

Spruce Street, Oxford Street, Rose Street, Grizzly Peak Boulevard Route

This evacuation route is within or along the perimeter of Fire Zone 2, indicating a relatively high potential of fire. It is composed of primarily residential areas with high population density. Grizzly Peak Boulevard and half of Spruce Street are hilly and winding with fire potential due to the presence of vegetation. Around three-quarters of the route has incomplete utility undergrounding as shown in Table 1 and Figure 1.

Spruce Street is a north-south minor arterial street. It is primarily residential and provides access to Cragmont School, Step One Nursery School, and Congregation Beth El pre-school and synagogue. There are bulb-outs at the intersection of Spruce Street and Rose Street, which narrow Spruce Street. The evacuation route along Spruce Street is 2 miles long. Overhead lines are present for 1.8 miles between Michigan Avenue and Rose Street, and between Cedar Street and Hearst Avenue. All the overhead utilities are distribution lines.

Oxford Street is a north-south minor arterial street. It is primarily residential with a few houses and apartment buildings. The evacuation route along Oxford Street is 0.25 miles long from Rose Street to Cedar Street. Overhead lines are present for the entire length. All of the overhead utilities are distribution lines.

Rose Street is an east-west residential hillside collector street. The evacuation route along Rose Street is 0.06 miles connecting Oxford Street and Spruce Street, with overhead lines present for the entire length.

Grizzly Peak Boulevard is a north-south minor arterial street and is a major access road for mutual responders from both El Cerrito and Oakland, and provides access to the Space Sciences Laboratory and other University of California properties. Shepherd of the Hills Lutheran Church resides near the intersection of Grizzly Peak Boulevard with Spruce Street. The evacuation route along Grizzly Peak Boulevard is 2.29 miles long from the City limit near Centennial Drive to Spruce Street. Overhead lines are present for 1.4 miles from Cragmont Avenue to Latham Lane and from Hill Road to the City limit near Centennial Drive.

Evacuation Route: Spruce/Oxford/Rose/Grizzly Peak (4.60 miles)						
Street	Segment			Segment Length (mi)	Utility Length (mi)	
					OH	UG
Grizzly Peak	Centennial Dr	to	Arcade Ave	0.60	0.44	0.16
Grizzly Peak	Arcade Ave	to	Lathan Ln	0.67	-	0.63
Grizzly Peak	Lathan Ln	to	Spruce St	1.02	0.91	0.06
Spruce St	Grizzly Peak Blvd	to	Rose St	1.69	1.45	0.24
Rose St	Spruce St	to	Oxford	0.06	0.06	-
Oxford	Rose	to	Cedar	0.25	0.25	-
Spruce St	Cedar	to	Hearst Ave	0.31	0.31	-
Total of each OH/UG Utilities					3.42	1.09
Percentage of each OH/UG Utilities					76%	24%
Total Utilities					4.51	

Table 1: Detailed utility status for route Spruce/Oxford/Grizzly Peak

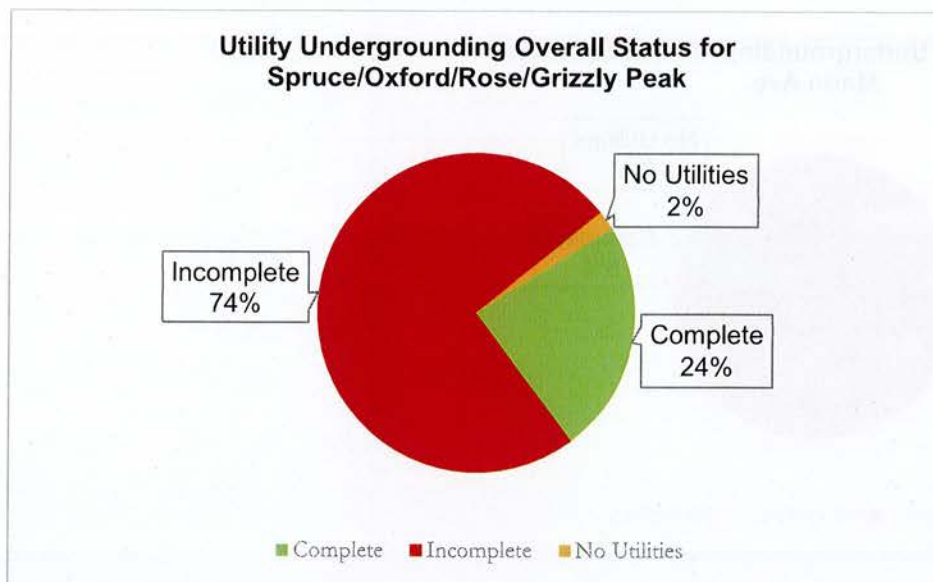


Figure 1

Marin Avenue Route

Marin Avenue is an east-west principal arterial street with primarily residential land uses along the evacuation route. It provides access to Cragmont School at the intersection with Spruce Street, Angel Academy Pre-school near the intersection with Oxford Ave, and Fire Station 4 at the intersection with The Alameda. Around 70% of the route is inside the boundary of Fire Zone 2. The evacuation route along Marin Avenue is 1.3 miles long from Tulare Avenue to Grizzly Peak Boulevard. Overhead lines are present for almost the entire length with a 94% incompleteness rate for utility undergrounding as shown in Table 2 and Figure 2.

Evacuation Route: Marin Ave (1.32 miles)					
Street	Segment		Segment Length (mi)	Utility Length (mi)	
				OH	UG
Marin Ave	Tulare Ave	to The Traffic Circle at Arlington Ave	0.53	0.53	-
Marin Ave	The Traffic Circle at Arlington Ave	to Grizzly Peak	0.79	0.71	0.08
Total of each OH/UG Utilities				1.24	0.08
Percentage of each OH/UG Utilities				94%	6%
Total Utilities				1.32	

Table 2: Detailed utility status for route Marin Avenue

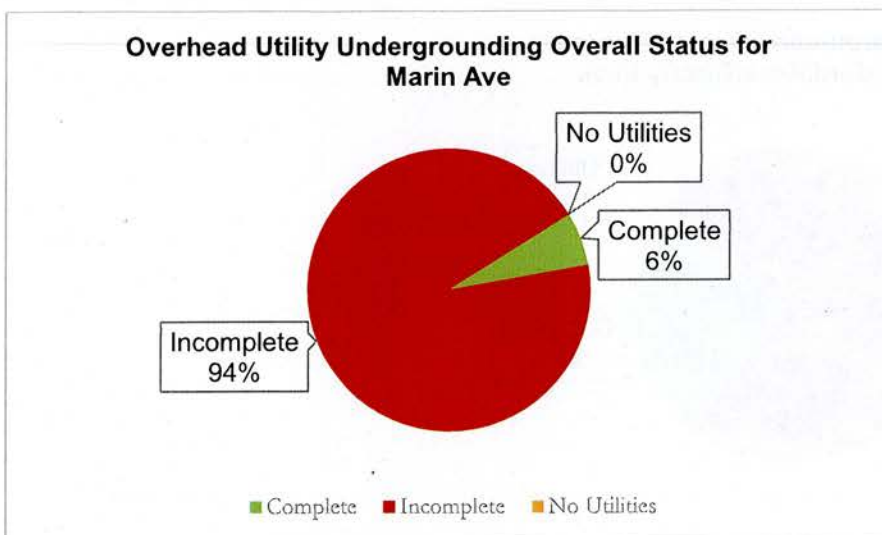


Figure 2

Gilman Street, Hopkins Street Route

This evacuation route is partially inside the boundary of Fire Zone 2 and connects to Interstate 80/580 with a railroad crossing near Interstate 80. It is composed of mostly residential areas towards the east side and mostly commercial areas towards the west side. It has over 90% incompletions for utility undergrounding as shown in Table 3 and Figure 3.

Gilman Street is an east-west principal arterial street connected to Interstate 80, and provides access to St. Ambrose Church. It is mostly commercial between Interstate 80 and San Pablo Avenue. However, between San Pablo Avenue and Hopkins Street, it is mostly residential. The evacuation route along Gilman Street is 1.2 miles long. Overhead lines are present for over 90% of the entire length.

Hopkins Street is an east-west major collector street. It is primarily residential with a few commercial buildings and a park, and it provides access to the North Branch Public Library, a couple of preschools, school facilities for Martin Luther King Junior High School, and two churches. The evacuation route along Hopkins Street is 0.9 miles long from Gilman Street to Sutter Street. Overhead lines are present for almost 90% of the entire length.

