



## BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

WEDNESDAY, MARCH 29, 2023

2:00 P.M.

2180 Milvia Street, 6th Floor, Berkeley, CA 94704 – Redwood Room  
1404 Le Roy Ave, Berkeley, CA 94708 – Teleconference Location  
2140 Shattuck Avenue, 6th Floor, Berkeley, CA 94704 – Teleconference Location  
806 15th Street NW, 20005 Washington, DC – Teleconference Location

### Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf  
Alternate: Councilmember Ben Bartlett

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 encouraged. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. 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/1617314166>. 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: **161 731 4166**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

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: March 6, 2023**
- 2. Review and Approve Draft Agenda:**
  - a. 4/11/23 – 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**

- **None**

## **Unscheduled Items**

- 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**
- 9. Discussion of Potential Changes and Enhancements to the City Council Legislative Process including the concepts referred by Council at the March 14, 2023 meeting**
- 10. Modifications or Improvements to City Council Meeting Procedures (referred by Council at the March 14, 2023 meeting)**
- 11. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## Unscheduled Items

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

## Items for Future Agendas

- Requests by Committee Members to add items to future agendas

## Adjournment – Next Meeting Monday, April 10, 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:

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.

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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, March 23, 2023.

A handwritten signature in black ink that reads "Mark Numainville".

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, MARCH 6, 2023**

**2:30 P.M.**

2180 Milvia Street, 6th Floor - Redwood Room

1404 Le Roy Ave, Berkeley 94708 – Teleconference Location

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

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**Roll Call:** 2:32 p.m. All present.

**Public Comment** – 3 speakers

## **Review of Agendas**

**1. Approval of Minutes: February 27, 2023**

**Action:** M/S/C (Hahn/Wengraf) to approve the minutes of 2/27/23.

**Vote:** All Ayes.

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

a. 3/21/23 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to approve the agenda of 3/21/23 with the changes noted below.

- *Item 19 Care First (Commission) – Moved to April 25 agenda*
- *Item 20 Health Educators (Commission) – Moved to May 23 agenda to provide time for a City Manager Companion Report*
- *Item 21 Rental Assistance (Arreguin) – Councilmembers Hahn, Harrison, and Robinson added as co-sponsors*
- *Item 22 Bioneers (Arreguin) – Councilmembers Hahn and Wengraf added as co-sponsors*
- *Item 23 Speed Feedback Signs (Hahn) – Councilmember Wengraf added as a co-sponsor*
- *Item 24 Pedestrian Safety (Hahn) – Councilmember Wengraf added as a co-sponsor*
- *Item 28 Unfunded Liabilities (City Manager) – Moved to April 11*
- *Item 30 Middle Housing (Taplin) – Referred to Land Use Committee*
- *Item 31 Labor Peace Ordinance (Harrison) – Revised item submitted; Moved to Action Calendar; Councilmembers Taplin and Bartlett added as co-sponsors; Requested that the Author present the item to the Labor Commission for consideration*
- *Item 32 Bike Storage (Robinson) – Councilmembers Hahn, Harrison, and Taplin added as co-sponsors; Moved to Consent Calendar*

Order of Action Items

Item 27 RPP

Item 29 Transit-First

Item 31 Labor Peace Ordinance

**Vote:** All Ayes.

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

- None selected

**4. Adjournments In Memory – None**

## Scheduling

5. **Council Worksessions Schedule** – BMASP special meeting moved to 3/20/23
6. **Council Referrals to Agenda Committee for Scheduling** – received and filed
7. **Land Use Calendar** – received and filed

## Referred Items for Review

- 8a. **Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**
- 8b. **Analysis of Return to In-Person Meetings of City Legislative Bodies**  
**Action:** 3 speakers. Discussion held. No action taken.
9. **Discussion of Potential Changes and Enhancements to the City Council Legislative Process**  
**Action:** 3 speakers. Discussion held. Moved to Unscheduled Items until proposal is presented to the Committee.

## Unscheduled Items

10. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**
11. **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/Hahn) to adjourn the meeting.  
**Vote:** All Ayes.

Adjourned at 3:39 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on March 6, 2023.

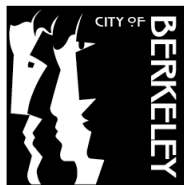
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Mark Numainville, City Clerk

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**DRAFT AGENDA**  
**BERKELEY CITY COUNCIL MEETING**

**Tuesday, April 11, 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

*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 encouraged. 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).*

*Remote participation by the public is available through Zoom. 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.*

**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 February 14 (regular), February 21 (special), February 27 (closed and special), February 28 (special and regular), March 13 (closed), March 14 (special and regular), March 20 (special) and March 21 (special and regular).

**Financial Implications:** None

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

### 2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 11, 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:** General Fund - \$120,000

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

### 3. Contract No. 31900273 Amendment: Bay Area Community Services North County Housing Resource Center

**From: City Manager**

**Recommendation:** Adopt a Resolution amending Contract No. 31900273 with Bay Area Community Services (BACS) North County Housing Resource Center (HRC) by increasing the not to exceed amount (NTE) by \$80,000 utilizing one-time grant funds. The amendment will increase the NTE amount from \$11,410,274 to \$11,490,274.

**Financial Implications:** See report

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

## Consent Calendar

- 4. Contract: JSI Research & Training Institute, Inc. for Community Health Assessment, Innovation, and Improvement Plan Consultant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with JSI Research & Training Institute, Inc. to serve as a Community Health Assessment, Innovation, and Improvement Plan consultant for the City of Berkeley's Health, Housing, and Community Services (HHCS) Department from May 1, 2023 to May 1, 2025 in an amount not to exceed \$249,413.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 5. Contract: Easy Does It for Provision of Wheelchair Van Service for Seniors & the Disabled**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager, or her designee, to execute a contract and any amendments with Easy Does It in the amount of \$175,000 for the period of July 1, 2023 through June 30, 2026 for the provision of accessible wheelchair van services to clients of the Aging Services Division's Berkeley Rides for Seniors & the Disabled program.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 6. Contract No. 32100126 Amendment: Anjanette Scott LLC for Housing Consultant Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100126 with Anjanette Scott LLC increasing the contract by \$50,000 for consulting services in a total amount not to exceed \$150,000, with a contract end date of June 30, 2024.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 7. Contract No. 32000224 Amendment: GovtInvest Labor Costing, Pension & OPEB Analysis Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment to Contract No. 32000224 with GovtInvest for a labor costing, pension and OPEB (Other Post-Employment Benefits) analysis software system, increasing the amount of the contract by \$150,000 to cover 3 years of subscription access to this service for a revised total contract amount not to exceed \$200,000.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

## Consent Calendar

- 8. Side Letter of Agreement – Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with Service Employees International Union, Local 1021 Community Services & Part-Time Recreation Leaders Association (PTRLA) to modify Section 15.6 of the Memorandum of Agreement regarding Hazardous Substance Special Assignment Pay. Effective July 7, 2022, employees who are regularly assigned to perform services in unhoused settings throughout the service area shall receive a three percent (3%) salary differential to their base pay for all actual hours worked in the field and performing duties in unhoused settings. This Resolution follows Council consideration of this item in Closed Session on December 12, 2022.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
- 9. Contract No. 31900122-1 Amendment: Rolling Orange, Inc. for Additional Website Maintenance and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900122-1 with Rolling Orange, Inc. for additional website maintenance and support for an amount not-to-exceed \$105,000 and a total contract value not-to-exceed \$674,300 from March 1, 2019 to June 30, 2025.  
**Financial Implications:** See report  
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 10. Donation: Memorial Bench at the Berkeley Marina in memory of Sophia Pritzos**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in memory of Sophia Pritzos.  
**Financial Implications:** \$3,400 (Donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 11. Lease Amendment: Cazadero Performing Arts Camp (CPAC), 5385 Cazadero Hwy, Cazadero, CA 95421**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute an amendment to a lease agreement with Cazadero Performing Arts Camp, at 5385 Cazadero Hwy, Cazadero, CA 95421, for City to disburse up to \$400,000 to tenant to implement capital improvements to satisfy City's obligations under the lease.  
**Financial Implications:** Measure T1 Fund - \$400,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

**12. Contract: Power Engineering Construction for the Selective Timber Pile Replacement Project at the Berkeley Marina**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Berkeley Marina Selective Pile Replacement Project (Bid Specification No. 23-11567-C); and 2. Accepting the bid of Power Engineering Construction as the lowest responsive and responsible bidder on the Project; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Power Engineering Construction, for the Berkeley Selective Piling Replacement Project, in an amount not to exceed \$3,175,000, which includes a contract amount consisting of base bid plus allowance of \$2,710,690 and a 17.13% contingency in the amount of \$464,310.

**Financial Implications:** See report

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

**13. Contract No. 10785 Amendment: West Coast Arborist, Inc for Tree Removal and Pruning Service**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10785 with West Coast Arborist, Inc. for tree removal and pruning service by increasing the contract amount by \$100,000 for a not-to-exceed amount of \$1,290,000.

**Financial Implications:** 2023 Parks Tax Fund - \$1,290,000

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

**14. Accept Grant Funding From the Board of State and Community Corrections (BSCC) Officer Wellness and Mental Health Grant Award Program**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager, or designee, to accept the Board of State and Community Corrections (BSCC) Officer Wellness and Mental Health Grant Award. The total funding awarded to the Berkeley Police Department is \$106,014 for the period July 1, 2022, to December 1, 2025. Funds for the grant will be used to enhance officer wellness and resilience by providing mental health resources.

**Financial Implications:** See report

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

## Consent Calendar

**15. Support March 21, 2023 Day of Action Urging Banks to Divest from Fossil Fuel Businesses**

**From: Peace and Justice Commission**

**Recommendation:** Adopt a Resolution that the City of Berkeley Council support the Tuesday March 21, 2023 nation-wide day of action to tell banks to divest from fossil fuel projects, and encourages Berkeley's residents to support and participate in local actions on that date.

**Financial Implications:** None

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

## Council Consent Items

**16. Support AB 40 – Improving Ambulance Patient Offload Times**

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution in support of AB 40 (Rodriguez), which develops a 20-minute statewide standard for ambulance patient offload times. Send a copy of the Resolution to Assemblymembers Freddie Rodriguez and Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.

**Financial Implications:** None

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

**17. Resolution to Support AB 1001**

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

**Recommendation:** Adopt a Resolution in support of Assembly Bill 1001, introduced by Assembly Member Matt Haney, and send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assembly Members Matt Haney and Buffy Wicks.

**Financial Implications:** See report

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

**18. Support for AB 1690 (Universal health care coverage)**

**From: Councilmember Taplin (Author)**

**Recommendation:** Send a letter to Assemblymember Ash Kalra (D-San Jose) in support of AB 1690 (Universal health care coverage).

**Financial Implications:** Staff time

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

**19. Support for AB 362 (Land value taxation study)**

**From: Councilmember Taplin (Author)**

**Recommendation:** Send a letter to Assemblymember Alex Lee (D-San Jose) in support of AB 362 (Land value taxation study).

**Financial Implications:** See report

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

## Council Consent Items

- 20. Referral to the June 2023 Budget Process to Increase Capacity for Berkeley Community Media**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Refer \$54,000 to the June, 2023 budget Process to increase personnel funding for Berkeley Community Media (BCM), advancing two current part time employees to full time.  
**Financial Implications:** \$54,000  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 21. Referral to the June 2023 Budget Process for Funding Harold Way Placemaking Project Schematic Design**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Refer \$100,000 to the June 2023 Budget Process to fund Harold Way Placemaking Project Schematic Design.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 22. Referral to the June 2023 Budget Process for Two Full-Time Social Workers for Social Justice Collaborative**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Refer \$147,000 to the June 2023 Budget Process for annual staffing costs associated with funding two social workers to provide low-income immigrants, asylum seekers, unaccompanied children, young dreamers, and displaced families with direct legal services and legal representation.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 23. Referral \$100,000 to the June, 2023 Budget Process to Design a Comprehensive Berkeley Police Early Intervention and Risk Management System**  
**From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor)**  
**Recommendation:** Refer \$100,000 to the June, 2023 Budget Process to enter into a contract to design and assist with implementing a comprehensive Berkeley Police Department Early Intervention and Risk Management System to provide necessary data and help in implementing fair and impartial policing policies and public safety reimagining.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140



## Council Consent Items

**24. Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing**

**From: Councilmember Harrison (Author)**

**Recommendation:** Refer \$579,000 to the June 2023 Budget Process for annual City staffing costs and for allied non-profits to implement and administer programs associated with acquisition and prevention of displacement from multi-family housing including the Small Sites Program, investments related to the Empty Homes Tax, and administrative implementation of the proposed Berkeley Community and Tenant and Opportunity to Purchase Act (COPA/TOPA).

**Financial Implications:** See report

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

**25. Relinquishment of Council Office Budget Funds to Grant Downtown Berkeley Association (DBA) \$500 for 2274 Shattuck Avenue Mural Project serving a Municipal Public Purpose.**

**From: Councilmember Harrison (Author)**

**Recommendation:** Adopt a resolution approving the expenditure to grant Downtown Berkeley Association (DBA) \$500 for the 2274 Shattuck Avenue Mural Project serving a Municipal Public Purpose, with funds relinquished to the City's general fund for this purpose from Councilmember Harrison's discretionary Council Office Budget Fund.

**Financial Implications:** See report

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

**26. Resolution in Support of AB 641: Automobile dismantlers: catalytic converters**  
**From: Councilmember Harrison (Author)**

**Recommendation:** Adopt resolution in support of AB 641, Automobile dismantlers: catalytic converters, amending Section 220 of the Vehicle Code to revise and expand the definition of "automobile dismantler" to include individuals illegally in possession of two or more catalytic converters.

**Financial Implications:** Staff time

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

**27. Proclaiming May as Jewish American Heritage Month**

**From: Councilmember Hahn (Author), Councilmember Wengraf (Co-Sponsor)**

**Recommendation:** Adopt a resolution proclaiming May as Jewish American Heritage Month.

**Financial Implications:** None

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

## Council Consent Items

**28. Kala Art Institute 2023 Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**

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

**Recommendation:** Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn and \$500 from Councilmember Taplin, to the Kala Art Institute, a 501(c)(3) non-profit organization, to support Art Kala 2023, an exhibition, auction, and benefit to support Kala's artistic, cultural, and educational programs, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budgets of Councilmembers Hahn and Taplin, and from any other Councilmembers who would like to contribute.

**Financial Implications:** Councilmembers' Discretionary Funds - \$500

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

**29. Budget Referral: Study to support Housing Element commitment to increase housing on higher-resourced commercial avenues of Solano, North Shattuck, and College Avenues.**

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

**Recommendation:** Refer \$250,000 to the June 2023 budget process to study and develop options, including but not limited to changes to zoning, incentives/programs/financing mechanisms, and objective design standards for Solano Avenue, North Shattuck, and College Avenue to: 1. Increase housing opportunities for people of all incomes, with an emphasis on housing affordable to households at or below 120% of Area Median Income (AMI); 2. Provide preferences to households previously excluded from residential areas served by these commercial corridors via discriminatory deed restrictions and/or discriminatory lending practices; 3. Provide housing with amenities for seniors, households with children, individuals with disabilities, artists, and other populations with specialized housing needs; 4. Ensure recommendations for zoning and design standards consider unique characteristics of each commercial area, including lot sizes and depths, availability of rear-access to parcels, abutting/neighborhood residential zoning standards, and any other unique characteristics of each commercial district and its surroundings; 5. Enhance the viability of locally-owned and neighborhood-serving commercial uses both during construction and over the long term, including potential reduced rents/right to return for existing establishments, appropriately-sized and accessible commercial spaces, and rent-controlled commercial spaces as a potential community benefit. Examples of such neighborhood serving commercial uses may change as retail trends develop, but could include: grocery/food stores, banks, dry cleaning and shoe repair, hardware stores, wellness and hair salons, restaurants and cafes, fitness centers, clothing and gift shops.

**Financial Implications:** General Fund - \$250,000

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

## Council Consent Items

### 30. **Budget Referral: Funds to Study Berkeley's Affordable and Social Housing Needs and Programmatic and Funding Opportunities**

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

**Recommendation:** Refer \$250,000 to the June 2023 budget process to study and report to Council on: 1. The need for Affordable Housing in Berkeley to: a. Rehouse Berkeley's unhoused residents. b. Meet the housing needs of very low-, low- and moderate-income Berkeley residents, from less than 30% to 120% of Area Median Income (AMI). c. Significantly increase cooperative, land trust, and other Social Housing, including innovative social housing models that provide significant moderate-income housing opportunities. d. Meet the needs of low-income artists, seniors, individuals with disabilities, and other populations with unique needs. e. Potentially increase Affordable Housing, up to 100%, at North Berkeley and Ashby Bart Stations. f. Meet the City's Housing Element Affordable Housing production requirements of 5,270 units from 30%-120% AMI in a timely manner, prior to the end of the current RHNA cycle in 2031. 2. Existing and potential new programs to increase homeownership for low-income and first-time homebuyers. 3. Needs/programs to accelerate the City's Small Sites Program. 4. Existing and upcoming funds available at the local, County, Regional, State, and Federal levels to support Berkeley in meeting its Affordable and Social Housing needs and requirements. 5. Berkeley-specific funds required to meet Affordable and Social Housing needs and to produce Berkeley's RHNA-required Affordable Housing, including funds to build capacity at Land Trusts and other organizations to deliver Cooperative and Social Housing. 6. Existing sources and amounts of Funding available to meet Berkeley's Affordable and Social Housing needs and requirements. 7. Potential Bonds or other measures to secure necessary Affordable and Social Housing funds including a potential measure or measures on the November 2024 ballot, based on the success of 2018 Measure O. 8. Added costs of delaying the preservation and construction of Affordable Housing, including potential increased costs for land, financing, and construction, and the yearly/per-individual cost of providing services to Berkeley's unhoused residents. 9. Consequences of failure to meet RHNA Affordable Housing allocations in a timely manner. 10. Potential re-authorization of Measure P in November of 2024 as a permanent measure, to extend additional funding available to support rehousing the homeless. 11. Any other information related to Affordable and Social Housing in Berkeley to help inform residents and the City Council of the need for additional Affordable Housing and Affordable Housing programs and funds, and funds to rehouse the homeless. Study to be delivered to the City Council no later than December 1, 2023 and to include a plan for Berkeley to meet its Affordable and Social Housing needs and requirements and recommendations for additional funds, programs, and other measures to meet needs over the next decade.

**Financial Implications:** See report

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

## Council Consent Items

- 31. Budget Referral: \$30,000 for Yield Signs at Two Unmarked Intersections**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** In support of the City’s Pedestrian Plan with a vision that, “Berkeley is a model walkable city where traveling on foot or with an assistive device is safe, comfortable, and convenient for people of all races, ethnicities, incomes, ages, and abilities,” refer to the Fiscal Year 2024 Budget Process an allocation of \$30,000 to install “YIELD” signs at two unmarked intersections at Shasta and Queens and Quail and Queens.  
**Financial Implications:** \$30,000  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 32. Budget Referral: \$150,000 for Handrails, Lights and Signage for City Pedestrian Path Network**  
**From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor), Councilmember Humbert (Co-Sponsor)**  
**Recommendation:** In support of the City’s goals as stated in the “General Plan,” “Local Hazard Mitigation Plan,” “Pedestrian Plan,” and “Community Wildfire Protection Plan”, refer to the Fiscal Year 2024 Budget Process an allocation of \$150,000 for the installation of lighting, handrails and signage on paths deemed most critical for safe evacuation throughout Berkeley.  
**Financial Implications:** \$150,000  
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 33. Approval of the Public Bank East Bay Viability Study** *(Reviewed by the Budget & Finance Committee)*  
**From: Councilmember Robinson (Author), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**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 and participating jurisdictions in the production of a business plan for a public bank  
*Policy Committee Recommendation: To send the item to Council with a positive recommendation.*  
**Financial Implications:** See report  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Council Consent Items

**34. Budget Referral: Fully fund the City's 50-50 Sidewalk Repair Program  
From: Councilmember Humbert (Author), Councilmember Robinson (Co-Sponsor)**

**Recommendation:** Refer \$2.2 million to the FY 24 Mid-Biennial Budget Update for the purpose of fully funding clearance of the existing backlog in Berkeley's 50-50 Sidewalk Repair Program. Refer an additional \$1 million per year (above the existing \$1 million baseline funding for sidewalk repair) to future budget processes to ensure all of Berkeley's sidewalks are kept in a state of good repair.

**Financial Implications:** See report

Contact: Mark Humbert, Councilmember, District 8, (510) 981-7180

## Action Calendar

*The public may comment on each item listed on the agenda for action. 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 during one of the Action Calendar public comment periods on the item. Public comment will occur for each Action item (excluding public hearings, appeals, and/or quasi-judicial matters) in one of two comment periods, either 1) before the Action Calendar is discussed; or 2) when the item is taken up by the Council.*

*A member of the public may only speak at one of the two public comment periods for any single Action item.*

*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 – Scheduled Public Comment Period

*During this public comment period, the Presiding Officer will open and close a comment period for each Action item on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters). The public may speak on each item. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

## Action Calendar – Old Business

**35. Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone (Continued from March 21, 2023)**

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

**Recommendation:** Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code (BMC) to Establish a Labor Peace Policy minimizing labor/management conflict in Berkeley Marina Zone.

**Financial Implications:** See report

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

## Action Calendar – New Business

### 36. **Unfunded Liability Obligations and Unfunded Infrastructure Needs**

**From: City Manager**

**Recommendation:** That the City Council takes the following actions:

1. Accept the Unfunded Liability Obligations and Unfunded Infrastructure Needs report;
2. Receive a presentation on Pensions and Other-Post Employment Benefits tonight and provide staff with direction;
3. Schedule for either the April 25, 2023 City Council Meeting or at a later date to be determined a presentation and discussion on Unfunded Infrastructure Needs.

**Financial Implications:** See report

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

### 37. **Proposition 218 Procedures and Five Year Zero Waste Rate Schedule**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving initiation of the Proposition 218 procedures for the proposed Zero Waste Fund Five Year Rate Schedule and adding Zero Waste customers to the City's Very Low Income Refund program.

**Financial Implications:** See report

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

### 38a. **Recommendation for RV Lot and Waste Management on Streets for RVs**

**From: Homeless Services Panel of Experts**

**Recommendation:** The Homeless Services Panel of Experts recommends to Council that they refer to staff to expedite all efforts to identify a location for another RV lot(s) to take the place of the now closed SPARK lot at 742 Grayson and that the new lot identified require mandatory safety inspections and fire extinguishers to be provided. The Homeless Services Panel of Experts further recommends that Council refer to staff to develop a waste management plan to be implemented for RVs currently on the streets.

**Financial Implications:** See report

Contact: Josh Jacobs, Commission Secretary, (510) 981-5400

### 38b. **Companion Report to Recommendation for RV Lot and Waste Management on Streets for RVs**

**From: City Manager**

**Recommendation:** Refer the Homeless Services Panel of Experts' recommendation to identify and expedite a new safe RV parking location/program and develop a waste management plan for RVs on the streets to the Budget and Finance Policy Committee for consideration alongside all other homeless services priorities in the budget process.

**Financial Implications:** See report

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

## Action Calendar – New Business

**39a. Referral of two health educator positions to the COB FY 2024 budget process**

**From: Peace and Justice Commission**

**Recommendation:** Refer to the budget process a request for estimated \$150,000 annually, beginning in FY 2024 or as early as the AAO #2 process in spring 2023, for staffing, materials, and supplies to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities, as proposed by the Peace and Justice Commission.

**Financial Implications:** See report

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

**39b. Companion Report: Referral of two health educator positions to the COB FY 2024 budget process**

**From: City Manager**

**Recommendation:** Refer to the Peace and Justice Commission's request for \$150,000 annually for staffing, materials, and supplies for health education and outreach to the Budget and Finance Policy Committee for further deliberation.

**Financial Implications:** None

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

## Action Calendar – New Business

### 40a. Allocation of \$3 Million Over Two Years, FY 2024 and FY 2025, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

*(Reviewed by the Budget and Finance Policy Committee)*

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

**Recommendation:** Adopt a Resolution allocating \$3 million from the General Fund in FY24 (July 1, 2023 through June 30, 2024) and FY25 (July 1, 2024 through June 30, 2025) that shall be invested in a grant program administered and coordinated by the Department of Health, Housing, and Community Services' (HHCS) Public Health Division (HHCS/PHD) consistent with the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the health effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY24 and FY25. In each of these years, the funds will be distributed as follows: a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding. b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants. c. Direct the City Manager to utilize up to 15% of the allocated funds to support HHCS/PHD to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE Commission funding program as well as pay certain City of Berkeley Finance Department costs related to the sugary drink tax.

*Policy Committee Recommendation: To forward the item to Council with a Qualified Positive Recommendation to approve staff's recommendation, with an additional amount of \$35,590 in FY24 and FY25, and any additional revenues beyond the projected amounts being prioritized for grants.*

**Financial Implications:** See report

Contact: Roberto Terrones, Commission Secretary, (510) 981-5400



## Action Calendar – New Business

### 40b. Companion Report: Allocation of \$3 Million Over Two Years, FY24 and FY25, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs). *(Reviewed by the Budget and Finance Policy Committee)*

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

**Recommendation:** Adopt a Resolution allocating \$2 million from the General Fund in FY24 (July 1, 2023 through June 30, 2024) and FY25 (July 1, 2024 through June 30, 2025) that shall be invested in a grant program administered and coordinated by the Department of Health, Housing, and Community Services' (HHCS) Public Health Division (HHCS/PHD) consistent with the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the health effects of SSB consumption. The total of \$2 million will be distributed in two installments of \$1 million per year for FY24 and FY25. The funds will be distributed as follows: a. Direct the City Manager to award up to \$712,000 of the allocated funds to Berkeley Unified School District (BUSD) for the period, July 1, 2023 to June 30, 2025 through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding. b. Direct the City Manager to award at least \$712,000 of the allocated funds for the period, July 1, 2023 to June 30, 2025 through an RFP process managed by HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants. c. For the period, July 1, 2023 to June 30, 2025, direct the City Manager to allocate \$125,000 to fund Finance Department costs for staffing and MuniServices fees and \$451,000 to HHCS/PHD for staffing, operating and consulting costs to coordinate and monitor the grant process, manage resulting contracts awarded, support activities aligned with the goal of the sugary beverage tax, including the Healthy Retail Checkout ordinance, and provide an annual presentation to the SSBPPE Commission that includes process and outcome data and updates on Finance Department fees related to the sugary drink tax for the SSBPPE Commission to inform the development of the Commission's annual report. d. Carryover any sugary drink tax revenue received in excess of \$2 million during FY24 and FY25 to be awarded for related services in FY25 – FY27.

*Policy Committee Recommendation: To forward the item to Council with a Qualified Positive Recommendation to approve staff's recommendation, with an additional amount of \$35,590 in FY24 and FY25, and any additional revenues beyond the projected amounts being prioritized for grants.*

**Financial Implications:** See report

Contact: Henry Oyekanmi, Finance, (510) 981-7300, Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Action Calendar – Policy Committee Track Items

### 41. Establishment of Fred Ross Memorial Bench in Cesar Chavez Park

**From: Mayor Arreguin (Author)**

**Recommendation:** Adopt a Resolution directing the City Manager to work with the family of the late Fred Ross Jr. to dedicate a memorial bench at the west facing edge of Cesar Chavez Park in his honor. The family of Fred Ross Jr. shall be responsible for the cost of the bench and shall be engaged in determining the location of the bench.

**Financial Implications:** None

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

## Information Reports

### 42. Environment and Climate Commission 2023 Work Plan

**From: Environment and Climate Commission**

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

## Public Comment – Items Not Listed on the Agenda

## Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:*

1) *No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred.*

2) *In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

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Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: 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.

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Peace and Justice Commission

CONSENT CALENDAR  
APRIL 11, 2023

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Grace Morizawa, Chairperson, Peace and Justice Commission

Subject: Support March 21, 2023 Day of Action Urging Banks to Divest from Fossil Fuel Businesses

RECOMMENDATION:

Adopt a resolution that the City of Berkeley Council support the Tuesday March 21, 2023 nation-wide day of action to tell banks to divest from fossil fuel projects, and encourage Berkeley's residents to support and participate in local actions on that date.

CURRENT SITUATION AND ITS EFFECTS:

The national group, Third Act, founded by activist Bill McKibben to rally older Americans against climate change, will hold a series of intergenerational rallies on Tuesday, March 21, 2023 to which the general public is invited, with the following purpose: to "make visible the invisible connection between cash and carbon. We will pressure the big, dirty fossil-fueled banks – Bank of America, Chase, Citibank, and Wells Fargo – to move their investments out of fossil fuels by moving our money out of their banks;" and nearby rallies will take place at Piedmont Avenue and 41<sup>st</sup> Street in Oakland at 9:30 AM and in Albany, San Francisco, Sacramento, San Rafael, Sebastopol, and other locations.

1000 Grandmothers for Future Generations is among the groups participating in the March 21 rallies, and the Grandmothers state: "We are elder women and allies stepping up to the urgency of the climate crisis. We act in support of the rights of Native Americans and other frontline communities. We believe that we cannot address the climate crisis without addressing systemic racism. That is what climate justice means to us."

At its regular meeting February 6, 2023, the Peace and Justice Commission adopted the following recommendation proposing City Council support the Day of Action on March 21 and encourage Berkeley's residents to participate in local actions.

M/S/C: Jaquin, Lippman.

Ayes: Jacquin, Lippman, Lee, Leon-Maldonado, Morizawa.

Noes: None.

Abstain: Gussmann, Maran.

Absent: Bohn.

### FISCAL IMPACTS OF RECOMMENDATION

None

### ENVIRONMENTAL SUSTAINABILITY

According to the Environmental and Energy Study Institute, “Air pollution from burning fossil fuels can cause multiple health issues, including asthma, cancer, heart disease, and premature death. Globally, fossil fuel pollution is responsible for one in five deaths. In the United States, 350,000 premature deaths in 2018 were attributed to fossil fuel-related pollution. The annual cost of the health impacts of fossil fuel-generated electricity in the United States is estimated to be up to \$886.5 billion....”

“The environmental and health impacts of fossil fuels disproportionately harm communities of color and low-income communities. Black and Latinx Americans are exposed to 56 and 63 percent more particulate matter pollution, respectively, than they produce.”

### BACKGROUND

On May 30, 2017, after revelations about illegal behavior by Wells Fargo, today one of the major investors in climate-destroying loans, the Berkeley City Council resolved to divest from Wells Fargo and to re-invest in financial institutions that “adhere to fair, socially and environmentally responsible banking.”

### RATIONALE FOR RECOMMENDATION

The National Whistleblower Campaign states that “while fossil fuel companies and deforestation-linked companies are the primary drivers of climate change, most companies in these industries could not operate without support from major financial institutions. Banks provide loans that allow these companies to expand, and investment banks also provide underwriting services that help companies to issue new stocks and obtain debt financing through corporate bonds.

“In the five years since the Paris Agreement was signed, the world’s 60 largest commercial banks have provided more than USD 3.8 trillion for fossil fuels through lending and underwriting. Since the Paris Agreement was signed, financial institutions have also increased their funding for commodities linked to deforestation by 40%, providing USD 153.9 billion in financing for forest-risk commodities.”

### ALTERNATIVE ACTIONS CONSIDERED

None

Support March 21, 2023 Day of Action Urging Banks to Divest from Fossil Fuel Businesses

Consent Calendar  
April 11, 2023

CITY MANAGER

The City Manager takes no position on this recommendation.

CONTACT PERSON

Grace Morizawa, Chairperson, Peace and Justice Commission

Okeya Vance-Dozier Commission Secretary, (510) 981-7239

Attachment 1: Resolution

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

## Resolution Supporting March 21, 2023 Day of Action Urging Banks to Divest from Fossil Fuel Businesses

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

WHEREAS, according to the Environmental and Energy Study Institute,<sup>1</sup> "Air pollution from burning fossil fuels can cause multiple health issues, including asthma, cancer, heart disease, and premature death. Globally, fossil fuel pollution is responsible for one in five deaths. In the United States, 350,000 premature deaths in 2018 were attributed to fossil fuel-related pollution.<sup>2</sup> The annual cost of the health impacts of fossil fuel-generated electricity in the United States is estimated to be up to \$886.5 billion....<sup>3</sup>

"The environmental and health impacts of fossil fuels disproportionately harm communities of color and low-income communities. Black and Latinx Americans are exposed to 56 and 63 percent more particulate matter pollution, respectively, than they produce;"<sup>4</sup> and

WHEREAS, the National Whistleblower Campaign states that "while fossil fuel companies and deforestation-linked companies are the primary drivers of climate change, most companies in these industries could not operate without support from major financial institutions.<sup>5</sup> Banks provide loans that allow these companies to expand, and investment banks also provide underwriting services that help companies to issue new stocks and obtain debt financing through corporate bonds....

"In the five years since the Paris Agreement was signed, the world's 60 largest commercial banks have provided more than USD 3.8 trillion for fossil fuels through

<sup>1</sup> "Fact Sheet | Climate, Environmental, and Health Impacts of Fossil Fuels," Dec. 17, 2021, <https://www.eesi.org/papers/view/fact-sheet-climate-environmental-and-health-impacts-of-fossil-fuels-2021>

<sup>2</sup> "Fossil fuel air pollution responsible for 1 in 5 deaths worldwide," Harvard T.H. Chan School of Public Health, Center for Climate Change and the Global Environment, Feb. 9, 2021, <https://www.hsph.harvard.edu/c-change/news/fossil-fuel-air-pollution-responsible-for-1-in-5-deaths-worldwide/>

<sup>3</sup> "Economic value of U.S. fossil fuel electricity health impacts," NIH National Library of Medicine, Feb. 2013, <https://pubmed.ncbi.nlm.nih.gov/23246069/>

<sup>4</sup> "Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure," National Academy of Sciences, March 11, 2029 <https://www.pnas.org/doi/10.1073/pnas.1818859116>

<sup>4</sup> <https://www.clientearth.org/media/w1qdlnmk/clientearth-position-paper-to-the-ec-deforestation-public-consultation.pdf>

<sup>5</sup> <https://www.whistleblowers.org/the-role-of-banking-in-climate-change/>



lending and underwriting.<sup>6</sup> Since the Paris Agreement was signed, financial institutions have also increased their funding for commodities linked to deforestation by 40%, providing USD 153.9 billion in financing for forest-risk commodities;<sup>7</sup> and

WHEREAS, on May 30, 2017, after revelations about illegal behavior by Wells Fargo, today one of the major investors in climate-destroying loans, the Berkeley City Council resolved to divest from Wells Fargo and to re-invest in financial institutions that “adhere to fair, socially and environmentally responsible banking;”<sup>8</sup> and

WHEREAS, the national group Third Act, founded by activist Bill McKibben to rally older Americans against climate change, will hold a series of intergenerational rallies on Tuesday, March 21, 2023 to which the general public is invited, with the following purpose: to “make visible the invisible connection between cash and carbon. We will pressure the big, dirty fossil-fueled banks – Bank of America, Chase, Citibank, and Wells Fargo – to move their investments out of fossil fuels by moving our money out of their banks;”<sup>9</sup> and nearby rallies will take place at Piedmont Avenue and 41<sup>st</sup> Street in Oakland at 9:30 AM and in Albany, San Francisco, Sacramento, San Rafael, Sebastopol, and other locations;<sup>10</sup> and

WHEREAS, 1000 Grandmothers for Future Generations is among the groups participating in the March 21 rallies, and the Grandmothers state: “We are elder women and allies stepping up to the urgency of the climate crisis. We act in support of the rights of Native Americans and other frontline communities. We believe that we cannot address the climate crisis without addressing systemic racism. That is what climate justice means to us.”<sup>11</sup>

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<sup>6</sup> “The Role of Banking in Climate Change,” Published by a consortium of environmental groups including the Sierra Club, Indigenous Environmental Network and Rainforest Action among others. March 24, 2021. <https://www.bankingonclimatechaos.org/bankingonclimatechaos2021/>

<sup>7</sup> <https://www.clientearth.org/media/w1qdlnmk/clientearth-position-paper-to-the-ec-deforestation-public-consultation.pdf>

<sup>8</sup> “Policy not to do business with financial institutions that employ unethical practices, invest in environmentally unsustainable endeavors and practices that undermine the health and rights of Indigenous people and those of disadvantaged populations, and to end all financial relationships with Wells Fargo,” May 30, 2017, Berkeley City Council, <https://records.cityofberkeley.info/PublicAccess/paFiles/cqFiles/index.html>; search fields: Search Type: “Resolution Query”; Search Terms: “Fargo”; Search Start and End dates: 5-30-2017

<sup>9</sup> <https://thirdact.org/>

and

<https://vtdigger.org/2021/09/02/bill-mckibben-launches-third-act-to-rally-older-americans-around-climate-change/>

<sup>10</sup> <https://thirdact.org/national-day-of-action/>

<sup>11</sup> 1000 Grandmothers for Future Generations,

<https://www.1000grandmothers.com/#:~:text=1000%20Grandmothers%20for%20Future%20Generations&text=We%20are%20elder%20women%20and,crisis%20without%20addressing%20systemic%20racism>

Support March 21, 2023 Day of Action Urging Banks to Divest from Fossil Fuel Businesses

Consent Calendar  
April 11, 2023

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports the Tuesday March 21, 2023 nation-wide day of action to tell banks to divest from fossil fuel projects, and encourages Berkeley's residents to support and participate in local actions.



Office of the Mayor

CONSENT CALENDAR

April 11, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Support AB 40 – Improving Ambulance Patient Offload Times

RECOMMENDATION

Adopt a Resolution in support of AB 40 (Rodriguez), which develops a 20-minute statewide standard for ambulance patient offload times. Send a copy of the Resolution to Assemblymembers Freddie Rodriguez and Buffy Wicks, State Senator Nancy Skinner, and Governor Gavin Newsom.

BACKGROUND

The ambulance patient offload time (APOT), is defined as the time between when an ambulance arrives at a hospital and when the patient is transferred from the ambulance gurney to the care of the hospital. The longer the APOT, the longer an ambulance is out of service and unable to respond to other emergencies. APOTs throughout California have been increasing in recent years, even before the COVID-19 pandemic, as a result of staffing demands and high hospital occupancy. Each year, approximately 70,000 Californians wait over an hour upon arriving at a hospital on an ambulance gurney before being admitted.

In February 2023, 22.3% of APOTs at Alta Bates Hospital took more than 20 minutes. The availability of Emergency Medical Services (EMS) transports in Berkeley has improved in recent years as a result of the purchasing of two new ambulances for Berkeley's EMS Division in October 2021 with Measure FF Funds. However, there is a significant risk of APOTs for Berkeley patients to increase in future years as a result of a potential closure of Alta Bates. In addition to longer transit times, APOTs will likely increase due to a surge in demand at the next closest hospital, Summit, making it more difficult to provide hospital beds to incoming patients in a timely manner. According to the Alta Bates Rapid Health Impact Assessment in 2018, it will take on average an additional 10-12 minutes for an ambulance in Berkeley to transport a patient to Summit instead of Alta Bates.

In 2021, 40% of EMS calls in Berkeley were for people aged 65 or older, who make up 14% of the City's population. People aged 65 and older is Berkeley's fastest growing population segment, which is expected to account for 20% of the City's population by 2030. This is expected to place additional strains on hospital and ambulance service in the future. Ensuring that proper standards are in place to accommodate future increases in demand is needed to protect the health and safety of the community.

AB 40, introduced by Assemblymember Freddie Rodriguez, directs the State's Emergency Medical Services Authority (EMSA) to develop standards to ensure a 20-minute APOT 90% of the time. It also calls on EMSA to implement an audit tool to improve the accuracy of data and provide technical assistance to support implementation of this policy by March 1, 2024.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 40

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

IN SUPPORT OF AB 40

WHEREAS, swift access to emergency services is a critical and potentially lifesaving measure that is expected during a medical emergency; and

WHEREAS, a key factor in getting medical treatment during a medical emergency is the ambulance patient offload time (APOT), the time between when an ambulance arrives at a hospital and when the patient is transferred from the ambulance gurney to the care of the hospital; and

WHEREAS, in recent years, APOTs throughout California have been increasing, even before the COVID-19 pandemic, as a result of staffing demands and high hospital occupancy, with approximately 70,000 Californians waiting over an hour upon arriving at a hospital on an ambulance gurney before being admitted; and

WHEREAS, as of February 2023, 22.3% of patients transported to Berkeley's Alta Bates Hospital experience an APOT of over 20 minutes, which can cause delays in getting a patient receiving medical care and longer wait times for ambulances to respond to another medical emergency; and

WHEREAS, Berkeley residents are likely to witness an increase in APOTs if Alta Bates Hospital is closed, in addition to longer transit times during medical emergencies where minutes can make the difference between life and death; and

WHEREAS, Berkeley's fastest growing population segment is people aged 65 and over, who in 2021 accounted for 40% of EMS calls, which will result in increased demand for hospital and ambulance services in the future; and

WHEREAS, AB 40, introduced by Assemblymember Freddie Rodriguez, directs the State's Emergency Medical Services Authority (EMSA) to develop standards to ensure a 20-minute APOT 90% of the time; and

WHEREAS, ensuring that proper standards are in place to accommodate future increases in demand is needed to protect the health and safety of the community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 40.

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

AMENDED IN ASSEMBLY MARCH 15, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 40**

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**Introduced by Assembly Member Rodriguez**

December 5, 2022

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An act to add Section 53112.5 to the Government Code, and to add Sections 1797.120.5, 1797.120.6, ~~and 1797.120.7~~, and 1797.260 to the Health and Safety Code, relating to emergency services.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Rodriguez. Emergency medical services.

Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, creates the Emergency Medical Services Authority, which is responsible for the coordination of various state activities concerning emergency medical services. Among other duties, existing law requires the authority to develop planning and implementation guidelines for EMS systems, provide technical assistance to existing agencies, counties, and cities for the purpose of developing the components of EMS systems, and receive plans for the implementation of EMS and trauma care systems from local EMS agencies. Existing law makes a violation of the act or regulations adopted pursuant to the act punishable as a misdemeanor.

This bill would require the authority to develop an electronic signature for use between the emergency department medical personnel at a receiving facility and the transporting emergency medical personnel that captures the points in time when the hospital receives notification of ambulance arrival and when transfer of care is executed for documentation of ambulance patient offload time, as defined. The bill would require the authority to develop a statewide standard of 20

AB 40

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minutes, 90% of the time, for ambulance patient offload time. The bill would also require the authority to develop an audit tool to improve data accuracy regarding transfer of care, as specified, and to provide technical assistance and funding as needed, subject to an appropriation, for small rural hospitals and volunteer EMS providers to implement these provisions. The bill would require the authority to adopt emergency regulations to implement these provisions on or before March 1, 2024.

~~The bill would require the authority, on or before March 1, 2024, to establish a working group of various stakeholders to review, update, and publish a toolkit to reduce patient offload delays in the emergency department.~~

*The bill would require a general acute care hospital with an emergency department to develop, in consultation with its emergency department staff, an ambulance patient offload time reduction protocol by June 1, 2024, that addresses specified factors, including, among other things, mechanisms to improve hospital operations to reduce ambulance patient offload time. The bill would require the hospital to file its protocol with the authority and to report annually any revisions to its protocol. The bill would require the authority, on or after March 1, 2024, to monitor monthly ambulance patient offload time data for each facility. The bill would require the authority to, among other things, report ambulance patient offload time exceedance to the relevant local EMS agency and the Commission on Emergency Medical Services if, on or after July 1, 2024, the general acute care hospital with an emergency department has an ambulance patient offload time that exceeds the statewide standard of 20 minutes, 90% of the time.*

The bill would additionally require local EMS agencies to create, in collaboration with local hospitals, a joint plan to respond to surges in demand for medical services and to submit the joint plans to the authority on or before March 1, 2024.

Because the bill would create new requirements within the act, thereby expanding the scope of an existing crime, the bill would impose a state-mandated local program.

Existing law, the Warren-911-Emergency Assistance Act, requires each local public agency within its respective jurisdiction to establish a basic system that automatically connects a person dialing 911 to an established public safety answering point through normal telephone service facilities.

This bill would require the Emergency Services Medical Authority, on or before March 1, 2024, to develop a public education campaign related to the use of the 911 service and other tools for access to care.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 53112.5 is added to the Government  
2 Code, to read:

3 53112.5. On or before March 1, 2024, the Emergency Medical  
4 Services Authority shall develop, in partnership with local public  
5 health departments, a public education campaign related to use of  
6 the 911 service and other tools for access to care. This shall include  
7 public service announcements and educational material.

8 SEC. 2. Section 1797.120.5 is added to the Health and Safety  
9 Code, to read:

10 1797.120.5. (a) (1) The authority shall develop a California  
11 Emergency Medical Services Information System requirement for  
12 an electronic signature for use between the emergency department  
13 medical personnel at a receiving facility and the Emergency  
14 Medical Technician (EMT), Advanced Emergency Medical  
15 Technician (AEMT), or Emergency Medical Technician-Paramedic  
16 (EMT-P) that captures the points in time when the hospital receives  
17 notification of ambulance arrival and when transfer of care is  
18 executed for documentation of ambulance patient offload time, as  
19 defined by Section 1797.120.

20 (2) The signature shall be collected when physical transfer of  
21 the patient occurs and the report is given to hospital staff and shall  
22 note ambulance arrival time at the hospital.

23 (b) The authority shall develop a statewide standard of 20  
24 minutes, 90 percent of the time, for ambulance patient offload  
25 time.



1 (c) The authority shall develop an audit tool to improve data  
2 accuracy of transfer of care with validation from hospitals and  
3 local EMS agencies.

4 (d) The authority shall provide technical assistance and funding  
5 as needed, subject to an appropriation, for small rural hospitals  
6 and volunteer EMS providers to implement this section.

7 (e) On or before March 1, 2024, the authority shall adopt  
8 emergency regulations to implement this section. The emergency  
9 regulations adopted pursuant to this section shall be adopted in  
10 accordance with Chapter 3.5 (commencing with Section 11340)  
11 of Part 1 of Division 3 of Title 2 of the Government Code, and,  
12 for purposes of that chapter, including Section 11349.6 of the  
13 Government Code, the adoption of the regulations is an emergency  
14 and shall be considered by the Office of Administrative Law as  
15 necessary for the immediate preservation of the public peace, health  
16 and safety, and general welfare.

17 SEC. 3. Section 1797.120.6 is added to the Health and Safety  
18 Code, to read:

19 ~~1797.120.6. On or before March 1, 2024, the authority shall~~  
20 ~~establish a working group of stakeholders representing hospital~~  
21 ~~administration, EMS providers, local EMS agencies, and hospital~~  
22 ~~employees in the emergency department and in the inpatient setting~~  
23 ~~to review, update, and publish a toolkit to reduce patient offload~~  
24 ~~delays in the emergency department.~~

25 *1797.120.6. (a) A licensed general acute care hospital with*  
26 *an emergency department shall, by June 1, 2024, develop, in*  
27 *consultation with its emergency department staff, an ambulance*  
28 *patient offload time reduction protocol that addresses all of the*  
29 *following factors:*

30 *(1) Notification of hospital administrators, nursing staff, medical*  
31 *staff, and ancillary services that the statewide standard for*  
32 *ambulance patient offload time has been exceeded for one month.*

33 *(2) Mechanisms to improve hospital operations to reduce*  
34 *ambulance patient offload time, including, but not limited to,*  
35 *transfers, elective admissions, discharges, alternative care sites,*  
36 *supplies, improved triage and transfer systems, and additional*  
37 *staffing.*

38 *(3) Systems to improve general hospital coordination with the*  
39 *emergency department, including consults for emergency*  
40 *department patients.*

1 (4) Direct operational changes that facilitate a rapid reduction  
2 in ambulance patient offload time to the statewide standard of 20  
3 minutes, 90 percent of the time.

4 (b) A licensed general acute care hospital with an emergency  
5 department shall file its ambulance patient offload time reduction  
6 protocol with the authority and shall annually report any revisions  
7 to its protocol.

8 SEC. 4. Section 1797.120.7 is added to the Health and Safety  
9 Code, to read:

10 1797.120.7. (a) On or after March 1, 2024, the authority shall  
11 monitor monthly ambulance patient offload time data for each  
12 facility required to report under Section 1797.120.5.

13 (b) If, on or after July 1, 2024, a general acute care hospital  
14 with an emergency department has an ambulance patient offload  
15 time that exceeds the standard in subdivision (b) of Section  
16 1797.120.5, the authority shall do all of the following:

17 (1) Report the ambulance patient offload time exceedance to  
18 the relevant local EMS agency and the commission via electronic  
19 means.

20 (2) Direct the local EMS agency to alert all EMS providers in  
21 the jurisdiction.

22 (3) Direct the licensed general acute care hospital with an  
23 emergency department to implement the ambulance patient offload  
24 time reduction protocol developed pursuant to Section 1797.120.6.

25 (4) Host weekly calls with the relevant hospital administration,  
26 EMS providers, local EMS agency, and hospital employees to  
27 update and discuss implementation of the protocol and the  
28 outcomes.

29 ~~SEC. 4.~~

30 SEC. 5. Section 1797.260 is added to the Health and Safety  
31 Code, to read:

32 1797.260. Local EMS agencies shall create, in collaboration  
33 with local hospitals, a joint plan to respond to surges in demand  
34 for medical services. Local EMS agencies shall submit the joint  
35 plans to the authority on or before March 1, 2024.

36 ~~SEC. 5.~~

37 SEC. 6. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

**AB 40**

— 6 —

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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Office of the Mayor

CONSENT CALENDAR

April 11, 2023

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Taplin (Co-Sponsor)

Subject: Resolution to Support AB 1001

RECOMMENDATION

Adopt a Resolution in support of Assembly Bill 1001, introduced by Assembly Member Matt Haney, and send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assembly Members Matt Haney and Buffy Wicks.

SUMMARY

If adopted, Assembly Bill 1001 would require a general acute care hospital to adopt behavioral health emergency service policies related to minimum staffing requirements, response times, and data management and reporting. It would also establish the Behavioral Health Emergency Response and Training Fund to support staffing increases in general acute care hospitals.

BACKGROUND

The State's Department of Public Health (DPH) provides licensing, regulation, and inspection of various types of health facilities, including general acute care hospitals<sup>1</sup>. DPH upholds standards that encompass sanitation, staffing of qualified and licensed staff and services, and the use of data given to hospital officials to make informed decisions. Currently, the Department of Health Care Access and Information (DHCAI) is responsible for administering various programs with respect to health care professions and establishes various programs to facilitate the expansion of the health care workforce. The board of supervisors in each county establishes and maintains a county hospital to provide public health care services within the county, authorizing the board to prescribe rules for the hospital's government and management, and to appoint a county physician and other necessary officers and employees of the hospital, as needed.

While both state and federal law requires health plans to provide behavioral health care treatment, there exists no policy within the context of workforce standards when providing care at acute health hospitals. California maintains no unified standard for providing behavioral health emergency services at acute care hospitals with respect to

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<sup>1</sup> An acute care hospital can be defined as a hospital that provides inpatient medical care for those seeking or needing services in the form of surgery and/or treatment for acute medical conditions or injuries. County hospitals are the typical service providers delivering public care at the local level.

staffing requirements, service delivery wait and response times, and data management and reporting to DHCAI. This may leave patients seeking behavioral health emergency services to wait for an undetermined time without no expectation that they will receive care within a set period of time. In addition, patients who seek such treatment may not receive the adequate level of care from an appropriately licensed provider, leading patients to receive inadequate or subpar services, hospitals referring out such care to off-site providers, and/or hospital systems relying on more expensive administrative and staffing methods to provide needed services.

DHCS notes that the COVID-19 pandemic has exacerbated behavioral health challenges, both in terms of mental health and substance use disorder(s), placing significant demands on the existing system of care and workforce capacity. Governor Newsom has made behavioral health a top priority for his administration, and, as such, the Department of Healthcare Services (DHCS) has updated its assessment of California's behavioral health system<sup>2</sup>. DHCS has found that nearly one in ten California adults suffer from a substance use disorder, with another one in 20 suffering from a mental illness. Those living with the most serious behavioral health conditions are often served through the public hospital system. One in 13 suffer from serious emotional disturbance, with higher rates seen among low-income children and those who are Black and Latinx. About 43% of California residents reported it was "somewhat or very difficult" for them to obtain an appointment with a provider for a behavioral health condition who accepts their insurance. This reality places additional strains and demand on the local level to provide the most intensive care to those most needy, marginalized, and distressed, while further exasperating the limited ability to receive quality care outside private insurance providers through county hospital systems.

The lack of universal data collection and dissemination standards presents a challenge in pinpointing the exact numbers of Berkeley residents who seek behavioral health services in emergency scenarios at acute hospitals, let alone the number of residents who engage in subpar treatment experiences at these locations. Nonetheless, we know Alameda County experiences the state's highest rate of involuntary 72-hour psychiatric holds, with John George Psychiatric Hospital viewed as the primary mental health treatment center in the County<sup>3</sup>.

To better match the level of help needed, while maintaining standards of adequacy, safety, and sanitation for staffing, services, and hospitals with the type of needs required by those being served, AB 1001 seeks to establish policies for behavioral health emergency services. It would specifically:

- require protocols to meet standards established by DPH and consist of various parameters such as minimum staffing requirements for behavioral health

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<sup>2</sup> Update provided in their report published on January 10, 2022 titled "Assessing the Continuum of Care for Behavioral Health Services in California".

<sup>3</sup> John George therefore receives several redirected calls for inpatient behavioral health service when patients are seen at Highland Hospital, our county's primary acute hospital.

emergency services, procedures for response by behavioral health emergency services personnel in a timely manner, and annual training;

- require the department to adopt regulations on standards for general acute care hospitals related to behavioral health emergency services;
- require all hospitals to maintain records related to certain data on behavioral health emergency services provided for a period of 3 years and to report that data to the department on a quarterly basis, requiring DPH to post quarterly reports on that data on its internet website;
- establish the Behavioral Health Emergency Response and Training Fund to provide grants to qualifying applicants for the purpose of funding a new program or supporting an existing program that increases the staffing in general acute care hospitals of direct care personnel who are trained in behavioral health care and behavioral health emergency services response or intervention; and
- require DPH to evaluate the program and report to the Legislature annually.

AB 1001 directly connects to our City's commitment to building a holistic and comprehensive response to our resident's behavioral health needs. The implementation of our new Speciated Care Unit<sup>4</sup> is one of the many multi-pronged commitments we've made in our efforts to reimagining our approach to public safety. AB 1001 would not only align with the City's direction in responding to behavioral health crises and needs, but would also allow for the collection and analysis of treatment delivery data, and ultimately improve the standard by which our residents receive behavioral care at hospitals overseen by our county officials.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impact.

#### CONTACT PERSON

Mayor Jesse Arreguín, 510-981-7100  
Anthony Rodriguez, Senior Legislative Assistant

#### Attachments:

- 1: Resolution (SUPPORT OF CALIFORNIA ASSEMBLY BILL 1001)
- 2: Text of AB 1001 (as of March 16, 2023)

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<sup>4</sup> The Specialized Care Unit Program is currently being designed through our contract with Bonita House approved by Council in December 2022.

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

SUPPORTING ASSEMBLY BILL 1001

WHEREAS, according to statewide data, a) nearly one in ten California adults suffer from a substance use disorder, with another one in 20 suffering from a mental illness, b) one in 13 adults suffer from serious emotional disturbance, and c) roughly 43% of California residents reported it was “somewhat or very difficult” for them to obtain an appointment with a provider for a behavioral health condition who accepts their insurance; and

WHEREAS, the City of Berkeley recognizes the mental health crisis exacerbated by the COVID-19 pandemic and its effects on our society’s wellbeing; and

WHEREAS, the City seeks opportunities to support efforts that align with our Specialized Care Unit programming and efforts to Reimagining Public safety at brought forth at the local, regional, and state level; and

WHEREAS, the City of Berkeley calls for greater data collection, monitoring, analysis, and dissemination to understand the scope of the need for improved behavior health service delivery at acute hospital systems to better serve its residents appropriately; and

WHEREAS, Assembly Bill 50, introduced by Assembly Member Matt Haney, would amend state law to require general acute care hospitals to adopt behavioral health emergency service policies related to minimum staffing requirements, response times, and data management and reporting, and instruct the Department of Public Health to establish the Behavioral Health Emergency Response and Training Fund to support staffing increases in general acute care hospitals; and

WHEREAS, in 2022, the City Council approved funding and the execution of a contract with Bonita House to build a Specialized Care Unit program, which will provide a non-police response for anyone experiencing a mental health crisis in Berkeley; and

WHEREAS, the City of Berkeley continues to undergo efforts in its Reimagining Public Safety process to transform the City’s role and response to our community’s need to maintain and uphold public safety, including a new standard to community-centered approaches to safety, and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 1001.

BE IT FRUTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assembly Members Matt Haney and Buffy Wicks.



**ASSEMBLY BILL**

**No. 1001**

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**Introduced by Assembly Member Haney**

February 15, 2023

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An act to add Section 128740.1 to, and to add Article 7.1 (commencing with Section 1323.2) and Article 7.15 (commencing with Section 1323.4) to Chapter 2 of Division 2 of, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as introduced, Haney. Health facilities: behavioral health emergency services.

Existing law provides for the licensing, regulation, and inspection of various types of health facilities by the State Department of Public Health, including general acute care hospitals. Existing law requires certain building standards and regulations to prescribe standards of adequacy, safety, and sanitation of the physical plant, of staffing with duly qualified licensed personnel, and of services, based on the type of health facility and the needs of the persons served. Existing law requires specified financial and utilization data to be reported to the department by a hospital at the end of a calendar quarter.

Existing law generally makes a violation of the licensure provisions for health facilities a misdemeanor.

This bill would require a general acute care hospital to adopt policies to respond to a patient requiring behavioral health emergency services, as defined. The bill would require that these protocols meet standards established by the department and consist of various parameters such as minimum staffing requirements for behavioral health emergency services, procedures for response by behavioral health emergency

**AB 1001**

— 2 —

services personnel in a timely manner, and annual training, as specified. The bill would require the department to adopt regulations on standards for general acute care hospitals related to behavioral health emergency services. The bill would require all hospitals to maintain records related to certain data on behavioral health emergency services provided for a period of 3 years and to report that data to the department on a quarterly basis. The bill would require the department to post quarterly reports on that data on its internet website.

Existing law establishes the Department of Health Care Access and Information, which is responsible for administering various programs with respect to health care professions and establishes various programs to facilitate the expansion of the health care workforce.

Existing law authorizes the board of supervisors in each county to establish and maintain a county hospital to provide public health care services within the county. Existing law authorizes the board to prescribe rules for the hospital's government and management, and to appoint a county physician and other necessary officers and employees of the hospital, as specified.

This bill would establish the Behavioral Health Emergency Response and Training Fund to provide grants to qualifying applicants for the purpose of funding a new program or supporting an existing program that increases the staffing in general acute care hospitals of direct care personnel who are trained in behavioral health care and behavioral health emergency services response or intervention.

The bill would also require the department to evaluate the program and report to the Legislature annually.

By expanding the scope of a crime under the above paragraphs, this bill would impose a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Article 7.1 (commencing with Section 1323.2)  
2 is added to Chapter 2 of Division 2 of the Health and Safety Code,  
3 to read:

4

5 Article 7.1. Behavioral Health Emergency Services

6

7 1323.2. (a) The Legislature finds and declares all of the  
8 following:

9 (1) Direct patient care in general acute care facilities currently  
10 involves patients who have behavioral health needs, including  
11 needs related to mental health and substance use, and behavioral  
12 health emergencies.

13 (2) Patient care outcomes in general acute care hospitals are  
14 dependent upon safe staffing levels and the competence of direct  
15 care personnel who staff those facilities.

16 (3) Insufficient staffing levels of direct patient care personnel,  
17 including registered nurses, who have the specialized competency  
18 to provide, and are appropriately trained in, behavioral health and  
19 behavioral health emergency response results in unsafe patient  
20 care and increased occurrences of workplace violence.

21 (4) To ensure the availability of direct patient care personnel  
22 who have the specialized competency to provide, and are  
23 appropriately trained in, behavioral health and behavioral health  
24 emergency response in general acute care hospitals, the Legislature  
25 intends that all such facilities in this state adopt policies and  
26 protocols on behavioral health emergency response and training  
27 in compliance with standards established in this article.

28 (b) This article does not expand the scope of licensure for  
29 licensed persons providing services pursuant to this article.

30 1323.21. For the purposes of this article, the following  
31 definitions apply:

32 (a) (1) "Behavioral health emergency condition" means a  
33 psychiatric emergency medical condition, as defined in paragraph  
34 (1) of subdivision (k) of Section 1317.1, or a cognitive, mental  
35 health, substance use, or stress-related crisis that manifests itself  
36 by acute symptoms of sufficient severity that it renders the patient  
37 as being either of the following:

**AB 1001**

— 4 —

1 (A) An immediate danger or risk of danger to themselves or to  
2 others.

3 (B) Immediately unable to provide for, or utilize, food, shelter,  
4 or clothing, due to a cognitive, mental health, substance use, or  
5 stress-related condition.

6 (2) A behavioral health emergency condition does not require  
7 a psychological evaluation or a psychiatric or mental health  
8 diagnosis.

9 (3) This subdivision does not expand, restrict, or otherwise  
10 affect the scope of licensure or clinical privileges for clinical  
11 psychologists or medical personnel.

12 (b) (1) “Behavioral health emergency services” means services  
13 provided by a general acute care hospital for medical screening,  
14 examination, and evaluation by a physician and surgeon or, to the  
15 extent permitted by applicable law, by other appropriate licensed  
16 persons under the supervision of a physician and surgeon, to  
17 determine if a behavioral health emergency condition exists, and  
18 if it does, the care, treatment, and surgery, if within the scope of  
19 that person’s license, necessary to relieve or eliminate the  
20 behavioral health emergency condition, within the capability of  
21 the facility.

22 (2) Behavioral health emergency services may include the use  
23 of a bed, monitoring by nursing and other staff, and any other  
24 services that are reasonable and necessary to safely assess a  
25 patient’s condition or determine the need for response and  
26 intervention by behavioral health emergency services personnel  
27 to respond to a behavioral health emergency condition or for a  
28 possible inpatient admission to the hospital that has a behavioral  
29 health emergency condition.

30 (3) This subdivision does not expand, restrict, or otherwise  
31 affect the scope of licensure or clinical privileges for clinical  
32 psychologists or other medical personnel.

33 (c) “General acute care hospital” has the same meaning as  
34 defined in subdivision (a) of Section 1250.

35 1323.23. (a) By January 1, 2025, each general acute care  
36 hospital shall adopt policies and protocols to respond to patients  
37 requiring behavioral health emergency services that meet standards  
38 established by the department and that shall consist of all of the  
39 following:

1 (1) The names or job titles of the hospital staff responsible for  
2 implementing the behavioral health emergency services policies  
3 and protocols.

4 (2) Minimum staffing requirements for behavioral health  
5 emergency services in accordance with subdivision (f), including  
6 all of the following:

7 (A) At least two registered nurses who have experience and  
8 competency in providing psychiatric care.

9 (B) At least one staff member, in addition to subparagraph (A),  
10 who is licensed to provide direct patient care and has experience  
11 and competency in providing psychiatric care. Additional staff  
12 under this subparagraph may include an additional registered nurse,  
13 or a physician and surgeon or a psychiatric technician.

14 (C) At least one staff member who can respond to the  
15 psychosocial needs of patients who have a behavioral health  
16 emergency condition. Staff under this subparagraph may include  
17 a licensed clinical social worker or clinical psychologist.

18 (3) Procedures to ensure the availability of behavioral health  
19 emergency services personnel in each patient care area at all times,  
20 including a requirement that behavioral health emergency services  
21 personnel are not considered to be available if those personnel  
22 have other assignments that prevent them from participating in  
23 behavioral health emergency services response in a timely manner.

24 (4) Procedures for identifying and assessing a patient's condition  
25 to determine the need for response or intervention by behavioral  
26 health emergency services personnel.

27 (5) Procedures for response by behavioral health emergency  
28 services personnel in a timely manner.

29 (6) Procedures to ensure timely transfers or admissions as  
30 required under subdivision (g).

31 (7) Training and education on a continuing annual basis for  
32 behavioral health emergency services personnel who provide direct  
33 patient care to ensure competency in existing and new skills in  
34 psychiatric care, behavioral health, and substance use treatment  
35 services.

36 (8) Training and education on a continuing annual basis for all  
37 behavioral health emergency services personnel on behavioral  
38 health emergency services response, including on providing  
39 trauma-informed care and ensuring access to linguistically and  
40 culturally competent care.

1 (9) Annual training and education for all hospital staff who are  
2 required to be present in a patient care area to recognize patient  
3 interactions that require response by behavioral health emergency  
4 services personnel and how to obtain that response or intervention.

5 (10) Procedures to ensure the provision of linguistically and  
6 culturally competent behavioral health emergency services to each  
7 patient with a behavioral health emergency condition.

8 (11) Procedures to evaluate a behavioral health emergency  
9 services patient for substance use treatment and counseling needs  
10 and to ensure the provision of that treatment and counseling.

11 (12) Procedures for hospital staff to report concerns regarding  
12 the availability of sufficient staff to perform behavioral health  
13 emergency services and concerns regarding the availability,  
14 condition, storage, and maintenance of equipment.

15 (13) Procedures to coordinate implementation of response and  
16 intervention by behavioral health emergency services personnel  
17 with the workplace violence prevention plan adopted by a hospital  
18 as required in the standard adopted by the Occupational Safety  
19 and Health Standards Board under Section 6401.8 of the Labor  
20 Code, including methods of reporting and investigating any  
21 incidents of workplace violence related to a patient receiving  
22 behavioral health emergency services.

23 (b) Policies and protocols adopted under subdivision (a) shall  
24 be maintained and implemented at all times in all units of the  
25 general acute care hospitals where patient care is provided and  
26 shall be available to all hospital staff at all times.

27 (c) By July 1, 2024, the department shall develop procedures  
28 to evaluate existing programs utilized by general acute care  
29 hospitals to provide behavioral health emergency services response  
30 and training for compliance with the requirements under the article.

31 (d) Every general acute care hospital shall designate a licensed  
32 registered nurse or physician who has experience and competence  
33 in psychiatric services as a director who shall be responsible for  
34 the management of the policies and protocols adopted under  
35 subdivision (a).

36 (e) Policies and protocols adopted under subdivision (a) shall  
37 be developed, implemented, and reviewed annually with the  
38 meaningful input and active involvement of the following general  
39 acute care hospital staff, including their recognized collective  
40 bargaining agent or agents, if any:

1 (1) Registered nurses who provide emergency medical services.

2 (2) Registered nurses who provide psychiatric nursing care or  
3 provide care in a psychiatric unit, if any.

4 (3) Psychiatrists and other physicians who provide inpatient  
5 psychiatric services or provide care in a psychiatric unit, if any.

6 (4) Ancillary staff who provide inpatient psychiatric services  
7 or provide care in a psychiatric unit, including psychiatric  
8 technicians.

9 (5) Behavioral health emergency services personnel as identified  
10 in hospital policies and protocols adopted under subdivision (a).

11 (6) Hospital staff who are required to be present in a patient  
12 care area that are reasonably anticipated to require response by  
13 behavioral health emergency services personnel.

14 (f) Development, implementation, and annual review of policies  
15 and protocols pursuant to subdivision (e) shall include the  
16 participation of general acute care hospital staff in evaluating the  
17 effectiveness of the policies and protocols in providing timely  
18 access to care for behavioral health services patients, reducing  
19 rates of workplace violence, and designing and implementing  
20 training on behavioral health emergency services response.

21 (g) (1) Training and education required by this article shall be  
22 provided in person and shall be designed to provide an opportunity  
23 for interactive questions and answers with a person knowledgeable  
24 about the behavioral health emergency response and training  
25 policies and protocols adopted by the general acute care hospital  
26 under subdivision (a).

27 (2) Each general acute care hospital shall develop, implement,  
28 and annually review training and education required by this article  
29 with the meaningful input and active involvement of general acute  
30 care hospital staff identified in subdivision (e), including  
31 development of curricula and training materials, and review and  
32 revision of the training program.

33 (3) Training materials developed to meet the requirements of  
34 this article shall be appropriate in content and vocabulary to the  
35 educational level, literacy, and language of general acute care  
36 hospital staff receiving the training.

37 (h) Notwithstanding subdivisions (d) and (e) of Section 1275,  
38 behavioral health emergency services provided to patients receiving  
39 services shall comply with the same licensed registered  
40 nurse-to-patient ratios as supplemental emergency services or, if

1 the patient is in an inpatient bed or unit, the licensed registered  
2 nurse-to-patient ratio of that bed or unit, whichever ratio is lower.  
3 This subdivision does not alter or amend the effect of any  
4 regulation adopted pursuant to Section 1276.4 as of the effective  
5 date of the act that added this subdivision.

6 (i) A patient who requires behavioral health emergency services  
7 with an order by a provider for admission to a general acute care  
8 hospital or transfer to another health facility, as defined in Section  
9 1250, shall not be provided care and treatment as a patient receiving  
10 observation services, as defined in subdivision (a) of Section  
11 1253.7, or in an observation unit, as defined in subdivision (c) of  
12 Section 1253.7, for more than 24 hours.

13 (j) The department shall adopt regulations on standards for  
14 general acute care hospital on behavioral health emergency  
15 services, including on behavioral health emergency services  
16 response and training.

17 1323.24. (a) All general acute care hospitals shall maintain  
18 records of the following for a period of three years:

19 (1) Each transfer of a behavioral health emergency services  
20 patient.

21 (2) Each admission of a behavioral health emergency services  
22 patient to an inpatient psychiatric unit of the hospital, if any.

23 (3) Each patient readmission within 30 days of being discharged  
24 or transferred after receiving behavioral health emergency services  
25 at the hospital.

26 (4) Each patient who received behavioral health emergency  
27 services in an observation unit or while receiving observation  
28 services.

29 (b) (1) All hospitals providing behavioral health emergency  
30 services shall file with the department quarterly reports on forms  
31 prescribed by the department that describe the aggregate number  
32 for each of the data listed in subdivision (a) and reasons for transfer,  
33 admission, readmission, or placement in an observation unit or  
34 receipt of observation services.

35 (2) The department shall post quarterly reports pursuant to this  
36 subdivision on the department's publicly accessible internet website  
37 within five calendar days of receipt by the department.

38 (c) The department, in consultation with the Department of  
39 Health Care Services, the Department of Health Care Access and  
40 Information, and the Division of Occupational Safety and Health,



1 shall inspect a representative sample of behavioral health  
 2 emergency response and training programs utilized by general  
 3 acute care hospitals. In evaluating a behavioral health emergency  
 4 response and training program, the department shall examine  
 5 patient outcomes and rates of workplace violence at each facility.  
 6 If the department determines that a program is not complying with  
 7 Section 1323.23 or regulations or is not meeting goals related to  
 8 timely access to care or to workplace violence rate reduction  
 9 established by the department pursuant to subdivision (d), the  
 10 department shall be immediately notify a general acute care  
 11 hospital that utilized the program in writing. The department's  
 12 district offices shall inspect facility-based behavioral health  
 13 emergency response and training programs as utilized by general  
 14 acute care hospitals as part of their annual survey.

15 (d) (1) The department, in consultation with the Department  
 16 of Health Care Services and the Department of Health Care Access  
 17 and Information, shall establish goals related to timely access to  
 18 care for behavioral health emergency services in general acute  
 19 care hospitals.

20 (2) The department, in consultation with the Division of  
 21 Occupational Safety and Health, shall establish goals to reduce  
 22 the rates of workplace violence related to behavioral health  
 23 emergency services in general acute care facilities.

24 (e) Training components of behavioral health emergency  
 25 response and training programs shall be conducted during the  
 26 normal working hours of the hospital staff unless the staff receives  
 27 at least the normal hourly wage for any additional time spent in  
 28 the training component of the approved program.

29 SEC. 2. Article 7.15 (commencing with Section 1323.4) is  
 30 added to Chapter 2 of Division 2 of the Health and Safety Code,  
 31 to read:

32

33 Article 7.15. The Behavioral Health Emergency Response and  
 34 Training Fund

35

36 1323.4. (a) For the purposes of this article, the following  
 37 definitions apply:

38 (1) "Department" means the Department of Health Care Access  
 39 and Information.

1 (2) “Fund” means the Behavioral Health Emergency Response  
2 and Training Fund.

3 (3) “Program” means a program for the behavioral health  
4 emergency response and training of general acute care hospital  
5 staff that meets the criteria established and approved under this  
6 chapter.

7 (b) The Behavioral Health Emergency Response and Training  
8 Fund is hereby established in the State Treasury for the purpose  
9 of providing grants to support programs described in Section  
10 1323.41 and shall be administered by the department.

11 (c) The department shall annually establish the total amount of  
12 funding necessary to support programs described in Section  
13 1323.41. It is the intent of the Legislature to provide sufficient  
14 supplemental funding for these programs pursuant to this article  
15 in the annual Budget Act and to deposit that funding in the fund  
16 in 2025.

17 (d) Notwithstanding any other law, the department may receive  
18 and deposit moneys in the fund from the following entities:

19 (1) Nonstate entities, such as private sector or philanthropic  
20 entities.

21 (2) Local and federal governmental agencies.

22 (e) No more than 5 percent of the moneys in the fund shall be  
23 available for the department’s administrative activities related to  
24 planning and production of grants.

25 (f) Beginning no later than July 1, 2024, the fund shall be  
26 available to receive moneys from nonstate entities.

27 1323.41. (a) The department shall use moneys in the fund to  
28 administer grants to general acute care hospitals in California that  
29 are designated public hospitals, county hospitals, or hospitals that  
30 are operated by nonprofit organizations in California that are  
31 exempt from taxation under Section 501(c) of the Internal Revenue  
32 Code. A grant recipient under this subdivision shall use the funds  
33 awarded to fund a new program or support an existing program  
34 that increases the staffing in general acute care hospitals of direct  
35 care personnel who are trained in behavioral health care and  
36 behavioral health emergency services response or intervention.  
37 By way of nonlimiting examples, the program and the awarded  
38 funds may be used for any of the following:

39 (1) Behavioral health emergency response training programs.

- 1 (2) Costs associated with hiring or retaining behavioral health  
2 emergency services personnel who provide behavioral health  
3 emergency services that meet the requirements of Section 1323.23.
- 4 (3) Costs associated with training hospital staff in the provision  
5 behavioral health emergency services that meet the requirements  
6 of Section 1323.23.
- 7 (4) Costs associated with implementation of policies and  
8 procedures adopted by a hospital to meet the requirements of  
9 Section 1323.23.
- 10 (b) (1) Unless otherwise specified by the department, grants  
11 made pursuant to this article are for a period of one year and may  
12 be renewed.
- 13 (2) An application for a grant shall be made on a form to be  
14 developed by the department.
- 15 (3) Decisions regarding the grants and the funding level of the  
16 grant shall be made after consideration of all relevant factors, such  
17 as the grantee's anticipated level of need and the availability of  
18 funds.
- 19 (c) To administer this section, the department shall use moneys  
20 in the fund to pay direct and indirect costs of the department,  
21 including hiring or administrative costs.
- 22 (d) The department shall use moneys in the fund to maintain a  
23 system of financial reporting on all aspects of the fund. The  
24 financial reporting shall include, but is not limited to, information  
25 from the grantees on their expenditures and activities using grant  
26 funds associated with this article as the department deems  
27 necessary to ensure the use of the funds are consistent with the  
28 purposes of this article and the terms of any grant award.
- 29 (e) For purposes of this section, the department shall not require  
30 the submission of any identifying personal information about  
31 individuals receiving behavioral health or emergency services as  
32 part of an application for a grant or reporting of expenditures and  
33 activities using grant funds under this article. Information required  
34 by the department, or its contracted vendor, may only include  
35 information in summary, statistical, or other forms that do not  
36 identify particular individuals.
- 37 (f) Contracts entered into or amended pursuant to this article  
38 are exempt from Chapter 6 (commencing with Section 14825) of  
39 Part 5.5 of Division 3 of Title 2 of the Government Code, Section  
40 19130 of the Government Code, Part 2 (commencing with Section

1 10100) of Division 2 of the Public Contract Code, and the State  
 2 Administrative Manual, and are exempt from the review or  
 3 approval of any division of the Department of General Services.

4 1323.42. The department shall conduct an evaluation of the  
 5 grant program implemented pursuant to Section 1323.41 and shall  
 6 report its findings to the Legislature no later than January 1, 2026,  
 7 and on an annual basis no later than each January 1 thereafter. The  
 8 first annual report shall cover the period before July 1, 2025. Each  
 9 subsequent annual report shall cover the previous fiscal year. The  
 10 department may use moneys in the fund, upon appropriation by  
 11 the Legislature, for the evaluation of the program. The report shall  
 12 be submitted in compliance with Section 9795 of the Government  
 13 Code.

14 SEC. 3. Section 128740.1 is added to the Health and Safety  
 15 Code, to read:

16 128740.1. (a) The quarterly summary utilization data reported  
 17 to the department by a hospital pursuant to Section 128740, shall  
 18 include all of the following:

19 (1) Number of inpatient psychiatric visits and number of hours  
 20 of services provided.