Evacuation Route: Gilman/Hopkins (2.16 miles)					
Street	Segment		Segment Length (mi)	Utility Length (mi)	
				OH	UG
Gilman	Interstate 80 Ramp	to San Pablo Ave	0.62	0.57	0.05
Gilman/Hopkins	San Pablo Ave	to The Alameda	1.23	1.20	0.03
Hopkins	The Alameda	to Sutter St	0.31	0.20	0.11
Total of each OH/UG Utilities				1.97	0.19
Percentage of each OH/UG Utilities				91%	9%
Total Utilities				2.16	

Table 3: Detailed utility status for route Gilman/Hopkins

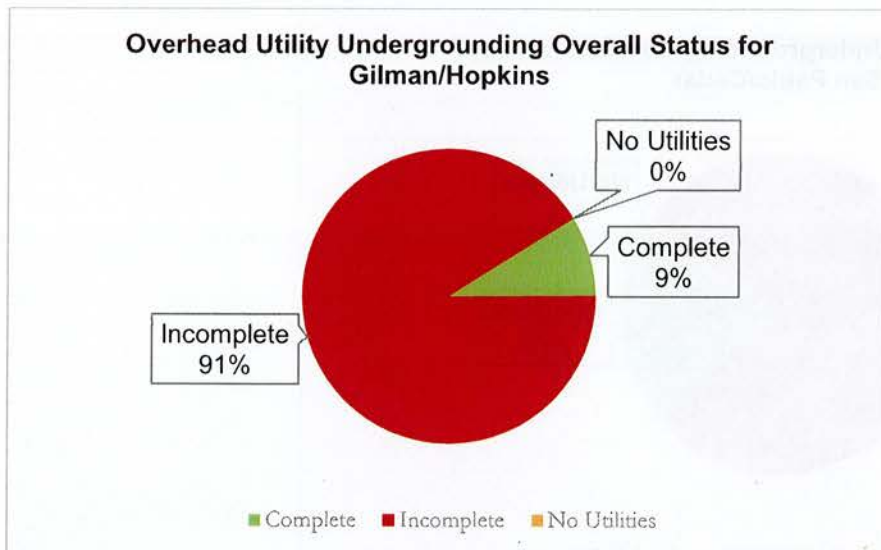


Figure 3

San Pablo Avenue, Cedar Street Route

This evacuation route is partially inside the boundary of Fire Zone 2 and connects to Gilman Street, which leads to Interstate 80. It has almost 80% incompletions for utility undergrounding as shown in Table 4 and Figure 4.

San Pablo Avenue is a north-south principal arterial street and is also State Highway Route 123 under Caltrans jurisdiction, with commercial land uses along the street frontage. The evacuation route along San Pablo Avenue, connecting Gilman Street and Cedar Street, is 0.4 miles long. There are no overhead lines along the evacuation route, and the whole street connecting Albany and Oakland has been completely undergrounded.

Cedar Street is an east-west minor arterial street. It is primarily residential, with a few businesses and provides access to two churches. The evacuation route along Cedar Street is 2.0 miles from San Pablo Avenue to La Loma Avenue. Overhead lines are present for almost the entire length.

Evacuation Route: San Pablo/Cedar (2.38 miles)					
Street	Segment	Segment Length (mi)	Utility Length (mi)		
			OH	UG	
San Pablo	Gilman to Cedar	0.37	-	0.37	
Cedar	Cedar to Juanita Way	0.39	0.32	0.04	
Cedar	Juanita Way to MLK Jr Way	0.71	0.71	-	
Cedar	MLK Jr Way to La Loma Ave	0.91	0.84	0.07	
Total of each OH/UG Utilities			1.87	0.48	
Percentage of each OH/UG Utilities			80%	20%	
Total Utilities			2.35		

Table 4: Detailed utility status for route San Pablo/Cedar

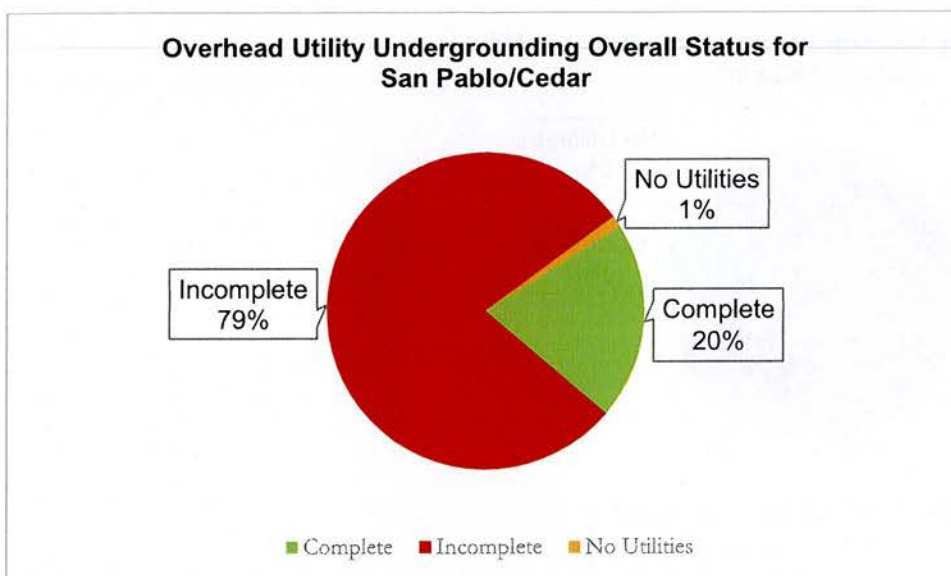


Figure 4

University Avenue, 6th Street, Dwight Way Route

This evacuation route is partially inside the boundary of Fire Zone 2, reaches the edge of Fire Zone 3, and connects to Interstate 80. It is composed of mostly residential areas towards the east side and mostly commercial areas towards the west side. Around one-third of the route only allows one-way traffic to the east, which is from Martin Luther King Junior Way to Piedmont Crescent on Dwight Way. It has around 93% incompletions for utility undergrounding as shown in Table 5 and Figure 5.

University Avenue is an east-west principal arterial street connected to Interstate 80 with primarily commercial land uses along the street frontage. The evacuation route along University Avenue is 0.3 miles from Interstate 80 to 6th Street. For the entirety of the street spanning from Interstate 80 to the University of California campus, there is only a small segment with overhead lines near Interstate 80. This street might be a better option for an evacuation route that provides safer access to citizens than many existing routes with overhead lines.

6th Street is a north-south minor arterial street. It is primarily residential with a few businesses. The evacuation route along 6th Street is 0.6 miles long connecting University Avenue and Dwight Way. Overhead lines are present for the entire length.

Dwight Way is an east-west minor arterial street. It is primarily residential with a few businesses and provides access to two urgent care centers, a couple of churches, a preschool, university residence halls, and many apartment buildings. The evacuation route along Dwight Way is 2.68 miles long from 6th Street to the street end near Fernwald Rd. Overhead lines are present for the entire length. Almost half of this segment only allows for one-way traffic to the east, however, evacuation routes should provide access to the Interstate 80 in the west side. Therefore, further investigations and discussions should be carried out for modifying the existing evacuation route.

Evacuation Route: University/6th/Dwight (3.57 miles)					
Street	Segment		Segment Length (mi)	Utility Length (mi)	
				OH	UG
University Ave	Interstate 80 Overpass	to 6th	0.31	0.07	0.17
6th	University Ave	to Dwight Way	0.56	0.56	-
Dwight Way	6th	to Fernwald Rd	2.68	2.68	-
Total of each OH/UG Utilities				3.31	0.17
Percentage of each OH/UG Utilities				95%	5%
Total Utilities				3.48	

Table 5: Detailed utility status for route University/6th/Dwight

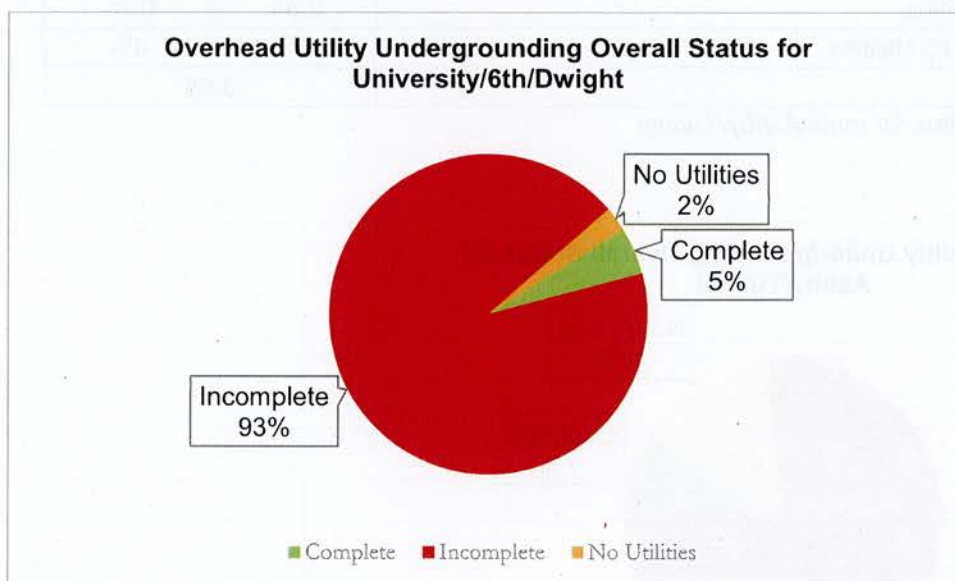


Figure 5

Ashby Avenue, Tunnel Road Route

This evacuation route is along State Highway Route 13. It is partially inside the boundary of Fire Zone 2 and connects to Interstate 80. It has a 79% incompleteness rate for utility undergrounding as shown in Table 6 and Figure 6.