21 (2) Number of behavioral health emergency service visits and  
 22 number of hours of services provided.

23 (3) Number of observation service visits and the number of  
 24 hours of services provided, including the number of behavioral  
 25 health emergency service hours provided during observation service  
 26 visits.

27 (4) Number of behavioral health emergency service inpatient  
 28 admissions, including the number of behavioral health emergency  
 29 service admissions to an inpatient psychiatric unit.

30 (5) Number of behavioral health emergency service readmissions  
 31 within 30 days of discharge or transfer.

32 (b) All hospitals shall maintain records of aggregate data listed  
 33 in subdivision (a) for a period of three years.

34 SEC. 4. No reimbursement is required by this act pursuant to  
 35 Section 6 of Article XIII B of the California Constitution because  
 36 the only costs that may be incurred by a local agency or school  
 37 district will be incurred because this act creates a new crime or  
 38 infraction, eliminates a crime or infraction, or changes the penalty  
 39 for a crime or infraction, within the meaning of Section 17556 of  
 40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin  
Subject: Support for AB 1690 (Universal health care coverage).

#### RECOMMENDATION

Send a letter to Assemblymember Ash Kalra (D-San Jose) in support of AB 1690 (Universal health care coverage).

#### FINANCIAL IMPLICATIONS

N/A

#### BACKGROUND

Assembly Bill 1690 currently states: "It is the intent of the Legislature to guarantee accessible, affordable, equitable, and high-quality health care for all Californians through a comprehensive universal single-payer health care program that benefits every resident of the state."

Kalra introduced the previous effort for statewide single-payer as AB-1400, which failed to receive a floor vote in the 2021-2022 legislative session.<sup>1</sup> The bill is sponsored by the California Nurses Association.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

#### Attachments:

1: Letter

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<sup>1</sup> Koseff, A. (2022). Why single payer died in the California legislature, again. *CalMatters*. Retrieved from <https://calmatters.org/politics/2022/02/california-single-payer-legislature/>

The Honorable Ash Kalra  
Member of the California State Assembly  
California State Capitol  
Sacramento, CA 95814

**Re: Support for AB 1690: Universal health care coverage**

Dear Assemblymember Kalra

The City Council of the City of Berkeley writes in strong support of AB 1690, which states the intent of the California state legislature to establish a single-payer healthcare system.

While the federal Patient Protection and Affordable Care Act (PPACA) brought many improvements in health care and health care coverage, it still leaves many Californians without coverage or with inadequate coverage. Californians, as individuals, employers, and taxpayers have experienced a rise in the cost of healthcare and health care coverage in recent years, including rising premiums, deductibles, and copays, as well as restricted provider networks and high out-of-network charges. Businesses have also experienced increases in the costs of health care benefits for their employees, and many employers are shifting a larger share of the cost of coverage to their employees or dropping coverage entirely.

A universal single-payer healthcare system would consistently cover all Californians, because coverage is based on residency, not a person's changing income or employment status. It is more important than ever for a state like California, one of the wealthiest regions in the nation with the 4th highest GDP per capita in the world, to redistribute some of its prodigious wealth by taxing its highest earners in order to guarantee high-quality healthcare as a human right for all residents.

Thank you for your leadership on this important legislation.

Sincerely,

City Council - City of Berkeley  
2180 Milvia St  
Berkeley, CA 94709





CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Support for AB 362 (Land value taxation study)

### RECOMMENDATION

Send a letter to Assemblymember Alex Lee (D-San Jose) in support of AB 362 (Land value taxation study).

### FINANCIAL IMPLICATIONS

N/A

### BACKGROUND

Traditional property tax systems levy taxes based on the value of property in which the Board of Equalization defines as all matters and things (real, personal, and mixed) that a private party can own. Improvements to surrounding buildings and property can increase the value of the lot which would then affect the property tax levied. By contrast, a land value tax is based on the value of land without regard to buildings or other improvements.

The current property tax system results in higher taxes for improvements to the value of the property. Ultimately, this can result in a disincentive for a landowner to build or renovate property, since this could raise their taxes. California's Proposition 13 exacerbates this disincentive by restricting annual reassessments to a maximum of 2% unless the property is sold or has new construction. A 2016 study by Ralph McLaughlin at Trulia found Proposition 13 results in some of the lowest effective tax rates for the wealthiest jurisdictions in California with the highest property values.

Assembly Bill 362 would require the California Department of Tax and Fee Administration to "conduct a study on the efficacy of a statewide land value taxation system as a potential alternative to current appraisal methods for real property taxation and a way to encourage property development." A land tax system would disincentivize properties that are left idle, creating an incentive for landowners to improve and maximize the use of their land.

According to author Assemblymember Lee's office, there are a number of jurisdictions that employ land value tax systems or a variation of it around the world including Denmark, Singapore, and Taiwan.

In Allentown, Pennsylvania, the city adopted a land value tax in 1996 and 70% of residential parcels saw a tax decrease. Construction returned to the city and Allentown experienced a 32% increase in building permits.

The economist Rick Rybeck of Just Economics explains: "Buying and selling land creates nothing; it's what you do on the land that creates value...land taxes don't reduce the amount of land. Taxing land values reduces the benefits of land ownership. This reduces land prices."<sup>1</sup>

Potential benefits include:

- Making land speculation less profitable, reducing the incentive for suburban sprawl
- Making housing more affordable while fostering business growth and employment
- Sustainable financing for public infrastructure improvements
- Less vulnerable to tax evasion since land cannot be concealed or moved overseas (titles are registered with the public and thus easily identified)

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:

1: Letter

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<sup>1</sup> Rybeck, R. (2019). If the Land Tax Is Such a Good Idea, Why Isn't It Being Implemented? *Strong Towns*. Retrieved from <https://www.strongtowns.org/journal/2019/3/8/if-the-land-tax-is-such-a-good-idea-why-isnt-it-being-implemented>

The Honorable Alex Lee  
Member of the California State Assembly  
California State Capitol  
Sacramento, CA 95814

**Re: Support for AB 362: Land Value Taxation Study**

Dear Assemblymember Lee:

The City Council of the City of Berkeley writes in strong support of AB 362 (Lee), which would require the Department of Tax and Fee Administration to study land value taxation in California.

The current property tax system results in higher taxes for improvements to the value of the property. Ultimately, this can result in a disincentive for a landowner to build or renovate property, since this could raise their taxes. California's Proposition 13 exacerbates this disincentive by restricting annual reassessments to a maximum of 2% unless the property is sold or has new construction. A 2016 study by Ralph McLaughlin at Trulia found Proposition 13 results in some of the lowest effective tax rates for the wealthiest jurisdictions in California with the highest property values.

Cities across the East Bay including Berkeley are increasingly strained by rising infrastructure costs, deferred maintenance, and a housing shortage with insufficient subsidies for providing affordable housing on the scale that it is so desperately needed. The City of Berkeley has committed to plan for nearly 9,000 new housing units in its 2023-2031 Regional Housing Needs Allocation cycle in its Housing Element Update, which was recently approved by the Department of Housing and Community Development. With high land prices, long-term owners of vacant properties will face a significant disincentive to selling or developing much-needed housing, and nonprofit affordable housing developers will have fewer potential sites available for low-income housing.

The current property tax system exacerbates the devastating scarcity of housing that is affordable to our most vulnerable community members, while limiting funding available for local schools, infrastructure, and services. Cities like Berkeley have been increasingly reliant on consumption taxes and parcel taxes to fund capital improvements, which can disproportionately impact lower-income homeowners. Californians deserve better.

Thank you for your leadership on this important legislation.

Sincerely,

City Council - City of Berkeley  
2180 Milvia St  
Berkeley, CA 94709





Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR

April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Referral to the June 2023 Budget Process to Increase Capacity for Berkeley Community Media

RECOMMENDATION

Refer \$54,000 to the June, 2023 budget Process to increase personnel funding for Berkeley Community Media (BCM), advancing two current part time employees to full time.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

BCM is funded through the City of Berkeley's IT Department and the Berkeley Rent Board. Between these two entities, BCM receives \$253,000 per year (\$231,000 from the IT Department and \$22,000 from the Rent Board). Before 2006, Berkeley Community Media (BCM) had five full-time employees with full health, dental, and vision coverage and one part-time employee. Between 2004 and 2006, the IT department cut BCM's funding by 15% and has not increased it since. In 2016, the Rent Board increased BCM's budget from \$20,000 to \$22,000 a year; this additional \$2,000 is the only funding increase BCM has received in 18 years despite inflation increasing 57% in that same period. As a result, Berkeley Community Media now only has one full-time employee and only two of its eight employees are eligible for healthcare.

Fortunately, BCM has a team of dedicated individuals who work hard to maintain a vibrant community with limited funding, but not without personal and financial strain. BCM staff has experienced a hardship of carrying out programming, administrative, and educational duties with only one full time employee. To continue maintaining the existing programming at its full capacity, many part time employees must donate volunteer hours. Inadequate funding limits BCM's programming and detrimentally affects students who, as a result of strained resources, have less access to services. By increasing its staff budget, BCM will be able to provide more stable staffing with adequately paid experts, dedicated to providing our community with a unique and equity driven service.

BACKGROUND

BCM is Berkeley's Public, Education and Government community media center,

specifically designed to address the needs of Berkeley residents. BCM's primary mission is to enhance the transparency of local government and civic affairs and provide residents of Berkeley an opportunity to produce media and share it with their community.

While there are a handful of other community-based media programs in the Bay Area, BCM is uniquely positioned to serve Berkeley. It is the only mission driven and equity centered media company in Berkeley. BCM films City Council meetings as well as Rent Stabilization Board and ZAB meetings, enhancing the transparency of local government. It provides coverage for city events such as the North Berkeley Senior Center re-opening, the Milvia Bike Path ribbon cutting, the digital kiosks in Downtown and the street renaming for Kala Bagai Way.

BCM provides an opportunity for local residents to share their stories by participating in media classes and a community of individuals who are available to aid with development and production. BCM has its own local television station, allowing community members the opportunity to air programs from painting shows to films, to local news coverage. Its location in the Maudell Shirek building, Berkeley's Old City Hall, makes it accessible to a diverse population of people by public transportation in the heart of Berkeley. It has also invested in local community organizations and partners such as the Dorothy Day House, the Women's Daytime Drop-in Center, St Mary's Center, La Peña Cultural Center, Berkeley Symphony, and Luna Dance Studio and produces and airs live and taped coverage of diverse local arts, educational, and cultural events, including the World Music Festival, Holocaust Remembrance Day, forums featuring Congresswoman Barbara Lee and Mark DeSaulnier on race relations and Congresswoman Lee and Congresswoman Ayanna Pressley's forum titled, "A Dialogue on Women of Color Running for Office."

Finally, BCM makes creative education and expensive arts equipment accessible to those who otherwise may not be able to afford it by providing critical training in production, editing and podcasting and periodically offering master classes from industry expert and access to professional equipment. BCM offers a membership program to anyone interested in advancing their video editing and production skills and provides a 50% membership discount to Berkeley residents at \$60 a year. A membership offers access to a high-quality production studio, media lab, field equipment, unlimited classes and workshops and the ability to submit programs to BCM's local television station.

Individuals who are unable to pay membership fees or class costs, may volunteer their time through internship opportunities. BCM also hosts a youth and Berkeley High School internship program, training students in cinematography, video editing, special effects as well as media literacy and analysis. It hosts industry professionals to speak to students about career paths and how skills they learn at BCM can be professionally applicable.

As a Public, Education, and Government (P.E.G) access television station and production facility, BCM provides affordable and accessible media services, training,

and access to high-quality film production equipment, for filmmakers, amateur television producers and youth from Black, Latinx, Indigenous, and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality, BCM’s mission is to provide a voice to Berkeley’s most under-resourced and underrepresented communities.

It has a membership of more than 83 diverse producers and supporters. Nearly 30% of those who reported demographic information are people of color, and 20% have an income level of \$25,000 or less; 53% of members identify as female. BCM’s bylaws specify that it recruits and supports members who reflect Berkeley’s community, including people of color and disabled persons. Its Board of Directors reflects this commitment to diversity, with 27% identifying as Black and Latinx, 45% identifying as female, 18% identifying as persons with disabilities, and 18% identifying as LGBTQ.

**Overview of Proposed Staffing Costs**

BCM’s current personnel budget totals \$268,000, 83% of its annual \$323,000 budget. The additional \$54,000 would allow BCM to offer much needed cost of living adjustments (COLAS), add hours to existing employees, and provide healthcare for two employees (bringing the number receiving healthcare to three). The budget referral, totaling \$54,000, is comprised of four distinct financial needs.

| <b>Category</b>           | <b>Annual Amount</b> |
|---------------------------|----------------------|
| Employee raises           | \$12,200             |
| Additional employee hours | \$27,400             |
| Additional payroll        | \$3,000              |
| Healthcare                | \$11,200             |
| Total cost allocation     | \$54,000             |

Employee raises would range from a 1.2%-2.4%, increasing hourly compensation from \$20.00-\$28.00/hour to \$20.48-\$28.34/hour.

Four employees would be compensated for some of their additional work hours. Two employees will gain three and four hours respectively per week. Two employees will gain eight paid hours per week, making them eligible for healthcare benefits.

**FISCAL IMPACTS OF RECOMMENDATION**

\$54,000 to stabilize BCM’s staff budget.

Referral to the June 2023 Budget Process to Fund an Increase in Staff Hours for  
Berkeley Community Media

CONSENT CALENDAR  
April 11, 2023

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140





Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Referral to the June 2023 Budget Process for Funding Harold Way Placemaking Project Schematic Design

RECOMMENDATION

Refer \$100,000 to the June 2023 Budget Process to fund Harold Way Placemaking Project Schematic Design.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The one-block long Harold Way connects Allston Way and Kittredge Street, linking the Berkeley Central Branch Library and the Downtown Berkeley YMCA. Over the years Harold Way has been the site of a variety of community events and cultural celebrations including the Asian Cultural Festival, Día de los Muertos celebration, the Harold Way Pumpkin Patch, the Lunar New year Celebration, and Berkeley Bliss: the Silent Disco Experience. The streetscape is quite plain at present, discouraging its use outside of events but is ideal for creating an urban oasis in our busy Downtown with the addition of design features, trees, seating areas, and a public restroom.

BACKGROUND

On March 19, 2022 Berkeley Design Advocates (BDA) and Downtown Berkeley Association (DBA) co-sponsored a Harold Way Placemaking Workshop in anticipation of two housing projects bringing new life this quiet one-block street in the heart of Downtown Berkeley. Input was received from the Berkeley design community, neighbors, nearby property owner, and other community members. BDA volunteer architect Ryan Call developed a Workshop Report and Three Initial Options.<sup>1</sup> Subsequently, BDA and DBA have met with City staff, City elected officials, and other community members to review the report and options. The response has been generally favorable for all three options. (See “Blended Options” below.)

This request seeks funding of up to \$100,000 for a consultant to develop a Preferred Design Option/Schematic Design for a pedestrianized Harold Way between Kittredge Street and Allston Way. BDA and DBA have received a proposal of approximately

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<sup>1</sup><https://static1.squarespace.com/static/5f868525cd65db169e0e9bf7/t/6307cde3d1394f428f8e2b6b/1661455861813/2022+0704+Harold+Way+Workshop+Results-sm.pdf>

\$60,000 plus expenses from a respected urban landscape design firm but are open to other design firms that might be selected by the City. It would be prudent to allocate up to \$100,000 due to additional expenses, inflation, and possible additional scope or tasks required by the City. It is anticipated that funding would come from the Street and Open Space Plan (SOSIP) fund, which had a balance of \$1,755,944 as of February 27, 2023. Construction of several large housing projects in the Downtown over the next few years is expected to grow the SOSIP fund significantly. Final Design and Construction Documents are estimated to be in the range in the \$200,000-\$300,000, with the cost of construction dependent on design selected, inflation, materials, and other factors.

The development of the Schematic Design would not be limited to the three initial “blended options,” but may borrow elements for any of these options as deemed appropriate. The scope of the consultant Schematic Design project would include:

- Extensive community outreach (at least three meetings)
- Pre-design meetings with key stakeholders
- Review of existing conditions, climate, building plans, trees, utilities, drainage
- Understanding of City requirements and operating/maintenance constraints
- Three programming designs with up to three revisions based on community input
- Presentation of final preferred schematic design
- Preliminary opinion of probable construction costs

This Schematic Design project is estimated to take six to nine months to complete, with final presentation to Berkeley City Council for approval.

Design Options

# blended option 1

- Food! Invite local vendors / Food Trucks
- Keep it simple! Let the community "set the stage".
- Ramp up at both ends for the full width of the street right of way. Pave the entire elevated "stage" with a nice material, and set the stage for events with whatever is needed for the party (event)!
- Consider a diversity of plaza experiences such as an open plaza towards the Library on Kittredge Street with food trucks, and a more serene tree plaza towards Allston.
- Replace / relocate existing trees ( which are spaced rather far apart) with trees spaced 32' on center with offset rows.
- Extend a simple but elegant paving material from building to building to provide programing flexibility and a sense of space that feels larger and less cluttered.
- Convert south façade of parking structure on Allston to art wall installation, possibly including media screens for outdoor movies.
- Activate ground floor of new east side Harold Way building with live/work workshops and storefronts and organize entries to complement street activities. Locate amenity uses at north and south ends of new building.
- Encourage café at new westside building to spill out into Harold Way
- Eliminate vehicular traffic on Harold Way
- Bollards at Kittredge Street and Allston Way



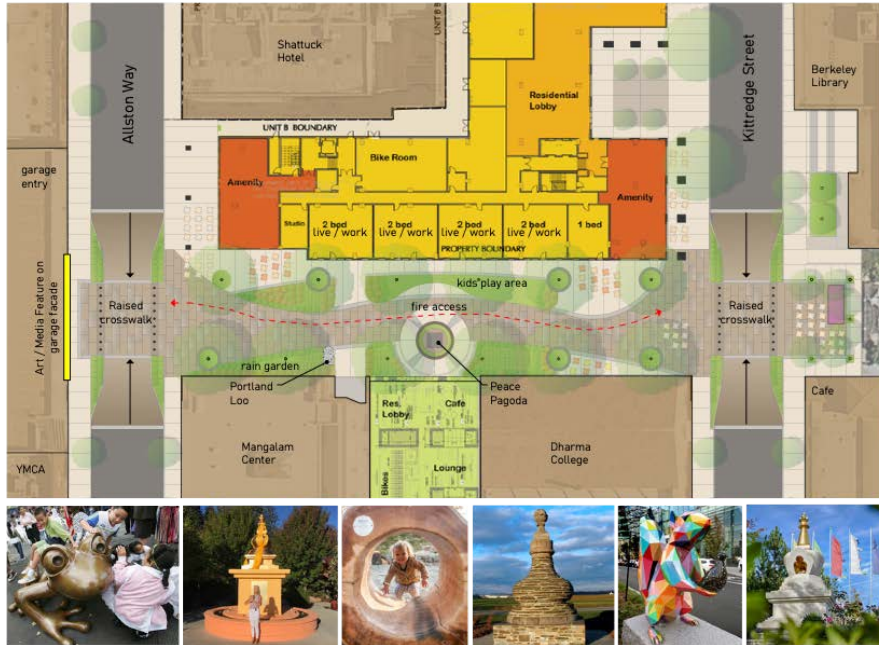
# blended option 2

- Food! Invite local vendors / Food Trucks
- Keep it simple! Let the community "set the stage".
- Ramp up at both ends for the full width of the street right of way. Pave the entire elevated "stage" with a nice material, and set the stage for events with whatever is needed for the party (event)!
- Treat Harold Way as an urban garden with gathering areas to spill out into street, building off gardens/ activities at garden/plaza between library and housing at Kittredge terminus of Harold Way.
- Retain existing trees along Harold Way. Keep roadway clear of trees and open for gatherings.
- Pitch raised roadways to a series of rain gardens at entries and along western side of Harold Way. Use gardens to frame building and plaza entries.
- Convert south façade of parking structure on Allston to art wall installation, possibly including media screens for outdoor movies.
- Activate ground floor of new east side Harold Way building with live/work workshops and storefronts and organize entries to complement street activities. Locate amenity uses at north and south ends of new building.
- Encourage café at new westside building to spill out into Harold Way
- Eliminate vehicular traffic on Harold Way
- Bollards at Kittredge Street and Allston Way



# blended option 3

- Children's reading area
- Possible play sculpture(s) for kids (Women and children are key elements to creating a welcoming environment for everyone!)
- Flexible seating - chess and games
- Keep it simple! Let the community 'set the stage'
- Ramp up at both ends for the full width of the street right of way. Pave the entire elevated 'stage' with a nice material, and set the stage for events with whatever is needed for the party (event!)
- Treat Harold Way as an urban garden with gathering areas to spill out into street, building off gardens/activities at garden/plaza between library and housing at Kittredge terminus of Harold Way.
- Retain existing trees along Harold Way. Keep roadway clear of trees and open for gatherings.
- Pitch raised roadways to a series of rain gardens at entries and along western side of Harold Way. Use gardens to frame building and plaza entries.
- Convert south façade of parking structure on Allston to art wall installation, possibly including media screens for outdoor movies.
- Activate ground floor of new east side Harold Way building with live/work workshops and storefronts and organize entries to complement street activities. Locate amenity uses at north and south ends of new building.
- Encourage café at new westside building to spill out into Harold Way
- Eliminate vehicular traffic on Harold Way
- Bollards at Kittredge Street and Allston Way



## FISCAL IMPACTS OF RECOMMENDATION

\$100,000 toward the Harold Way Placemaking Project Schematic Design.

## ENVIRONMENTAL SUSTAINABILITY

Creating a livable, walkable Downtown adds to Berkeley's environmental sustainability. The Harold Way block is very close to transit (both BART and AC Transit), Downtown amenities and the U.C. Berkeley campus.

## CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140



Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR

April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Referral to the June 2023 Budget Process for Two Full-Time Social Workers for Social Justice Collaborative

RECOMMENDATION

Refer \$147,000 to the June 2023 Budget Process for annual staffing costs associated with funding two social workers to provide low-income immigrants, asylum seekers, unaccompanied children, young dreamers, and displaced families with direct legal services and legal representation.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The Social Justice Collaborative (SJC) is a community-based legal non-profit, dedicated to serving low-income immigrants, asylum seekers, unaccompanied children, dreamers, and displaced families through direct legal services and legal representation in court at little to no cost.

Since its inception, SJC has provided full-scope deportation defense and asylum representation for some of the most difficult cases. While SJC attorneys can provide high quality legal aid to individuals in need, many clients are survivors of violent displacement and government oppression and require help beyond what SJC's legal team can provide. The legal aid portion of services, while the main and most significant focus of SJC, does not address the entire healing process associated with obtaining asylum and United States citizenship. Unfortunately, mental health care is not easily accessible for immigrant communities and less so for Indigenous Guatemalan (Mayan-Mam) immigrants, who SJC prioritizes serving. In 2016, Mam became one of the ten languages most frequently spoken in immigration court<sup>1</sup>. More than a quarter of SJC's clients (34% as of 2021) are Mayan Mam-speaking and SJC has one of the highest numbers of Mayan Mam speakers on staff providing accessible legal and social work services.

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<sup>1</sup> "Eoir 59 Certification and Release of Records - United States Department ..." Departmentofjustice.gov. Accessed March 17, 2023. <https://www.justice.gov/eoir/page/file/1380121/download>.

Social workers have the professional training and capacity to provide SJC's clients with comprehensive and holistic care, critically serving minors and families who are struggling to adjust to life in the United States.

In 2023, there is a heightened awareness of the issues that Immigrants and Asylees must confront when facing the immigration system. Most people now know that in addition to the turmoil presented by the system, immigrants including very young children do not have a right to an attorney. This makes an incredibly difficult process to navigate almost impossible.

Hiring full-time Social Workers is the most cost-effective way to address SJC's client's needs. In the past, SJC has partnered with California State University, East Bay, and Stanislaus in order to have unpaid social work interns available to support clients. The intern program has demonstrated how crucial it is to have social workers as part of the SJC team. They are able to thoughtfully and expertly address the needs of clients beyond attorneys' capacity, allowing attorneys to focus on difficult case work, and are well-versed in assisting clients in navigating services and resources. However, the reliance on unpaid students, who must be supervised by someone not affiliated with SJC and who only work part-time, dramatically limits the number of clients an intern can serve. There are also periods of time between interns, a difficult situation for clients whose cases can and do sometimes last for years.

### BACKGROUND

Social Justice Collaborative (SJC) was founded in 2012 to ensure that low-income immigrants in Northern California have legal aid and assistance for little to no cost. SJC specializes in deportation defense, but their attorneys and legal staff have extensive experience working on a wide range of cases, including DACA, visas for victims of human trafficking, and Asylum litigation in immigration court. As its team has grown, so has its capacity to take on a higher number of cases. Services include case building, court and interview representation, partner referrals as needed, and family reunification efforts, where possible.

In 2018, Social Justice Collaborative acquired its own building and made the move from Oakland to Berkeley. Throughout its history, it has served immigrant families in Berkeley, assisting Berkeley residents who are victims of crime, domestic violence survivors, and asylum seekers. SJC's clients range from those just beginning their immigration case to those who are now lawful permanent residents and may soon qualify to naturalize.

The majority of SJC's clients reside in the East Bay. SJC does, however, serve all Northern California and the Central Valley, providing assistance to a diverse client base, with an emphasis on indigenous Asylum seekers. Within the last decade many lower-income immigrants in Berkeley have been displaced as living costs increase and reside in surrounding cities. However, SJC clients do significantly contribute to the city of Berkeley by working in a variety of industries including the service industry, construction as day laborers, or as housekeepers or caregivers.

SJC also upholds close partnerships with other organizations established in Berkeley. SJC and The University of California, Berkeley have been long-standing partners. UC Berkeley has students from their undergraduate program who serve as interns or in work-study positions at SJC to gain experience and knowledge. SJC works with the Law School to host Law Clerks and has hosted clerks who have gone on to work in the immigration field. At the moment, SJC is working to finalize a partnership with Berkeley Bowl to refer newly permitted workers.

Organizations from around California that provide similar services oftentimes refer clients to SJC, either because their funding cannot allow them to take clients on or because of the complexity of the legal case. In addition to providing direct legal services, SJC is part of coalitions that fight for state-wide policy to protect immigrant communities and have participated in the Mayor’s Office round tables dedicated to Berkeley as a sanctuary city.

SJC has a very high (near 100%) success rate in immigration court and assists clients on appeal for those whose cases were not successful. It provides 100% of legal consultations free of charge, and 100% of minors are represented at no cost. Further, in 2021, SJC provided more than 1,000 hours of pro bono hours and represented 120 individuals through volunteer work. In 2021, SJC saved immigrant families over \$3.6 million dollars in legal service costs. SJC has won more than 300 cases, has filed upwards of 100 work permits and green card applications, and in 2022 was named one of the top local charities in the San Francisco Bay Area.

In ten years SJC has grown from three (3) staff members to 35, demonstrating the demand for expanded programs and services.

SJC does necessary and vital work in the Berkeley community, but needs additional funding to fill the critical gaps discussed above.

**Overview of Proposed Staffing Costs**

SJC is largely funded by state grants through the California Department of Social Services and The State Bar of California. It also obtains funding under the IOLTA program, as well as the ISF and UUM programs under CDSS. State funding is indispensable, but only covers a fraction of the work that SJC does. In order to keep services affordable, SJC requires increased, varied, flexible funding and support. SJC was recently awarded funding to provide digital content to be shared by the Statewide Asylee Orientation Project but this project does not replace direct services to Bay Area Clients.

| <b>Staff Position</b> | <b>Salary per FTE /Year</b> | <b>Salary Cost</b> | <b>Taxes and Workers’ Comp</b> | <b>Total</b> |
|-----------------------|-----------------------------|--------------------|--------------------------------|--------------|
| Social Worker (2)     | \$65,000                    | \$130,000          | \$17,000                       | \$147,000    |

FISCAL IMPACTS OF RECOMMENDATION

\$147,000.00 in staffing costs toward the hiring of two new full-time social workers for Social Justice Collaborative.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140





Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author) and Vice Mayor Bartlett (Co-sponsor)

Subject: Referral \$100,000 to the June, 2023 Budget Process to Design a Comprehensive Berkeley Police Early Intervention and Risk Management System

RECOMMENDATION

Refer \$100,000 to the June, 2023 Budget Process to enter into a contract to design and assist with implementing a comprehensive Berkeley Police Department Early Intervention and Risk Management System to provide necessary data and help in implementing fair and impartial policing policies and public safety reimagining.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

A key outcome from the February 23, 2021 Council-approved “Report and Recommendations from Mayor’s Fair and Impartial Policing Working Group” was direction to the City Manager to “Implement an Early Intervention System (EIS) and a risk-management structure.”<sup>1</sup> Additionally, the “Reimagining Public Safety In Berkeley: Final Report and Implementation Plan” by the National Institute for Criminal Justice Reform recommended a comprehensive EIS.<sup>2</sup>

These systems, adopted successfully by neighboring jurisdictions, involve structured use of public safety data to inform goals and strategies and improve accountability and transparency. A well-structured EIS and risk management system offers the following benefits:

- Allows the department to commend personnel for positive performance.<sup>3</sup> Officer morale and retention are thus improved. This can also help identify best practices

<sup>1</sup> “Report and Recommendations, Mayor’s Fair and Impartial Policing Working Group,” February 23, 2021, Mayor Jesse Arreguin and Councilmember Kate Harrison, <https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations.pdf>.

<sup>2</sup> National Institute for Criminal Justice Reform “Reimagining Public Safety In Berkeley: Final Report and Implementation Plan,” March 2022, [https://berkeleyca.gov/sites/default/files/documents/BerkeleyReport\\_030722.pdf](https://berkeleyca.gov/sites/default/files/documents/BerkeleyReport_030722.pdf)

<sup>3</sup> Benefits and use of any system are dependent on design and inclusion/availability of data. For instance, benefits from assessing response times can only be realized if the system, as designed and functioning, has access to quality response time data.

to be shared and implemented throughout the department, leading to improved overall performance and outcomes.

- Promotes a culture of wellness by monitoring possible indicators of job-related stress and other risk factors. Data-informed proactiveness can improve de-escalation, communication, provide more resources for mental health support, or address other factors that may be contributing to officer stress and burnout.
- Allows assessment of trends by types of stops, parts of the city and by particular squads or teams.
- Mitigates risk and reduce litigation by evaluating patterns, trends or incidents in areas such as vehicle collisions, use of force, alleged misconduct, sustained misconduct, and other performance metrics and outcomes. Comparing crime types with personnel information (e.g., number of reported resisting, delaying, obstructing arrest offenses by person or squad) is another type of warning or risk management metric. Most importantly, this can help prevent incidents that could put community members, officers, and suspects at risk of harm or injury.
- Helps the City adjust, improve, or create policies, procedures, or training initiatives depending on an evaluation of risk and risk-based outcomes.
- Helps the Department identify any important underutilized or inaccessible data that reveals important and actionable trends.<sup>4</sup> Insights about time of day or area of the city may be important when crafting a community-informed, precision-based, or problem-oriented public safety solution.
- Provides opportunities for regular risk management meetings with Department leadership to measure progress and reflect on whether deployment patterns and policing strategies and tactics are achieving desired outcomes.
- Build trust between law enforcement and the communities they serve by providing data and opportunities for regular conversations between the PAB, the community, the Council, City Management and the Department.

The expectation is that EIS and risk management systems can identify patterns of policing such as the arrest quotas alleged in 2022. The system would help identify officer, squad, or Department-wide outliers or patterns in stops, searches, and use of force and their outcomes, to examine the reasons for racial disparities, to provide educational interventions, and to take administrative action, as appropriate. A system would also be able to extract and create EIS/Performance Management fixed or custom reports.

The EIS would have role level security depending on the desired use and/or confidentiality of the data. Users would be identified by role/rank/assignment and rules

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<sup>4</sup> For example, the crime hub works well if a community member wants or needs to review reported crimes by type for a specific selection of blocks or search, filter, or contrast to other periods of time. However, the current hub displays broad classifications of crime such as “assault” and “robbery” but little helpful data regarding these offenses. An assault may be felony or misdemeanor, and a robbery may be everything from shoving a security guard on the way out of a store to an armed carjacking. The hub doesn’t offer an ability to easily examine these differences nor does the current version use additional filters such as day of week or time of day for reported offenses. It is also still difficult to export hub crime data into raw data that can be used for further data analysis.

associated with those variables allow or disallow functions and access to data as a result.

Data available to the public would be anonymized. Using anonymized and aggregate data, the Department could discuss data and trends regularly with the community, the Council, and the PAB in furtherance of community, Fair and Impartial Working Group and public safety reimagining goals. A fundamental finding of the City's reimagining process was that disparities are not merely the result of individuals, but systemic socioeconomic forces. Deep analysis enabled by a robust risk management system could help the City and community highlight and address community-level policy pressures that may be driving disparities.

### BACKGROUND

Due to funding and time constraints, no comprehensive system as envisioned by the 2021 Council direction has yet been implemented in Berkeley. The Berkeley Police Department operates a less comprehensive "Early Warning System" (EWS) that was originally created in 2004 and revised in 2008. These early efforts consisted of supervisors, commanders and managers manually aggregating informal performance review and counseling intervention program information, and focused on:

- (a) Poor attendance and/or abusive use of leave;
- (b) Multiple formal sustained or not sustained complaints;
- (c) Multiple informal complaint inquiries;
- (d) Multiple use of force incidents
- (e) Multiple obstructing/resisting arrest incidents;
- (f) Multiple vehicle collisions; and,
- (g) Substandard conduct/performance concerns observed by a superior officer.

Since 2021, the Department has updated the Department's EWS policy (Policy 1041) to include monitoring stop data for individual officers. However, the system lacks automated data-driven systems to monitor officers' individual stop data by department management, instead relying on supervisor identification of issues and random quarterly audits of several officers' stop data, complaints, uses of force incidents and other factors.<sup>5</sup>

Thanks to Department and Council leadership, BPD maintains a rigorous data and transparency hub which has improved transparency. However, the current hub appears to be largely external facing, and it is unclear to what extent the system informs internal decision-making or accountability as part of the EWS. A Council report by the Department suggests that data streams flowing into the transparency hub are not

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<sup>5</sup> "Update on the Implementation of Fair and Impartial Policing Task Force Recommendations," Jennifer Louis, Interim Chief of Police, September 2022, <https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20Item%2019%20Update%20on%20the%20Implementation.pdf>.

necessarily considered internally through the EWS. Rather, as discussed in detail below, reviews are done manually through audits.<sup>6</sup>

The Department announced in September 2022 that it was piloting a new precision and evidence-based policing data model. The real-time dashboard will track calls for service demands and route call data as part of a “feedback loop” between the Community Services Bureau and Patrol Watch Commanders to help reduce stops that studies have shown had minimal impact on public safety.<sup>7</sup> The Department envisions improved accountability from this work, but it is unclear how it relates to the larger EIS concept and whether such additional work to develop the system is funded. This plan to define, track, and measure precision policing strategy and tactics is promising and there is great potential to integrate it to an EIS.

The 2021 State of California Racial and Identity Profiling Act (RIPA) report identifies two models of successful programs: the Phoenix and Seattle Police Departments. The report clarifies that an EIS system is “meant to be part of a larger performance management system designed to keep communities and officers safe” and to protect against racial and identity profiling.<sup>8</sup> Effective systems identify at-risk behaviors *before* the need for disciplinary action, although they may ultimately include discipline. Key components are identification, accountability, and enforcement.

RIPA data and other potential data streams available to the department provides a long list of potential indicators that might be used to flag outliers, including not limited to:

- Stop, use of force, and warrantless search data that disparately impact people of color;
- Yield rates that are higher among White people than among people of color who are stopped;
- Deployment and policing strategies, policies, and patterns; and
- Racial and identity profiling allegations, sustained misconduct charges and other criteria.

The systems proposed by RIPA and other leaders in the field differ from what is mandated in current policy. The identification in the former is accomplished through data analysis across the department, whereas current policy leaves it to individual supervisors to flag individual subordinates for unprofessional conduct, putting much more onus on individual supervisors and making it potentially seem more personal.

As RIPA points out, early warning and risk management systems are not meant to be primarily a disciplinary system.

“To ensure officers do not feel that this system is a ‘gotcha’ system but rather something they should be invested in... training should include what the EIS captures and how the data will be

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Racial and Identity Profiling Advisory (Ripa) Board Report, State of California Department of Justice, 2021, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>.

interpreted, as well as the purpose of the data. Supervisors should be trained to understand their role in the accountability process and how this may alter their current responsibilities. Agencies must also clearly outline how EIS works, how and why it will be used, and what interventions will look like in their policies and protocols.”

Part of this accountability is consistent, regular follow-through. In addition, the Department needs to determine if such problematic behaviors are generalized throughout the department. For example, it may be that instead of a few outliers, racial disparities of stops, searches, and yield rates are seen throughout the department as a whole. In that case, interventions would include the monitoring and training of supervisors, or changes in policy. If interventions are not effective, disciplinary action may be necessary.

Furthermore, a National Institute of Justice study carried out in three cities found that EIS systems reduced citizen complaints and use of force incidents among officers subject to interventions.<sup>9</sup> The cumulative conclusion drawn from these studies is that, to be effective, a system has to be well-constructed and include careful identification, accountability, and follow-up enforcement.

Statistical analysis of BPD data by members of the Mayor’s Fair and Impartial Working Group showed that between 2015 and 2020, Black people were stopped almost twice as often as Whites in circumstances that did not result in any enforcement action (i.e., citation or arrest). Among civilians who are stopped, Black people were searched more than twice as often as Whites.<sup>10</sup> This is one of the most important indicators of racial disparities in stops since it suggests a potentially lower threshold for stopping Black people. A more robust EIS will allow the department to disaggregate this data to understand the source of these disparities. This does *not* mean that officers or groups of officers have done anything wrong, just that an effective EIS system would flag them for careful analysis to see what is driving apparent disparities. Most fundamentally, analysis can drive examination of the legality, benefits and consequences of different stop and search criteria and allow changes at the management and Council levels as disparate outcomes may be the result of policies or training gaps.

## **Overview of Budget Request**

This budget referral would provide resources to hire a consultant to design and help implement a comprehensive system building on what the Mayor’s Fair and Impartial Working Group envisioned, but with a more comprehensive data-analytic capacity and an internal and external focus to enhance both transparency and the Department’s ability to safeguard the well-being of its employees as well as the public.

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<sup>9</sup> Samuel Walker; Geoffrey P. Alpert; Dennis J. Kenney, “Early Warning Systems: Responding to the Problem Police Officer, Research in Brief,” U.S. Department of Justice Office of Justice Programs, July 2001, <https://www.ojp.gov/library/publications/early-warning-systems-responding-problem-police-officer-research-brief>.