Ashby Avenue is an east-west principal arterial street and is also State Highway Route 13 under Caltrans jurisdiction. It is primarily residential with a few businesses, mostly between Interstate 80 and San Pablo Avenue. It provides access to the Claremont Branch Library, a hospital, a nursing home, many apartment buildings, and a couple of gas stations. The evacuation route along Ashby Avenue is 2.9 miles long. Overhead lines are present for 2.4 miles from 9th street to Martin Luther King Jr Way, Adeline Street to Benevue Avenue, Piedmont Avenue to Domingo Avenue, a section between Bay Street and 7th Street, and at the intersection with Elmwood Avenue.

Tunnel Road is an east-west principal arterial street and is also State Highway Route 13 under Caltrans jurisdiction with residential land uses along the street frontage. The evacuation route along Tunnel Road is 0.6 miles from Domingo Avenue to the City limit near Vicente Road. Overhead lines are present for the entire length.

Evacuation Route: Ashby/Tunnel (3.56 miles)					
Street	Segment		Segment Length (mi)	Utility Length (mi)	
				OH	UG
Ashby Ave	Bay St	to Sacramento St	0.98	0.61	0.10
Ashby Ave	Sacramento	to College Ave	1.44	1.15	0.14
Ashby/Tunnel	College Ave	to Vicente Rd	1.14	1.05	-
Total of each OH/UG Utilities				2.81	0.24
Percentage of each OH/UG Utilities				92%	8%
Total Utilities				3.05	

Table 6: Detailed utility status for route Ashby/Tunnel

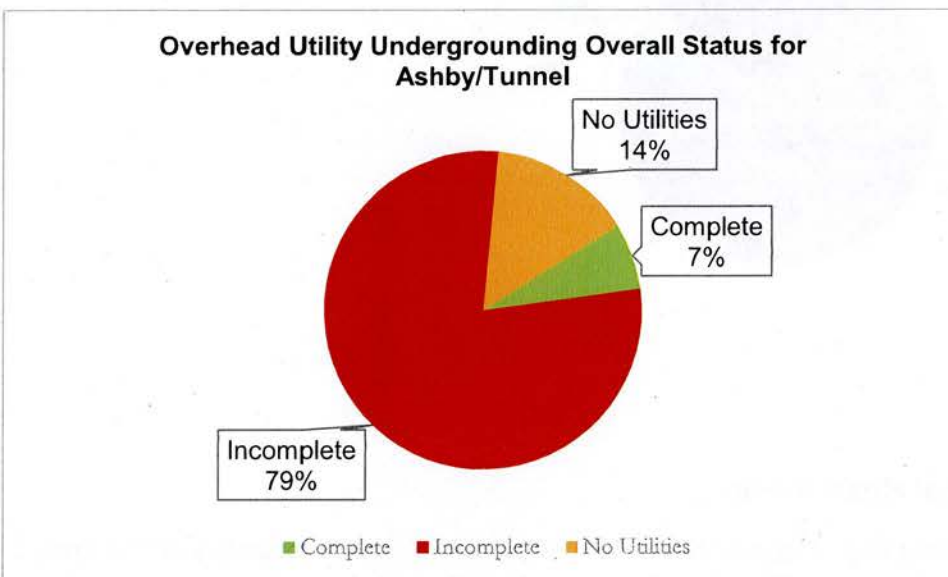


Figure 6

San Pablo Avenue, Alcatraz Avenue, Claremont Avenue Route

This evacuation route reaches the edge of Fire Zone 2 and connects to State Highway Route 13 with about one half of the route inside the City of Oakland. It has around 82% incompletions for utility undergrounding as shown in Table 7 and Figure 7.

San Pablo Avenue is a north-south principal arterial street and is designated as State Highway Route 123 under Caltrans jurisdiction with commercial land uses along the street frontage. The evacuation route along

San Pablo Avenue, connecting Ashby Avenue and Alcatraz Avenue, is 0.4 miles long. There are no overhead lines along the evacuation route except at the intersection with 65th Street.

Alcatraz Avenue is an east-west minor arterial street. It provides access to a school and a church. The evacuation route along Alcatraz Avenue is 1.9 miles long. Overhead lines are present for over 90% of the street segment.

Claremont Avenue is a north-south minor arterial street. It is primarily residential with a few businesses between Woolsey Street and Prince Street and provides access to the John Muir Elementary School near the intersection with Ashby Avenue. The evacuation route on Claremont Avenue is 0.5 miles from Alcatraz Avenue to State Highway Route 13. Overhead lines are present for the entire length.

Evacuation Route: San Pablo/Alcatraz/Claremont Ave (2.79 miles)					
Street	Segment		Segment Length (mi)	Utility Length (mi)	
				OH	UG
San Pablo	Ashby	to Alcatraz	0.37	-	0.37
Alcatraz	San Pablo	to Claremont	1.93	1.81	0.12
Claremont	Alcatraz	to Ashby	0.49	0.49	-
Total of each OH/UG Utilities				2.30	0.49
Percentage of each OH/UG Utilities				82%	18%
Total of all Utilities				2.79	

Table 7: Detailed utility status for route San Pablo/Alcatraz/Claremont

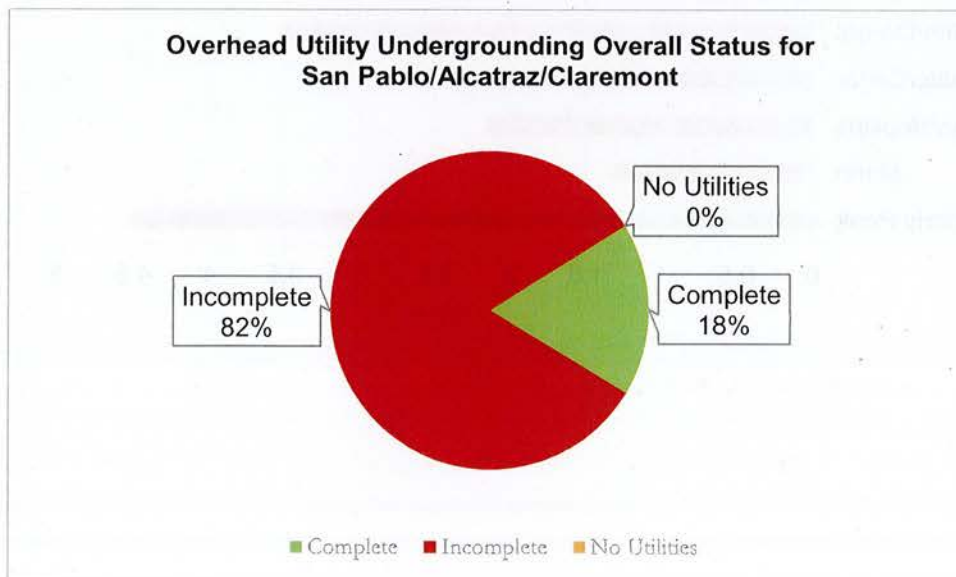


Figure 7

Summary

Currently, around 86% of the City's major evacuation routes have not yet been undergrounded. The utility maps show that along the majority of each of the City's major evacuation routes, there exists overhead utilities, underground utilities, or both, with a few minor segments that do not possess utilities. For the majority of the major evacuation routes, if utility poles and overhead wires are not observed, then it is reasonable to assume that there are underground utilities present along these segments.

Based on the compiled information, Table 8 shows the overall status of the utilities along the City's major evacuation routes. Figure 8 shows the length of each evacuation route and the length with existing overhead and underground facilities. Figure 9 shows the total utility undergrounding status for the City's major evacuation routes.

Total of OH/UG Utilities along all Evacuation Routes		
	OH	UG
Total of each OH/UG Utilities (mi)	16.92	2.74
Percentage of each OH/UG Utilities	86%	14%
Total Utilities (mi)	19.66	
Total Route Length (mi)	20.38	

Table 8: Overall utility status for Berkeley evacuation routes

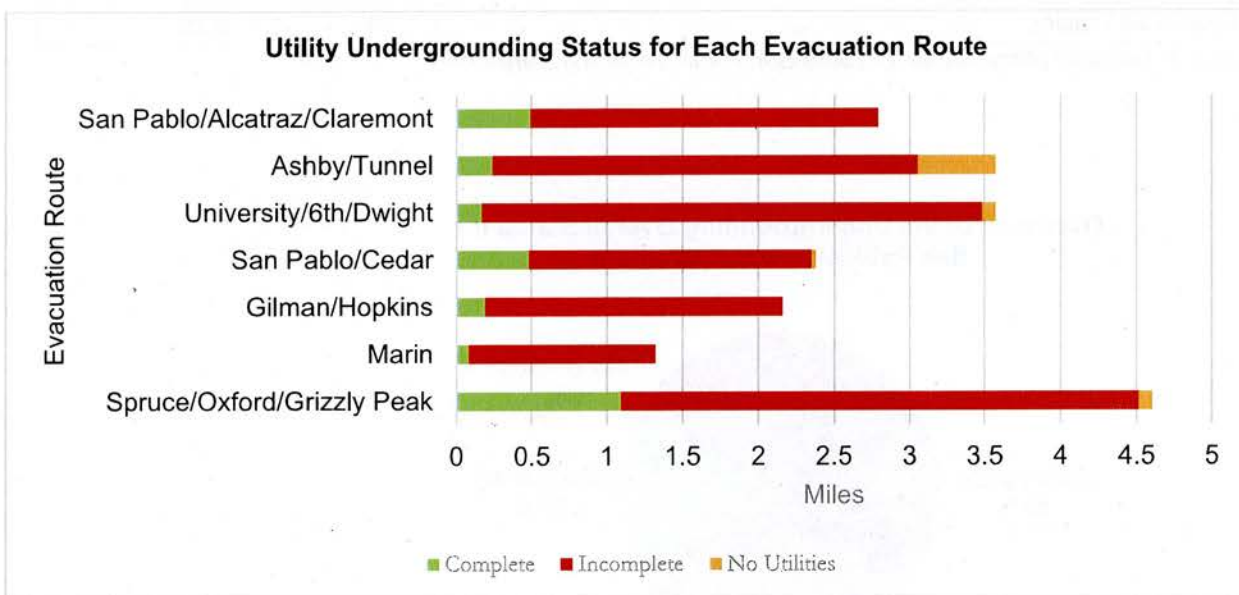


Figure 8

Section IV – Planning Level Costs

Cost Estimate Methodology

Three methods are used to determine the per mile unit cost of undergrounding: Method 1 is from a California Public Utilities Commission report regarding undergrounding program costs, Method 2 is from recent publicly bid utility undergrounding projects and Method 3 is an average of a few listed projects in a report from the City and County of San Francisco Board of Supervisors Report. Below is a description of each method.

Method 1: CPUC/Edison Electric Institute Studies on Utility Undergrounding Costs

The Policy and Planning Division of the California Public Utilities Commission (CPUC) completed a report entitled "Program Review California Overhead Conversion Program, Rule 20A for Years 2011-2015". The report references the Edison Electric Institute study titled "Out of Sight, Out of Mind" for the unit cost per mile for undergrounding utilities. The 2012 report prepared by Edison Electric Institute concluded that the cost to underground in an urban area is approximately \$5,000,000 per mile. Using this unit cost combined with a construction inflation coefficient of 4%, the undergrounding unit cost for an arterial street in an urban area in 2019 is as shown below for Method 1.

Method 1 Costs for Utility Undergrounding	\$6,580,000 per mile
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Method 2: Utility Undergrounding Costs in the San Francisco Bay Area

Comparison of the bid unit prices from recent local agency utility undergrounding projects totaling more than \$40 million in construction costs located in Redwood City, Pleasanton, Dublin, San Pablo, Half-Moon Bay, Martinez, and South San Francisco. These combined projects were evaluated to develop a general cost for utility undergrounding in the San Francisco Bay Area. The representative projects are publicly bid, incorporate the bid results of various complicated urban utility undergrounding projects, and reflect a balance of pricing from various contractors in the San Francisco Bay Area. When reviewing the bids for local utility undergrounding projects, these projects often included incidental items that will not be associated with the Berkeley evacuation route undergrounding project and therefore can be removed from the Method 2 cost. Examples of construction cost items to be removed from the Method 2 estimates are upgrades related to: storm drain systems, sidewalks and curb ramps, Caltrans and other agency requirements, wet utilities and landscape improvements. The City of Berkeley is also anticipating a programmatic approach for the evacuation route undergrounding program; it is estimated that a programmatic approach would result in a 20% reduction in overall cost due to savings in mobilization, project overhead, and materials purchases. After consideration of the added costs of streetlights, private property service conversions, and the utility company costs per mile for wiring and vaults, engineering design fees, construction management costs; the resulting unit cost is as shown below for Method 2.

Method 2 Costs for Utility Undergrounding	\$7,058,000 per mile
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Method 3: San Francisco Report on Utility Undergrounding Costs

City and County of San Francisco Board of Supervisors also prepared a report to review cost of undergrounding utility wires in San Francisco in March 2015. This report references several other cities that have implemented undergrounding of utility wires and included associated costs per mile. This method includes per mile cost based on some of the undergrounding projects in San Diego, San Francisco, Oakland, and San Jose with inflation costs to the Year 2019. The average of the above projects costs (excluding the highest and lowest) for Year 2019 represents the resulting unit cost for Method 3, which is shown below.

Method 3 Costs for Utility Undergrounding	\$6,760,000 per mile
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Utility Undergrounding Costs per Mile

The per mile unit cost for utility undergrounding for a major arterial street is calculated using the average of Method 1, Method 2 and Method 3. See below unit costs per mile with and without street lighting. These planning level cost estimates are not actual costs and may be lower or higher depending upon the project length, locations, extent of improvements, and bidding environment due to economy, when the projects are out to bid.

Avg. of Method 1, 2 & 3 Costs for Utility Undergrounding with Street Lighting FY 2019 (BASELINE)	\$6,800,000 per mile
Avg. of Method 1, 2 & 3 Costs for Utility Undergrounding without Street Lighting FY 2019	\$6,300,000 per mile
Cost for Street Lighting FY 2019	\$500,000 per mile

Street lighting costs are also shown separately as per mile cost above, since the City is considering installing solar street lighting. The above baseline includes planning costs, engineering design fees, construction costs, utility wiring costs, service conversions, street lighting costs, and project management costs.

Construction Complexity Level for City of Berkeley Evacuation Routes

The Construction Complexity Level metric is broken down into five levels; Level 1 represents the least complex conditions for utility undergrounding, and Level 5 represents the most complex conditions for utility undergrounding. The Construction Complexity Level metric is dependent on four different categories:

1. Existing wire quantity and size: The utility company record maps identify the size and quantity of overhead wires for each street segment, including high voltage conductors and transformers. Wire sizes, quantities and substructures affect the cost of the underground duct banks.
2. Average Daily Traffic (ADT): ADT levels were determined from the City of Berkeley Traffic Engineering Average Total Daily Traffic Volume Map. High traffic volumes cause increased construction costs for traffic control during construction.
3. Street categorization as either residential, commercial, or mixed-use: Commercial buildings have greater utility demands and more service conversions when compared to a single family residential building.

4. Type of pavement surfacing: Streets were categorized as either asphalt or concrete streets. Concrete streets are more expensive for trenching and resurfacing.

The City's Evacuation Routes were examined for each of the four different categories and they were assigned a Construction Complexity Level. Level 5 represents the greatest cost at \$6,800,000 per mile. A Level 4 street is assumed to be 10% less than the cost of a Level 5 street, a Level 3 street is assumed to be 20% less than the cost of a Level 5 street, a Level 2 street is assumed to be 30% less than the cost of a Level 5 street, and a Level 1 street is assumed to be 40% less than the cost of a Level 5 street.

A summary of these unit costs in FY 2019 for each Construction Complexity Level can be found below which includes planning costs, engineering design fees, construction costs, utility wiring costs, service conversions, street lighting costs, and project management costs.

Level 5 Construction Complexity for Utility Undergrounding	\$6,800,000 per mile
Level 4 Construction Complexity for Utility Undergrounding	\$6,120,000 per mile
Level 3 Construction Complexity for Utility Undergrounding	\$5,440,000 per mile
Level 2 Construction Complexity for Utility Undergrounding	\$4,760,000 per mile
Level 1 Construction Complexity for Utility Undergrounding	\$4,080,000 per mile

For greater detail of each evacuation route undergrounding costs for FY 2019-Programmatic Approach, refer to Appendix D.