<sup>10</sup> “Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group,” February 23, 2021, p. 39.

It is in the public interest to refer funds to the June 2023 budget process to accelerate the implementation process of a comprehensive EIS system as envisioned by Council action in 2021 in response to the Mayor's Fair and Impartial Working Group Report.

Such systems have operated successfully in other localities for some time. Evaluation can be conducted and software programs can be developed with consultants to assist BPD in implementing an EIS.

To achieve a comprehensive and effective EIS system, the scope of consultant work would include:

1. **Evaluating** the current early warning system.
2. **Identifying and including stakeholders in system design:** determine who will be impacted by the new policy and involve them in the evaluation process.
3. **Collecting and analyzing data:** collect data on the existing EIS policy's implementation and effects, both intended and unintended. This could include feedback from stakeholders, data on program outcomes, and review of any relevant reports or studies.
4. **Assessing the existing policy's effectiveness:** Evaluate the policy against its intended goals and objectives and determine if it is achieving its desired outcomes from BPD, BPA, and community perspectives.
5. **Researching and comparing** current best or suggested practices.
6. **Recommending improvements:** Based on current best or suggested practices and/or the results of the evaluation, make recommendations for improvement, revision, or implementation of alternative policies. Provide examples of sample reports that could come from the system.
7. **Evaluating a proposed system's fairness:** Consider the impact of the new policy on different groups, including personnel as well as marginalized communities, and determine if the policy is equitable, fair, and just.
8. **Evaluating the cost and implementation of alternatives or improvements:** assess the available data and resources required to implement a revised/desired policy and system and identify costs.
9. **Communicating results:** share the results of the evaluation with stakeholders and decision-makers, and engage in open and transparent discussions about the implications of the findings. Model a process for regular strategic dialogue between the BPD, City Management, Legislators, the PAB and community leaders to review aggregate data, patterns and trends to evaluate policing policies and strategies.

**10. Assist in Implementing changes:** based on the results of the evaluation and recommendations, assist with implementation of any desired changes.

FISCAL IMPACTS OF RECOMMENDATION

It is estimated that consultant work to implement a comprehensive EIS and Risk Management System would cost \$100,000.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140







Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Harrison  
 Subject: Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

RECOMMENDATION

Refer \$579,000 to the June 2023 Budget Process for annual City staffing costs and for allied non-profits to implement and administer programs associated with acquisition and prevention of displacement from multi-family housing including the Small Sites Program, investments related to the Empty Homes Tax, and administrative implementation of the proposed Berkeley Community and Tenant and Opportunity to Purchase Act (COPA/TOPA):

|                                                                                                                                                                     |                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Community Development Project Coordination for acquisition capacity of 3-6 additional projects per year (HHCS)                                                      | 1.5 FTE (1 FTE for the Empty Homes Tax and 0.5 FTE for COPA/TOPA) - \$318,915*<br><br>*Includes \$4,500 to support office, technology, and training needs |
| Community Development Project Coordination for COPA/TOPA (HHCS)                                                                                                     | 0.5 FTE - \$108,088                                                                                                                                       |
| Deputy City Attorney II                                                                                                                                             | 0.35 FTE - \$101,884                                                                                                                                      |
| Qualified Organization Capacity Support for two additional projects per year (in addition to existing allocation of \$100,000 to the Bay Area Community Land Trust) | \$50,000                                                                                                                                                  |

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing and displacement crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been

Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

particularly burdensome in a city where 58% of residents are renters.<sup>1</sup> While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build or acquire sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.<sup>2</sup> Unfortunately, Alameda County's housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.<sup>3</sup>

As documented by the Rent Board-sponsored Anti-eviction Mapping Project Report, the crisis has contributed to extreme displacement, with the City losing "49.2% of its Black population between 1990 and 2020," and "only 30% of households below 80% of Area Median Income (AMI) occupy[ing] units that are [ ] affordable to them."<sup>4</sup>

The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions including enhancing the resources of the Small Sites Program to support acquisitions under the Empty Homes Tax and COPA/TOPA, and staffing to implement and administer the COPA/TOPA. The market will not do this on its own. Acquiring and preserving affordable housing is key to reaching the housing and equity goals codified in Berkeley's recently adopted 2023-2031 Housing Element and strategic plan because this is a cost-effective way to ensure the city does not lose the affordable homes it already has while it invests in producing more affordable homes overall.<sup>5</sup> The City of Berkeley is pursuing a number of strategies to acquire properties and make them permanently affordable but is forced to do so without adequate resources for City staff, its non-profit partners and for acquisition of properties.

Before the 2008 financial crisis, Berkeley had a robust housing department. The department was downsized and merged with the health department to form Health, Housing, and Community Services (HHCS). Despite limited housing staff, the Department has excelled in face of unprecedented Council demand for housing and acquisition. In contrast to other housing strategies, acquiring existing properties does

<sup>1</sup> Anti-Eviction Mapping Project: *Densifying Berkeley: Potential Impacts on Displacement and Equity*, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>.

<sup>2</sup> Id.

<sup>3</sup> California Housing Partnership Housing Needs Dashboard, 2019, <https://chpc.net/housingneeds/?view=37.405074,-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production>.

<sup>4</sup> "Anti-Eviction Mapping Project: *Densifying Berkeley: Potential Impacts on Displacement and Equity*," 2022.

<sup>5</sup> *City of Berkeley Housing Trust Fund and Small Sites Program Guidelines*. <https://berkeleyca.gov/sites/default/files/2022-04/Housing-Trust-Fund-Guidelines.pdf>.

Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

not result in carbon-intensive demolition and it maximizes continuity and price security, minimizing displacement of long-term and low-income residents. However, to meet this demand in the face of the City's new Housing Element and other policies, it is critical to bolster staffing in the housing division.

### BACKGROUND

The Small Sites program, which acquires and renovates occupied, multifamily rental properties and converts into permanently affordable units or non-equity housing cooperatives, has successfully purchased properties, most recently 13 units of affordable housing on Solano Avenue and eight units in South Berkeley on a church property.<sup>6</sup> The program has been a critical piece of Berkeley's affordable housing strategy through the acquisition and rehabilitation of rental units. The sites guarantee below market rate rents.

On November 8, 2022 nearly two thirds of Berkeley voters approved Measure M, the Empty Homes Vacancy Tax, intended to incentivize owners of housing property to bring units back on the market and discourage speculation. The law will go into effect beginning January 1, 2024 and is expected to identify thousands of vacant units that could be candidates for acquisition, while also generating millions of dollars in revenue for housing acquisition and production. In addition to the staff needed to simply administer the tax, the City needs additional staff to help vet potential candidate properties identified as vacant and possibly available for acquisition. As a general tax, funds from the Empty Homes Tax will be placed into the General Fund. However, the voters in passing Measure M approved the non-binding intention of using the revenue in ways consistent with the Housing Trust Fund as well as other municipal purposes at the discretion of the Council.<sup>7</sup>

In addition, on March 10, 2020, COPA/TOPA was first presented to the Berkeley City Council's Land Use, Housing and Economic Development Policy Committee. The ordinance was heard again in March and May of 2021 before passing out of Committee on May 20, 2021 with a qualified positive recommendation. The Mayor held an informational work session on COPA/TOPA on January 27, 2022.<sup>8</sup> The ordinance would create legal rights for tenants to make the first offer or match any final offer to buy their home whenever the owner chooses to put it up for sale. Alternatively, tenants could assign these rights to an affordable housing developer so that it can prevent the displacement of the tenants by acquiring the property and preserving its affordability. COPA/TOPA would also provide technical assistance, education, and financing to help make these purchases possible.

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<sup>6</sup> Savidge, Nico. "To Boost Affordable Housing, Berkeley Looks to Buy, Not Just Build." *Berkeleyside*, 19 Sept. 2022, <https://www.berkeleyside.org/2022/06/05/berkeleys-affordable-housing-acquisition-rehabilitation-small-sites>.

<sup>7</sup> As discussed in the August 2022 Council report that accompanied the Empty Homes Tax and the tax ordinance.

<sup>8</sup> Mayor Jesse Arreguín, "Tenant Opportunity to Purchase Act, Adding B.M.C. Chapter 13.89," January 27, 2022, <https://berkeleyca.gov/sites/default/files/2022-04/2022-01-27%20Item%2001%20Tenant%20Opportunity%20to%20Purchase%20Act.pdf>

Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

Thus, COPA/TOPA provides pathways to stabilize existing housing for tenants and preserve affordable housing, allows tenants to become first-time homeowners, and facilitates opportunities for democratic ownership of residential property. To be effective, COPA/TOPA requires a well-funded staffing infrastructure to administer and enforce it. Education, legal and technical assistance to tenants is also needed during implementation to ensure the rights that COPA/TOPA provides can be meaningfully exercised.

### FUNDING DETAILS

HHCS' housing services are currently provided by two units; one unit, the Housing Development Unit, is dedicated to affordable housing development through the City's Housing Trust Fund, including the Small Sites Program. The unit has a total of 3.5 FTE. None of the staff are dedicated specifically to Small Sites. Instead, this program has been absorbed into the workload of the unit alongside other housing development projects.

The Department reports that at peak times ahead of multi-year predevelopment or development processes, each Small Sites Program project demands up to 0.5 FTE. The additional 1.5 FTE contemplated in this item could assist HHCS with expanding the capacity of the program and using data from the Empty Homes Tax to identify properties for acquisition and rehabilitation by the City or its partners, including the Land Trust, non-profit developers and the Berkeley Housing Authority.

Current Small Sites Program duties include, but are not limited to:

- Managing projects funded through the Small Sites Program, including acquisition, rehabilitation or new construction by other organizations (typically nonprofit developers);
- Coordinating the disposition of City-owned property for development as affordable housing as needed;
- Developing competitive solicitations (NOFAs, RFPs, RFQs) for development funding as well as consultant services;
- Providing technical assistance, reviewing funding applications, underwriting projects, and making funding recommendations;
- Preparing housing loan or grant agreements using boilerplate documents and negotiate revisions with borrowers. Researching and drafting other types of agreements as needed;
- Monitoring projects during predevelopment and construction. Reviewing and approving draw requests and work with the Department's fiscal unit to disburse funds;
- Preparing reports and presentations for the City Council and Housing Advisory Commission.

In addition, this budget referral includes the approximately .5 FTE as proposed by the Department in order to implement additional part-time support from HHCS to coordinate the acquisition of properties in connection with COPA/TOPA.

Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

The .5 FTE Community Development Project Coordinator duties will include:

- Program Design and Development, including coordinating with CAO to develop process, procedures, forms, etc.
- Developing and maintaining a webpage with certified Qualified Organizations (QO) and Supportive Partners (SP), active seller notices to tenants, and tenant/QO statements of interest
- Certifying and renewing QOs and SPs monitor and evaluate them on an ongoing basis
- Advising tenants and QOs on applying for SSP funding
- Developing targeted materials and provide ongoing education for landlords and tenants.
- Organizing trainings, meetings and webinars, and act as liaison to professional and civic groups, community organizations, and individuals

The City Attorney’s Office also indicates it will need additional resources to implement COPA/TOPA, as follows:

| <b>Deputy City Attorney II***</b>                                                                                                |              |                            |
|----------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------|
| <b>Task</b>                                                                                                                      | <b>% FTE</b> | <b>Ordinance Reference</b> |
| Adjudicate policy exemptions, such as definition of principal residence, family in family transfer, and medical hardship waivers | 5%           | 13.89.050                  |
| Adjudicate non-compliance with ROFR (verifies bona fide offers when dispute reported)                                            | 5%           | 13.89.100                  |
| Landlord/tenant mediation                                                                                                        | 5%           | 13.89.170                  |
| Legal Analysis of potential violations                                                                                           | 5%           | 13.89.170                  |
| Remedies/Civil Action for violations                                                                                             | 10%          | 13.89.170                  |
| Support advising of tenants and QOs                                                                                              | 5%           |                            |
|                                                                                                                                  | <b>35%</b>   |                            |

\*\*\*This is strictly related to ordinance implementation and does not reflect any staffing required for legal challenges to the ordinance

Finally, this request also includes an additional \$50,000 per year to assist Qualified Organizations with staff support to acquire up to two projects per year. The \$25,000 per project line item is included to build sufficient project management capacity for partners with the City. HHCS already acquires approximately two projects per year through the Small Sites Program and provides \$100,000 in capacity support to the Bay Area Community Land Trust. Berkeley will need to support additional start-up capacity and allow for ongoing support through pre-development funds related to specific small sites and/or COPA/TOPA projects.

Thanks to the foresight of Berkeley voters, the Council and staff, the Council has a wide variety of General Fund, Special Tax, and fee revenue that can be used to acquire housing and maintain it as affordable for current residents and future generations. The Measure U1 tax, the Housing Trust Fund, Measure O, and Measure M Vacancy Tax all have a strong nexus to property acquisition.

Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

It is in the public interest to consider funding staff and non-profit support for acquisition of housing to remain perpetually affordable as part of the June, 2023 budget process.

FISCAL IMPACTS OF RECOMMENDATION

\$579,000 per year in staffing costs to enhance the Small Sites Program, fund programmatic and investment of Empty Homes Tax proceeds, and implement and administer COPA/TOPA.

ENVIRONMENTAL SUSTAINABILITY

Acquiring and rehabilitating existing housing stock can be a lower carbon alternative to demolition and building new affordable housing.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140



Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
April 11, 2023

TO: Honorable Members of the City Council  
FROM: Councilmember Harrison  
SUBJECT: Relinquishment of Council Office Budget Funds to Grant Downtown Berkeley Association (DBA) \$500 for 2274 Shattuck Avenue Mural Project serving a Municipal Public Purpose.

RECOMMENDATION

Adopt a resolution approving the expenditure to grant Downtown Berkeley Association (DBA) \$500 for the 2274 Shattuck Avenue Mural Project serving a Municipal Public Purpose, with funds relinquished to the City’s general fund for this purpose from Councilmember Harrison’s discretionary Council Office Budget Fund.

BACKGROUND

The Regal United Artists Theater has closed after 90 years. It is currently boarded up, making the once lively façade bare. Fortunately, The Downtown Berkeley Association has commissioned artist, Doran Dada, to paint a mural on the front of the building on behalf of the property owner, Panoramic Interests.

Dada has painted hieroglyphs since a teenager and describes his style of artwork as “Egyptian Wonderland.” His work draws upon “folk art found in ancient cultures as well as in modern western ones,” which hopes will “inspire a new awakening of the magnificent African contributions to the world and help guide us all towards a bright future together!” Dada recently completed a celebrated mural located at 3163 Adeline St.



“God Shu on his Flying Chariot,” by Doran Dada, 3163 Adeline St.,  
Photo by Natasha Kaye | Daily Californian<sup>1</sup>

The Downtown Berkeley business community has financially suffered from the ongoing effects of the pandemic and the following recession. Many businesses have shutdown, leaving vacant and sterile commercial buildings. Investing in public and accessible murals is one step we can take in stimulating downtown Berkeley’s economy and renewing its rich history of the arts.

Patrick Kennedy and the DBA have funded the mural, but it is important and in the public interest for the District 4 office to contribute to its completion by reimbursing \$500 to the DBA. Public art is free for all members of the public to enjoy.

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<sup>1</sup> Natasha Kaye, “Mural unveiled in South Berkeley as part of 'beautification' efforts,” The Daily Californian, January 27, 2023, <https://www.dailycal.org/2023/01/27/new-mural-unveiled-in-south-berkeley-as-part-of-beautification-efforts>



Relinquishment of Council Office Budget Funds to Grant Downtown Berkeley Association (DBA) \$500 for 2274 Shattuck Avenue Mural Project serving a Municipal Public Purpose.

CONSENT CALENDAR  
April 11, 2023



Mural In Progress, Photo by Doran Dada

**Cost of Completion**

| Patrick Kennedy | DBA      | District 4 | Total      |
|-----------------|----------|------------|------------|
| \$1,000.00      | \$500.00 | \$500.00   | \$2,000.00 |

**FISCAL IMPACTS OF RECOMMENDATION**

No General Fund Impact. \$500 is available from Councilmember Harrison’s office account.

**ENVIRONMENTAL SUSTAINABILITY**

Creating a beautiful, livable, walkable Downtown contributes to Berkeley’s environmental sustainability.

Relinquishment of Council Office Budget Funds to Grant Downtown Berkeley Association (DBA) \$500 for 2274 Shattuck Avenue Mural Project serving a Municipal Public Purpose.

CONSENT CALENDAR  
April 11, 2023

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE  
EXPENSE ACCOUNT OF COUNCILMEMBER HARRISON FOR A GRANT TO THE 2274  
SHATTUCK AVENUE MURAL PROJECT TO PROVIDE PUBLIC SERVICES FOR A  
MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Harrison has surplus funds in her office expenditure account; and

WHEREAS, The Regal United Artists Theater has closed after 90 years and is now boarded up with a bare and vacant façade and the owner of the building, the Downtown Berkeley Association, and District 4 Council office will fund artist Doran Dada to paint a mural on the front of the building; and

WHEREAS, the provision of such services would fulfill the City's and Downtown Berkeley's commitment to arts and culture, and it's dedication to stimulating Downtown Berkeley's economic growth and development;

WHEREAS, public art is free for all members of the public to enjoy and serves a municipal public purpose.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by Councilmember Harrison from her Council Office Budget up to \$500 shall be granted to the Downtown Berkeley Association as a grant towards its \$1,000 expenditure toward the Shattuck Avenue Mural Project located at 2274 Shattuck Avenue.





Kate Harrison  
Councilmember, District 4

CONSENT CALENDAR  
April 11, 2023

To: Honorable Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Resolution in Support of AB 641: Automobile dismantlers: catalytic converters.

RECOMMENDATION

Adopt resolution in support of AB 641, Automobile dismantlers: catalytic converters, amending Section 220 of the Vehicle Code to revise and expand the definition of “automobile dismantler” to include individuals illegally in possession of two or more catalytic converters.

BACKGROUND

Catalytic converters are standard technology that help reduce toxic pollution from gasoline and hybrid vehicles. As the price of metals continue to rise, thieves have unfortunately targeted parked vehicles, utilizing portable saws to cut off, steal, and then sell the converters as scrap. Hybrid vehicles such Toyota Priuses, are especially vulnerable given their precious metal content. Repairs can cost owners thousands of dollars.

AB 641, introduced by Assembly Member Vince Fong, would amend Section 220 of the California Vehicle Code to revise the definition of “automobile dismantler,” to include, specifically, a person who has two or more catalytic converters that have been cut from a motor vehicle with a sharp implement. This bill intends to expand the criteria for what can be legally actionable under state law. This bill addresses the current state of catalytic converter theft throughout California by expanding what qualifies as criminal behavior.

Berkeley is facing unprecedented vehicle theft driven, in many cases by the high resale price of catalytic converters. According to the Berkeley Scanner, the number of catalytic converter thefts has drastically risen from 15 incidents in 2017 to 843 incidents in 2022<sup>1</sup>: a 5,520% increase in just six years. In some cases, catalytic converter theft becomes violent. A handful of reported incidents in 2022 involved gunfire.

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<sup>1</sup> Raguso, Emilie. “Berkeley Police Find 'Freshly Cut' Catalytic Converter during Car Stop.” The Berkeley Scanner. The Berkeley Scanner, January 20, 2023.  
<https://www.berkeleyscanner.com/2023/01/20/arrests/berkeley-police-catalytic-converter-arrests/>.

This is not an issue isolated to Berkeley and the Bay Area. California has seen a massive rise in catalytic converter theft citing 1,600 thefts per month in 2022, accounting for 37% of catalytic converter theft nationally<sup>2</sup>. While the Berkeley Police Department is doing everything in its capacity to address this urgent issue, it has proven to be a difficult task without supplemental state-wide legislation.

Concerned constituents throughout Berkeley have urged Council to act on the alarming rate of rising catalytic converter theft. It is in the public interest to support legislative work at the state level to ensure Berkeley resident's safety and property protection.

#### FINANCIAL IMPLICATIONS

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

#### ENVIRONMENTAL SUSTAINABILITY

No foreseen impact.

#### CONTACT PERSON

Councilmember Kate Harrison  
510-981-7140

#### ATTACHMENTS:

1. Resolution
2. Support Letters
3. AB 641

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<sup>2</sup> "Justice Department Announces Takedown of Nationwide Catalytic Converter Theft Ring." Eastern District of California | Justice Department Announces Takedown of Nationwide Catalytic Converter Theft Ring | United States Department of Justice, November 2, 2022. <https://www.justice.gov/usao-edca/pr/justice-department-announces-takedown-nationwide-catalytic-converter-theft-ring>.

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

IN SUPPORT OF AB641: AUTOMOBILE DISMANTLERS CATALYTIC CONVERTERS

WHEREAS, in the City of Berkeley and statewide, communities face an urgent and ongoing rise in catalytic converter theft; and

WHEREAS, members of the California State Assembly are pursuing an effort to revise the definition of what qualifies an automobile dismantler, to expand its definition to cover existing crime; and

WHEREAS, change in State policy is key to addressing many unmet local policy priorities, providing additional support to local entities with protecting the safety of the public.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it supports these efforts and the passage of AB 641 to expand the definition of automobile dismantlers in Section 220 of the California Vehicle Code.

BE IT FURTHER RESOLVED that the Clerk send a copy of this Resolution and letters of support to Governor Gavin Newsom, State Assemblymember Buffy Wicks, and State Senator Nancy Skinner.

Governor Gavin Newsom  
1021 O Street, Suite 9000  
Sacramento, CA 95814

**RE: Berkeley City Council in Support of AB 641: Automobile dismantlers:  
catalytic converters.**

Dear Governor Newsom,

We write to express our strong support of AB 641: Automobile dismantlers: catalytic converters, introduced by Assembly Member Vince Fong, amending Section 220 of the Vehicle Code to revise and expand the definition of “automobile dismantler” to include a person who has possession of two or more catalytic converters that have been cut from a motor vehicle with a sharp implement.

Existing state law fails to address the scope of crime associated with vehicle theft. As we have seen locally and nationally, catalytic converter theft has taken a massive financial and emotional toll on our communities. From cost of repair to fear of violence, vehicle theft leaves communities feeling terrified and violated. Berkeley residents have urged local government to take swift and assertive action.

Berkeley is facing unprecedented vehicle theft driven, in many cases, by the high resale price of catalytic converters. According to the Berkeley Scanner, the number of catalytic converter thefts has drastically risen from 15 incidents in 2017 to 843 incidents in 2022: a 5,520% increase in just six years.

For these reasons, the Berkeley City Council strongly supports AB 641.

Sincerely,

The Berkeley City Council



California State Senator Nancy Skinner  
1021 O Street, Suite 8630  
Sacramento, CA 95814

**RE: Berkeley City Council in Support of AB 641: Automobile dismantlers:  
catalytic converters.**

Dear Senator Nancy Skinner,

We write to express our strong support of AB 641: Automobile dismantlers: catalytic converters, introduced by Assembly Member Vince Fong, amending Section 220 of the Vehicle Code to revise and expand the definition of “automobile dismantler” to include a person who has possession of two or more catalytic converters that have been cut from a motor vehicle with a sharp implement.

Existing state law fails to address the scope of crime associated with vehicle theft. As we have seen locally and nationally, catalytic converter theft has taken a massive financial and emotional toll on our communities. From cost of repair to fear of violence, vehicle theft leaves communities feeling terrified and violated. Berkeley residents have urged local government to take swift and assertive action.

Berkeley is facing unprecedented vehicle theft driven, in many cases, by the high resale price of catalytic converters. According to the Berkeley Scanner, the number of catalytic converter thefts has drastically risen from 15 incidents in 2017 to 843 incidents in 2022: a 5,520% increase in just six years.

For these reasons, the Berkeley City Council strongly supports AB 641.

Sincerely,

The Berkeley City Council

State Assemblymember Buffy Wicks  
1021 O Street, Suite 4240  
P.O. Box 942849, Sacramento, CA 94249

**RE: Berkeley City Council in Support of AB 641: Automobile dismantlers:  
catalytic converters.**

Dear Assemblymember Wicks,

We write to express our strong support of AB 641: Automobile dismantlers: catalytic converters, introduced by Assembly Member Vince Fong, amending Section 220 of the Vehicle Code to revise and expand the definition of “automobile dismantler” to include a person who has possession of two or more catalytic converters that have been cut from a motor vehicle with a sharp implement.

Existing state law fails to address the scope of crime associated with vehicle theft. As we have seen locally and nationally, catalytic converter theft has taken a massive financial and emotional toll on our communities. From cost of repair to fear of violence, vehicle theft leaves communities feeling terrified and violated. Berkeley residents have urged local government to take swift and assertive action.

Berkeley is facing unprecedented vehicle theft driven, in many cases, by the high resale price of catalytic converters. According to the Berkeley Scanner, the number of catalytic converter thefts has drastically risen from 15 incidents in 2017 to 843 incidents in 2022: a 5,520% increase in just six years.

For these reasons, the Berkeley City Council strongly supports AB 641.

Sincerely,

The Berkeley City Council

**ASSEMBLY BILL**

**No. 641**

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**Introduced by Assembly Member Vince Fong  
(Principal coauthor: Assembly Member Jim Patterson)  
(Coauthors: Assembly Members Alanis, Chen, Dixon, Essayli, Flora,  
Joe Patterson, Ta, and Wallis)**

February 9, 2023

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An act to amend Section 220 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as introduced, Vince Fong. Automobile dismantlers: catalytic converters.

Existing law defines an “automobile dismantler” as a person who is engaged in the business of buying, selling, or dealing in vehicles that are required to be registered under the Vehicle Code, for the purpose of dismantling the vehicles, buys or sells the integral parts and component materials of those vehicles, or deals in used motor vehicle parts, as specified. The definition of “automobile dismantler” also includes a person who keeps or maintains on property owned by the person, or under their possession or control, 2 or more unregistered motor vehicles no longer intended for, or in condition for, legal use on the highways, as specified. Existing law makes it a crime for a person to act as an automobile dismantler without having an established place of business, meeting specified requirements, and having a current, valid license or temporary permit issued by the Department of Motor Vehicles.

This bill would revise the definition of an automobile dismantler to include a person who keeps or maintains on property owned by the person, or under their possession or control, for any of the above-described purposes 2 or more used catalytic converters that have

been cut from a motor vehicle using a sharp implement. By expanding the definition of an automobile dismantler, the bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 220 of the Vehicle Code is amended to  
2 read:

3 220. (a) An “automobile dismantler” is ~~any~~ a person not  
4 otherwise expressly excluded by Section 221 ~~who~~: *who is engaged*  
5 *in the business of buying, selling, or dealing in vehicles of a type*  
6 *required to be registered under this code, including nonrepairable*  
7 *vehicles, for the purpose of dismantling the vehicles, who buys or*  
8 *sells the integral parts and component materials thereof, in whole*  
9 *or in part, or deals in used motor vehicle parts. This section does*  
10 *not apply to the occasional and incidental dismantling of vehicles*  
11 *by dealers who have secured dealer plates from the department*  
12 *for the current year whose principal business is buying and selling*  
13 *new and used vehicles, or by owners who desire to dismantle not*  
14 *more than three personal vehicles within any 12-month period.*

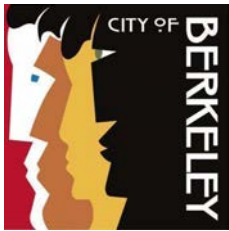
15 ~~(a) Is engaged in the business of buying, selling, or dealing in~~  
16 ~~vehicles of a type required to be registered under this code,~~  
17 ~~including nonrepairable vehicles, for the purpose of dismantling~~  
18 ~~the vehicles, who buys or sells the integral parts and component~~  
19 ~~materials thereof, in whole or in part, or deals in used motor vehicle~~  
20 ~~parts. This section does not apply to the occasional and incidental~~  
21 ~~dismantling of vehicles by dealers who have secured dealers plates~~  
22 ~~from the department for the current year whose principal business~~  
23 ~~is buying and selling new and used vehicles, or by owners who~~  
24 ~~desire to dismantle not more than three personal vehicles within~~  
25 ~~any 12-month period.~~

1 (b) Notwithstanding ~~the provisions of~~ subdivision (a),  
2 *“automobile dismantler”* includes a person not otherwise expressly  
3 *excluded by Section 221* who keeps or maintains on real property  
4 owned by ~~him, or under his~~ *the person, or under their* possession  
5 or control, two or more unregistered motor vehicles no longer  
6 intended for, or in condition for, legal use on the highways, *or two*  
7 *or more used catalytic converters that have been cut from a motor*  
8 *vehicle using a sharp implement*, whether for the purpose of resale  
9 of used parts, for the purpose of reclaiming for use some or all of  
10 the materials, whether metal, glass, fabric, or otherwise, or to  
11 dispose of them, or for any other purpose.

12 SEC. 2. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.

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**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

CONSENT CALENDAR

April 11, 2023

**To:** Honorable Members of the City Council  
**From:** Councilmembers Sophie Hahn (Author); Susan Wengraf (Co-Sponsor)  
**Subject:** Proclaiming May as Jewish American Heritage Month

RECOMMENDATION

Adopt a resolution proclaiming May as Jewish American Heritage Month.

BACKGROUND

On April 20, 2006, the Federal Government proclaimed May as Jewish American Heritage Month, stating, “As a nation of immigrants, the United States is better and stronger because Jewish people from all over the world have chosen to become American citizens,” and, since then, proclamations in support of Jewish American Heritage Month have been made by Presidents of the United States annually, and by other government entities.

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

Berkeley has been and continues to be a City greatly enriched by the Jewish American community. This item honors Jewish-Americans in Berkeley and throughout the United States with a resolution in support of Jewish-American Heritage Month.

FINANCIAL IMPLICATIONS

N/A.

ENVIRONMENTAL SUSTAINABILITY

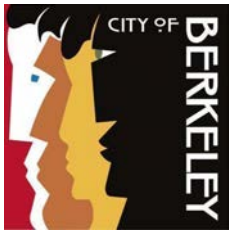
N/A.

CONTACT PERSON

Councilmember Sophie Hahn, (510) 981-7150

Attachments:

1. Resolution



**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

## **RESOLUTION IN SUPPORT OF JEWISH AMERICAN HERITAGE MONTH**

WHEREAS, Jewish Americans are an important part of the American story and have made significant contributions to all areas of American life and culture since our nation's earliest days; and

WHEREAS, on April 20, 2006, the Federal Government proclaimed May as Jewish American Heritage Month, stating, "As a nation of immigrants, the United States is better and stronger because Jewish people from all over the world have chosen to become American citizens," and, since then, proclamations in support of Jewish American Heritage Month have been made by Presidents of the United States annually; and

WHEREAS, generations of Jews from across the globe have come to the United States in search of a better life for themselves and their families, including many fleeing persecution and genocide; and

WHEREAS, in recognition of a shared experience of oppression, and in keeping with longstanding values and traditions, Jewish Americans have participated actively in movements to support equality and civil rights for all peoples; and

WHEREAS, Jewish Americans connect to their Jewish identity through history, culture, religion, and through the expression of Jewish ethics and values; and

WHEREAS, Jewish Americans are ethnically, socially, politically, and economically diverse, with an estimated 15% percent of Jewish Americans being individuals of color; and

WHEREAS, in recent years, Jewish Americans have increasingly experienced antisemitism, including physical attacks, vandalism, verbal and physical harassment, and hateful comments posted on social media,<sup>1</sup> and

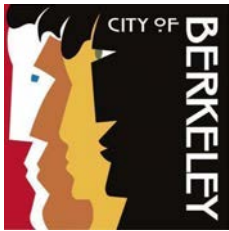
WHEREAS, the City of Berkeley shares an obligation to condemn and combat antisemitism wherever it exists, to include Jewish Americans in all facets of civic life, and to stand with the Jewish American community against hatred or bigotry; and

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

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<sup>1</sup> <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime>  
<https://www.adl.org/blog/antisemitic-incidents-reported-to-adl-increase-sharply-during-israel-hamas-conflict>  
<https://www.sdjewishworld.com/2021/09/20/survey-finds-jewish-college-students-fear-for-their-safety/>





**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

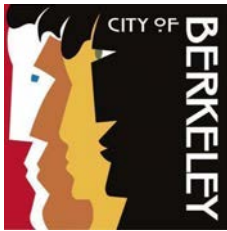
WHEREAS we celebrate the rich and diverse heritage of the Jewish American community, including those who live, work and play in Berkeley, and;

WHEREAS, we recognize Jewish American commitment to civic engagement and are enriched by local Jewish institutions such as The Magnes Collection of Jewish Life and Art, the Jewish Community Center of the East Bay, New Lehrhaus, Urban Adamah, and Congregations Beth El, Beth Israel, Chabad House, Berkeley Hillel, Congregation Netivot Shalom, Chochmat HaLev, and Beyt Tikkun, as examples;

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley hereby declares the month of May as Jewish American Heritage Month, in appreciation of the achievements and contributions made by Jewish organizations and members of the Jewish American community.

BE IT FURTHER RESOLVED that the City of Berkeley will continue efforts to confront antisemitism and other forms of hate impacting the Jewish American community, support education about the Jewish American community, and include Jewish American culture in programs, activities, and ceremonies throughout the year.





**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

**To:** Honorable Members of the City Council  
**From:** Councilmembers Sophie Hahn (Author) and Terry Taplin (Co-Sponsor)  
**Subject:** Kala Art Institute 2023 Relinquishment of Council Office Budget  
 Funds to General Fund and Grant of Such Funds

### RECOMMENDATION

Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn and \$500 from Councilmember Taplin, to the Kala Art Institute, a 501(c)(3) non-profit organization, to support Art Kala 2023, an exhibition, auction, and benefit to support Kala's artistic, cultural, and educational programs, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budgets of Councilmembers Hahn and Taplin, and from any other Councilmembers who would like to contribute.

### BACKGROUND

Founded in 1974, by Archana Horsting and Yuzo Nakano, as an international residency program rooted in the local community and a forum for ideas, Kala Art Institute encourages artistic experimentation. Over four decades -- from a garage studio with one etching press and a single hot plate to a 15,200 sq. ft. facility in the historic West Berkeley Heinz building -- Kala has grown steadily in the breadth of its offerings and in the size of its operation, yet remains true to its mission to be a workshop of ideas and to engage the community through exhibitions, education, and public programs.

In 2009, Kala dynamically expanded its facility providing new opportunities for artists and the community. With improved studios, project rooms, classrooms, and a 2,200 sq. ft. light-filled gallery with an accessible street level location, Kala is working to maximize its capacity to serve the community as a vital center for artistic experimentation. Kala serves 35,000 individuals yearly through artist residencies, exhibitions, and community workshops. In addition, Kala's Artists-in-Schools program provides curriculum-based visual arts education to children in neighboring public schools in Berkeley, Emeryville, and Oakland. Overall, their constituents range from 5 to 95 years old and represent a diverse group of participants including local residents and visiting artists from all states and countries -- representing an international spectrum of backgrounds and experience. Bay Area artists represent 85% of participants in Kala's artist residencies.

Kala Art Institute's mission is to help artists sustain their creative work over time through its Artist-in-Residence and Fellowship Programs, and to engage the community through

exhibitions, public programs, and education.

The heart of Kala's mission as a vital, California art-making hub is supporting artists and engaging the community. Kala offers professional facilities to those working in and across print and digital media, new media, and performance. Artists at Kala are encouraged to work across disciplines, produce innovative artwork of the highest quality, and are given total freedom to realize their artistic vision using media that span the Gutenberg to digital eras. Kala offers access to equipment, time, and space to cultivate creative projects. Kala's studios provide tools for printmaking, photography, video, installation, and digital media. Kala fosters a fresh approach to experimentation, as artists investigate the interface of digital work, work made by hand, work made in the studio, performance-based work that engages the community and everything in between. A spirit of exchange and education is nurtured through all Kala's community programs.

Kala's creative community builds bridges between the intense art-making environment of the Kala studios, located in the historic Heinz ketchup factory in Berkeley and life outside the studio in Kala's immediate neighborhood and far beyond. Additionally, Kala is committed to offering quality art education to the general public and public school children through its on-site and online program of classes and workshops, summer programs and its Artists-in-Schools program, established in 1991, providing multiple week artist-led instruction to students in neighboring East Bay public schools.

Celebrating Kala's 49th year, Art Kala 2023 brings together Kala's creative community and features the inventive and meaningful art being made in the Bay Area. Art Kala 2023 with Honorary Auction Chair Jules Roman will open the auction benefit exhibition on March 30<sup>th</sup> with a free, family friendly preview party and will close the exhibition on May 13, 2023 with a festive closing party with food, drinks, music, a live auction and a short program honoring three local artists Pantea Karimi, Gregory Rick, and Jos Sances. Art Kala 2023 will take place at: Kala Gallery, 2990 San Pablo Avenue, Berkeley, California 94702. All proceeds support Kala's arts education and community arts programs.

More information can be found at: <http://www.kala.org/gallery/spring-gala-and-auction/>.

#### FISCAL IMPACTS OF RECOMMENDATION

A total of up to \$4,500 from Councilmembers' discretionary budgets.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

This item is consistent with the City's vision on sustainability.

#### CONTACT PERSON

Councilmember Sophie Hahn, (510) 981-7150

Attachments: Resolution

RESOLUTION #####-N.S.

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

WHEREAS, Kala Art Institute is a nonprofit organization dedicated to helping artists sustain their creative work over time through its Artist-in-Residence and Fellowship Programs, and to engaging the community through exhibitions, public programs, and education; and

WHEREAS, since 1974, Kala has grown steadily in the breadth of its offerings and in the size of its operation, yet remains true to its mission to be a workshop of ideas and to engage the community through exhibitions, education, and public programs; and

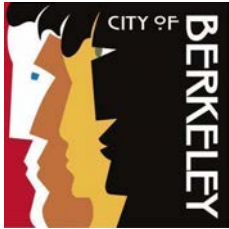
WHEREAS, Kala serves 35,000 individuals yearly through artist residencies, exhibitions, and community workshops, and through its Artists-in-Schools program provides curriculum-based visual arts education to children in neighboring public schools in Berkeley, Emeryville, and Oakland; and

WHEREAS, Kala's constituents range from 5 to 95 years old and represent a diverse group of participants including local residents and visiting artists from all states and countries – representing an international spectrum of backgrounds and experience – with Bay Area artists representing 85% of participants in Kala's artist residencies; and

WHEREAS, Art Kala 2023 brings together Kala's creative community and features inventive and meaningful art being made in the Bay Area, honoring Pantea Karimi, Gregory Rick, and Jos Sances; with a VIP Print by Pavel Acevedo;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$500 per office, including \$250 from the office of Councilmember Hahn and \$500 from the office of Councilmember Taplin, shall be granted to the Kala Art Institute to support Art Kala 2023 and to celebrate Kala's 49th year of sustaining the creative work of Berkeley artists.