Other Construction Cost Scenarios

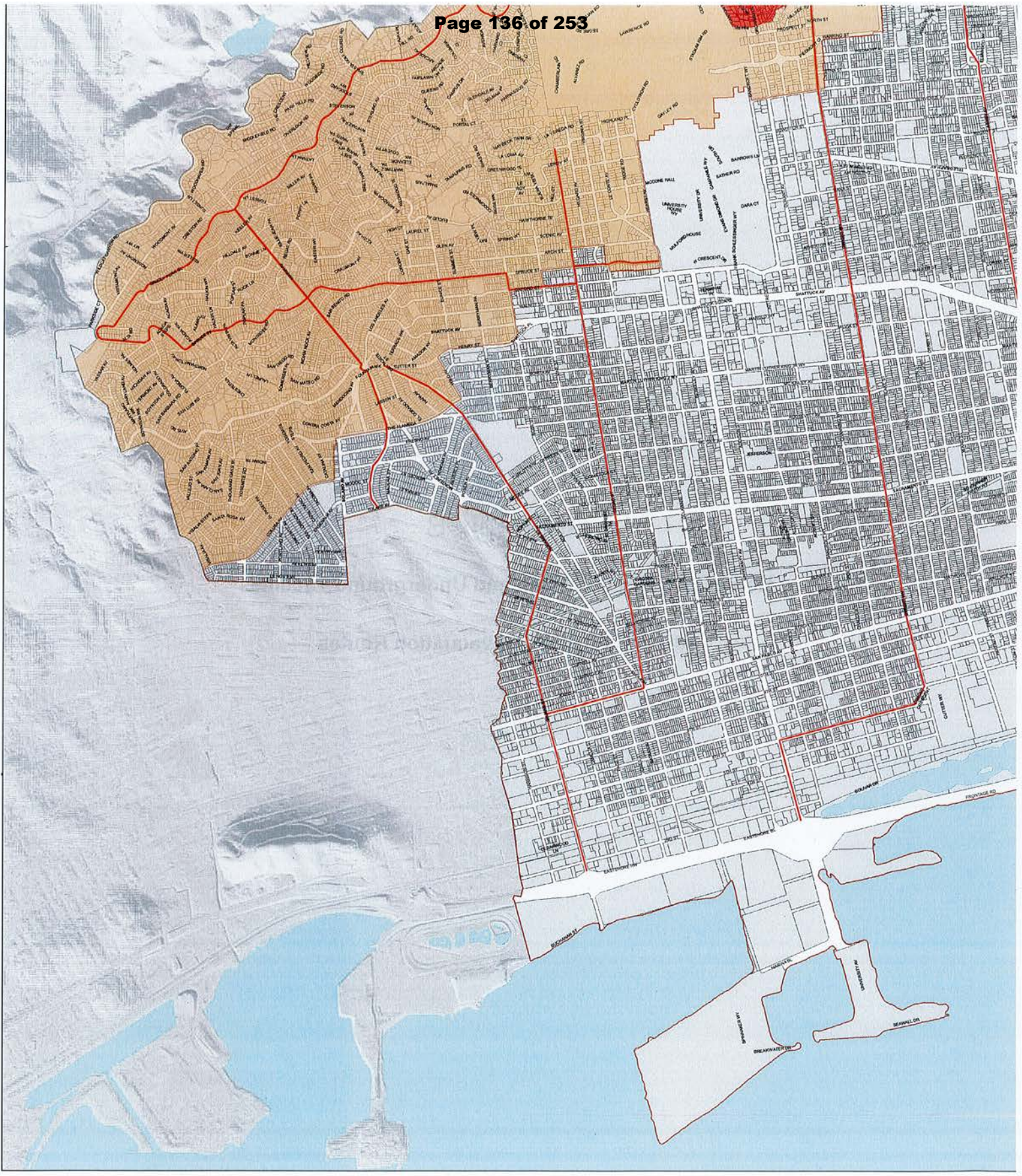
If the undergrounding program is implemented by ballot measure, the projects are anticipated to begin construction in 2023. See Appendix D for revised program costs to include inflation to year 2023. If the program is implemented in a traditional capital improvement program (CIP) implementation of one project at a time, the 20% savings will not be realized. Appendix D shows the program costs to year 2023 with a CIP approach.

Summary of Total Program Undergrounding Costs

The total program costs for utility undergrounding along the City of Berkeley's evacuation routes is \$102.6 Million (FY 2019), \$120 Million (FY 2023) with a programmatic approach and \$139.5 Million (FY 2023) with a CIP approach.