**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

**To:** Honorable Members of the City Council  
**From:** Councilmember Sophie Hahn (Author); Councilmembers Kate Harrison and Terry Taplin (Co-Sponsors)  
**Subject:** Budget Referral: Study to support Housing Element commitment to increase housing on higher-resourced commercial avenues of Solano, North Shattuck, and College Avenues.

RECOMMENDATION

Refer \$250,000 to the June 2023 budget process to study and develop options, including but not limited to changes to zoning, incentives/programs/financing mechanisms, and objective design standards for Solano Avenue, North Shattuck, and College Avenue to:

1. Increase housing opportunities for people of all incomes, with an emphasis on housing affordable to households at or below 120% of Area Median Income (AMI);
2. Provide preferences to households previously excluded from residential areas served by these commercial corridors via discriminatory deed restrictions and/or discriminatory lending practices;
3. Provide housing with amenities for seniors, households with children, individuals with disabilities, artists, and other populations with specialized housing needs;
4. Ensure recommendations for zoning and design standards consider unique characteristics of each commercial area, including lot sizes and depths, availability of rear-access to parcels, abutting/neighborhood residential zoning standards, and any other unique characteristics of each commercial district and its surroundings;
5. Enhance the viability of locally-owned and neighborhood-serving commercial uses both during construction and over the long term, including potential reduced rents/right to return for existing establishments, appropriately-sized and accessible commercial spaces, and rent-controlled commercial spaces as a potential community benefit. Examples of such neighborhood serving commercial uses may change as retail trends develop, but could include: grocery/food stores, banks, dry cleaning and shoe repair, hardware stores, wellness and hair salons, restaurants and cafes, fitness centers, clothing and gift shops.

FINANCIAL IMPLICATIONS

\$250,000 from the City's General Fund.

## CURRENT SITUATION AND ITS EFFECTS

Program 27 of Berkeley's approved 2023 Housing Element identifies transportation and commercial corridors as priority development areas. This program specifically identifies Solano Avenue, North Shattuck and College Avenue districts as areas for increased housing. As Part of the Land Use, Safety, and Environmental Justice Element Update, the City committed to:

“update zoning map and development standards to accommodate housing capacity and growth on transit and commercial corridors, particularly in the highest resource and higher income neighborhoods pursuant to the Affirmatively Furthering Fair Housing requirement.

These updates will increase allowed densities and/or development capacity with the goal of achieving consistency among all transit and commercial corridors, especially between formerly red-lined areas and higher-resource areas of Solano Avenue, north Shattuck Avenue, and College Avenue.”<sup>1</sup>

Funds are required to develop a comprehensive study, in conjunction with District Councilmembers and local stakeholders, of opportunities to increase housing capacity on Solano Avenue, North Shattuck and College Avenue commercial corridors. This study and options developed, including potential programs, changes to zoning, and other measures as outlined in the Recommendation or further developed through study should be presented to the City Council prior to referring any zoning changes to the Planning Commission.

The goal of the study is to enhance access to higher resourced neighborhoods for formerly excluded communities and to continue and expand opportunities for vibrant, locally-owned, neighborhood-serving commercial uses along the corridors.

## BACKGROUND

The Housing Element Update will serve as the City of Berkeley's housing plan for the next eight years (2023-2031). It is an important opportunity for Berkeley's residents and community members to come together to assess housing needs, identify policy and resource priorities, and find solutions to implement a wide range of housing choices. The plan contains goals, policies, and programs that will guide the City's decision-making around the development and rehabilitation of housing.

The Housing Element serves as a comprehensive document for everyone in the Berkeley community. Racial and social equity, and protections for vulnerable and historically impacted communities, are key factors in this update to the City's housing plan.

The Housing Element is mandated by State law to be updated every eight years and certified by California's Department of Housing and Community Development (HCD). Each jurisdiction in

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<sup>1</sup> [https://berkeleyca.gov/sites/default/files/documents/Berkeley\\_2023-2031%20Housing%20Element\\_02-17-2023v2\\_0.pdf](https://berkeleyca.gov/sites/default/files/documents/Berkeley_2023-2031%20Housing%20Element_02-17-2023v2_0.pdf)



California receives a target number of homes to plan for called the Regional Housing Needs Allocation, or RHNA. On December 16, 2021, Association of Bay Area Governments (ABAG) Executive Board conducted a public hearing and adopted the Final RHNA Plan. The total Regional Housing Needs Determination (RHND) for the Bay Area in the 2023-2031 period is 441,176 units. Berkeley's RHNA for the 2023-2031 period is 8,934 residential units.<sup>2</sup>

Beyond the requirements outlined in the Housing element itself, it is overdue for additional housing – particularly affordable housing – to be constructed along these key, higher resourced corridors to advance our City's commitment to equity. As many other neighborhoods are already doing their fair share to provide additional housing, it is time for us to ensure additional affordable housing is constructed in higher resource neighborhoods as well.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Housing near transit can reduce greenhouse gas impacts and local commerce reduces the need to travel for everyday needs.

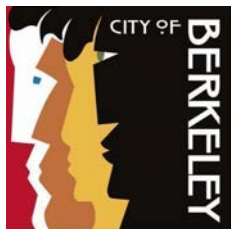
#### CONTACT PERSON

Councilmember Sophie Hahn, (510) 981-7150

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<sup>2</sup> <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/housing-element-update>





**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

CONSENT CALENDAR

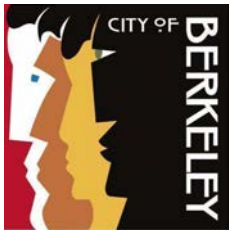
April 11, 2023

**To:** Honorable Members of the City Council  
**From:** Councilmember Sophie Hahn (Author), Councilmembers Ben Bartlett and Terry Taplin (Co-Sponsors)  
**Subject:** Budget Referral: Funds to Study Berkeley's Affordable and Social Housing Needs and Programmatic and Funding Opportunities

RECOMMENDATION

Refer \$250,000 to the June 2023 budget process to study and report to Council on:

1. The need for Affordable Housing in Berkeley to:
  - a. Rehouse Berkeley's unhoused residents.
  - b. Meet the housing needs of very low-, low- and moderate-income Berkeley residents, from less than 30% to 120% of Area Median Income (AMI).
  - c. Significantly increase cooperative, land trust, and other Social Housing, including innovative social housing models that provide significant moderate-income housing opportunities.
  - d. Meet the needs of low-income artists, seniors, individuals with disabilities, and other populations with unique needs.
  - e. Potentially increase Affordable Housing, up to 100%, at North Berkeley and Ashby Bart Stations.
  - f. Meet the City's Housing Element Affordable Housing production requirements of 5,270 units from 30%-120% AMI in a timely manner, prior to the end of the current RHNA cycle in 2031.
2. Existing and potential new programs to increase homeownership for low-income and first-time homebuyers.
3. Needs/programs to accelerate the City's Small Sites Program.
4. Existing and upcoming funds available at the local, County, Regional, State, and Federal levels to support Berkeley in meeting its Affordable and Social Housing needs and requirements.
5. Berkeley-specific funds required to meet Affordable and Social Housing needs and to produce Berkeley's RHNA-required Affordable Housing, including funds to build capacity at Land Trusts and other organizations to deliver Cooperative and Social Housing.
6. Existing sources and amounts of Funding available to meet Berkeley's Affordable and Social Housing needs and requirements.



**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

7. Potential Bonds or other measures to secure necessary Affordable and Social Housing funds including a potential measure or measures on the November 2024 ballot, based on the success of 2018 Measure O.
8. Added costs of delaying the preservation and construction of Affordable Housing, including potential increased costs for land, financing, and construction, and the yearly/per-individual cost of providing services to Berkeley's unhoused residents.
9. Consequences of failure to meet RHNA Affordable Housing allocations in a timely manner.
10. Potential re-authorization of Measure P in November of 2024 as a permanent measure, to extend additional funding available to support rehousing the homeless.
11. Any other information related to Affordable and Social Housing in Berkeley to help inform residents and the City Council of the need for additional Affordable Housing and Affordable Housing programs and funds, and funds to rehouse the homeless.

Study to be delivered to the City Council no later than December 1, 2023 and to include a plan for Berkeley to meet its Affordable and Social Housing needs and requirements and recommendations for additional funds, programs, and other measures to meet needs over the next decade.

#### FINANCIAL IMPLICATIONS

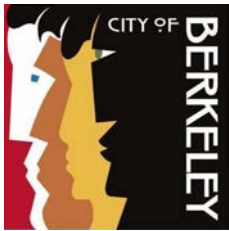
\$250,000 from the General Fund

#### CURRENT SITUATION AND ITS EFFECTS

Measure O, passed by 77.5% of voters in 2018, provided \$135 million in funding for affordable housing in the City of Berkeley. To date, Measure O-funded projects that are completed or under construction have secured an average of \$4.40 of other funding for every \$1.00 of City funds. This trend suggests that once all funds have been fully spent, as much as \$594 million in new affordable housing will have been built, supported, or preserved as a direct result of Measure O.

Currently all Measure O funds have been raised or pre-allocated to upcoming affordable housing projects in the design phase. No additional funding from Measure O remains to support future projects.

At the same time, Berkeley's recently passed Housing Element requires the City to produce a total of 5,270 units of housing affordable to families earning from 30% to 120% of AMI. While numbers have decreased in recent years, Berkeley still counts approximately 1,000 homeless people every night. Working and low-income families struggle to find homes. Lotteries for affordable units attract thousands more people than spaces available. There is a clear need for



**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

the construction, acquisition, and preservation of additional affordable housing for our community.

To continue Berkeley's commitment to building and preserving affordable housing, jump-started with Measure O funds, Berkeley must plan ahead.

Similarly, 2018's Measure P has been tremendously impactful. Berkeley has made quantifiable progress by funding state-of-the-art programs to rehouse the homeless. In fact, during the pandemic years, homelessness in Berkeley decreased by 5% while increasing more than 20% in Alameda County as a whole. The City has successfully rehoused hundreds of individuals, leveraging City of Berkeley funds, supported by Measure P, with additional State and Federal funding. Unfortunately, Measure P sunsets in 2028. This already presents challenges in planning for continued success.

This item funds research and development of comprehensive plans documenting needs and requirements for Affordable and Social Housing and rehousing services for the homeless, and outlining programs and funds needed to meet those needs over the coming decade. With respect to funding needs, this item asks for an assessment of the potential for ballot measures in November of 2024, following on the success of Measures O and P.

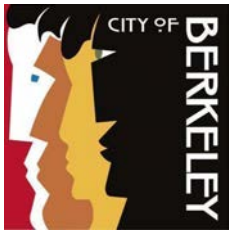
## BACKGROUND

### **Affordable Housing Bond**

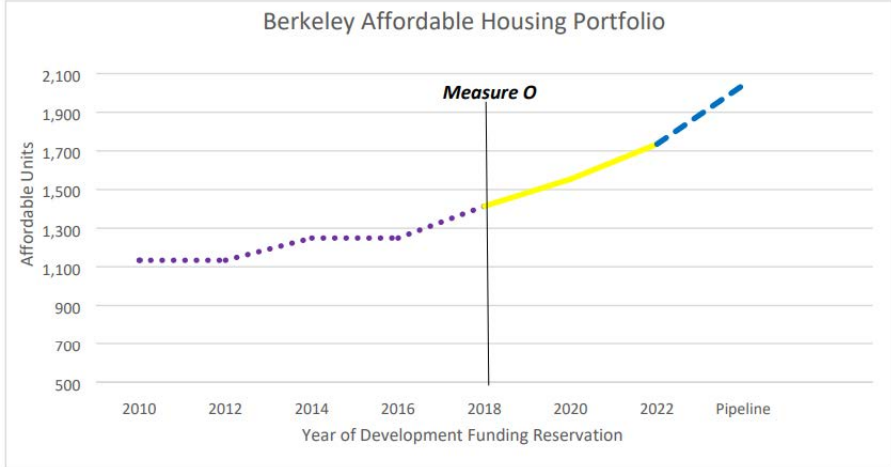
In November 2018 Berkeley voters adopted Measure O which allowed the City to issue up to \$135 million in bonds to fund housing for "low-, very low-, low-, median-, and middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations."

As a bond measure dedicated to a specific purpose, Measure O required a two-thirds supermajority vote to pass. The measure passed with 77% of Berkeley voters voting in favor.

Measure O included provisions to establish an oversight committee as well as to conduct annual audits. The Measure O Bond Oversight Commission was first convened in April 2019. The Commission met seven times in 2019, one in 2020 prior to the pandemic, and again in February and March of 2021. Subsequently, Council approved the assignment of Measure O oversight to the Housing Advisory Commission and dissolved the Measure O Bond Oversight Commission.



**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**



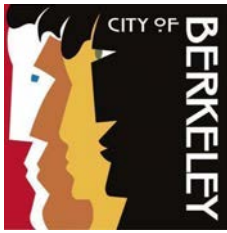
Most affordable housing developments leverage the City’s investment with at least 5-7 other funding sources. Measure O-funded projects that are completed or under construction have secured an average of \$4.40 of other funding for every \$1.00 of City funds.

Per Section 3.6.1 of the Housing Element “A household is considered to have a housing cost burden if it spends more than 30 percent of gross income on housing expenses. Housing expenses include rent or mortgage payments and utilities. For owner households, housing expenses also include taxes and insurance. Households with a cost burden may have trouble making rent, mortgage or utility payments, keeping up with home maintenance, or may have to forego other non-housing related necessities in order to keep up with housing expenses. A household is considered as having a severe cost burden if housing expenses make up over 50 percent of the household’s gross income.”

Table 3.30: Cost Burden in Berkeley, Alameda County, and the Bay Area (2017)

|                 | Cost Burden<br>(>30% of Income Used for Housing) |                 | Severe Cost Burden<br>(>50% of Income Used for Housing) |                 |
|-----------------|--------------------------------------------------|-----------------|---------------------------------------------------------|-----------------|
|                 | # of Households                                  | % of Households | # of Households                                         | % of Households |
| <b>Berkeley</b> |                                                  |                 |                                                         |                 |
| Owner Occupied  | 5,298                                            | 27%             | 2,398                                                   | 12%             |
| Renter Occupied | 13,794                                           | 53%             | 8,182                                                   | 32%             |
| All Households  | 19,092                                           | 42%             | 10,580                                                  | 23%             |
| <b>Region</b>   |                                                  |                 |                                                         |                 |
| Alameda County  | 214,197                                          | 37%             | 96,579                                                  | 17%             |
| Bay Area        | 986,937                                          | 36%             | 447,802                                                 | 16%             |

Source: ABAG Housing Element Data Package (based on U.S. Dept. of Housing and Urban Development (HUD), Comprehensive Housing Affordability Strategy (CHAS), ACS tabulation, 2013-2017 release)



**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

As summarized in Table 3.30: Cost Burden in Berkeley, Alameda County, and the Bay Area (2017), 42 percent of all Berkeley households are cost burdened with 23 percent experiencing a severe cost burden. Cost burden is notably more prevalent among renter households, with over half of renter households paying more than 30 percent of their income to housing expenses. When compared to the region, cost burden is more widespread in Berkeley than in Alameda County and the Bay area as a whole.

For the 2023-2031 Housing Element, ABAG assigned the City of Berkeley a RHNA of 8,934 units. This RHNA is divided into four income categories. The RHNA does not include the extremely low category. It is estimated to be ½ of the very-low-income need, per Government Code §65583.a.1. The total very-low-income RHNA is 2,446; therefore, 1,223 units are designated as extremely-low-income and 1,223 units are designated as very-low-income.

| INCOME LEVEL               | 2015-2023 RHNA UNITS | 2023-2031 RHNA UNITS |
|----------------------------|----------------------|----------------------|
| Very Low (< 50% AMI)       | 532                  | 2,446                |
| Low (50-80% AMI)           | 442                  | 1,408                |
| Moderate (80-120% AMI)     | 584                  | 1,416                |
| Above Moderate (>120% AMI) | 1,401                | 3,664                |
| <b>Total</b>               | <b>2,959</b>         | <b>8,934</b>         |

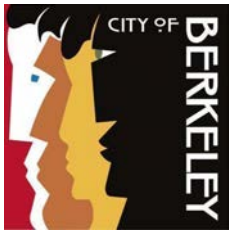
### **Reauthorization of Measure P**

Measure P provides around \$10 million of funding annually from real property transfer taxes to pay for homeless services. Berkeley voters passed Measure P in November 2018 with 72.4% approval.

The City is using funding from Measure P to address immediate street conditions & hygiene, provide emergency shelter and temporary accommodation, establish new permanent housing, and prevent households from becoming homeless again. The City is funding 24 homeless services projects in the current fiscal year with \$16.8 million in Measure P funds.

### **Progress on homeless services projects**

Homeless services projects funded by Measure P are providing support services for unhoused members of the Berkeley community. These services include:



**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

### **Immediate street conditions and hygiene**

Measure P funds will support nine projects aimed at addressing immediate street conditions and hygiene. These projects address the immediate needs of persons currently living on the streets or in vehicles. The projects provide a range of services, including mental health crisis response, street medicine, lockers, outreach workers, and portable toilets, as well as drop-in services such as food, case management, and help obtaining documents for social services. The City anticipates spending \$3.2 million of Measure P funding on these services through June 2023.

### **Emergency shelter**

Measure P funds five projects that provide immediate shelter and supportive services for a range of adults, including transitional-age youth, those seeking to move out of encampments, and others. Support services include coordinated entry system access, housing navigation, and employment development. The City anticipates spending \$4.3 million of Measure P funding on these services through June 2023.

### **Permanent housing**

Measure P will also fund four permanent housing projects in the current fiscal year. These projects provide immediate housing and supportive services for single adults and families that were formerly homeless. Services provided by the sites include housing retention services, payee support, and mental health treatment. The City anticipates spending \$2.9 million of Measure P funding on permanent housing in the current fiscal year.

### **Homelessness prevention**

Measure P funds will also target two programs to prevent homelessness through legal assistance, housing retention services, and flexible housing funds. These direct interventions help individuals or families who can immediately avoid homelessness. The city anticipates spending \$1.9 million on these services through June 2023.<sup>1</sup>

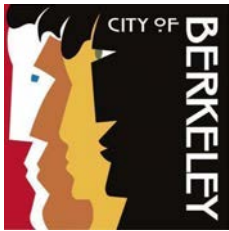
Securing stable, long term, predictable funding allows staff to plan strategies, make long term commitments to community partners and peer agencies, compete for and secure competitive grant funding, while continuing to address urgent and shorter term needs as they arrive.

Measures O & P were well received by voters in 2018. Together, they have been extremely successful at generating the physical assets to actually house low income residents while funding the vitally needed services to provide transitional support to rehouse many of our homeless neighbors. Substantially similar follow up funding measures modeled on their success provides a clear pathway forward for our community to honor the commitments we've made to ending homelessness in an effective and proven manner.

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<sup>1</sup> <https://berkeleyca.gov/your-government/our-work/bond-revenue-measures/measure-p>





**Councilmember Sophie Hahn**  
**City of Berkeley, District 5**

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City's Housing Trust Fund Guidelines identify sustainable development as a City priority, and encourage developers to incorporate as many green building strategies and materials as is feasible. New construction affordable housing developments are typically built to third-party, green building standards such as LEED or GreenPoint Rated.

CONTACT PERSON

Councilmember Sophie Hahn, (510) 981-7150

Attachments:

1. Measure O Bond Impacts on Affordable Housing Development in Berkeley
2. Measure P Program Projection as of 9/1/22
3. Affordable Housing Projects Funded by Measure O and Other Sources since 2018



Office of the City Manager

**ACTION CALENDAR**

October 11, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Measure O Bond Impacts on Affordable Housing Development in Berkeley

**RECOMMENDATION**

Review and discuss the presentation on Measure O Bond impacts on affordable housing development in Berkeley.

**SUMMARY**

In 2018 Berkeley voters approved Measure O, a general obligation bond that will generate up to \$135 million for affordable housing developments. As this report demonstrates, the funds have had a significant impact on the production of new affordable housing units; expanding the City’s Housing Trust Fund portfolio and creating a robust pipeline of new housing developments.

**CURRENT SITUATION AND ITS EFFECTS**

As of September 30, 2022, \$111,379,307 in Measure O funds have either been committed (via an executed loan agreement) or awarded (by Council action) for specific affordable housing development projects. The projects with either committed or awarded Measure O funds are listed below:

| Project Name                     | Address           | Units | Measure O    | Status             |
|----------------------------------|-------------------|-------|--------------|--------------------|
| Jordan Court                     | 1601 Oxford       | 35    | \$3,501,884  | Occupied           |
| Berkeley Way – BRIDGE Affordable | 2020 Berkeley Way | 89    | \$179,494    | Lease-up           |
| Berkeley Way Hope Center - PSH   | 2012 Berkeley Way | 53    | \$6,731,092  | Lease-up           |
| Berkeley Way Hope Center Shelter |                   | 44*   | \$6,909,837  | Lease-up           |
| Maudelle Miller Shirek Community | 2001 Ashby        | 87    | \$12,932,000 | Under construction |
| Blake Apartments                 | 2527 San Pablo    | 63    | \$9,125,000  | Under construction |
| 1740 San Pablo                   | 1740 San Pablo    | 54    | \$7,500,000  | Predevelopment     |

|                          |                             |                      |                      |                |
|--------------------------|-----------------------------|----------------------|----------------------|----------------|
| BUSD Workforce Housing   | 1701 San Pablo              | 110                  | \$24,500,000         | Predevelopment |
| BART sites               | North Berkeley & Ashby BART | TBD                  | \$40,000,000         | Planning       |
| <b>Measure O impact:</b> |                             | <b>&gt;535 units</b> | <b>\$111,379,307</b> |                |

\* Shelter beds

Council also reserved \$17 million from the third issuance of Measure O (anticipated in 2025) to support the following pipeline projects:

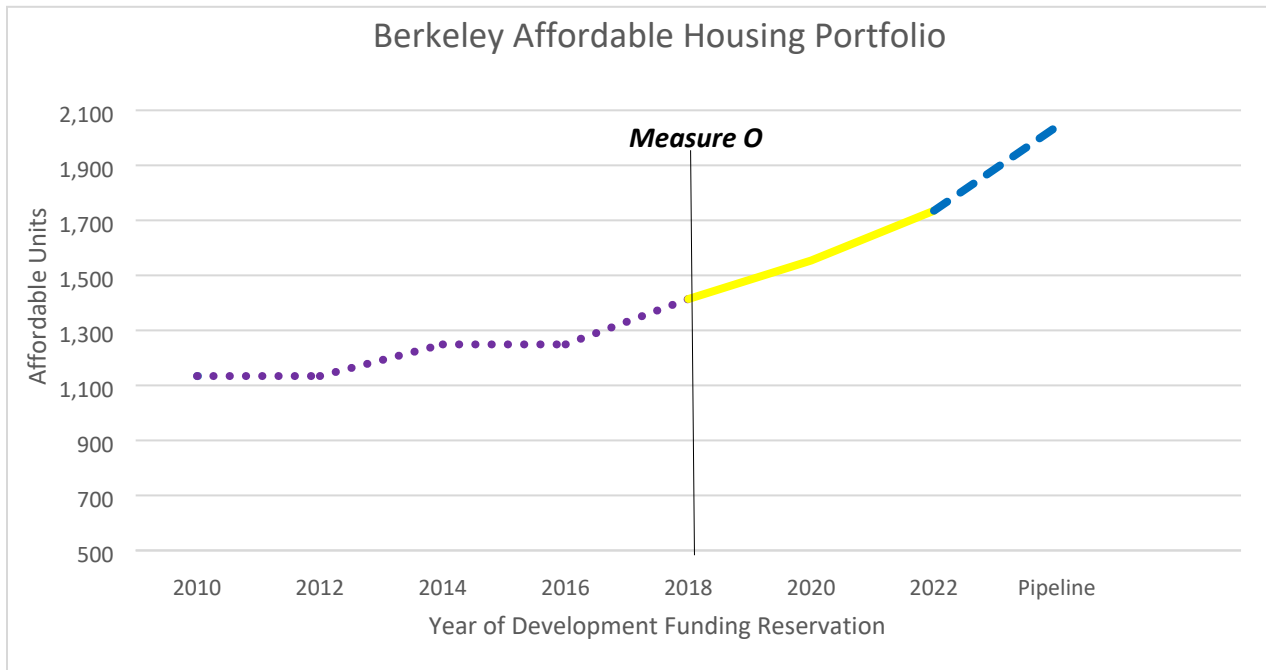
| Project Name                        | Address    | Units | City Funding | Status         |
|-------------------------------------|------------|-------|--------------|----------------|
| Supportive Housing in People’s Park | 2566 Haste | 119   | \$14,359,593 | Predevelopment |
| St. Paul Terrace                    | 2024 Ashby | 50    | \$12,250,000 | Predevelopment |

Together, the awarded, committed, and reserved funds account for \$128,379,307 in Measure O funds. More details about these projects can be found in the attached Measure O Projects spreadsheet.

*Measure O’s Impact on the City’s Affordable Housing Portfolio*

Measure O supplements the City’s Housing Trust Fund, which pools Affordable Housing Mitigation Fees, Inclusionary Fees, Commercial Linkage Fees, Condo Conversion Fees, and entitlement funds from the federal HOME program. Prior to Measure O, the City was able to fund no more than one new construction project every few years. The 15-unit Harmon Gardens was completed in 2011, and the next affordable new construction project was the 42-unit Harper Crossing, which was completed in 2018. The City issued a Request for Proposals in 2019 through which Council approved funding reservations for five new construction projects, all supported with Measure O, including two that were completed earlier this year. In 2010, the City had approximately 1,134 apartments in its portfolio of restricted affordable housing units. With completed projects, active projects, and pipeline projects, the City is on track to nearly double its portfolio in the coming years to over 2,000 apartments.

The following table shows the growth in the City’s affordable housing portfolio since 2010, and the impact Measure O has had on increasing the City’s inventory of apartments affordable to extremely low-, very low-, and low-income households.



*Leveraging of City Funds*

The City’s affordable housing development funds are most often reserved early in the predevelopment process. This allows project sponsors to compete for state and federal funds. Typically, the City executes a loan agreement once all permits are ready to issue and full financing has been secured, a process which usually takes years. At times City funds are loaned at site acquisition. As a result, funds may be reserved or committed for years before they are expended.

Most affordable housing developments leverage the City’s investment with at least 5-7 other funding sources. Measure O-funded projects that are completed or under construction have secured an average of \$4.40 of other funding for every \$1.00 of City funds. Leveraging data for funded developments can be found in the attachment to this report.

*Measure O Disbursements*

Once Measure O funds are committed to a project, they are typically disbursed on a monthly (or less frequent) schedule when the project sponsor has incurred eligible project expenses as well as satisfied various conditions of the loan agreement. The project sponsor submits an invoice along with documentation of each expense, which is reviewed and approved by multiple City staff before funds are released.

As of 9/30/2022 the City had disbursed \$28,871,911 in Measure O funds through seven development loans. Four housing developments are complete or substantially complete

(Berkeley Hope Center, Berkeley Hope Center Permanent Supportive Housing, BRIDGE Berkeley Way, and Jordan Court), two are in construction (Maudelle Miller Shirek Community and Blake Apartments), and site acquisition has been completed for 1740 San Pablo Ave. These represent a total of 221 units (including 44 shelter beds) completed with Measure O support to date, and another 150 currently in construction.

Developing affordable housing with Measure O funds is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

### BACKGROUND

In November 2018 Berkeley voters adopted Measure O which allowed the City to issue up to \$135 million in bonds to fund housing for "low-, very low-, low-, median-, and middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations."

As a bond measure dedicated to a specific purpose, Measure O required a two-thirds supermajority vote to pass. The measure passed with 77% of Berkeley voters voting in favor.

The City has issued Measure O bonds twice so far:

- In FY2020 the City issued \$38,000,000 in Measure O bonds. The cost of issuing these bonds, including bond counsel, was \$785,000. Net funds received were \$37,215,000.
- In May 2022 the City issued \$40,000,000 in Measure O bonds. The cost of issuing these bonds, including bond counsel, was \$432,800. Net funds received were \$39,567,200.

Measure O included provisions to establish an oversight committee as well as to conduct annual audits. The Measure O Bond Oversight Commission was first convened in April 2019. The Commission met seven times in 2019, one in 2020 prior to the pandemic, and again in February and March of 2021.

Subsequently, Council approved the assignment of Measure O oversight to the Housing Advisory Commission and dissolved the Measure O Bond Oversight Commission. The Commissions have reviewed requests for funding, made funding recommendations to Council and received information about the status of funding reservations and commitments. Neither commission produced its own report assessing the status of Measure O. Full commission packets are not available on the City's new website.

Staff are in the process of contracting with an outside auditor to audit Measure O expenditures as required by the ballot measure. The first fiscal year including Measure O expenditures ended on June 30, 2021 and will be the first year to be audited.

Members of the public who are interested in learning more about Measure O funds as they are allocated and expended can consult the Housing Advisory Commission meeting agendas and materials online, and/or attend the Commission meetings.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City's Housing Trust Fund Guidelines identify sustainable development as a City priority, and encourage developers to incorporate as many green building strategies and materials as is feasible. New construction affordable housing developments are typically built to third-party, green building standards such as LEED or GreenPoint Rated.

#### POSSIBLE FUTURE ACTION

Council will review and take action on funding reservations related to the development of affordable housing at the BART sites, which will be partially funded with Measure O funds.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Council's funding reservations for pipeline or new affordable housing developments would allocate the remaining Measure O funds, and other available Housing Trust Funds.

#### CONTACT PERSON

Jenny Wyant, Senior Community Development Project Coordinator, HHCS, 510-981-5228

Attachment:

1: Measure O-Funded Developments

| City of Berkeley<br><b>Affordable Housing Projects Supported by Measure O</b><br>Total Authorized Bonds = \$135M |                          |                                                       |                                                                                                                                                                                            |                    |                  |                                                          |                                                |                           |                                                                              |                              |
|------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------|----------------------------------------------------------|------------------------------------------------|---------------------------|------------------------------------------------------------------------------|------------------------------|
| Project Name                                                                                                     | Project Address          | Development Partner                                   | Description                                                                                                                                                                                | Units <sup>1</sup> | Affordability    | Total Measure O Funds Committed or Reserved <sup>2</sup> | Measure O Disbursements Through September 2022 | Total City Funds Reserved | Projected Sources of Funds <sup>3</sup>                                      | Project Status               |
| <b>Projects with Measure O Commitments and Reservations</b>                                                      |                          |                                                       |                                                                                                                                                                                            |                    |                  |                                                          |                                                |                           |                                                                              |                              |
| <a href="#">BRIDGE Berkeley Way</a>                                                                              | 2012 Berkeley Way        | BRIDGE Housing                                        | 89 affordable homes and services for low- and very low- income families.                                                                                                                   | 89                 | 50-60% AMI       | \$179,494                                                | \$161,544                                      | \$2,774,925               | Measure O, HTF                                                               | Under Construction           |
| <a href="#">BFHP Hope Center</a>                                                                                 | 2012 Berkeley Way        | Berkeley Food & Housing Project (BFHP)/BRIDGE Housing | 32-bed homeless shelter, 12 transitional beds for homeless veterans, a community kitchen and wrap-around services for mental health, substance abuse, job training and social activities.  | 44                 | 0-30% AMI        | \$6,909,837                                              | \$5,354,255                                    | \$16,964,507              | Berkeley's Housing Trust Fund (HTF), Measure U1 <sup>4</sup> (U1), Measure O | Under Construction           |
| <a href="#">BFHP Hope Center Permanent Supportive Housing</a>                                                    | 2012 Berkeley Way        | BFHP/ BRIDGE Housing                                  | 53 permanent supportive housing apartments.                                                                                                                                                | 53                 | 0-30% AMI        | \$6,731,092                                              | \$6,250,345                                    | \$7,727,630               | Measure O, HTF                                                               | Under Construction           |
| <a href="#">Jordan Court</a>                                                                                     | 1601 Oxford Street       | Satellite Affordable Housing Associates (SAHA)        | 34 affordable studio units for seniors. 12 units will also be set aside for formerly homeless households.                                                                                  | 35                 | 20-60% AMI       | \$3,501,884                                              | \$2,906,118                                    | \$6,026,927               | HTF, Measure O                                                               | Completed                    |
| <a href="#">Maudelle Miller Shirek Community</a>                                                                 | 2001 Ashby Avenue        | Resources for Community Development (RCD)             | 86 apartments for families and individuals. 12 units will also be set aside for formerly homeless households.                                                                              | 87                 | 20-80% AMI       | \$12,932,000                                             | \$2,336,537                                    | \$17,000,000              | Measure O, U1, LHFTF                                                         | Under Construction           |
| <a href="#">Blake Apartments</a>                                                                                 | 2527 San Pablo Avenue    | SAHA                                                  | 21 studio units, eight one-bedroom units, 33 two-bedroom units and one three-bedroom manager's unit. 12 units are prioritized for people with an intellectual or developmental disability. | 63                 | 30-60% AMI       | \$9,125,000                                              | \$6,992,872                                    | \$12,000,000              | Measure O, U1, State Local Housing Trust Fund (LHFTF)                        | Under Construction           |
| <a href="#">1740 San Pablo Avenue</a>                                                                            | 1740 San Pablo Avenue    | BRIDGE Housing                                        | 53 new affordable homes for families                                                                                                                                                       | 54                 | 30-60% AMI       | \$7,500,000                                              | \$4,870,239                                    | \$7,500,000               | Measure O                                                                    | Acquisition / Predevelopment |
| <a href="#">Berkeley Unified School District (BUSD) Workforce Housing Development</a>                            | 1701 San Pablo Avenue    | BUSD/SAHA/Abode                                       | Approximately 109 homes in a five to six story building. Employees of BUSD and their households will have a leasing preference.                                                            | 110                | 30-120% AMI      | \$24,500,000                                             | -                                              | \$24,500,000              | Measure O                                                                    | Acquisition / Predevelopment |
| <a href="#">BART Sites</a>                                                                                       | Ashby and North Berkeley | TBD                                                   | TBD                                                                                                                                                                                        | TBD                | TBD              | \$40,000,000                                             | -                                              | \$53,000,000              | TBD                                                                          | Planning                     |
| <b>Measure O Impact</b>                                                                                          |                          |                                                       |                                                                                                                                                                                            | <b>&gt;535</b>     | <b>New Units</b> | <b>\$111,379,307</b>                                     | <b>\$28,871,911</b>                            | <b>\$147,493,989</b>      |                                                                              |                              |
| <b>Projects with City Funding Reservations</b>                                                                   |                          |                                                       |                                                                                                                                                                                            |                    |                  |                                                          |                                                |                           |                                                                              |                              |
| <a href="#">Supportive Housing at People's Park</a>                                                              | 2556 Haste Street        | RCD                                                   | 118 affordable units with 62 units set aside for formerly homeless households.                                                                                                             | 119                | 10-50% AMI       | FR <sup>5</sup>                                          | -                                              | \$14,359,593              | TBD                                                                          | Acquisition / Predevelopment |
| <a href="#">St. Paul Terrace</a>                                                                                 | 2024 Ashby Avenue        | Community Housing Development Corporation (CHDC)      | 49 affordable units, including 11 studios, 6 one-bedrooms and 17 two-bedrooms, and 15 three-bedrooms.                                                                                      | 50                 | 30-60% AMI       | FR                                                       | -                                              | \$12,250,000              | TBD                                                                          | Predevelopment               |
| <a href="#">Ephesians Legacy Court</a>                                                                           | 1708 Harmon Avenue       | CHDC                                                  | 79 one-bedroom units.                                                                                                                                                                      | 80                 | 30-60% AMI       | FP <sup>6</sup>                                          | -                                              | \$3,556,400               | TBD                                                                          | Predevelopment               |
|                                                                                                                  |                          |                                                       |                                                                                                                                                                                            | <b>249</b>         |                  |                                                          |                                                | <b>\$30,165,993</b>       |                                                                              |                              |

<sup>1</sup> total units, including managers' units

<sup>2</sup> committed = in contract, and reserved = set aside for a particular project

<sup>3</sup> the final mix of funds is determined at loan closing

<sup>4</sup> General Funds generated pursuant to Measure U1

<sup>5</sup> Funding Reservation that the City Council has approved from currently available affordable housing funds and from forward reservations of up to \$17 million from the third issuance of Measure O bonds and \$2.5 million in FY2023 general funds generated pursuant to Measure U1

<sup>6</sup> Funding Prioritization by City Council prioritizing future housing funds (including but not limited to HTF and Measure O funds)

| Leveraging of Measure O/City Subsidy                          |                |                                  |                |                  |                                                        |                                                                                                                                                                                                                                         |
|---------------------------------------------------------------|----------------|----------------------------------|----------------|------------------|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Project Name                                                  | Project Budget | City Funds (including Measure O) | Non-City Funds | Leveraging Ratio | Non-City Sources                                       | Notes                                                                                                                                                                                                                                   |
| <a href="#">BRIDGE Berkeley Way</a>                           | \$ 62,563,741  | \$ 2,774,925                     | \$ 59,788,816  | 22.5             | A1, AHP, AHSC, Tax Credits, TE Bond                    | average leveraging ratio for Berkeley Way as a whole = 4.4<br>BRIDGE and BFHP spread the City subsidy amongst the three projects, but prioritized the shelter portion for City funding due to limited sources for that type of housing. |
| <a href="#">BFHP Hope Center</a>                              | \$ 19,917,041  | \$ 16,964,507                    | \$ 2,952,534   | 1.2              | A1, BFHP                                               |                                                                                                                                                                                                                                         |
| <a href="#">BFHP Hope Center Permanent Supportive Housing</a> | \$ 39,589,497  | \$ 7,727,630                     | \$ 31,861,867  | 5.1              | A1, Boomerang, AHSC, NPLH, SHMHP, Tax Credits, TE Bond |                                                                                                                                                                                                                                         |
| <a href="#">Jordan Court</a>                                  | \$ 24,961,105  | \$ 6,026,927                     | \$ 18,934,178  | 4.1              | A1, AHP, NPLH, Tax Credits, TE Bond                    |                                                                                                                                                                                                                                         |
| <a href="#">Maudelle Miller Shirek Community</a>              | \$ 86,930,256  | \$ 17,000,000                    | \$ 69,930,256  | 5.1              | AHSC, IIG, NPLH, Tax Credits, TE Bond                  |                                                                                                                                                                                                                                         |
| <a href="#">Blake Apartments</a>                              | \$ 52,284,217  | \$ 12,000,000                    | \$ 40,284,217  | 4.4              | AHSC, DDS, HCD Accelerator, IIG                        |                                                                                                                                                                                                                                         |

**Non-City Funding Sources:**

|                 |                                                                                              |
|-----------------|----------------------------------------------------------------------------------------------|
| A1              | Alameda County A1 Bond funds                                                                 |
| BFHP            | Berkeley Food and Housing Project Capital Campaign                                           |
| Boomerang       | Alameda County funds                                                                         |
| AHP             | Federal Home Loan Bank - Affordable Housing Program                                          |
| AHSC            | CA HCD - Affordable Housing and Sustainable Communities Program                              |
| DDS             | Department of Developmental Services                                                         |
| HCD Accelerator | CA HCD - Housing Accelerator Fund                                                            |
| IIG             | CA HCD - Infill Infrastructure Grant Program                                                 |
| NPLH            | CA HCD - No Place Like Home Program                                                          |
| SHMHP           | CA HCD - Supportive Housing Multifamily Housing Program                                      |
| Tax Credits     | California Tax Credit Allocation Committee                                                   |
| TE Bonds        | California Debt Limit Allocation Committee - Tax Exempt Bonds are paired with 4% tax credits |





| TRANSFER TAX -- MEASURE P PROGRAM PROJECTION AS OF 9/1/22  |                |                |                |                |                  |                  |
|------------------------------------------------------------|----------------|----------------|----------------|----------------|------------------|------------------|
|                                                            | FY 2019 Actual | FY 2020 Actual | FY 2021 Actual | FY 2022 Actual | FY 2023 Estimate | FY 2024 Estimate |
| <b>Revenues</b>                                            |                |                |                |                |                  |                  |
| <i>Beginning Fund Balance</i>                              | \$ -           | \$ 2,932,313   | \$ 9,859,779   | \$ 17,032,464  | \$ 21,771,787    | \$ 18,340,647    |
| <i>Measure P Revenues*</i>                                 | \$ 2,932,313   | \$ 9,512,603   | \$ 10,919,576  | \$ 20,591,313  | \$ 14,073,750    | \$ 14,073,750    |
| <b>Total Revenues and Balance of Funds</b>                 | \$ 2,932,313   | \$ 12,444,916  | \$ 20,779,355  | \$ 37,623,777  | \$ 35,845,537    | \$ 32,414,397    |
| <b>LESS: Total Expenses</b>                                | \$ -           | \$ 2,585,137   | \$ 3,746,891   | \$ 15,851,991  | \$ 17,504,890    | \$ 16,435,517    |
| <b><u>Personnel Costs</u></b>                              | \$ -           | \$ 118,521     | \$ 155,753     | \$ 281,989     | \$ 695,730       | \$ 722,413       |
| CMO: Homeless Services Coordinator                         | \$ -           | \$ -           | \$ -           | \$ -           | \$ 196,348       | \$ 202,899       |
| Finance: Accountant II                                     | \$ -           | \$ -           | \$ 70,784      | \$ 200,380     | \$ 178,858       | \$ 193,441       |
| Finance: Contract Staffing                                 | \$ -           | \$ 38,266      | \$ -           | \$ -           | \$ -             | \$ -             |
| HHCS: Community Services Specialist II                     | \$ -           | \$ 80,255      | \$ 84,969      | \$ 81,609      | \$ -             | \$ -             |
| HHCS: 50% Senior Management Analyst                        | \$ -           | \$ -           | \$ -           | \$ -           | \$ 113,085       | \$ 116,560       |
| HHCS: 2 Year Limited Term Community Services Specialist II | \$ -           | \$ -           | \$ -           | \$ -           | \$ 207,439       | \$ 209,513       |
| <b><u>Non-Personnel Costs/ Program Expenses</u></b>        | \$ -           | \$ 2,466,616   | \$ 3,591,138   | \$ 15,570,002  | \$ 16,809,160    | \$ 15,713,104    |
| Fire: 5150 Response & Transport                            | \$ -           | \$ 846,616     | \$ 1,601,639   | \$ 1,003,931   | \$ 1,900,000     | \$ 1,900,000     |
| Dorothy Day House Shelter                                  | \$ -           | \$ -           | \$ 300,000     | \$ 566,000     | \$ 566,000       | \$ 566,000       |
| Dorothy Day House Drop In                                  | \$ -           | \$ -           | \$ 21,340      | \$ 182,000     | \$ 182,000       | \$ 182,000       |
| Pathways STAIR Center                                      | \$ -           | \$ -           | \$ 1,200,000   | \$ 1,499,525   | \$ 2,499,525     | \$ 2,499,525     |
| Pathways STAIR Center - ADA/Conversion Project             | \$ -           | \$ -           | \$ -           | \$ -           | \$ -             | \$ -             |
| No Place Like Home                                         | \$ -           | \$ -           | \$ -           | \$ -           | \$ 128,750       | \$ 128,750       |
| Hope Center - Mental Health Services                       | \$ -           | \$ -           | \$ -           | \$ -           | \$ 71,250        | \$ 71,250        |
| Coordinated Entry System                                   | \$ -           | \$ -           | \$ -           | \$ 1,000,000   | \$ 1,000,000     | \$ 1,000,000     |
| BDIC Locker Program                                        | \$ -           | \$ -           | \$ 25,000      | \$ 50,000      | \$ 50,000        | \$ 50,000        |
| LifeLong Medical - Street Medicine                         | \$ -           | \$ -           | \$ -           | \$ 525,000     | \$ 525,000       | \$ 525,000       |
| YSA Tiny Home                                              | \$ -           | \$ -           | \$ 117,000     | \$ 78,000      | \$ 78,000        | \$ 78,000        |
| DBA- Homeless Outreach Worker                              | \$ -           | \$ 20,000      | \$ 40,000      | \$ 40,000      | \$ 40,000        | \$ 40,000        |
| Downtown Streets Team                                      | \$ -           | \$ -           | \$ 111,243     | \$ 225,000     | \$ 225,000       | \$ 225,000       |
| Horizon Shelter at 742 Grayson Street                      | \$ -           | \$ -           | \$ 86,633      | \$ 1,002,000   | \$ 1,011,900     | \$ 1,011,900     |
| SPARK Safe RV Parking Program                              | \$ -           | \$ -           | \$ -           | \$ 398,096     | \$ -             | \$ -             |
| Project Homekey                                            | \$ -           | \$ -           | \$ -           | \$ 7,400,000   | \$ -             | \$ -             |

|                                                                                                                                                                                                         |              |              |               |               |                |                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|---------------|---------------|----------------|----------------|
| Permanent Housing Subsidies / Shallow Subsidies                                                                                                                                                         | \$ -         | \$ -         | \$ -          | \$ 650,000    | \$ 1,600,000   | \$ 1,600,000   |
| 1367 University Avenue Step Up Housing Project                                                                                                                                                          | \$ -         | \$ -         | \$ -          | \$ -          | \$ 1,133,244   | \$ 900,000     |
| HHCS: Square One Hotel Vouchers                                                                                                                                                                         | \$ -         | \$ -         | \$ -          | \$ -          | \$ -           | \$ -           |
| Training and Evaluation                                                                                                                                                                                 | \$ -         | \$ -         | \$ -          | \$ 50,000     | \$ 133,334     | \$ 133,334     |
| Homeless Response Team                                                                                                                                                                                  | \$ -         | \$ -         | \$ 88,283     | \$ 900,450    | \$ 918,149     | \$ 920,085     |
| Berkeley Relief Fund                                                                                                                                                                                    | \$ -         | \$ 1,600,000 | \$ -          | \$ -          | \$ -           | \$ -           |
| Portable Toilets                                                                                                                                                                                        | \$ -         | \$ -         | \$ -          | \$ -          | \$ 96,000      | \$ 96,000      |
| Berkeley Emergency Storm Shelter                                                                                                                                                                        | \$ -         | \$ -         | \$ -          | \$ -          | \$ 186,500     | \$ 186,500     |
| One-Time Use of Measure P for Nexus Community Programs                                                                                                                                                  | \$ -         | \$ -         | \$ -          | \$ -          | \$ 2,722,903   | \$ 2,722,903   |
| Reimagining Public Safety-Expand Downtown Streets Teams as placement for low-level violations                                                                                                           | \$ -         | \$ -         | \$ -          | \$ -          | \$ 50,000      | \$ 50,000      |
| Expand the scope of services for the Downtown Streets Team to address the need for enhanced services around commercial and industrial areas in the Gilman District twice weekly                         | \$ -         | \$ -         | \$ -          | \$ -          | \$ 50,000      | \$ 50,000      |
| Reimagining Public Safety: Conduct a service needs assessment based on 911 and non-911 calls for service, dispatch, and response and capacity assessment of crisis response and crisis-related services | \$ -         | \$ -         | \$ -          | \$ -          | \$ 100,000     | \$ -           |
| Reimagining: Respite from Gender/Domestic Violence                                                                                                                                                      | \$ -         | \$ -         | \$ -          | \$ -          | \$ 220,000     | \$ 220,000     |
| COVID-19 Emergency Housing Assistance - Housing Retention Program                                                                                                                                       | \$ -         | \$ -         | \$ -          | \$ -          | \$ 1,000,000   | \$ -           |
| Anti-Displacement Programs (Legal Assistance, Housing Retention Program, Flexible Housing Funds)                                                                                                        | \$ -         | \$ -         | \$ -          | \$ -          | \$ 900,000     | \$ 900,000     |
| Ramp-down 5150 transport for people without nexus to homelessness - transfer to General Fund                                                                                                            | \$ -         | \$ -         | \$ -          | \$ -          | \$ (578,395)   | \$ (343,143)   |
| Fiscal Year Surplus (Shortfall)                                                                                                                                                                         | \$ 2,932,313 | \$ 6,927,466 | \$ 7,172,686  | \$ 4,739,322  | \$ (3,431,140) | \$ (2,361,767) |
| Ending Fund Balance                                                                                                                                                                                     | \$ 2,932,313 | \$ 9,859,779 | \$ 17,032,464 | \$ 21,771,787 | \$ 18,340,647  | \$ 15,978,880  |

Attachment 1  
9/14/2022

City of Berkeley  
**Affordable Housing Projects Funded by Measure O and Other Sources since 2018**  
 Total Authorized Measure O Bond = \$135M  
 Total Funded and Reserved from All City Sources = \$198M

**Projects with Measure O + Other Funding Reservations and Commitments**

| Project Name                                                                          | Project Address          | Development Partner                                   | Description                                                                                                                                                                                | Units <sup>1</sup> | Affordability | Total Measure O Funds Committed or Reserved <sup>2</sup> | Total U1 Funds Committed or Reserved | Total City Funds | Projected City Sources of Funds <sup>3</sup>                                 | Project Type             | Project Status                            |
|---------------------------------------------------------------------------------------|--------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------|----------------------------------------------------------|--------------------------------------|------------------|------------------------------------------------------------------------------|--------------------------|-------------------------------------------|
| <a href="#">BFHP Hope Center</a>                                                      | 2012 Berkeley Way        | Berkeley Food & Housing Project (BFHP)/BRIDGE Housing | 32-bed homeless shelter, 12 transitional beds for homeless veterans, a community kitchen and wrap-around services for mental health, substance abuse, job training and social activities.  | 44                 | 0-30% AMI     | \$6,909,837                                              | \$6,023,365                          | \$16,964,507     | Berkeley's Housing Trust Fund (HTF), Measure U1 <sup>4</sup> (U1), Measure O | New Construction         | Under Construction                        |
| <a href="#">BFHP Hope Center Permanent Supportive Housing</a>                         | 2012 Berkeley Way        | BFHP/ BRIDGE Housing                                  | 53 permanent supportive housing apartments.                                                                                                                                                | 53                 | 0-30% AMI     | \$6,731,092                                              |                                      | \$7,727,630      | Measure O, HTF                                                               | New Construction         | Under Construction                        |
| <a href="#">BRIDGE Berkeley Way</a>                                                   | 2012 Berkeley Way        | BRIDGE Housing                                        | 89 affordable homes and services for low- and very low- income families.                                                                                                                   | 89                 | 50-60% AMI    | \$179,494                                                |                                      | \$2,774,925      | Measure O, HTF                                                               | New Construction         | Under Construction                        |
| <a href="#">Jordan Court</a>                                                          | 1601 Oxford Street       | Satellite Affordable Housing Associates (SAHA)        | 34 affordable studio units for seniors. 12 units will also be set aside for formerly homeless households.                                                                                  | 35                 | 20-60% AMI    | \$3,501,884                                              |                                      | \$6,026,927      | HTF, Measure O                                                               | New Construction         | Completed                                 |
| <a href="#">Maudelle Miller Shirek Community</a>                                      | 2001 Ashby Avenue        | Resources for Community Development (RCD)             | 86 apartments for families and individuals. 12 units will also be set aside for formerly homeless households.                                                                              | 87                 | 20-80% AMI    | \$12,932,000                                             | \$1,568,000                          | \$17,000,000     | Measure O, U1, State Local Housing Trust Fund (LHTF)                         | New Construction         | Under Construction                        |
| <a href="#">Blake Apartments</a>                                                      | 2527 San Pablo Avenue    | SAHA                                                  | 21 studio units, eight one-bedroom units, 33 two-bedroom units and one three-bedroom manager's unit. 12 units are prioritized for people with an intellectual or developmental disability. | 63                 | 30-60% AMI    | \$9,125,000                                              | \$500,000                            | \$12,000,000     | Measure O, U1, LHTF                                                          | New Construction         | Under Construction                        |
| <a href="#">1740 San Pablo Avenue</a>                                                 | 1740 San Pablo Avenue    | BRIDGE Housing                                        | 53 new affordable homes for families                                                                                                                                                       | 54                 | 30-60% AMI    | \$7,500,000                                              |                                      | \$7,500,000      | Measure O                                                                    | New Construction         | Acquisition / Predevelopment              |
| <a href="#">Berkeley Unified School District (BUSD) Workforce Housing Development</a> | 1701 San Pablo Avenue    | BUSD/SAHA/Abode                                       | 110 homes in a five to six story building. Employees of BUSD and their households will have a leasing preference.                                                                          | 110                | 30-120% AMI   | \$24,500,000                                             |                                      | \$24,500,000     | Measure O                                                                    | New Construction         | Acquisition / Predevelopment              |
| <a href="#">BART Sites</a>                                                            | Ashby and North Berkeley | TBD                                                   | TBD                                                                                                                                                                                        | TBD                | TBD           | \$40,000,000                                             |                                      | \$53,000,000     | TBD                                                                          | New Construction         | <a href="#">Planning/ MOU established</a> |
| <a href="#">Northern California Land Trust's Anti-Displacement Project</a>            | 2321-2323 10th Street    | Northern California Land Trust                        | renovation of an 8-unit, occupied property                                                                                                                                                 | 8                  | 80% AMI       |                                                          | \$1,620,640                          | \$1,620,640      | U1                                                                           | Acquisition / Renovation | Acquired/ Predevelopment                  |
| MLK House                                                                             | 2942-2944 MLK Jr. Way    | RCD                                                   | Occupied HTF project (SROs) primarily serving clients of Berkeley Mental Health                                                                                                            | 12                 | 60% AMI       |                                                          |                                      | \$1,178,974      | State Permanent Local Housing Allocation (PLHA)                              | Renovation               | Predevelopment/ Pending renovation        |
| Ashby Lofts                                                                           | 2909-2919 Ninth St.      | SAHA                                                  | Occupied HTF project - 54-units, providing housing at 30%-50% Area Median Income (AMI), including many with physical or mental disabilities                                                | 54                 | 30-50% AMI    |                                                          |                                      | \$850,000        | PLHA                                                                         | Renovation               | Predevelopment/ Pending renovation        |

|                                                                         |                          |                                                             |                                                                                                                      |            |            |  |                      |                     |                 |                          |                                       |
|-------------------------------------------------------------------------|--------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------|------------|--|----------------------|---------------------|-----------------|--------------------------|---------------------------------------|
| Lorin Station                                                           | 3253-3269 Adeline Street | South Berkeley Neighborhood Development Corporation (SBNDC) | 14 affordable units, including 5 one-bedrooms, 7 two-bedrooms, and 2 three-bedrooms                                  | 14         | 60% AMI    |  |                      | \$730,742           | CDBG            | Renovation               | Predevelopment/<br>Pending renovation |
| Rosewood Manor                                                          | 1615 Russell Street      | SBNDC                                                       | 35 affordable units, including 8 one-bedrooms, 21 two-bedrooms, and 6 three-bedroom apartments                       | 35         | 60% AMI    |  |                      | \$1,792,491         | CDBG, HTF       | Renovation               | Predevelopment/<br>Pending renovation |
| <a href="#">Golden Bear Homes - Homekey Project</a>                     | 1620 San Pablo Ave       | Memar Properties and Bay Area Community Services (BACS)     | Acquisition of the Golden Bear Inn to be converted to permanent supportive housing under the State's Homekey Program | 44         | 30% AMI    |  |                      | \$8,463,535         | PLHA, Measure P | Acquisition / Renovation | Predevelopment/<br>Pending renovation |
| <a href="#">Stuart Street Apartments at McGee Avenue Baptist Church</a> | 1640/1638 Stuart St      | Bay Area Community Land Trust (BACLT)                       | renovation of a vacant 8-unit property on church-owned site                                                          | 8          | 80% AMI    |  | \$2,002,500          | \$2,002,500         | U1              | Acquisition / Renovation | Under Construction                    |
| <a href="#">Solano Ave. Apartments</a>                                  | 1685 Solano Ave          | BACLT                                                       | acquisition and renovation of a 13-unit, partially occupied property                                                 | 13         | 80% AMI    |  | \$1,400,000          | \$3,900,000         | U1, HTF         | Acquisition / Renovation | Under Construction                    |
| <a href="#">Supportive Housing in People's Park</a>                     | 2556 Haste Street        | Resources for Community Development (RCD)                   | 119 total units with 62 units set aside for formerly homeless households.                                            | 119        | 10-50% AMI |  |                      | \$14,359,593        | TBD             | New Construction         | Acquisition /<br>Predevelopment       |
| <a href="#">St. Paul Terrace</a>                                        | 2024 Ashby Avenue        | Community Housing Development Corporation (CHDC)            | 49 affordable units, including 11 studios, 6 one-bedrooms and 17 two-bedrooms, and 15 three-bedrooms.                | 50         | 30-60% AMI |  |                      | \$12,250,000        | TBD             | New Construction         | Predevelopment                        |
| <a href="#">Ephesians Legacy Court</a>                                  | 1708 Harmon Avenue       | CHDC                                                        | 79 one-bedroom units.                                                                                                | 80         | 30-60% AMI |  |                      | \$3,556,400         | TBD             | New Construction         | Predevelopment                        |
|                                                                         |                          |                                                             |                                                                                                                      | <b>972</b> |            |  | <b>\$111,379,303</b> | <b>\$13,114,505</b> |                 |                          | <b>\$198,198,864</b>                  |

<sup>1</sup> total units, including managers' units

<sup>2</sup> committed = in contract, and reserved = set aside for a particular project

<sup>3</sup> the final mix of funds is determined at loan closing

<sup>4</sup> General Funds generated pursuant to Measure U1

<sup>5</sup> Funding Reservation that the City Council has approved from currently available affordable housing funds and from forward reservations of up to \$17 million from the third issuance of Measure O bonds and \$2.5 million in FY2023 general funds generated pursuant to Measure U1

<sup>6</sup> Funding Prioritization by City Council prioritizing future housing funds (including but not limited to HTF and Measure O funds)





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Budget Referral: \$30,000 for Yield Signs at Two Unmarked Intersections

RECOMMENDATION

In support of the City’s Pedestrian Plan with a vision that, “Berkeley is a model walkable city where traveling on foot or with an assistive device is safe, comfortable, and convenient for people of all races, ethnicities, incomes, ages, and abilities,” refer to the Fiscal Year 2024 Budget Process an allocation of \$30,000 to install “YIELD” signs at two unmarked intersections at Shasta and Queens and Quail and Queens.

FINANCIAL IMPLICATIONS

\$30,000

BACKGROUND

In recent years, hills streets have experienced an increase in traffic volume as navigation apps send vehicles through residential streets in search of the fastest route.

There are no sidewalks along the narrow and curvy roads that lead to the intersections at Shasta Road & Queens Road and Quail Avenue & Queens Road.

Pedestrians, both elderly and young, fear for their lives as they walk across the intersections, where roads meet without any traffic control signage.

“YIELD” signs installed at these two intersections will warn drivers that they must slow down and yield the right-of-way to pedestrians and vehicles that are approaching from another direction.

ENVIRONMENTAL SUSTAINABILITY

No direct impact

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160







Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR

April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (author) Councilmember Hahn and Councilmember Humbert (co-sponsors)

Subject: Budget Referral: \$150,000 for Handrails, Lights and Signage for City Pedestrian Path Network

RECOMMENDATION

In support of the City's goals as stated in the "General Plan," "Local Hazard Mitigation Plan," "Pedestrian Plan," and "Community Wildfire Protection Plan", refer to the Fiscal Year 2024 Budget Process an allocation of \$150,000 for the installation of lighting, handrails and signage on paths deemed most critical for safe evacuation throughout Berkeley.

FINANCIAL IMPLICATIONS

\$150,000

BACKGROUND

The City of Berkeley is home to a system of more than 130 pedestrian paths, most of which were originally built into our hillsides as short-cuts to access transportation and commerce. However, today they also serve as a critical element and key resource in our disaster evacuation strategy, providing routes for access and egress for people threatened by both wildfire and earthquake and for first responders and other emergency personnel.

It is critical to have a safe, well-maintained pathway system. Most of the paths have no lighting or handrails, making them a treacherous and dangerous option for pedestrians fleeing a threat, on foot. Installing lighting and handrails and signage identifying the path as an evacuation route would make them a safer option for use in the event they need to be used in an emergency.

The importance of the City's pedestrian pathway network is acknowledged in many City documents:

The 2019 Local Hazard Mitigation Plan states,

*“In the city’s many steep neighborhoods with winding roads, these paths take the shortest, most direct routes, mimicking city block grids that do not exist. In addition to producing a community recreation asset, these pathways can assist evacuation and firefighting efforts in the hills. In preparedness outreach, the City instructs community members to always be ready to evacuate without a car and to be aware of the locations of developed paths that may reduce evacuation distance. However, because developed pathway conditions vary widely from those with concrete steps and railings to those with wooden steps with no railings, these paths may not be good options for evacuees with mobility issues or low vision. As indicated on the map, there are many small paths in the Berkeley hills that can help with fire evacuation and firefighting efforts.”*

The Draft Community Wildfire Protection Plan states:

*“Ensure that all public pathways are maintained to provide safe and accessible pedestrian evacuation routes from the hill areas.”*

The General Plan, Policy T-28 B states:

*“Maintain and improve pedestrian pathways throughout the City that are dedicated for public use and provide alternatives to the streets in case of emergency evacuation.”*

The General Plan, Policy T-52D states:

*“Continue to make repairs and safety improvements on public paths and restore unimproved paths.”*

For more than twenty years, the Berkeley Path Wanderers Association, a group of dedicated volunteers, have donated their labor to help the City of Berkeley maintain the pathway network, clearing vegetation and constructing new useable routes and making essential upgrades to the existing path system. They have been an invaluable partner in the shared goal of restoration and improvements to our path network and have consistently and conscientiously worked collaboratively with our Public Works Department. The City can leverage their contribution by working together with the Berkeley Path Wanderers to improve the conditions of the paths.

#### ENVIRONMENTAL SUSTAINABILITY

Pedestrian Pathway improvements are in keeping with our goals for environmental sustainability.

#### CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160



CONSENT CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Mayor Jesse Arreguin (Co-Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Sophie Hahn (Co-Sponsor)

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 and participating jurisdictions in the production of a business plan for a public bank

POLICY COMMITTEE RECOMMENDATION

On March 9, 2023, the Budget & Finance Committee adopted the following action: M/S/C (Arreguín/Harrison) to send the item to Council with a positive recommendation. Vote: Ayes – Harrison, Arreguín; Noes – None; Abstain – None; Absent – Kesarwani.

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

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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>.

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.

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

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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

Attachments:

1: Resolution

2: Resolution

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 APPROVING 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;

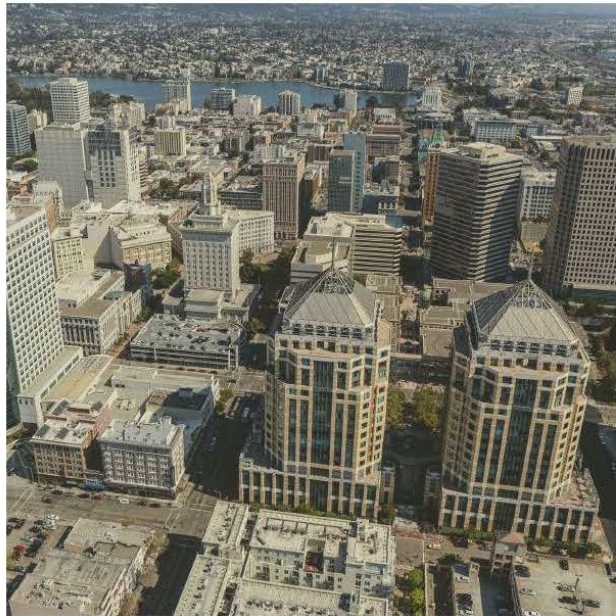
now, therefore, be it RESOLVED: That the Berkeley City Council approves the Public Bank East Bay Viability Study;

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,

<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.

<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

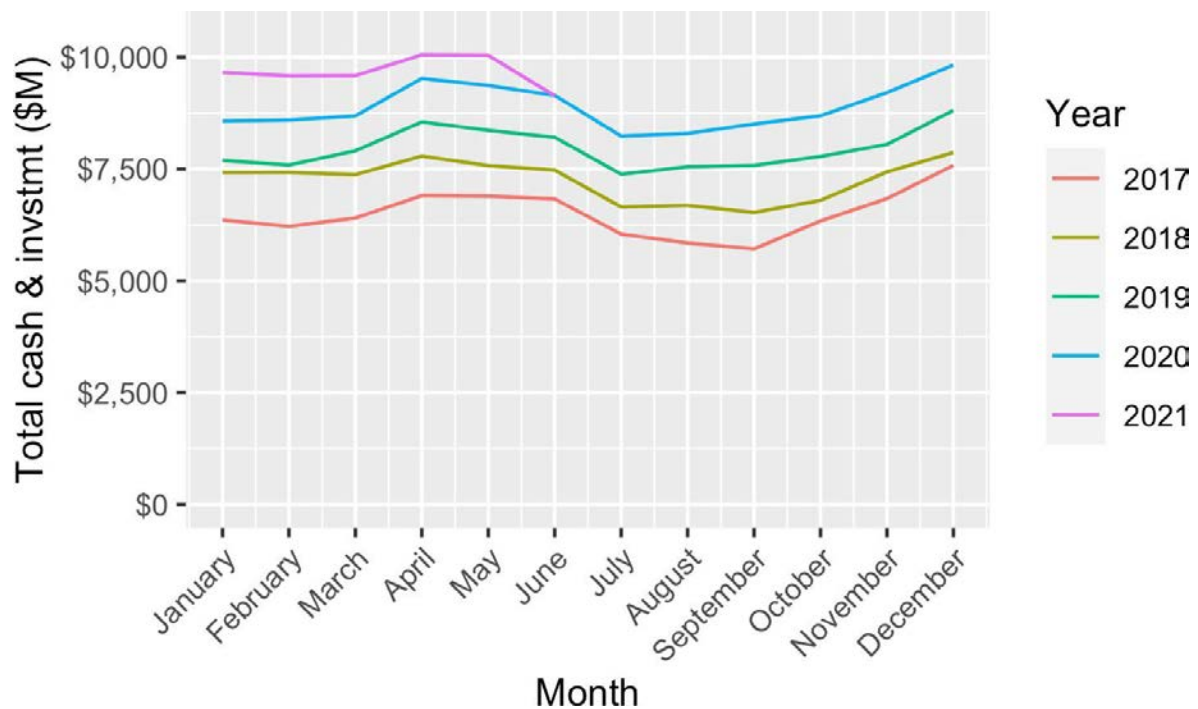
The following financial projections do not incorporate growth assumptions beyond increases in loan demand and modest increases in the amount of assets invested, such as increases in membership, or substantially higher investment levels. Given that we have projected that this small and conservative form 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.

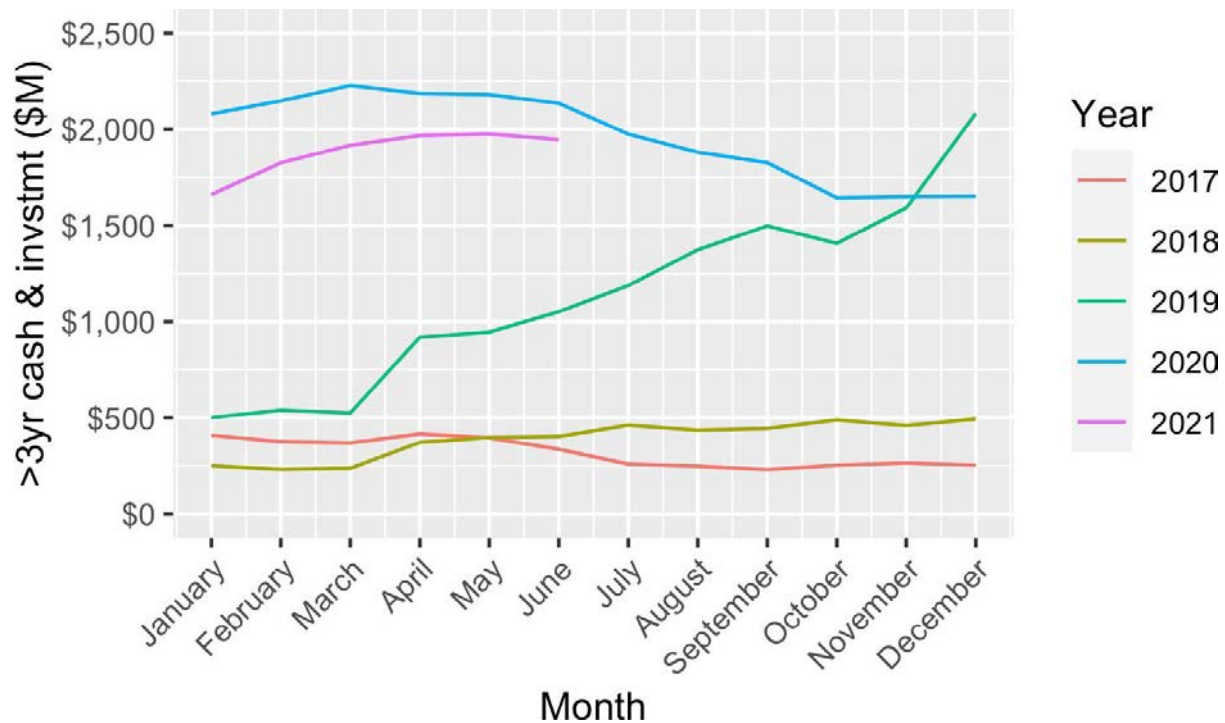
For clarity, the PBEB’s pledged deposits and accrued earnings are presented separately in the financial projections. How the earnings accrue to the Bank’s original investors and how much is reinvested is a matter to be determined by the member governments and Bank management.

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 |
|--|---|---|--------|--------|--------|--------|--------|--------|--------|--------|

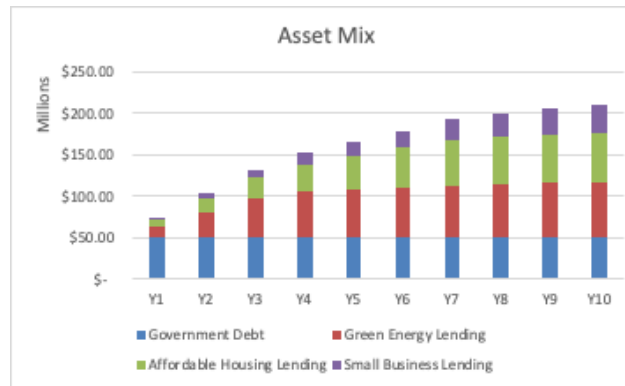
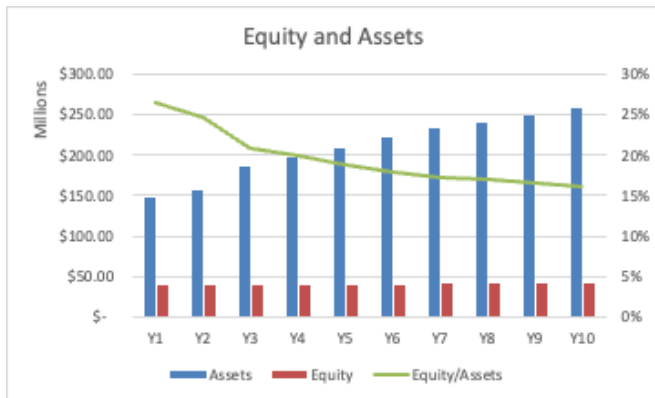
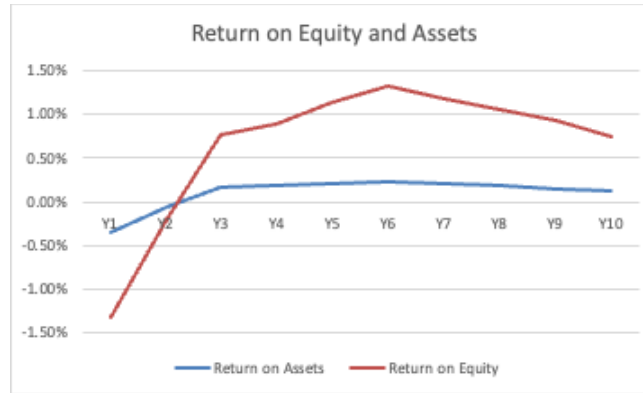
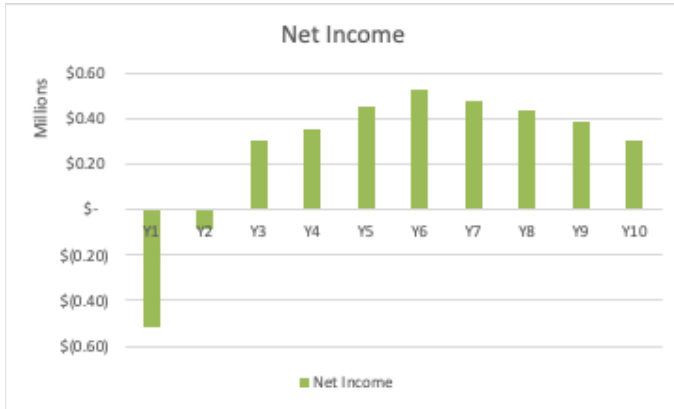
|                                     |                |                |                |                |                |                |                |                |                |                |
|-------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <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.                                                                                                                         |



**Berkeley City Councilmember**  
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CONSENT CALENDAR

April 11, 2023

To: Members of the Berkeley City Council

From: Councilmember Mark Humbert (Author)  
 Councilmember Rigel Robinson (co-sponsor)

Subject: Budget Referral: Fully fund the City's 50-50 Sidewalk Repair Program

RECOMMENDATION

Refer \$2.2 million to the FY 24 Mid-Biennial Budget Update for the purpose of fully funding clearance of the existing backlog in Berkeley's 50-50 Sidewalk Repair Program. Refer an additional \$1 million per year (above the existing \$1 million baseline funding for sidewalk repair) to future budget processes to ensure all of Berkeley's sidewalks are kept in a state of good repair.

SUMMARY

Providing safe, passable sidewalks is one of the most basic functions of any City government. The [City's 50-50 sidewalk repair program](#) splits sidewalk repair costs 50-50 between the City and property owners. Although Berkeley has made progress in addressing cracked and uneven sidewalks, there is a significant backlog of maintenance requests in the 50-50 repair program. It is estimated that \$2.2 million would be necessary to clear this backlog. It is further estimated that an additional \$1 million per year in regular sidewalk maintenance funding (in addition to the current \$1 million baseline) would be necessary to avoid the creation of a new backlog. Repairing Berkeley's sidewalks more expeditiously has the potential to save the City money in the long run and help fulfill the City's mobility, equity, and climate action goals.

FINANCIAL IMPLICATIONS

\$2.2 million in General Fund impacts in the first year (FY 24), decreasing to an additional \$1 million in General Fund impacts annually (above current baseline) thereafter.

Due to the nature of the backlog and the City's practice of contracting with outside firms for repair, it is expected that these amounts will allow the 50-50 program to easily scale up without requiring significant additional staff time or additional hires.

BACKGROUND

Property owners in Berkeley are responsible for maintaining the sidewalks adjacent to

Budget Referral:  
Fully fund the City's 50-50 Sidewalk Repair Program

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their property in a safe condition, including repairing cracks, deterioration, and other damage. ([BMC 16.04.010](#)) To repair a damaged sidewalk, property owners can choose to hire a contractor at their own cost, or request support from the City in repairing the sidewalk through the 50-50 program. The City will perform the repair, then bill the property owner for half the cost. City staff review requests to be added to the 50-50 program. If a request is approved, the City adds the property owner to a waitlist. Being on the waitlist does not relieve property owners of their responsibility to maintain a safe and usable sidewalk.

### CURRENT SITUATION AND ITS EFFECTS

Berkeley's Measure T1 has provided additional funding for sidewalk repairs through the City's 50-50 program. This has allowed the City to make progress on the sidewalk repair backlog, reducing it from over ten years to perhaps 3–4 years.<sup>1</sup> However, an estimated 350–450 properties remain on the waitlist, with new properties being added each year. This results in a significant number of sidewalks remaining uncomfortable or even potentially hazardous for pedestrians longer than they should.

### RATIONALE FOR RECOMMENDATION

Fixing damaged sidewalks is something the City must do eventually, and doing so sooner has the potential to save City resources. Although owners are responsible under state and local law for maintaining sidewalks adjacent to their properties and can be legally liable in the event someone is injured, "trip and falls" remain a significant source of claims against the City, costing staff time and sometimes settlement money—even if a court might hypothetically not ultimately find the City liable. Additionally, regardless of who may be liable, injuries resulting from poor pavement conditions are a burden on those who experience the injury, the medical system, and economic productivity.

Damaged sidewalks are also a deterrent to walking and other forms of alternative transportation and tend to have an outsized effect on the mobility of seniors and people with disabilities. Poor quality sidewalks are difficult to safely navigate, present greater dangers for at-risk groups, and thus discourage people and certain populations in particular from walking for pleasure or everyday tasks.