Appendix A

Map of City's Major East/West Evacuation Routes



Appendix B

Map of Existing Overhead and Underground Facilities

Along City's Major Evacuation Routes

CITY OF BERKELEY EVACUATION ROUTES UTILITY STATUS



Appendix C

Photos from Field Visits

Spruce/Oxford/Grizzly Peak Route



Grizzly Peak Blvd – Facing Northwest

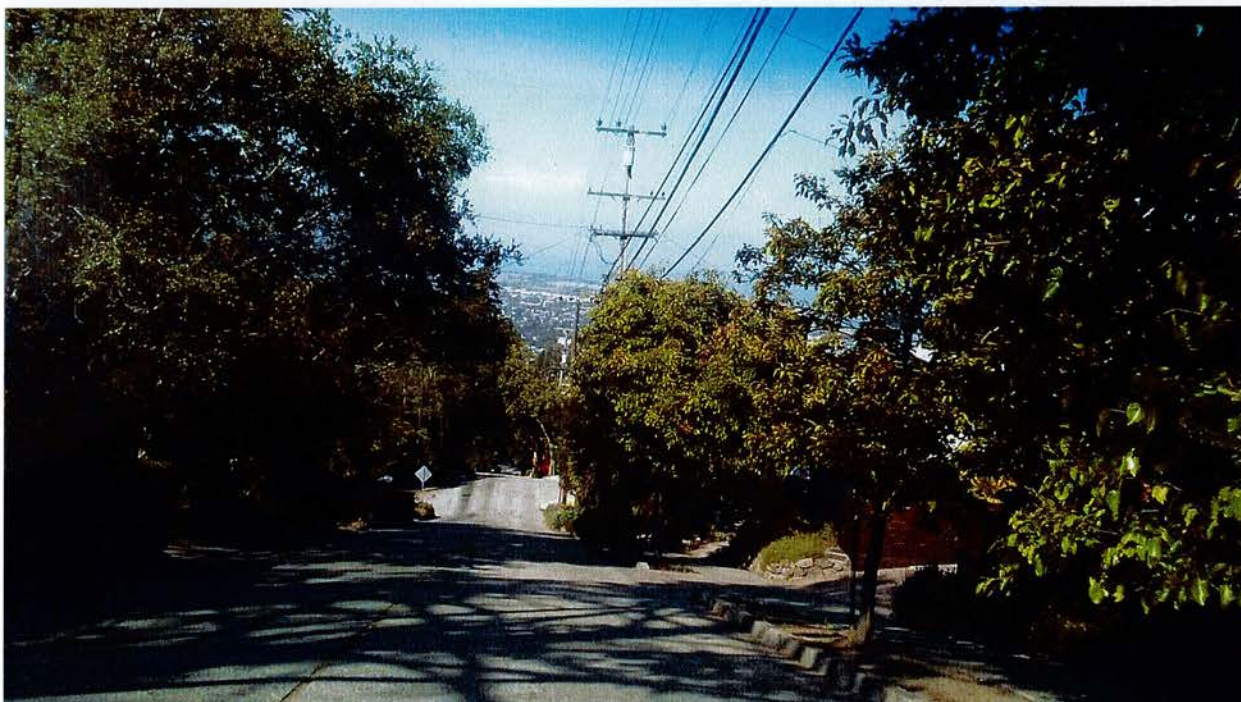


Spruce St – Facing South

Marin Ave Route



Marin Ave – Facing North



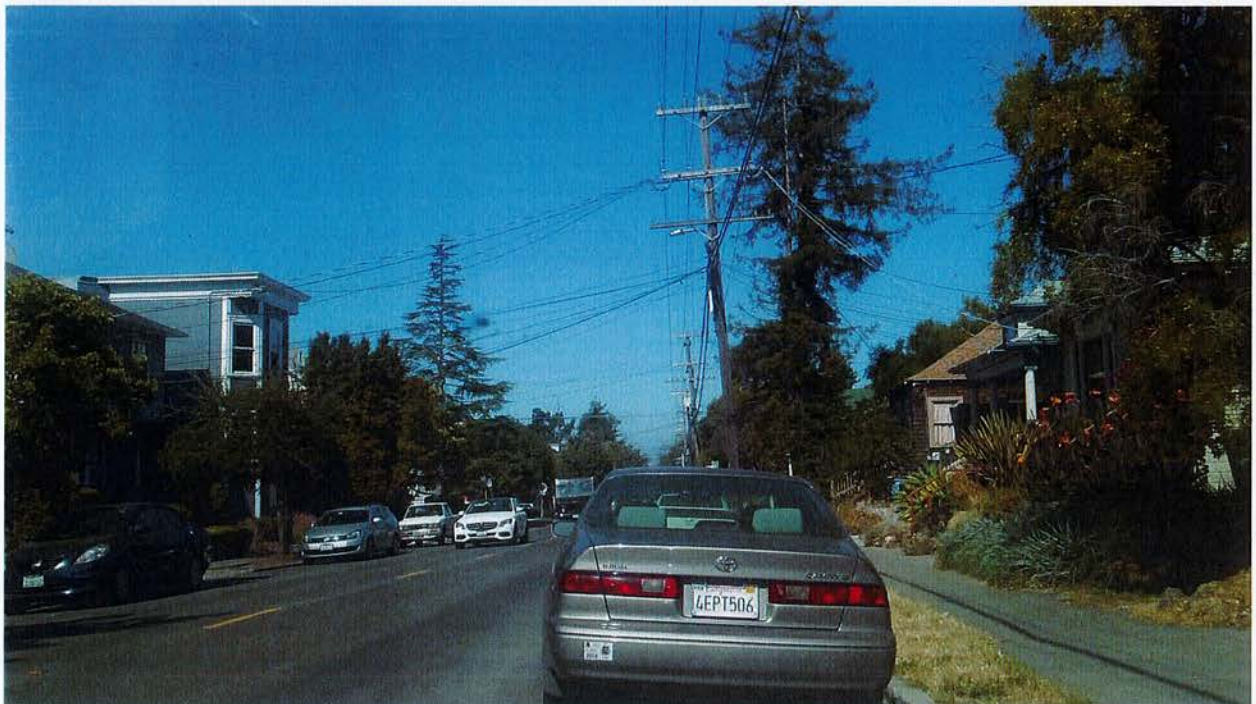
Marin Ave – Facing Southwest

Gilman/Hopkins Route



Gilman St – Facing West

San Pablo/Cedar Route



Cedar St – Facing West

Ashby/Tunnel Route



Ashby Ave – Facing West



Ashby Ave – Facing West

Route	Utility	Length (ft)	Depth (ft)	Cost (\$/ft)	Total Cost (\$)	Notes
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Appendix D

City of Berkeley Evacuation Route Utility Undergrounding Costs

Route	Utility	Length (ft)	Depth (ft)	Cost (\$/ft)	Total Cost (\$)	Notes
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FY 2019 Base line costs for Utility Undergrounding with Street Lighting with a Programmatic Approach is as shown below:

Street	Construction Complexity	Centerline of Street with Overhead	Unit of Measure	Unit Cost	Total Cost
San Pablo Ave	N/A	0	MILE	\$ -	\$ -
Cedar St	3	1.87	MILE	\$ 5,440,000	\$ 10,172,800
Alcatraz Ave	1	1.81	MILE	\$ 4,080,000	\$ 7,384,800
Claremont Ave	1	0.49	MILE	\$ 4,080,000	\$ 1,999,200
Grizzly Peak	2	1.35	MILE	\$ 4,760,000	\$ 6,426,000
Spruce St	2	1.76	MILE	\$ 4,760,000	\$ 8,377,600
Rose	2	0.06	MILE	\$ 4,760,000	\$ 285,600
Oxford St	2	0.25	MILE	\$ 4,760,000	\$ 1,190,000
Marin Ave	4	1.24	MILE	\$ 6,120,000	\$ 7,588,800
Gilman St	5	1.16	MILE	\$ 6,800,000	\$ 7,888,000
Hopkins	2	0.81	MILE	\$ 4,760,000	\$ 3,855,600
University Ave	3	0.07	MILE	\$ 5,440,000	\$ 380,800
Sixth St	3	0.56	MILE	\$ 5,440,000	\$ 3,046,400
Dwight Way	4	2.68	MILE	\$ 6,120,000	\$ 16,401,600
Ashby Ave	5	2.21	MILE	\$ 6,800,000	\$ 15,028,000
Tunnel Road	3	0.6	MILE	\$ 5,440,000	\$ 3,264,000
Total		16.92			\$ 93,289,200
Total (including 10% contingency)					\$ 102,618,120
Per Mile Unit Cost (including 10% contingency)					\$ 6,064,901

FY 2023 Base line costs for Utility Undergrounding with Street Lighting with a Programmatic Approach is as shown below:

The construction costs included below use the following assumptions:

1. Construction costs with inflation of 4% per year to 2023,
2. Undergrounding projects will be implemented as a City-wide program to reduce overall cost,
3. Construction costs are scaled based on the Construction Complexity Level of the street segment, and
4. Transportation and pedestrian amenities, wet utility upgrades, and other non-undergrounding expenditures are assumed not to be included.

Street	Construction Complexity	Centerline of Street with Overhead	Unit of Measure	Unit Cost	Total Cost
San Pablo Ave	N/A	0	MILE	\$ -	\$ -
Cedar St	3	1.87	MILE	\$ 6,364,000	\$ 11,900,680
Alcatraz Ave	1	1.81	MILE	\$ 4,773,000	\$ 8,639,130
Claremont Ave	1	0.49	MILE	\$ 4,773,000	\$ 2,338,770
Grizzly Peak	2	1.35	MILE	\$ 5,569,000	\$ 7,518,150
Spruce St	2	1.76	MILE	\$ 5,569,000	\$ 9,801,440
Rose	2	0.06	MILE	\$ 5,569,000	\$ 334,140
Oxford St	2	0.25	MILE	\$ 5,569,000	\$ 1,392,250
Marin Ave	4	1.24	MILE	\$ 7,160,000	\$ 8,878,400
Gilman St	5	1.16	MILE	\$ 7,955,000	\$ 9,227,800
Hopkins	2	0.81	MILE	\$ 5,569,000	\$ 4,510,890
University Ave	3	0.07	MILE	\$ 6,364,000	\$ 445,480
Sixth St	3	0.56	MILE	\$ 6,364,000	\$ 3,563,840
Dwight Way	4	2.68	MILE	\$ 7,160,000	\$ 19,188,800
Ashby Ave	5	2.21	MILE	\$ 7,955,000	\$ 17,580,550
Tunnel Road	3	0.6	MILE	\$ 6,364,000	\$ 3,818,400
Total		16.92			\$ 109,138,720
Total (including 10% contingency)					\$ 120,052,592
Per Mile Unit Cost (including 10% contingency)					\$ 7,095,307

Planning level cost estimate for utility undergrounding (with street lighting) along City of Berkeley evacuation routes for Year 2023 with programmatic approach.

FY 2023 Base line costs for Utility Undergrounding with Street Lighting traditional Capital Improvement Program implementation is as shown below:

Street	Construction Complexity	Centerline of Street with Overhead	Unit of Measure	Unit Cost	Total Cost
San Pablo Ave	N/A	0	MILE	\$ -	\$ -
Cedar St	3	1.87	MILE	\$ 7,394,000	\$ 13,826,780
Alcatraz Ave	1	1.81	MILE	\$ 5,545,000	\$ 10,036,450
Claremont Ave	1	0.49	MILE	\$ 5,545,000	\$ 2,717,050
Grizzly Peak	2	1.35	MILE	\$ 6,469,000	\$ 8,733,150
Spruce St	2	1.76	MILE	\$ 6,469,000	\$ 11,385,440
Rose	2	0.06	MILE	\$ 6,469,000	\$ 388,140
Oxford St	2	0.25	MILE	\$ 6,469,000	\$ 1,617,250
Marin Ave	4	1.24	MILE	\$ 8,318,000	\$ 10,314,320
Gilman St	5	1.16	MILE	\$ 9,242,000	\$ 10,720,720
Hopkins	2	0.81	MILE	\$ 6,469,000	\$ 5,239,890
University Ave	3	0.07	MILE	\$ 7,394,000	\$ 517,580
Sixth St	3	0.56	MILE	\$ 7,394,000	\$ 4,140,640
Dwight Way	4	2.68	MILE	\$ 8,318,000	\$ 22,292,240
Ashby Ave	5	2.21	MILE	\$ 9,242,000	\$ 20,424,820
Tunnel Road	3	0.6	MILE	\$ 7,394,000	\$ 4,436,400
Total		16.92			\$ 126,790,870
Total (including 10% contingency)					\$ 139,469,957
Per Mile Unit Cost (including 10% contingency)					\$ 8,242,905