Front-loading these fixes and then consistently providing the resources to ensure sidewalks remain in a state of good repair can allow residents and the City to enjoy greater benefits and overall cost savings over time. Given that the City will presumably need to eventually fix these sidewalks anyway, the difference in total direct costs over

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<sup>1</sup> "Berkeley's sidewalk repair backlog is shrinking," *Berkeleyside*, Dec. 26, 2022, <https://www.berkeleyside.org/2022/12/26/berkeleys-sidewalk-repair-backlog-is-shrinking>

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Fully fund the City's 50-50 Sidewalk Repair Program

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the long run would be negligible. Moreover, as with roads, sidewalk repair costs tend to compound over time (with early interventions preventing more expensive future failures). Frontloading these repairs could actually result in overall direct cost savings.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Because this item is fundamentally about accelerating planned repairs to existing infrastructure rather than expanding infrastructure, this item is not anticipated to result in direct sustainability or climate impacts above and beyond what is already anticipated from planned maintenance/repair.

However, this action has the potential to indirectly improve sustainability and climate action outcomes by encouraging alternatives to driving. In the [Climate Action Plan and Resilience Update](#) originally planned to be presented by staff at Council's March 14th, 2023 meeting<sup>2</sup>, it was reported that transportation accounted for nearly half of Berkeley's greenhouse gas (GHG) emissions in 2020. Given that use of transportation in general was down significantly in 2020 as a result of the pandemic, it's reasonable to assume that the proportion of Berkeley's GHG emissions attributable to transportation has risen again—perhaps to the roughly 60% that had been seen in the times prior to the pandemic. This expectation is consistent with the conclusions of the staff report. Since transportation generates such a large proportion of Berkeley's GHG emissions and since walking is a low-emissions form of mobility, encouraging more walking by ensuring that sidewalks are safe and pleasant to use can help reduce GHG emissions from transportation in Berkeley.

Encouraging walking in this way is also consistent with Berkeley's Climate Action Plan and its Electric Mobility Roadmap, both of which seek to reduce reliance on automotive transportation and instead encourage alternatives like walking, biking, transit, and electric micro-mobility devices. Since people on bikes, scooters, and transit are also likely to be pedestrians for some portion of their journey, sidewalk conditions are very important to their safety, comfort, and willingness to use these non-car mobility options.

### CONTACT PERSON

Councilmember Mark Humbert    District 8    510-981-7180

### ATTACHMENTS

1. City of Berkeley Sidewalk Repair Page

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<sup>2</sup> Climate Action Plan and Resilience Update, Berkeley City Council, March 14, 2023  
<https://berkeleyca.gov/sites/default/files/documents/2023-03-14%20Item%202023%20Climate%20Action%20Plan.pdf>

Budget Referral:  
Fully fund the City's 50-50 Sidewalk Repair Program

Consent Calendar  
April 11th, 2023

2. Berkeleyside Story - Berkeley's sidewalk repair backlog is shrinking

[Housing Authority \(https://bha.berkeleyca.gov/\)](https://bha.berkeleyca.gov/)[Public Library \(https://www.berkeleypubliclibrary.org/\)](https://www.berkeleypubliclibrary.org/)[Rent Board \(https://rentboard.berkeleyca.gov/\)](https://rentboard.berkeleyca.gov/)[School District \(https://www.berkeleyschools.net/\)](https://www.berkeleyschools.net/)[Home \(/\)](#) > [City Services \(/city-services\)](/city-services/) >[Streets, Sidewalks, Sewers, and Utilities \(/city-services/streets-sidewalks-sewers-and-utilities\)](/city-services/streets-sidewalks-sewers-and-utilities/) >Share (<https://www.adc>)

Sidewalk Repair

# Sidewalk Repair

*Property owners must ensure their sidewalks are safe by repairing cracks and damage. Apply for a permit to do the repairs yourself, or split the cost of repairs with the City under the 50-50 program.*

Property owners in Berkeley are responsible for maintaining the sidewalks adjacent to their property in a safe condition, including repairing cracks, deterioration, and other damage. See [BMC 16.04.010 \(https://berkeley.municipal.codes/BMC/16.04\)](https://berkeley.municipal.codes/BMC/16.04) for additional information. Please call 311 to report a sidewalk that is in an unsafe condition. City crews will install a “make-safe” measure to temporarily address the issue. “Make-safes” are not intended to be permanent repairs. To repair your damaged sidewalk, you can choose to hire a contractor at your own cost, or request support from the City in repairing the sidewalk through the 50-50 program. The City will perform the repair, then bill the property owner for half the cost.

## REQUEST SUPPORT WITH SIDEWALK REPAIRS THROUGH THE 50-50 PROGRAM

To request support with sidewalk repairs through the City's 50-50 program, please call (510) 981-2489 to report your sidewalk issue and request a temporary “make-safe” repair by the City. You will then be sent a notice with a 50-50 application via mail to the mailing address designated on Alameda County's assessment roll.

Please submit your completed application either:

- By mail: 1947 Center St, 4th Floor, Berkeley, CA 94704

- By email: [PWSidewalks@cityofberkeley.info](mailto:PWSidewalks@cityofberkeley.info) (Page: [PWSidewalks@cityofberkeley.info](#))

City staff will review your request to be added to the 50-50 program. If your request is approved, the City will add you to a waitlist. Being on the waitlist does not relieve your responsibility as property owner to maintain a safe and usable sidewalk.

The City will notify you at least one month prior to scheduling the work. The City (or a City-hired contractor) will notify you 1-2 weeks before construction begins, and post "No Parking" signs 72 hours in advance of the work. Following completion of the work, the City will send you an invoice for your half of the repair cost.

## PERFORMING REPAIRS YOURSELF

Property owners can hire a contractor to repair the sidewalk after getting the appropriate permits, but will not qualify for funding from the City.

To repair the sidewalk yourself, first get a quote from a licensed concrete contractor who has a City of Berkeley business license (learn more about [hiring contractors \(/construction-development/permits-design-parameters/permit-process/licensed-contractors-and-design\)](/construction-development/permits-design-parameters/permit-process/licensed-contractors-and-design)). The contractor should submit a line drawing to apply for an Engineering Permit at the [Permit Service Center \(/construction-development/permits-design-parameters/permit-process/permit-service-center\)](/construction-development/permits-design-parameters/permit-process/permit-service-center).

## DAMAGE BY TREE ROOTS

All trees in the strip between the sidewalk and street are City property, and cannot be pruned or removed by anyone except City staff, even if the tree is causing damage to the sidewalk. Learn more about City trees and how to request services by the [City's Urban Forestry Unit \(/city-services/streets-sidewalks-sewers-and-utilities/city-trees-and-coast-live-oak-ordinance\)](/city-services/streets-sidewalks-sewers-and-utilities/city-trees-and-coast-live-oak-ordinance).

If a City tree causes damage to a sidewalk, the City will pay half the cost of repairs under the 50-50 program. If the same tree causes damage again within 10 years, the City will pay the full cost of repairs. If the same tree causes damage a third time, the City will pay the full cost of repairs and the property owner can request removal of the tree, at their own expense.

If a tree on your private property is causing damage to the sidewalk, it is your responsibility to remove or prune the tree yourself unless the tree is a coast live oak. The City of Berkeley has protections for [coast live oak trees \(/city-services/streets-sidewalks-sewers-and-utilities/city-trees-and-coast-live-oak-ordinance\)](/city-services/streets-sidewalks-sewers-and-utilities/city-trees-and-coast-live-oak-ordinance).



**IN THIS SECTION**



**SIDEWALK REPAIR**

**Email:** [PWSidewalks@cityofberkeley.info](mailto:PWSidewalks@cityofberkeley.info) (mailto:PWSidewalks@cityofberkeley.info)

**Phone:** (510) 981-2489

**Related BMC**

 [BMC 16.04](#)

**WE'RE HERE TO HELP**

*Connect with us online, by phone, or in person.*



**REPORT ONLINE**

(/city-services/report-pay/report-issues)



**(510) 981-2489**



**VISIT**

(/your-government/about-us/city-offices-service-locations)

## CITY

# Berkeley's sidewalk repair backlog is shrinking

The city has helped fund over 2,800 sidewalk repair jobs since 2019 in a popular cost-share program, but the end of the waitlist is years away.

By Kate Darby Rauch

Dec. 26, 2022, 2:01 p.m.



A sidewalk in need of repair in the Berkeley Hills. File photo: Jerome Paulos

Walk around this city these days, and you may notice fresh stretches of concrete underfoot — sidewalk that's been recently repaired or restored.

This doesn't mean other sections of Berkeley's 400 miles of sidewalk aren't rough, rocky or dangerously uneven (mostly from the push of tree roots). It would take \$50 million-plus to fix all

sidewalks citywide, according to a spring 2022 city estimate.

But in the often confusing world of sidewalk responsibility and repair, the city is reporting steady progress in problem-solving, according to Scott Ferris, Berkeley parks director. Recent work is largely attributed to voter-approved **Measure T**, a \$100 million infrastructure and facilities improvement bond, passed in 2016.

“The sidewalk repair backlog has shrunk from 10+ years to 3-4 years, mostly because Measure T1 is funding more repairs,” Ferris wrote in an email.

The repair backlog Ferris refers to specifically applies to a city program that splits the cost of sidewalk repairs with property owners.

Chronically underfunded, the **50/50 cost-share program** had a waiting list of years. So long that some program applicants forgot they had even applied, according to several messages sent to Berkeleyside over the past year. People were confused by letters from the city saying their sidewalks were up for repair work and asking for 50% of the cost.

Measure T funds are helping with sidewalk catch-up, Ferris said.

**Budgeted in stages or phases**, the bond has helped fund around 2,811 sidewalk repairs through the 50/50 program since 2019, Ferris said, including around 550 jobs in the past year. It will assist with another 575 repairs in 2023.

This leaves 350 to 450 applications waiting, with the goal of completing these projects in a few years, Ferris said, noting this list isn't static and always changes.

### **Property owners responsible for sidewalk conditions**

Many people assume city sidewalks, like roads, are maintained by the city.

But in Berkeley, as in most cities in the state, responsibility for sidewalk repair is on property owners.

“**State** and local law place sidewalk maintenance as the responsibility of the property owner,” said Matthai Chakko, city spokesperson. Maintenance must meet city standards.

This also means property owners are liable for legal action stemming from bad sidewalks.

According to the Berkeley Municipal Code: A property owner “owes a duty to members of the public to keep [their] sidewalk in a safe condition. If said owner fails to maintain said sidewalk

in a safe condition, and a person sustains injury or damage as a result of said failure, then the owner shall be liable to such person for the resulting injury or damage.”

“

***It would take \$50 million-plus to fix all sidewalks citywide, according to a spring 2022 city estimate.***

Cities can take on responsibility for sidewalk maintenance under local ordinance, though few do.

Cities can also pitch in to help, such as with

the 50/50 program, which is statewide.

**Participation in the 50/50 program is by application.** All property owners are eligible, and projects are completed on a first-come, first-served basis, Ferris said.

After applying, property owners receive a letter from the city saying, in part:

“Please note that this program is extremely popular and the waitlist is long. Please be advised that being on this waitlist does not waive your liability in the event of a third-party injury, and it does not Relieve your responsibility as property owner to maintain the sidewalk adjacent to your property in a safe and usable condition.”

### **‘Make Safe’ repairs**

There’s another way Berkeley steps in for more urgent sidewalk repairs.

Berkeley sidewalk repair is primarily complaint driven, Ferris said. Complaints drive city inspections, which drive notices to property owners.

If the city doesn’t receive any complaints about a sidewalk issue, the problem can persist.

Ferris said the city responds to all complaints, though some people contacting Berkeleyside said they alerted the city to dangerous sidewalks, without seeing any changes.

Property owners worried about their sidewalks can always make repairs themselves, using city-approved contractors. Or, they can apply for the 50/50 program, risking a wait.

But sidewalk inspections may also drive emergency repairs.

The city does temporary “make-safe” sidewalk repairs “all the time,” said Joe Enke, city engineer, usually asphalt patching and filling. Property owners are told they’re responsible for permanent fixes.

A “make safe” repair may last until someone’s name comes to the top of the 50/50 list.

The city also does sidewalk shaving or grinding, at no cost to property owners. Sidewalk shaving, a relatively quick process, can reduce or eliminate tripping hazards. “We do repairs as they are brought to our attention,” Enke said.

Patching almost always eventually needs additional work, Enke said. But shaving “can solve many identified issues.”

A city shaving contractor just started \$1 million worth of work focused on schools and areas in Southwest and Northwest Berkeley,” Enke said.

### **Street trees belong to the city**

One of the most common ways sidewalks are damaged is by tree roots, uplifting sections of concrete which easily snag feet or wheels.

It's easy to assume property owners, responsible for their sidewalks, are also responsible for trees growing in the strips of land between the sidewalk and the street.

But this isn't so. Sidewalks are one thing, median strips another.

“It's City Right of Way (ROW) and ownership of the ROW [is] complicated,” Ferris said. “The width of the ROW varies from street to street, but typically includes the curb, planting strip, the sidewalk and sometimes a narrow area beyond the sidewalk.

“

***City tree care ultimately falls to the city, even when roots are damaging a sidewalk a property owner must repair.***

the homeowner,” Ferris said.

Property owners are welcome, and even encouraged, to partner with the city on tree care, Ferris said. City arborists will offer advice.

But city tree care ultimately falls to the city, even when roots are damaging a sidewalk a property owner must repair.

The worst offenders are some older trees, including liquidambar and camphor trees. To address this challenge, the city's urban foresters are now planting urban site-suitable species such as trident maple, redbud, Chinese flame, Brisbane box, Persian ironwood, Chinese pistache, and

“The City takes on responsibility of managing and maintaining the trees in the ROW in order to ensure that they are property maintained. The rest of the ROW (sidewalk/vegetation) is the responsibility of

water gum, said Chakko, the city spokesperson.

In Berkeley, as in many cities, many older street trees that are now recognized as poor choices for urban environments were planted before this was clearly understood.

Climate change is also affecting the health of street trees, Chakko said.

### **Disability survey will shed more light on sidewalks**

Soon, Berkeley will know more about the state of its sidewalks. A sidewalk inspection required by the Americans With Disability Act (ADA) was recently completed, Enke said.

“Nearly all of the city sidewalks were surveyed,” Enke said. A contractor did the work.

The survey is one part of the city’s **ADA Self Evaluation and Transition Plan**, a framework for complying with pedestrian accessibility requirements of the federal law. The initial plan was completed years ago, but updates are required.

“ADA compliance is ongoing. A timeline for accessibility improvements, including sidewalks, will be developed as the plan is finalized,” Enke said. Budgeting for ADA compliance is up to the city.

Public hearings and reports are part of the transition plan.

To report a broken or dangerous sidewalk or to get information on repairing the sidewalk by your house, including the city’s free shaving or the 50/50 cost sharing program contact the Berkeley Public Works sidewalk division by emailing **PWSidewalks@cityofberkeley.info** or calling 510-981-2489.

*This story has been corrected to better explain which types of trees are most likely to cause sidewalk damage and how urban foresters are addressing the issue. A previous version of the story listed as problematic some types of trees that, the city says, are actually well suited for urban environments.*



Kate Harrison  
Councilmember, District 4

ACTION CALENDAR

April 11, 2023

*(Continued from March 21, 2023)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author), Mayor Arreguín (Co-sponsor), Councilmember Taplin (Co-sponsor) and Councilmember Bartlett (Co-sponsor)

Subject: Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

RECOMMENDATION:

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code (BMC) to Establish a Labor Peace Policy minimizing labor/management conflict in Berkeley Marina Zone.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley owns a number of recreational, hospitality and food services properties in the Berkeley Marina and Waterfront. In maintaining these properties, the City has multiple interests, including providing superior facilities for residents and visitors, generating steady income from rents and fees supporting operations, supporting a harmonious labor and business environment, and supporting the Marina Fund.

The City is in the process of finalizing an exclusive negotiation agreement for former HS Lordships Restaurant property located at 199 Seawall Dr, Berkeley, CA 94710. It is in the public interest to avoid high profile and disruptive labor disputes that may arise between tenants, businesses, workers, and labor groups associated with this property and other properties in the Marina Zone.

In recent years, throughout the state of California and elsewhere in the United States, there has been an increase in labor disputes in the hospitality industry. In 2018 workers at HS Lordships restaurant walked out in the middle of brunch in protest of the severance offered by HS Lordships owners. Last year, workers at the DoubleTree Hotel joined nationwide protests to draw attention to the fact that they have been working without a contract since 2018 and their desire for better pay and healthcare benefits.

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

Through adopting a Labor Peace Agreement requirement for businesses operating in the Marina, Berkeley can protect its proprietary interest by preventing service and revenue disruptions while simultaneously facilitating a policy that has contributed to mutually beneficial relations between management and labor in other jurisdictions.

### BACKGROUND

Berkeley is a world-class tourist destination, welcoming more than a million visitors annually. The Marina, often recognized as the crown jewel of Berkeley, offers multiple parks, recreation facilities, and restaurants and hotel accommodations. The City Berkeley holds in trust pursuant to the Public Trust Tidelands grant from the State of California property along and near the City's waterfront known as the Berkeley Marina Zone, a major tourist hub and destination. The City leases its real property along and near the Marina Zone facilities to Hospitality Operation companies, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the City has an ongoing proprietary interest in the management and use of that Marina real property and harbor facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize public benefit and minimize risk.

The City's Marina Fund operates as an enterprise fund and therefore funds its activities outside of the general fund through fees, grants, and rents. The City has a strong interest in ensuring that operations and amenities continue to run smoothly to the benefit of residents and visitors alike.

This ordinance is intended to maximize the returns and minimize the risk to the City's proprietary interest resulting from possible conflict between employers leasing, and operating hospitality operations on City property, and labor organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the City's proprietary interest when private employers enter into leases to use City property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a labor organization (1) seeks to gain recognition as the collective bargaining representative for employees and (2) if recognized, seeks a first contract with the employer.

The sole purpose of this ordinance is to protect the City's proprietary interest in the hospitality operation leases. This ordinance does not favor any particular procedure for determining employee preference, or lack of preference, regarding labor organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a first contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.



Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

Other jurisdictions, including the Oakland Airport, BART, Port of San Francisco, the San Francisco International Airport (SFO), and Asilomar State Beach have all implemented Labor Peace Agreement policies at their respective properties requiring businesses to execute a Labor Peace Agreements to prevent disruptive management and labor disputes.<sup>1</sup>

Hotel Labor Peace in California State Parks and other Public Properties

**Asilomar Conference Center-** A 313-room hotel and conference center that is part of Asilomar State Beach. Workers there are members of UNITE HERE Local 483 and are covered by a collective bargaining agreement that guarantees labor peace. The [RFP in 2008](#) for a new concessionaire to operate the facility included a requirement to retain these workers, ensuring continued labor peace.



**SFO Grand Hyatt-** SFO has a labor peace policy that applies to food service as well as hotels under airport leases. The Grand Hyatt at SFO was developed in 2019 under this policy and had a labor peace agreement. Workers are members of UNITE HERE Local 2 and covered by a collective bargaining agreement.



**Bay Area Rapid Transit-** BART has a [labor peace policy](#), passed in 2021, which states that “The District shall not execute any lease, Lease Disposition and Development Agreement (LDDA), or other contract or agreement providing for the development of a Hotel Development Project in which the District has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hotel that has been selected, has signed a Labor Peace Agreement covering any Hospitality Operations at the project.”



As illustrated by SFO Airport Commission regulations, labor peace agreements may include “card check” provisions whereby the employer agrees to a neutral procedure for determining whether employees wish to be represented by a labor organization for collective bargaining.<sup>2</sup> Under card check, a neutral third party verifies employee union cards in lieu of holding a formal election. In addition, agreements may include provisions

<sup>1</sup> [Labor Peace Agreement Policy - Port of Oakland](#); [Labor Peace Agreement Policy for Transit Oriented Development Hotel Operations](#) – BART; [Labor Peace Policy - Port of San Francisco](#); [Labor Peace/Card Check Rule](#) – SFO.

<sup>2</sup> Appendix C, Labor Peace/Card Check Rule, SFO Airport Commission, <https://www.flysfo.com/sites/default/files/media/sfo/about-sfo/2014%20R&R%20Appx%20C%20-%20Labor%20Peace-Card%20Check%20Program.pdf>.

Adopt Ordinance Adding Chapter 2.102 to the Berkeley Municipal Code to Establish a Labor Peace Policy Minimizing Labor/Management Conflict in Berkeley Marina Zone

requiring the Employer to be neutral during the organizing campaign and/or to provide access to worksites by employers.<sup>3</sup>

The proposed ordinance specifies that the City will not execute hospitality operations leases or make substantial amendments providing for the use, development, or operation of a hospitality operation within the Marina Zone in which the City has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hospitality operation has provided evidence that it has entered into a Labor Peace Agreement. This requirement also applies to any future subcontractor, tenant, sub-lessee, or manager that operates the Hospitality Operation. The ordinance ensures that these requirements are express components of any request for proposal, request for qualifications, or other similar solicitation for a hospitality operation projects in the Marina Zone.

#### FISCAL IMPACTS OF RECOMMENDATION

City Attorney staff time will be necessary to implement the respective requirements in leases, requests for proposals, and other documents.

#### ENVIRONMENTAL SUSTAINABILITY

Not applicable.

#### CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

Attachments:

1. Draft Ordinance Adding BMC 2.102

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<sup>3</sup> *Labor Peace Agreements - U.S. Chamber.*

[https://www.uschamber.com/assets/archived/images/documents/files/labor\\_peace\\_agreements\\_2013\\_09\\_12.pdf](https://www.uschamber.com/assets/archived/images/documents/files/labor_peace_agreements_2013_09_12.pdf).

ORDINANCE NO. –N.S.

ADDING CHAPTER 2.102 TO THE BERKELEY MUNICIPAL CODE  
TO ESTABLISH A LABOR PEACE POLICY MINIMIZING LABOR/MANAGEMENT  
CONFLICT IN BERKELEY MARINA ZONE

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

Section 1. That Chapter 2.102 of the Berkeley Municipal Code is added to read as follows:

**Chapter 2.102**

**LABOR PEACE POLICY - MINIMIZING LABOR-MANAGEMENT CONFLICT IN  
BERKELEY MARINA ZONE**

**Sections:**

**2.102.010 Findings and Purpose.**

**2.102.020 Definitions.**

**2.102.030 City of Berkeley—Labor Peace Policy**

**2.102.040 Procedures to Minimize Disruption Caused by Labor/Management  
Conflict.**

**2.102.050 Applicability and Exemptions.**

**2.102.060 Prospective Effect.**

**2.102.070 Preemption.**

**2.102.080 Severability.**

### **2.102.010 Findings and Purpose.**

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

- A. Berkeley is a world-class tourist destination, welcoming more than a million visitors annually. The City of Berkeley holds in trust pursuant to the Public Trust Tidelands grant from the State of California property along and near the City's waterfront known as the Berkeley Marina Zone, a major tourist hub and destination. The City leases its real property along and near the Marina Zone facilities to Hospitality Operation companies, and in so doing faces the same risks and liabilities as private businesses participating in management of similar facilities. As a result, the City has an ongoing Proprietary Interest in the management and use of that Marina real property and harbor facilities and must make prudent business decisions, as would any private business, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk.
- B. This Chapter is intended to maximize the returns and minimize the risk to the City's Proprietary Interest resulting from possible conflict between Employers leasing, and operating Hospitality Operations on City property, and Labor Organizations, arising out of union organizing campaigns, labor negotiations, and disruption that may be caused by such conflict. Experience of public entities and private employers demonstrates that union organizing drives and union efforts to secure representation rights and an initial collective bargaining agreement can deteriorate into protracted and acrimonious conflict. Such conflict threatens the City's Proprietary Interest when private employers enter into leases to use City property, and labor conflict could jeopardize base rent payments or rent payments calculated on a percentage of sales. That threat is most acute during the period when a Labor Organization (1) seeks to gain recognition as the collective bargaining representative for Employees and (2) if recognized, seeks a First Contract with the Employer.
- C. The sole purpose of this Chapter is to protect the City's Proprietary Interest in the Hospitality Operation Leases. This Chapter does not favor any particular procedure for determining employee preference, or lack of preference, regarding Labor Organization representation, or the outcome of any such procedure; skew such procedures to favor or hinder any party; interfere with the negotiation, terms, or scope of a First Contract, if applicable; or express or implement any generally applicable policy regarding private sector labor/management relations, or regulate those relations in any way.

### **2.102.020 Definitions.**

"Demand for Recognition Period" means the period during which the Labor Organization seeks recognition as the collective bargaining representative of the Employees.

"Economic Action" means concerted action initiated or conducted by a Labor Organization, or Employees acting in concert with a Labor Organization, at the Employees' worksite, to bring economic pressure to bear on an Employer, as part of a campaign to organize Employees or prospective Employees of that Employer, or in attempting to secure a First Contract, if applicable. "Economic Action" includes such activities as striking, picketing, or boycotting. "Economic Action" does not include a lawsuit to enforce this Chapter.

"Employee" means anyone performing work for an Employer for compensation relating to Hospitality Operations on a full-time, part-time, seasonal, or temporary basis,

including those made available to work for the Employer through a temporary service, staffing agency, or similar agency.

“Employer” means any person or entity, including a subcontractor, with Employees engaged in Hospitality Operations.

“Hospitality Operations Lease” means a lease, sublease, license, sublicense, or other means of granting the right to a Hospitality Operation to use Marina Zone property, in which the City receives rent, a flat fee, or a charge. An “Hospitality Operations Lease” must be for a term of at least 12 months.

“Hospitality Operation” shall mean any hotel or motel operation, conference center, restaurant, bar, or other food and beverage service operation meeting the criteria specified in Section 2.102.050.

“Hospitality Operations” means any work done by Employees at or relating to a Hospitality Operation under a Hospitality Operation Lease.

“First Contract” means the first enforceable contract entered into between an Employer and a Labor Organization setting one or more terms or conditions of employment.

“First Contract Period” means, if a Labor Organization is recognized as the collective bargaining representative of Employees, the period between such recognition and execution of a First Contract.

“Labor Organization” means any organization of any kind, or any agency or employee representation committee, in which Employees participate and which exists for the purpose, in whole or part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

“Labor Peace Agreement” shall mean a binding and enforceable agreement with any Employer and a Labor Organization that represents or seeks to represent Hospitality Operations workers, as described more fully in Section 2.102.040.

“Marina Zone” shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

“Proprietary Interest” means any nonregulatory arrangement or circumstance in which the City has a financial or other nonregulatory interest including any of the following:

- (1) through a lease of real property that is owned by the City and used for the Hospitality Operation, the City receives ongoing revenue, excluding government fees, tax revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in paragraphs (2) and (3) of this subsection;
- (2) the City receives ongoing revenue from the Hospitality Operation to repay loans provided by the City to assist in the development or operation of the project;
- (3) the City receives ongoing revenue from the Hospitality Operation to pay debt service on bonds provided by the City to assist in the development of the project;
- (4) the City has assets at risk because it has agreed to underwrite or guarantee the development of the hospitality operation or loans related to the hospitality operation; or
- (5) the City has an ongoing economic and non-regulatory interest at risk in the financial success of a Hospitality Operation which is likely to be adversely affected by labor-management conflict, except that no interest shall be considered economic and non-

regulatory if it arises from the exercise of regulatory or police powers such as taxation (except as set forth in paragraphs (2) and (3) of this subsection), zoning, or the issuance of permits or licenses.

“Parties” means an Employer and Labor Organization that has requested to be, or has been, recognized as the collective bargaining representative of Employees.

“Pre-existing Lease” means any Hospitality Operation Lease entered into before the effective date of this Chapter.

“Subcontract” means any agreement between the authorized tenant, licensee, or other user under a Hospitality Operation Lease and another person or entity that contemplates or permits that other person or entity to operate or manage all or a portion of the Hospitality Operations.

“Subcontractor” means the person or entity that operates or manages all or a portion of Hospitality Operations under a Subcontract.

“Substantial Amendment” means an amendment to, or the City’s discretionary renewal or extension of:

(1) A lease of Marina Zone property entered into before the effective date of this Chapter that did not include Hospitality Operations but is expanded to include Hospitality Operations; or

(2) A Pre-existing Lease that provides for, or permits, any of the following:

(i) A new term that extends the duration of the lease beyond that provided in the Pre-existing Lease;

(ii) The right to construct improvements to support or serve Hospitality Operations, if not previously allowed under the Pre-existing Lease;

(iii) Rent credits or potential rent credits to a Marina Zone Hospitality Operation tenant that may be applied against 25% or more of the fixed rent under the Pre-existing Lease during the period in which the rent credits may be used; or

(iv) Rent credits or potential rent credits to a Marina Zone Hospitality Operation tenant that may be applied against 50% or more of the remaining percentage or participation rent (not including any portion of the rent), if any, under the Pre-existing Lease during the period in which the rent credits may be used.

### **2.102.030 City of Berkeley—Labor Peace Policy**

A. The City shall not execute Hospitality Operations Lease or Substantial Amendment providing for the use, development, or operation of a Hospitality Operation within the Marina Zone in which the City has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the Hospitality Operation has provided evidence that it has entered into a Labor Peace Agreement covering the Hospitality Operations as specified pursuant to Section 2.102.040.

B. Each such Hospitality Operations Lease or other contract or agreement shall further require that any future Subcontractor, tenant, sub-lessee, or manager that operates the Hospitality Operation shall be required to enter into a Labor Peace Agreement as specified under Section 2.102.040.

C. The City shall make these requirements express components of any request for proposal, request for qualifications, or other similar solicitation for a Hospitality Operation projects.

### **2.102.040 Procedures to Minimize Disruption Caused by Labor/Management Conflict.**

A. An Employer who receives a written request by a Labor Organization to enter into a Labor Peace Agreement shall:

- (1) Inform the City Manager, within five business days of receiving the request, that a Labor Organization seeking to represent its Employees has requested the Employer to enter into a Labor Peace Agreement required by this Chapter;
- (2) Enter into a Labor Peace Agreement, with the Labor Organization as to the Employees it seeks to represent, containing the following provisions:
  - (i) The Labor Organization, on behalf of itself and its members, in exchange for good and valuable consideration agrees not to engage in Economic Action against the Employer during the Demand for Recognition Period, and should the Labor Organization be recognized, the First Contract Period;
- (3) Upon the City Manager's request, promptly provide to the City Manager a report attesting to the status of the Employer's compliance with the requirements of this Section 2.102.040, including a statement by any Labor Organization that has requested that the Employer enter into a Labor Peace Agreement certifying the accuracy of the Employer's report; and
- (4) Include as a material term in any Subcontract a provision requiring the Subcontractor(s) to comply with this Chapter. This provision shall be a material and mandatory term of such Subcontract, and shall state: "Berkeley Municipal Code Chapter 2, commencing at Section 2.102.040, which applies to [Subcontractor], incorporated herein by reference. To the extent [Subcontractor] employs Employees in Hospitality Operations within the scope of Berkeley Municipal Code 2.102.040, [Subcontractor] hereby agrees as a material condition of this subcontract to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor's] Employees, if and as required by Chapter 2, and to otherwise fully comply with the requirements of that Chapter."

B. In the event that an Employer is unable to agree to terms of a Labor Peace Agreement with a Labor Organization within thirty (30) days of a written request by a labor Organization for a Labor Peace Agreement, the Employer may file a request with the Berkeley City Council to be excused from such obligations with respect to that Labor Organization. A public hearing shall be held by the City Council on the Employer's request for hearing. Notice of the public hearing shall be sent at least ten days before the public hearing date to the requesting Employer and the subject Labor Organization. The hearing shall be conducted in the same manner as public hearings for land use, zoning, landmarks, and public nuisance matters. The Council may approve a request by the Employer to be relieved of and excused from its obligations under this Section 2.102.040(A) with respect to the subject Labor Organization if the Council finds, after holding the noticed hearing, that forcing the Employer to adhere to the requirements of this Section 2.102.040(A) would be detrimental to the City's Proprietary Interests because: a. the Employer has attempted in good faith to reach a Labor Peace Agreement with the subject Labor Organization, and b. the Labor Organization has (i) refused to negotiate in good faith to reach a Labor Peace Agreement or (ii) placed condition(s) on Labor Peace Agreement that are arbitrary and capricious, in light of practices at other, similar venues that are subject to governmental labor peace requirements.

C. The City Manager shall include in every Hospitality Operation Lease a provision requiring the tenant, and any Employers operating under the Hospitality Operation Lease, to comply with the requirements of this Chapter and all other applicable laws.

**2.102.050 Applicability and Exemptions.**

A. This Chapter shall not apply to any Employer that does not employ employees in a Hospitality Operation. The City Manager shall determine the applicability of an exemption under this subsection A. on a case-by-case basis. Any Employer claiming an exemption must submit a written request, including the evidentiary basis for the exemption, to the City Manager within five business days of receiving a request to enter into a Labor Peace Agreement. The Employer shall have the burden of proving that an exemption is applicable.

B. This Chapter shall not apply to an Employer if:

(1) The City has no Proprietary Interest in the Hospitality Operation Lease under which the Employer operates a Hospitality Operation, or a Hospitality Operation Lease in which the City's cumulative investment, or the present value of its expected revenues, is less than \$100,000;

(2) The Employer operates under a Pre-existing Lease. This exemption applies to an Employer for the duration of such Pre-existing Lease unless the Pre-Existing Lease is subject to a Substantial Amendment after the effective date of this Ordinance;

(3) The Employer is a signatory to valid and binding collective bargaining agreement(s) covering all of its Employees at the Marina Zone property;

(4) The Employer is a governmental agency, and the law would prohibit application of this Chapter;

C. Nothing in this Ordinance shall require or compel an employee to be a member of any labor organization, nor shall it require the developer, operator or any tenant, subcontractor, or sub-tenant of a Hospitality Operation to recognize a labor organization as the bargaining representative for its employees or to enter into a collective bargaining agreement with any labor organization.

**2.102.060 Prospective Effect.**

This Chapter is intended to have prospective effect only. This Chapter shall be interpreted to avoid violating any laws that prevent the City from impairing obligations under any Pre-existing Lease.

**2.102.070 Preemption.**

Nothing in this Chapter shall be interpreted or applied so as to create any right, power, or duty in conflict with any Federal or State law.

**2.102.080 Severability.**

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



Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Homeless Services  
Panel of Experts

ACTION CALENDAR  
April 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Homeless Services Panel of Experts  
 Submitted by: Carole Marasovic, Chair, Homeless Services Panel of Experts  
 Subject: Recommendation for RV Lot and Waste Management on Streets for RVs

RECOMMENDATION

The Homeless Services Panel of Experts recommends to Council that they refer to staff to expedite all efforts to identify a location for another RV lot(s) to take the place of the now closed SPARK lot at 742 Grayson and that the new lot identified require mandatory safety inspections and fire extinguishers to be provided. The Homeless Services Panel of Experts further recommends that Council refer to staff to develop a waste management plan to be implemented for RVs currently on the streets.

FISCAL IMPACTS OF RECOMMENDATION

This two-part recommendation needs to be evaluated by City staff and the Council Budget and Finance Committee to assess the costs of implementation.

CURRENT SITUATION AND ITS EFFECTS

The SPARK RV lot at 742 Grayson closed at the same time that Horizon at 742 Grayson closed at the end of December, 2022. While arrangements were made for the residents of Horizon to move into the Berkeley Inn, no lot could be identified to hold the residents of the SPARK lot.

The SPARK lot was a successful endeavor with a capacity of 40 RVs. Safety inspections were not required which may have led to a fire of a vehicle.

RVs formerly in the lot have been left to roam the streets with health and safety risks to the dwellers who formerly resided there and with complaints from the larger community.

RV dwellers have the legal right to shelter in their vehicles. They require a lot to do so. Despite the land limitations, the City needs to amp up efforts to identify another lot to be overseen by a social services provider. Fire extinguishers must be provided and there should be safety inspections.

For health and sanitation purposes, remaining RVs on the street should have waste management services provided. Waste management services were provided at SPARK,

should be provided at the new RV lot and for the health and sanitation of the RV dwellers and the larger community should be provided to RV dwellers living on the streets given the limited capacity of the RV lot provided.

### BACKGROUND

On February 1, 2023, the Homeless Services Panel of Experts recommended as follows:

**Action:** M/S/C Marasovic/Johnson recommends to Council that they refer to staff to expedite all efforts to identify a location for another RV lot(s) to take the place of the now closed SPARK lot at 742 Grayson and that the new lot identified require mandatory safety inspections and fire extinguishers to be provided. The Homeless Services Panel of Experts further recommends that Council refer to staff to develop a waste management plan to be implemented for RVs currently on the streets.

**Vote:** Ayes: Johnson, Jones, Marasovic, Feller, Kealoha-Blake, and Meany.  
Noes: None. Abstain: None. Absent: Bookstein.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The benefits to the environment in terms of health and safety for the RV dwellers and the larger community, as to both recommendations, are indisputable.

### RATIONALE FOR RECOMMENDATION

The need for the RV lot for the health and safety of the RV dwellers and larger community is stated above.

### ALTERNATIVE ACTIONS CONSIDERED

Overnight lots, City or faith-based, could be explored but they are difficult to manage particularly by a single provider. In addition, they leave RV dwellers to wander the Berkeley streets during the day.

### CITY MANAGER

See Companion Report.

### CONTACT PERSON

Josh Jacobs, Homeless Services Coordinator, Neighborhood Services, (510) 981-5435



Peace and Justice Commission

ACTION CALENDAR  
APRIL 11, 2023

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

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

Subject: Referral of two health educator positions to the COB FY 2024 budget process

RECOMMENDATION:

Refer to the budget process a request for estimated \$150,000 annually, beginning in FY 2024 or as early as the AAO #2 process in spring 2023, for staffing, materials, and supplies to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities, as proposed by the Peace and Justice Commission.

FISCAL IMPACTS OF RECOMMENDATION

Estimated annual cost: \$150,000. This estimate was given by Dr. Lisa Warhuus, HHCS Director, for staffing, materials, and supplies to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities.

CURRENT SITUATION AND ITS EFFECTS:

According to HHCS Director Dr. Lisa Warhuus, “the overriding health challenge in Berkeley are health disparities....For many years, we have seen significant disparities between the health status of our white community members (generally well above national averages), and our BIPOC community members. Geographically, this shows up with generally excellent health outcomes for people living in the hills, with less ideal outcomes in zip codes in South and West Berkeley (although this is shifting somewhat with gentrification). In recent years, other high-risk populations would include people experiencing homelessness and, to some extent, the LGBTQ+ community (though we need more research on the latter as it can very dependent upon circumstances).

“One of the biggest challenges we have in addressing health disparities is in the communications and outreach (prevention) component of the work. We need to do more culturally responsive outreach to those most negatively impacted by disparities, **engage and listen to what people feel is most needed**, and work with them to fill that gap. In doing so over the years, our Public Health division has often found that what is most missing is trust in the system, information and education done in a culturally responsive way, and clear access points for medical insurance, coverage, and a medical home.