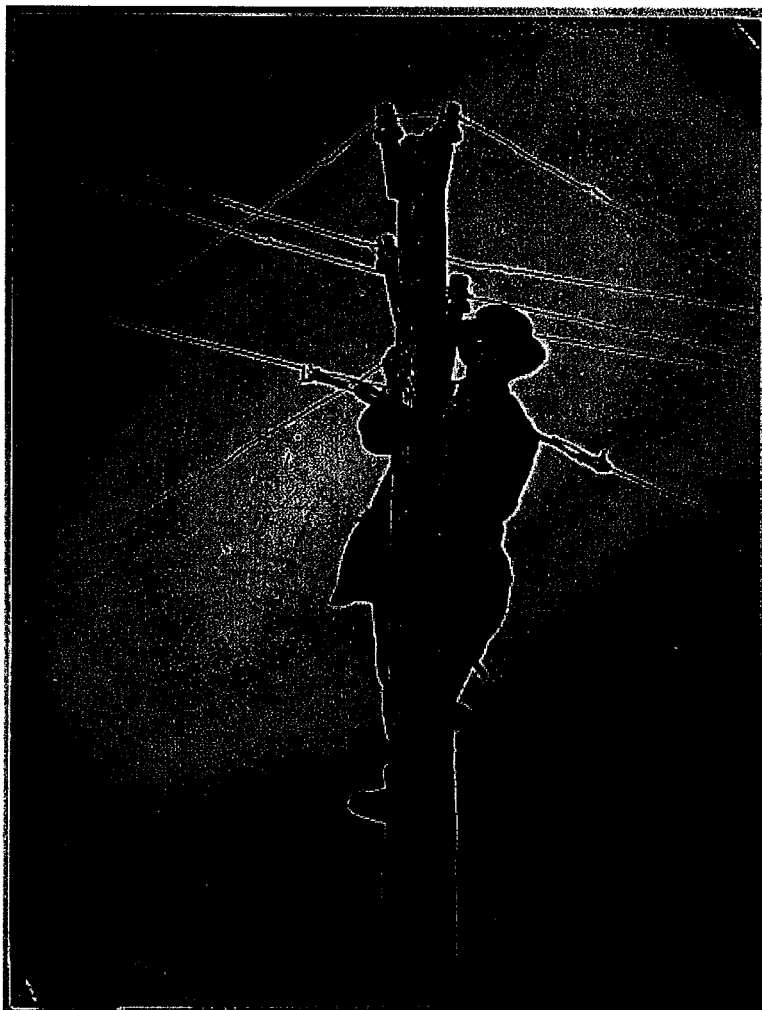
Planning level cost estimate for utility undergrounding (with street lighting) along City of Berkeley evacuation routes for Year 2023 with CIP approach

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Appendix F
A Natural History of the Wooden Utility Pole

A NATURAL HISTORY OF THE WOODEN UTILITY POLE



California Public Utilities Commission

July 2017

**April Mulqueen
Policy and Planning Division
California Public Utilities Commission
San Francisco**



...Yet they are ours. We made them.
See here, where the cleats of linemen
Have roughened a second bark
Onto the bald trunk. And these spikes
Have been driven sideways at intervals handy for human legs.
The Nature of our construction is in every way
A better fit than the Nature it displaces
What other tree can you climb where the birds' twitter,
Unscrambled, is English? True, their thin shade is negligible,
But then again there is not that tragic autumnal
Casting-off of leaves to outface annually.
These giants are more constant than evergreens
By being never green.

----- Excerpt from "Telephone Poles" by John Updike, 1963



1. Early Communications: Eyes, Wings, and Feet

Before the modern communications era, it was very difficult to communicate over a distance.

Clockwise from upper left: beacon towers along the Great Wall of China used fire and smoke to warn of approaching armies; Phidippides ran 26 miles to deliver the news of the Greek victory at the battle of Marathon, and died from the effort; carrier pigeons have been used to carry brief (and lightweight) messages for thousands of years; and in 1775, lanterns in a window at Boston's Old North Church signaled the direction of the British Army's march towards Lexington and Concord, Massachusetts: "one if by land, two if by sea!"



Figure 1



Figure 2

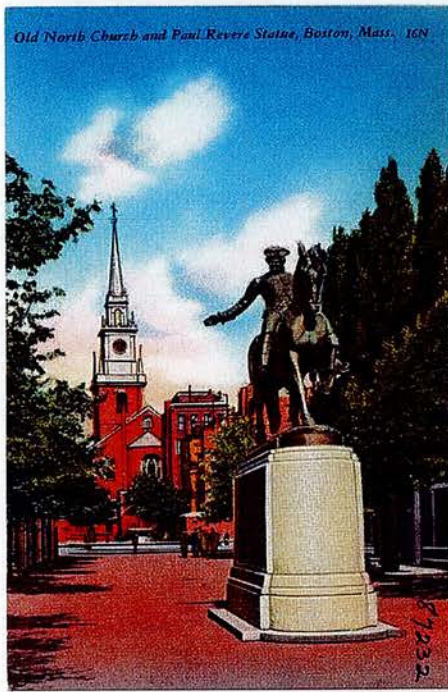


Figure 4



Figure 3

More complicated messages had to be written down and carried, and delivery over a distance could be quite slow. For example, in 1841, it took 110 days for news of President William Henry Harrison's death to reach Los Angeles.¹ 110 days is more than three times as long as William Henry Harrison served as President. 110 days is also the gestational period of a lion. While 110 days might be the right length of time to wait for a lion cub to be born, it is a long time to wait for important news.



Figure 5

2. The Telegraph: Forty Miles, and a Mistake

In 1843, the United States Congress gave Samuel Morse \$30,000 for a demonstration project to prove he could send messages over a distance more quickly and efficiently than the means available at the time. Morse and his partners began laying underground telegraph wires between the Capitol Building in Washington, D.C., and a railroad station in Baltimore, a distance of forty miles.

Unfortunately, the wires were defective, and Morse and his partners were running out of time and money. One of Morse's partners suggested that the quickest way to complete the project would be to string telegraph wires overhead on trees and wooden poles.

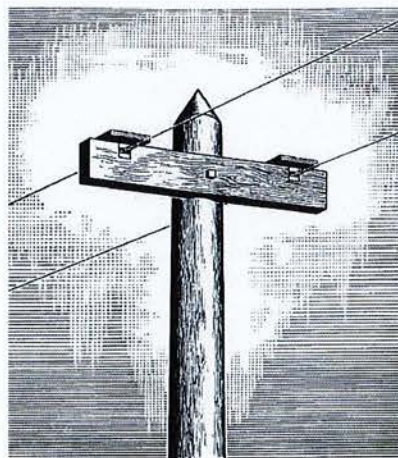


FIG. 2 MORSE'S FIRST TELEGRAPH LINE—1844

Figure 6

¹ Global Connections: Volume 2, Since 1500: Politics, Exchange, and Social Life in World History By John H. Coatsworth, Charles Tilly, Juan Cole, Louise A. Tilly, Michael P. Hanagan, and Peter C. Perdue, Cambridge University Press, March 2015, at 247.

The wooden utility pole was born, albeit as a mistake.

On May 24, 1844, thanks to telegraph wires hastily strung on hundreds of wooden utility poles, the phrase "What Hath God Wrought" was successfully telegraphed via Morse code from D.C. to Baltimore and back.

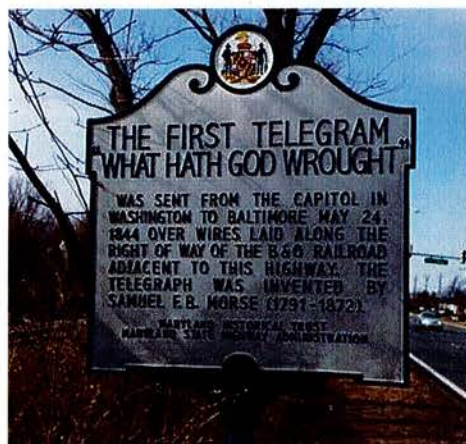


Figure 7

Although the first wooden utility poles were the result of a mistake, they caught on quickly; aside from the Plains, the United States is richly forested, and the raw material for wooden utility poles was readily available. Soon there were thousands of wooden utility poles carrying telegraph signals around the eastern and the western portions of the United States, although the eastern and western networks were not yet connected.

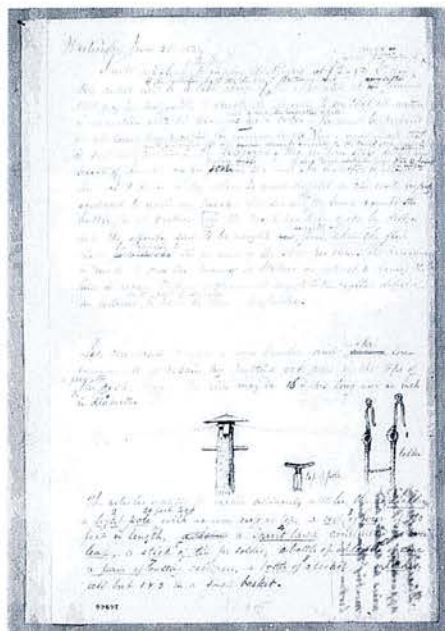



Figure 8

3. Coast to Coast: The Pony Express and the Transcontinental Telegraph

The California Gold Rush created a need for swift communications between the Atlantic and Pacific coasts. Standard overland mail took weeks or months to travel from New York to San Francisco, and the eastern and western telegraph networks were not connected. Beginning in 1860, the Pony Express used teams of riders on horseback to deliver letters from New York to San Francisco in a remarkably swift ten days. News intended for a wider audience could be carried by a combination of telegraph and Pony Express; in November 1860, the Pony Express riders bridged the gap between the eastern and western telegraph networks to bring news of Abraham Lincoln's election as President to California in eight days.

PONY EXPRESS!

CHANGE OF
TIME!

REDUCED
RATES!

10 Days to San Francisco!

LETTERS

WILL BE RECEIVED AT THE

OFFICE, 84 BROADWAY,

NEW YORK,

Up to 4 P. M. every TUESDAY.