“For instance, in a health assessment conducted by the Public Health Division in 2018, the highest priority identified by Berkeley participants to achieve a healthy community was communities that had access to basic needs and services (i.e. healthcare, housing, healthy food, transportation, etc.), felt connected and was treated with openness, tolerance, and inclusion, and had resources and up to date information on services. “The greatest threats to optimal health that community members identified were high costs of living, food security, and stress/mental wellness with recurring barriers being lack of or limited information and resources available to community members.”

At its regular meeting January 9, 2023, the Peace and Justice Commission adopted the following recommendation proposing the hiring of two health educator positions for the next fiscal year.

M/S/C: Bohn, Jaquin.

Ayes: Lippman, Jacquelin, Bohn, Lee, Morizawa, Gussmann.

Noes: None.

Abstain: Maran.

Absent: Leon-Maldonado.

#### ENVIRONMENTAL SUSTAINABILITY

N/A

#### BACKGROUND

Peace and Justice commissioners, along with members of the Commission on the Status of Women and the Community Health Commission, recently met with HHCS Director Dr. Lisa Warhuus and Public Health Manager Janice Chin, at Council’s request, to discuss resources for and obstacles to reproductive health services and education. Dr. Warhuus clarified that “from the lens of HHCS, the work in Berkeley needs to be centered on health disparities in the larger context first,” and to “ensure that our Public Health Division continuously includes Reproductive and Sexual Health (RSH) work as a part of their broader health education, prevention, and outreach strategy.”

HHCS is bringing on a consultant who will organize and engage community members and other stakeholders to create a Community Health Assessment and a Community Health Improvement Plan, including a pilot program to create a health innovation zone to work toward remedying severe health inequities. Performance measures will be tracked through a new web-based population data health platform that will be rolled out as part of this process.

RATIONALE FOR RECOMMENDATION

HHCS would benefit from hiring staff and paying for materials and supplies out of general fund to be able to more broadly and flexibly conduct health education, prevention, and outreach to reduce health disparities.

The department is facing the lack of sufficient resources to do culturally responsive outreach, engagement, and prevention on an unconstrained basis. Engagement of these educators would assist with Reproductive and Sexual Health (RSH) outreach as part of the larger health outreach program.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

See companion report.

CONTACT PERSON

George Lippman, Chairperson, Peace and Justice Commission  
Okeya Vance-Dozier, Commission Secretary, (510) 684-0503







Sugar-Sweetened Beverage  
Product Panel of Experts (SSBPPE)

ACTION CALENDAR

April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Sugar-Sweetened Beverage Product Panel of Experts Commission

Submitted by: Joy Moore, Chairperson, SSBPPE Commission

Subject: Allocation of \$3 Million Over Two Years, FY 2024 and FY 2025, to Reduce Consumption and Health Impacts of Sugar-Sweetened Beverages (SSBs).

RECOMMENDATIONS

Adopt a Resolution allocating \$3 million from the General Fund in FY2024 (July 1, 2023 through June 30, 2024) and FY2025 (July 1, 2024 through June 30, 2025) that shall be invested in a grant program administered and coordinated by the Department of Health, Housing, and Community Services' (HHCS) Public Health Division (HHCS/PHD) consistent with the Sugar-Sweetened Beverage Product Panel of Experts (SSBPPE) Commission's goals to reduce the consumption of sugar sweetened beverages (SSB) in Berkeley and to address the health effects of SSB consumption. The total of \$3 million will be distributed in two installments of \$1.5 million per year for FY2024 and FY2025. In each of these years, the funds will be distributed as follows:

- a. Direct the City Manager to award up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs. The BUSD funding process is separate from the RFP process for the general community-based organization funding process and shall be guided by the SSBPPE Commission's Criteria for BUSD Funding (Attachment 2).
- b. Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSBs and to address the effects of SSB consumption. The community-based organization funding RFP process is separate from the BUSD funding process and shall be guided by the SSBPPE Commission's Criteria for Community Agency Grants (Attachment 3).
- c. Direct the City Manager to utilize up to 15% of the allocated funds to support HHCS/PHD to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates

process and outcome data from the epidemiologist resulting from the SSBPPE Commission funding program as well as pay certain City of Berkeley Finance Department costs related to the sugary drink tax.

#### POLICY COMMITTEE RECOMMENDATION

On February 23, 2023, the Budget and Finance Committee took the following action: M/S/C (Harrison/Arreguín) To forward the item to Council with a Qualified Positive Recommendation to approve staff's recommendation, with an additional amount of \$35,590 in FY24 and FY25, and any additional revenues beyond the projected amounts being prioritized for grants. Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

Measure D, passed in November of 2014, created two provisions, namely: a) a 1 cent per ounce tax on sugary drinks distributed in Berkeley and b) creation of a Panel of Experts Commission. The collection of this tax commenced in May of 2015 and is being deposited into the City's General Fund. The SSBPPE Commission's recommendation to Council for allocation of \$3 million for FY2024 and FY2025 is independent of the amount of tax collected from the distribution of SSB in Berkeley. This request will create a liability of \$3 million for the City's General Fund in FY2024 and FY2025.

#### CURRENT SITUATION AND ITS EFFECTS

On October 20, 2022, the SSBPPE Commission approved the recommendation to the Berkeley City Council for allocation of \$3 million for the period FY2024 and FY2025, to be made available to invest in grants programs to reduce the consumption of sugary drinks and address the health consequences of the consumption of sugary drinks and moved to adopt their recommendation to Council as follows:

Key elements of the resolution include:

- 1) Direct the City Manager to award up to 42.5% of the allocated funds to BUSD through a grant proposal to reduce the consumption of SSBs.
- 2) Direct the City Manager to award at least 42.5% of the allocated funds through an RFP process managed by the HHCS/PHD for grants to community-based organizations consistent with the SSBPPE Commission's goals.
- 3) Direct the City Manager to utilize up to 15% of the allocated funds to support HHCS/PHD to:
  - a. Coordinate and monitor the grant process,
  - b. coordinate the overall program evaluation, and
  - c. produce an annual report that disseminates process and outcome data from the epidemiologist resulting from the SSBPPE Commission funding program as well as,
  - d. pay certain City of Berkeley Finance Department costs related to the sugary drink tax.

**Action:** Motion to update the SSBPPE Commission City Council recommendation from December 15th, 2020: 1) update dates; 2) background as needed, and recommendations; 3) maintain the same recommendation for funding; 4) and recommending the City Manager to utilize up to 15% of the allocated funds to support the COB Public Health Division and Finance Department fees related to the Sugar-Sweetened Beverage Soda Tax.

**Votes:** Ayes – Rose, Moore, Hecht, Morales, Scheider; Noes – None; Abstain – None; Absent – Browne, Crawford, Rodriguez.

## BACKGROUND

### *A Brief History of Measure D*

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

In addition to nearly three years of a global pandemic, our nation, our state, and our community face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children, as well as low income communities and communities of color have been and continue to be disproportionately affected. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, heart disease, and tooth decay.

Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but contribute massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latinx children are also aggressively targeted with advertisements to promote sugar-laden drinks.

The resulting impact on consumption should not be surprising. The average American now drinks nearly 40 gallons of sugary drinks a year. In the past 20 years, the prevalence of obesity in adults increased from 30.5% to 42.4%, and the prevalence of severe obesity increased from 4.7% to 9.2%. During this time, the prevalence of obesity

among youth (aged 2–19 years) increased from 13.9% to 19.3%, and the prevalence of severe obesity increased from 3.6% to 6.1%. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11. This level of consumption has had tragic impacts on community health. Type 2 Diabetes –previously only seen among adults –is now increasing among children. If the current obesity trends are not reversed, it is predicted that one in three children and nearly one-half of Latinx and African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.

Our community has not been immune to the challenge of unhealthy weight gain and obesity. According to the 2018 City of Berkeley Health Status Report, over a quarter of Berkeley’s 5th and 7th grade students (all race/ethnicities) are overweight or obese. Berkeley has a lower proportion of 5th and 7th grade children who are overweight or obese (29.4%) compared to children in Alameda County (35.3%) but has a higher proportion compared to California (26.8%). However, a higher proportion of African-American children are overweight or obese in Berkeley compared to Alameda County or California.

Tooth decay has meaningful impact on health, especially for children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

#### *COVID-19*

Of relevance today are the jarring statistics on the higher risk and severity of COVID-19 related to the social determinates of health for persons of color. Latinx and Black communities are disproportionately affected by COVID-19. Health disparities, as documented in the Annual Health Reports from the Berkeley Health Department, were an important impetus in the rationale for Measure D as well as the proposed use of revenues from Measure D. SSB consumption is directly related to the health conditions observed with higher rates of COVID-19. The link between SSB consumption and diabetes, obesity and heart disease and the relationship of these conditions to increased risk of COVID-19 makes heightens the critical nature of the SSB tax and its revenues to the reduction of health disparities in Berkeley.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

When sugary drink consumption decreases due to the direct investments in programs and activities, the SSBPPE Commission expects that there will be a reduction to the City’s waste stream.

RATIONALE FOR RECOMMENDATION

This two-year grant period supports comprehensive strategies to: a) reduce access to SSBs, b) improve access to water, c) limit marketing of SSBs to children, and d) implement education and awareness campaigns with specific populations. The two-year grant period will also indicate the City of Berkeley's commitment to reducing the consumption of SSBs and improving the health of Berkeley residents, particularly those most impacted by obesity, diabetes, tooth decay, and heart disease. The funding will allow grantees to develop interventions that include education, policy, systems and environmental changes with measurable outcome data and evaluation to show the rise in public awareness about the harmful impacts of SSBs, reduce consumption of SSBs over time, and decrease the health risks among residents of Berkeley.

To have the greatest impact, the SSBPPE Commission recommends that the following populations be prioritized:

- a) Children and their families with a particular emphasis on young children who are in the process of forming lifelong habits,
- b) Children and young adults living in households with limited resources,
- c) Groups exhibiting higher than average population levels of type 2 diabetes, obesity, heart disease, and tooth decay rates,
- d) Groups that are disproportionately targeted by the beverage industry marketing,
- e) Pregnant women,
- f) Berkeley-based organizations that serve any or all of the above populations.

ALTERNATIVE ACTIONS CONSIDERED

The Commission did not identify an alternative action which is consistent with the City's

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Roberto Terrones, MPH, Commission Secretary, HHCS, (510) 510-981-5324

ATTACHMENTS

1. Resolution
2. SSBPPE Commission's Criteria for BUSD Funding
3. SSBPPE Commission's Criteria for Community Agencies Funding

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

ALLOCATION: \$3 MILLION TOTAL FOR SUGAR-SWEETENED BEVERAGE CONSUMPTION AND REDUCTION GRANT PROGRAM IN FY2024 AND FY2025

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

WHEREAS, in FY2024 and FY2025, the City Council awarded a total of \$3 million upon the recommendation of the SSBPPE Commission to demonstrate the City’s long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

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

WHEREAS, the above conditions are all demonstrated to increase both the severity of COVID19 related illness and risk of death; and

WHEREAS Latinx and Black communities are disproportionately affected by COVID-19; and

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

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

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

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3<sup>rd</sup> graders; and

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

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to allocate \$3 million from the General Fund to be disbursed in two (2) installments of \$1.5 million in FY2024 and \$1.5 million in FY2025 and invested as follows:

1. Allocate up to 42.5% of the allocated funds to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened

beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs for the period, July 1, 2023 to June 30, 2025; and

2. Allocate at least 42.5% of the allocated funds through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period, July 1, 2023 to June 30, 2025; and
3. Allocate up to 15% of the allocated funds to support the Berkeley Public Health Division (BPHD) to coordinate and monitor the grant process, coordinate the overall program evaluation, and produce an annual report that disseminates process and outcome data resulting from the SSBPPE Commission funding program as well as City of Berkeley Finance Department fees related to the sugary drink tax.

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

### **SSBPPE Commission's Criteria for BUSD Funding**

The Berkeley Unified School District will be required to provide the following information and comply with the requirements listed in order to receive funding.

- A. Describe how you will reach the following priority populations:
- a. Children and their families; preschool through high school;
  - b. Children and young adults living in households with limited resources;
  - c. Groups exhibiting higher than average population levels of type 2 diabetes, obesity, and tooth decay;
  - d. Groups that are disproportionately targeted by the beverage industry marketing.
- B. Include how the proposal meets the following requirements:
- a. Proposal reflects approval from the BUSD School Board.
  - b. BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.
  - c. Awarded funding will not supplant BUSD FY22 and FY23 General Fund allocations.
  - d. Funded projects will publicly reflect support from Healthy Berkeley Program.
  - e. Funded projects and programs will include evaluation of their process and outcomes.
  - f. The proposal timelines and budgets will be specific, measurable, achievable, realistic, and time bound (SMART).
- C. Include specific goals for how the BUSD proposal meets the following scoring criteria:
- a. Decrease access to SSBs and/or improve access to drinking water. (15%)
  - b. Increase or strengthen SSB policies in school and outside of school. (15%)
  - c. Support the annual administration of the Berkeley adapted Youth Risk Behavior Survey to evaluate student's SSB knowledge, consumption, access, and policy perceptions. (20%)
  - d. To document how students at all grade levels and in priority populations are included. (10%)
  - e. To document policy elements that will last beyond the grant period. (15%)
  - f. Proposal budget matches the work plan and is appropriate. (10%)
  - g. To document how BUSD will be able to communicate SSB educational and policy efforts to parents and/or the Berkeley community (15%)



### **SSBPPE Commission's Criteria for Community Agencies Funding**

Community-based organizations will be required to provide the following information in order to be considered for funding.

- A. Describe your strategies that address the goals and objectives of this funding including:
- a. Transforming the systems, policies, environments, structures, and norms that underlie sugary drink consumption.
  - b. Developing community capacity to improve health by transforming systems, policies, environments, structures, and norms through increasing leadership potential of community members and young people, especially those serving priority populations.
  - c. Supporting community programming designed to change norms to support consumption of healthy food and beverages.
  - d. Providing health screenings and chronic disease prevention with a focus on dental health.
  - e. Impacting sugary drink marketing and retail environments (i.e., availability, promotion, price, placement in convenient stores, and advertising), especially those that disproportionately target priority populations.
- B. Include specific goals for how your project will meet the following scoring criteria
- a. The proposal aims to decrease consumption of sugary drinks, increase access to drinking water, and/or address health effects from consumption of sugary drinks (25%).
  - b. The proposal reaches people and communities in the priority populations. (25%).
  - c. Project provides lasting impact beyond the grant period: i.e. builds organizational and community capacity and/or changes systems and policies, and environments related to SSBs. (25%).
  - d. The proposal includes a plan for communicating efforts, activities, and/or successes to the larger Berkeley community. (15%).
  - e. Proposal budget matches the work plan and is appropriate. (10%)





Office of the Mayor

CONSENT CALENDAR

April 11, 2023

To: Members of the City Council

From: Mayor Jesse Arreguín

Subject: Establishment of Fred Ross Memorial Bench in Cesar Chavez Park

RECOMMENDATION

Adopt a Resolution directing the City Manager to work with the family of the late Fred Ross Jr. to dedicate a memorial bench at the west facing edge of Cesar Chavez Park in his honor. The family of Fred Ross Jr. shall be responsible for the cost of the bench and shall be engaged in determining the location of the bench.

BACKGROUND

Fred Ross Jr., the son of the former labor organizer Fred Ross, and a lifelong labor organizer and activist in his own right, sadly passed away on November 20, 2022. Mr. Ross lived in Berkeley for two decades.

Inspired by the work of his father, Mr. Ross worked side by side with Cesar Chavez and Dolores Huerta, founded the Neighbor to Neighbor initiative in the 1980s to provide support to Central American countries, helped elect Nancy Pelosi to Congress and later in life worked with IBEW Local 1245.

Former Labor Secretary Robert Reich had this to say about Mr. Ross:

*“You have comforted the afflicted, and afflicted the comfortable,” he told Ross. “Your boldness and vision have been a source of inspiration to me and huge number of other people, working for social justice, labor unions, and the hopes and dreams so many people have for a better life.”*

Mr. Ross was a renowned, beloved and effective organizer, who was honored at his recent memorial by over 650 people in attendance and notable speakers including Dolores Huerta and Nancy Pelosi. A bench in his memory at Cesar Chavez Park is a fitting tribute, as Mr. Ross loved walking in Cesar Chavez Park and enjoying the views to the west.

Tributes to Fred Ross, Jr. include:

[https://www.sfexaminer.com/news/politics/remembering-fred-ross-jr-legendary-organizer-for-social-justice/article\\_26f7987a-6cfa-11ed-b816-1b394e47b767.html](https://www.sfexaminer.com/news/politics/remembering-fred-ross-jr-legendary-organizer-for-social-justice/article_26f7987a-6cfa-11ed-b816-1b394e47b767.html)

<https://www.berkeleyside.org/2022/12/01/fred-ross-jr-obituary>

<https://www.fredrossproject.org/fred-ross-jr-memorial-1>

On April 26, 2007, the Parks & Recreation Commission approved a revised policy whereby park bench donations will be allowed at sites recommended by staff; and, also, established reasonable criteria for granting memorials. On July 22, 2008, Council adopted Resolution No. 61,148-N.S. approving a revised bench donation policy and establishing a process and conditions for granting bench donations, both anonymous and memorial types.

Pursuant to established policy, a bench memorial must be in recognition of someone who had a record of service to the City's parks or has made an outstanding contribution to the Berkeley community. The honoree must be deceased for *at least one year*.

This action would make an exception to the City's bench policy given Mr. Ross' extraordinary contributions (see Attachment B) and would initiate the placement of the bench at an appropriate location in consultation with the family. The family has requested this memorial bench and will be paying the customary fees established by the City for its placement.

#### FINANCIAL IMPLICATIONS

None. Costs will be paid by the family of Fred Ross Jr.

#### ENVIRONMENTAL SUSTAINABILITY

No impact

#### CONTACT PERSON

Jesse Arreguín, Mayor 510-981-7100

#### ATTACHMENTS:

Attachment A: Resolution

Attachment B: Letter dated February 17, 2023 from City to the Family of Fred Ross outlining current city protocols for establishing a memorial bench.

RESOLUTION NO. ##,###N.S.  
ESTABLISHMENT OF MEMORIAL BENCH IN CESAR CHAVEZ PARK  
IN HONOR OF  
FRED ROSS JR.

WHEREAS, On April 26, 2007, the Parks & Recreation Commission approved a revised policy whereby park bench donations will be allowed at sites recommended by staff; and, also, established reasonable criteria for granting memorials; and

WHEREAS, On July 22, 2008, Council adopted Resolution No. 61,148-N.S. approving a revised bench donation policy and establishing a process and conditions for granting bench donations, both anonymous and memorial types; and

WHEREAS, Pursuant to established policy, a bench memorial must be in recognition of someone who had a record of service to the City's parks or has made an outstanding contribution to the Berkeley community and has been deceased for at least one year; and

WHEREAS, On November 20, 2022, Fred Ross Jr. passed away quietly in his home after living in Berkeley for over two decades; and

WHEREAS, Fred Ross Jr. worked as an early age alongside Cesar Chavez in the lettuce fields of California; and

WHEREAS, His life work as an organizer included advocating for farmworker rights, effectively changing the U.S. policy of backing oppressive governments in Central America and accelerating the naturalization of legal immigrants; and

WHEREAS, Mr. Ross spent hours walking in his favorite location, Cesar Chavez Park, while enjoying the views to the west; and

WHEREAS, This action would be an exception to City protocols for memorial benches and would initiate the placement of the bench at an appropriate location in consultation with the family; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a new memorial bench location should be established on the west facing edge of Cesar Chavez Park to honor Fred Ross Jr. and his contributions to Berkeley and immigrants.

## ATTACHMENT B

On Feb 17, 2023, at 4:11 PM, Williams, Wanda <[WWilliams@cityofberkeley.info](mailto:WWilliams@cityofberkeley.info)> wrote:

Hi Margo:

My condolences for the loss of your husband. Thank you for your interest in donating a memorial bench to a City of Berkeley park. The Memorial Bench Donation Policy is outlined in the attached council resolution and is handled on a case by case basis depending on the availability of sites for benches at selected City parks.

***At this time, we are only accepting donations for replacing old existing benches at our parks. No new bench locations will be considered. Honoree must be deceased for at least one year prior to application acceptance.***

The donation process is as follows:

- Upon request, applicant should work with Parks Maintenance staff (Walt Vandernald) to identify a location where a bench needs to be replaced.
- Once site is approved by staff, complete and submit the application for Park Bench Donation, with a check for \$3,400 payable to "The City of Berkeley" to cover costs of purchasing a new bench, materials, installation and a cast iron plaque.
- City staff will process the application and submit a consent calendar item to the City Council for approval.
- Once approved, city staff will work with the applicant to finalize the text for the plaque, order it and finalize the location for the proposed bench. PRW maintains the right to the final decision for bench location.
- Building Maintenance staff will purchase, install plaque and assemble the bench.
- This bench donation shall be in effect for a minimum of 10 years or until the bench has exceeded its useful life (as determined by City staff). At that time, the existing bench may be replaced by the next family on the waiting list. The donor family may request the plaque at that time, or donate a new memorial bench.

The entire process can take up to 8 months to complete. If you have any additional questions, feel free to contact me via Email or at 510-981-6702.

Thank you,



Environment and Climate Commission

INFORMATION CALENDAR

April 11, 2023

To: Honorable Mayor and Members of the City Council  
 From: Environment and Climate Commission (ECC)  
 Submitted by: Ben Gould, Chairperson, ECC  
 Subject: Environment and Climate Commission 2023 Work Plan

INTRODUCTION

The Environment and Climate Commission is responsible for advising the City Council on matters related to environmental sustainability and climate change. The commission’s scope includes 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. The commission works closely with the City of Berkeley’s Office of Energy & Sustainable Development (OESD).

CURRENT SITUATION AND ITS EFFECTS

The ECC has a broad scope and a responsibility to support and work closely with OESD staff. The following projects are the current efforts underway by the ECC:

| Project                                                                          | Status       | Description                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Transportation Public Space Re-allocation & Vehicle Miles Traveled (VMT) Targets | In Committee | Re-allocate public street space away from auto-centric uses towards pedestrians, bicyclists, and buses, even more than currently envisioned in the bicycle and pedestrian master plans. Consider setting specific, measurable VMT reduction targets and identify and implement strategies to achieve them. |
| Encourage cargo bike deliveries                                                  | In Committee | Encourage e-bike deliveries to & by businesses.                                                                                                                                                                                                                                                            |
| Native Plants and Pest Reduction                                                 | In Committee | Identify opportunities & strategies to support native plants & avoid pesticides.                                                                                                                                                                                                                           |

|                      |         |                                                                                                                                                                                                                                                                    |
|----------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OESD input & support | Ongoing | Support OESD staff with feedback on programs, standards, and other initiatives, including the Building Emissions Saving Ordinance (BESO), the Berkeley Existing Buildings Electrification Strategy (BEBES), the Climate Equity Fund, Climate Action planning, etc. |
|----------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

At its February 22, 2023 meeting the Environment and Climate Commission approved the work plan to send to the City Council as follows: Motion/second to approve the 2023 Workplan as revised during the meeting (Tregub, Hedlund). The motion carried 9-0-0-0; Ayes: Tregub, Ranney, Hedlund, McGuire, Tahara, Allen, Guliasi, Lunaparra, Gould. Noes: None. Abstain: None. Absent: None.

**BACKGROUND**

First established in 2022, ECC was formed by merging the Community Environmental Advisory Commission (CEAC) and the Energy Commission (EC). ECC commissioners bring a wide range of expertise, with backgrounds in government, academia, nonprofit, and private sector environmental work. These backgrounds inform ECC’s work and help it to consider diverse and equitable approaches to addressing the City’s environmental challenges.

This work plan is intended to provide a guide to the work ECC plans to take on in 2022. As additional items or issues arise, or are referred to the Commission from Council, ECC will adjust this plan accordingly.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

ECC’s initiatives will improve environmental sustainability, reduce greenhouse gas emissions, and support a just transition.

**POSSIBLE FUTURE ACTION**

ECC is considering the following potential additional efforts:

| <b>Project</b>                       | <b>Status</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Green New Deal policies              | Conceptual    | Develop and support Green New Deal policies for Berkeley.                                                                                                                                                                                                                                                                                        |
| Electrification Information Campaign | Conceptual    | Making it easier for homeowners and renters who are interested in electrification (building + vehicle) to get information & be excited. Give people positive feelings about induction and electrification. Create checklist / resources / what you might do / should think about for people who are not doing major remodel or buying home, etc. |



|                                                                 |            |                                                                                                                                                        |
|-----------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                 |            | Support renters with feasible, affordable technologies.                                                                                                |
| Electric Mobility                                               | Conceptual | Work to reduce technological, policy, access, and cost barriers to transportation electrification.                                                     |
| Expanded OESD Support – events, resiliency hubs                 | Conceptual | Provide additional support at public events where OESD is staffing tables or otherwise engaging with the public. Support OESD with resiliency centers. |
| Water conservation, recycling, and reuse; stormwater management | Conceptual | Explore opportunities for policies and initiatives around water conservation, recycling, and reuse; stormwater management.                             |

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Future action items that ECC may send to City Council could require staff time to develop, finalize, and/or implement. ECC strives to ensure proposals provide significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, social, and economic impacts.

**CONTACT PERSON**

Billi Romain, Secretary, Environment and Climate Commission,  
[BRomain@cityofberkeley.info](mailto:BRomain@cityofberkeley.info).



|                                            |  |
|--------------------------------------------|--|
| Upcoming Worksessions and Special Meetings |  |
|--------------------------------------------|--|

|                                                       |  |
|-------------------------------------------------------|--|
| <i>start time is 6:00 p.m. unless otherwise noted</i> |  |
|-------------------------------------------------------|--|

|                 |  |
|-----------------|--|
| Scheduled Dates |  |
|-----------------|--|

|        |                          |
|--------|--------------------------|
| Apr 18 | 1. Hopkins Corridor Plan |
|--------|--------------------------|

|  |                          |
|--|--------------------------|
|  | 1. Hopkins Corridor Plan |
|--|--------------------------|

|             |                                 |
|-------------|---------------------------------|
| May 16 (WS) | 1. Fire Facilities Study Report |
|-------------|---------------------------------|

|  |                                 |
|--|---------------------------------|
|  | 1. Fire Facilities Study Report |
|--|---------------------------------|

|                                            |  |
|--------------------------------------------|--|
| Unscheduled Workshops and Special Meetings |  |
|--------------------------------------------|--|

|      |  |
|------|--|
| None |  |
|------|--|

|                                          |  |
|------------------------------------------|--|
| Unscheduled Presentations (City Manager) |  |
|------------------------------------------|--|

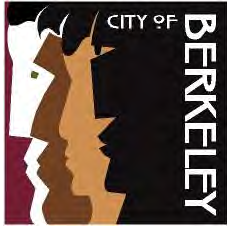
|      |  |
|------|--|
| None |  |
|------|--|

|    |                                                                                                                                                                                                                                                                                                                                                            |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                   |
| 1. | <p><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></p> <p><b>From: City Manager</b><br/> Contact: Liam Garland, Public Works, (510) 981-6300</p> <p><i>(Note: schedule with tentative special meeting in May 2023 on Ashby BART TOD)</i></p> |
| 2. | <p><b>23. Climate Action Plan and Resilience Update</b> <i>(Referred to the Agenda &amp; Rules Committee for scheduling on March 14, 2023.)</i></p> <p><b>From: City Manager</b><br/> Contact: Jordan Klein, Planning and Development, (510) 981-7400</p>                                                                                                  |
| 3. | <p><b>24. Berkeley Economic Dashboards Update</b> <i>(Referred to the Agenda &amp; Rules Committee for scheduling on March 14, 2023.)</i></p> <p><b>From: City Manager</b><br/> Contact: Eleanor Hollander, Economic Development, (510) 981-7530</p>                                                                                                       |

| 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>                                            |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                   |
| 469 Kentucky Avenue (single family dwelling)                                | ZAB                  |                       | 5/23/2023         |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |

3/23/2023





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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

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

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

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

Section 3. City Council


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

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

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

Noes: None.

Absent: None.

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

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



Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

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

Subject: Commission Meetings During COVID-19 Emergency

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

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

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

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

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

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

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



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

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

Prompts for Commissions to use in work plan:

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

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

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

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

Attachments:

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

cc: Mayor and City Councilmembers  
Senior Leadership Team

RESOLUTION NO. 69,331-N.S.

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

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

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

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

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

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

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

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

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

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

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

Section 1. Boards and Commissions

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

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

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

Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
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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.

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

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

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

### I. Vaccination Status

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

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

#### *Pre-entry negative testing*

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

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

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

### II. Health Status Precautions

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

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

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

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

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

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

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium.

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

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

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. The relevant capacity limits will be posted at the meeting location.

However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

Conference room capacity is limited to 15 persons.

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

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

**V. Protocols for Remote Participation by Mayor or Councilmembers**

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

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

**VI. Hand Washing/Sanitizing**

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

**VII. Air Flow/Circulation/Sanitizing**

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, CO<sub>2</sub>, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as

designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

### **VIII. Overflow in Gymnasium**

An overflow indoor seating area will be available at the West Campus Gymnasium if staff determines that attendance is likely to exceed the capacity of the Boardroom. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

### **IX. In-Meeting Procedures**

#### **Revised and Supplemental Materials**

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

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

#### **Communications from the Public**

The public may submit communications in hard copy at the Boardroom or electronically to [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info). To ensure that both in-person and remote Councilmembers receive the communication, the public should submit 10 copies at the Boardroom and send the electronic version to the e-mail listed above.

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

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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.

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### **IV. Physical Distancing**

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requires distancing and for those that choose to distance for personal health reasons.

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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.

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- A Councilmember at a remote location may impose reasonable capacity limits at their location.

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overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

**IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

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

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

### II. Health Status Precautions

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

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

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

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

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

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

Face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting.

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

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

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

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Council meeting.

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

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

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

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

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

**V. Protocols for Remote Participation by Mayor or Councilmembers**

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

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

**VI. Hand Washing/Sanitizing**

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

**VII. Air Flow/Circulation/Sanitizing**

Berkeley Unified Facilities Staff performs a vigorous cleaning process after each use of the Boardroom. BUSD upgraded all HVAC filtration to MERV13, and with the inclusion of Needlepoint BiPolar Ionization, is achieving a rating that is closer to MERV18. Additionally, BUSD installed indoor air quality monitoring sensors in all facilities that constantly monitor Volatile Organic Compounds, CO<sub>2</sub>, Relative Humidity, and Temperature. The sensors and alarms allow BUSD to ensure that all systems are working properly and as designed. If a sensor trips an alarm, a work order request is generated immediately to ensure the system is repaired expeditiously.

**VIII. Overflow in Gymnasium**

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. This area will be monitored by the BUSD security personnel.

**IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

**X. In-Meeting Procedures**

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

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

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

**Communications from the Public**

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

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



Office of the City Attorney

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

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

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

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

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

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

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

March 2, 2022

Page 2 Re: Continuing Use of Teleconferencing for Public Meetings

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

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

The Governor has issued an executive order (N-1-22) which extends to March 31, 2022 sunset dates for teleconferencing for state legislative bodies (under the Bagley-Keene Open Meeting Act) and student body organizations (under the Gloria Romero Open Meetings Act).<sup>5</sup> Executive Order N-1-22 does not affect the Brown Act teleconferencing provisions of AB 361, which have a sunset date of January 1, 2024. Therefore, until January 1, 2024, the City may utilize the teleconferencing provisions under AB 361 as long as the state of emergency remains in effect.

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<sup>1</sup> *New York Times*, California Lays Out a Plan to Treat the Coronavirus as a Manageable Risk Not an Emergency (Feb. 17, 2022), <https://www.nytimes.com/2022/02/18/us/california-lays-out-a-plan-to-treat-the-coronavirus-as-a-manageable-risk-not-an-emergency.html>.

<sup>2</sup> *Los Angeles Times*, Newsom scales back some special pandemic rules, but not California’s state of emergency (Feb. 25, 2022), <https://www.latimes.com/california/story/2022-02-25/newsom-scales-back-special-pandemic-rules-but-not-california-state-of-emergency>.

<sup>3</sup> Text of SCR 5 available at: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SCR5](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SCR5).

<sup>4</sup> Press release: Senator Toni G. Atkins, Senate Leader Atkins Issues Statement on SCR 5 and the State of Emergency (Feb. 17, 2022), <https://sd39.senate.ca.gov/news/20220217-senate-leader-atkins-issues-statement-scr-5-and-state-emergency>.

<sup>5</sup> Text of Executive Order N-1-22 available at: <https://www.gov.ca.gov/wp-content/uploads/2022/01/1.5.22-Bagley-Keene-waiver-EO.pdf>.



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

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

### I. Vaccination Status

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

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

#### *Pre-entry negative testing*

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

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

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

### II. Health Status Precautions

If a person who desires to attend the meeting in-person is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

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

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

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

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

Following the State of California and Local Health Officer Guidance, face coverings or masks that cover both the nose and mouth are required for all attendees at an in-person City Council meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of the City Council, city staff, and the public are required to wear a mask at all times, including when speaking publicly at the meeting.

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

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

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

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

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

**V. Protocols for Remote Participation by Mayor or Councilmembers**

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

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

**VI. Hand Washing/Sanitizing**

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

**VII. Air Flow/Circulation/Sanitizing**

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

**VIII. Overflow in Gymnasium**

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is 200 persons. The overflow area will have a broadcast of the meeting in progress

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

**IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided. Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

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

### I. **Vaccination Status**

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

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

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

### II. **Health ~~Check~~Status Precautions**

If an in-person attendee is feeling sick, including but not limited to, cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell they will be advised to attend the meeting remotely.

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

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

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

~~Attendees showing a fever will be directed to attend the meeting via remote participation (Zoom). If an attendee refuses to have their temperature~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~checked, guidance will be provided to the attendee on the requirement and their options for attending remotely and in-person.~~

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

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

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

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

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

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

### IV. **Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a council meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons with a medical status that requires distancing and for those that choose to distance for personal health reasons.

~~Relevant CalOSHA requirements for the workplace will be followed as is feasible. Capacity in the audience seating area (including members of the media and staff) at the BUSD Boardroom is limited to 40 persons due to~~

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

~~uncertainty about vaccination status of attendees and limiting attendance at indoor events to ensure the comfort and safety of attendees.~~ Conference room capacity is limited to ~~42-15~~ persons. The relevant capacity limits will be posted on the city council agenda and at the meeting location.

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

### V. **Protocols for Remote Participation by Mayor or Councilmembers**

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

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

### VI. **Hand Washing/Sanitizing**

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

### VII. **Air Flow/Circulation/Sanitizing**

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

## Hybrid Meeting Procedures for BUSD Boardroom (~~November 2021~~February 2022)

### **VIII. Overflow in Gymnasium**

An overflow indoor seating area will be available at the West Campus Gymnasium for every meeting. The capacity of the gymnasium is ~~100~~200 persons. The overflow area will have a broadcast of the meeting in progress to allow participants to follow the proceedings and move to the Boardroom at the appropriate time to provide public comment if desired. The broadcast audio and video will be provided to attendees in the overflow area. This area will be monitored by the BUSD security personnel.

### **IX. Food Provided for Elected Officials and Designated Staff**

- No buffet dinner provided.
- Box lunches only. Maximum of 16 (Mayor & Council [9], City Manager, City Attorney, City Clerk [2], Deputy City Managers [2], BCM Staff)
- Individually packaged snacks will be provided on a common table and drinks will be available in the refrigerator.



## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

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

### **I. Vaccination Status**

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

### **II. Health Check**

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

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

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

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

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

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

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

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

## Hybrid Meeting Procedures for BUSD Boardroom (November 2021)

### IV. Physical Distancing

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

### V. Protocols for Remote Participation by Mayor or Councilmembers

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

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

### VI. Hand Washing/Sanitizing

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

### VII. Air Flow/Circulation/Sanitizing

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

### VIII. Overflow in Gymnasium

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

## **Hybrid Meeting Procedures for BUSD Boardroom (November 2021)**

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

### **IX. Food Provided for Elected Officials and Designated Staff**

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



# URGENT ITEM AGENDA MATERIAL

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

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

**Meeting Date: September 28, 2021**

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

This item is submitted pursuant to the provision checked below:

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

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

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

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

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

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



Office of the City Attorney

CONSENT CALENDAR  
September 28, 2021

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

From: Farimah Faiz Brown, City Attorney

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

RECOMMENDATION

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

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

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

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

#### BACKGROUND

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

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

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

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

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

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

#### RATIONALE FOR RECOMMENDATION

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

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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

#### Attachments:

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

RESOLUTION NO. –N.S.

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

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

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

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

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

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

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

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



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

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

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

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

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



OFFICE OF THE GOVERNOR

June 2, 2021

**VIA EMAIL**

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

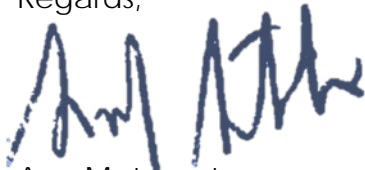
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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

June 4, 2021

Number: 2021-58

### 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

### 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.

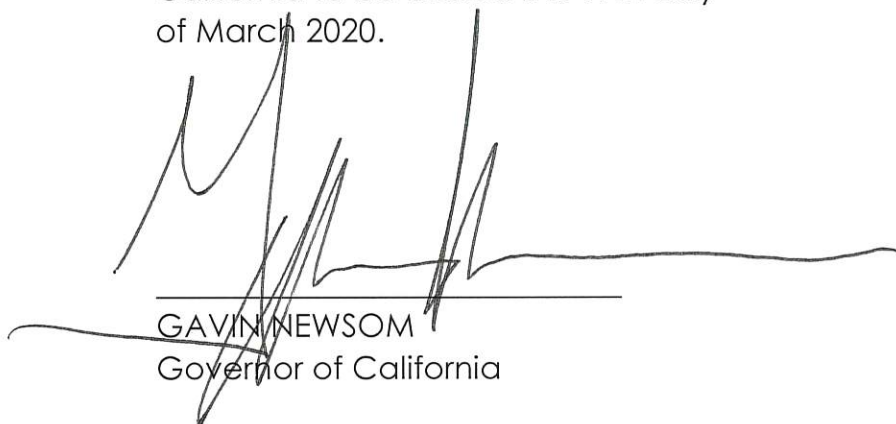
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

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

On March 14, 2023, the City Council referred the relevant concepts of this item to the Agenda & Rules Committee for consideration under the existing committee agenda item regarding enhancements to the City's legislative process.

Action Calendar  
March 14, 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.

### **Policy Committee Recommendation**

On February 14, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to send the item to the City Council with a Qualified Positive Recommendation to refer the relevant concepts of the original item to the Agenda & Rules Committee for consideration under the existing committee agenda item regarding enhancements to the City's legislative process. Vote: All Ayes.

### **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 overally 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 agendaized 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 agendaize 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 stymie 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**

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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

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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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