AND

Up to 2½ P. M. every SATURDAY,

Which will be forwarded to connect with the PONY EXPRESS leaving
ST. JOSEPH, Missouri,

Every WEDNESDAY and SATURDAY at 11 P. M.

TELEGRAMS

Sent to Fort Kearney on the mornings of MONDAY and FRIDAY, will connect
with PONY leaving St. Joseph, WEDNESDAYS and SATURDAYS.

EXPRESS CHARGES.

LETTERS weighing half ounce or under..... \$1 00
For every additional half ounce or fraction of an ounce 1 00
In all cases to be enclosed in 10 cent Government Stamped Envelopes,
And all Express CHARGES Pro-paid.

PONY EXPRESS ENVELOPES For Sale at our Office.

WELLS, FARGO & CO., Ag'ts.

New York, July 1, 1861.

SLOPE & JAMES, STATIONERS AND PRINTERS, 8 CULLEN STREET, NEW YORK

Figure 9

Almost as swiftly as the Pony Express carried mail to California, however, the Pony Express itself was swiftly overtaken by technology. In October 1861, thanks to tens of thousands of wooden utility poles installed across the Plains to connect telegraph networks in the eastern and western portions of the United States, the transcontinental telegraph was born. With the east and west coasts able to communicate instantaneously by telegraph, there was no more need for teams of riders on mustangs to gallop across the American Plains, and the Pony Express was disbanded.

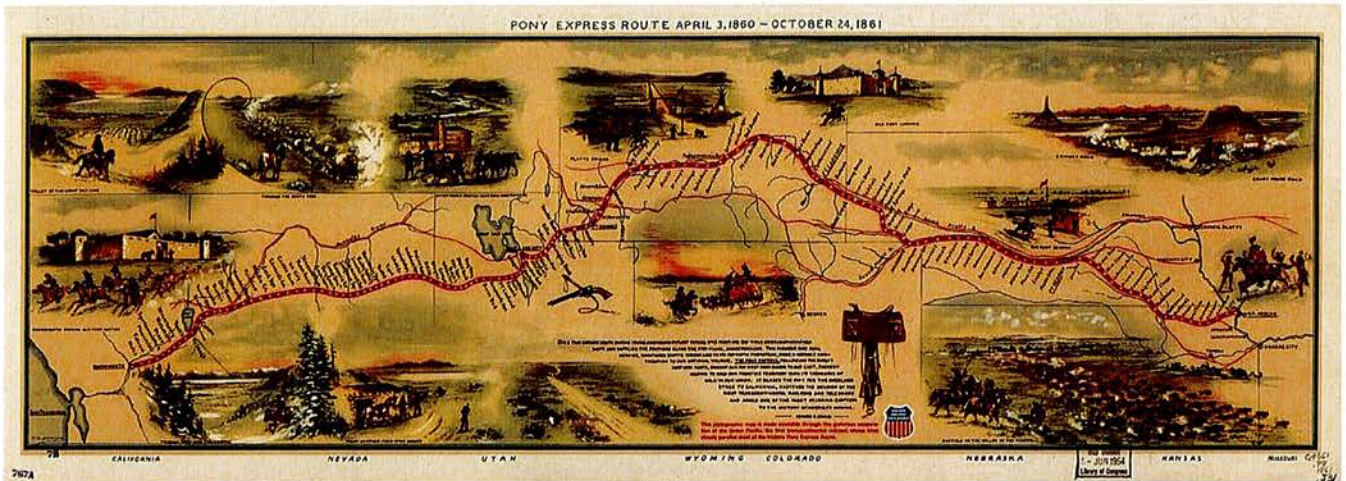


Figure 10



Figure 11

In 1860, it took eight days for news of Abraham Lincoln's election as President to reach California through a combination of telegraph and Pony Express. In 1865, thanks to tens of thousands of wooden utility poles carrying the transcontinental telegraph, the sad news of President Lincoln's assassination reached California instantly.

4. From the Telegraph to Telephones and Electric Lights

By the early 20th Century, wooden poles were carrying telephone lines and electrical lines as well as telegraph lines. Between electrification and the rapid adoption of telephony, wooden poles grew larger and more heavily burdened with utility lines to an extent that is unimaginable today.



Figure 12



Figure 13

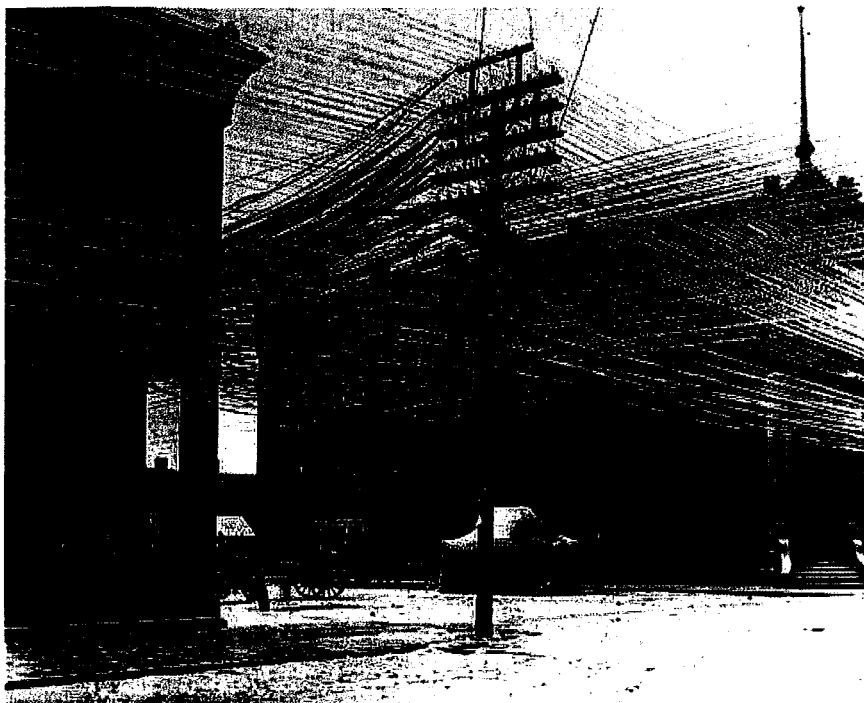


Figure 14

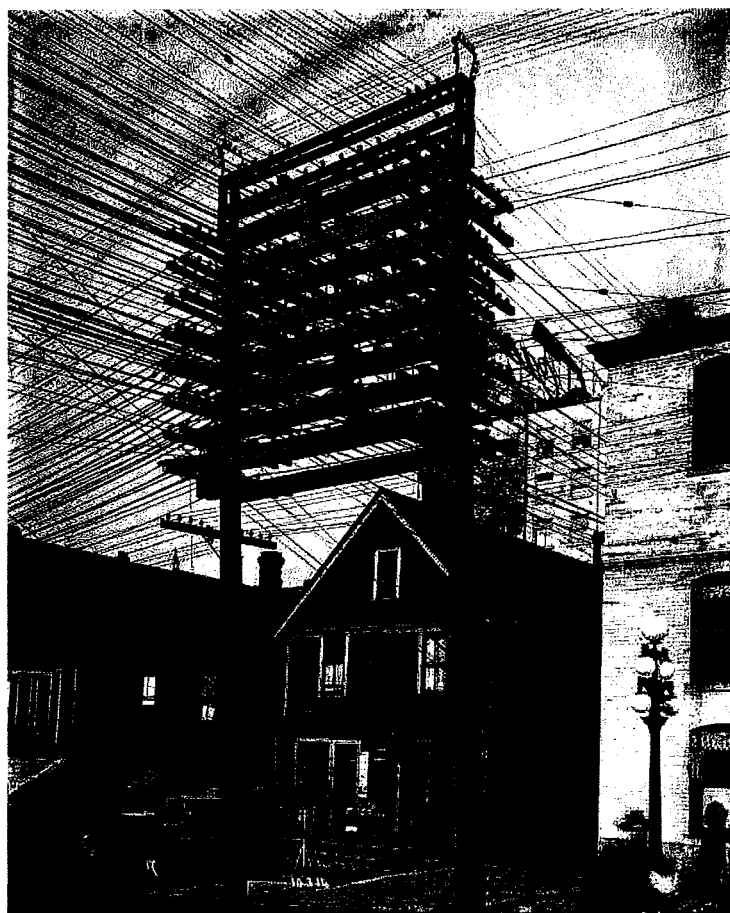


Figure 15

5. Technological Change and Competition

Although many Americans continue to use the term “telephone pole” to refer to utility poles, wooden utility poles now carry infrastructure necessary for such services as wireline and wireless voice communications, electricity, communications facilities for electric smart meter backhaul, video service, internet, communications lines for municipalities and water companies, and sometimes streetlights.

Southern California Edison provides this overview of the elements of a modern wooden utility pole carrying electric and communications lines:

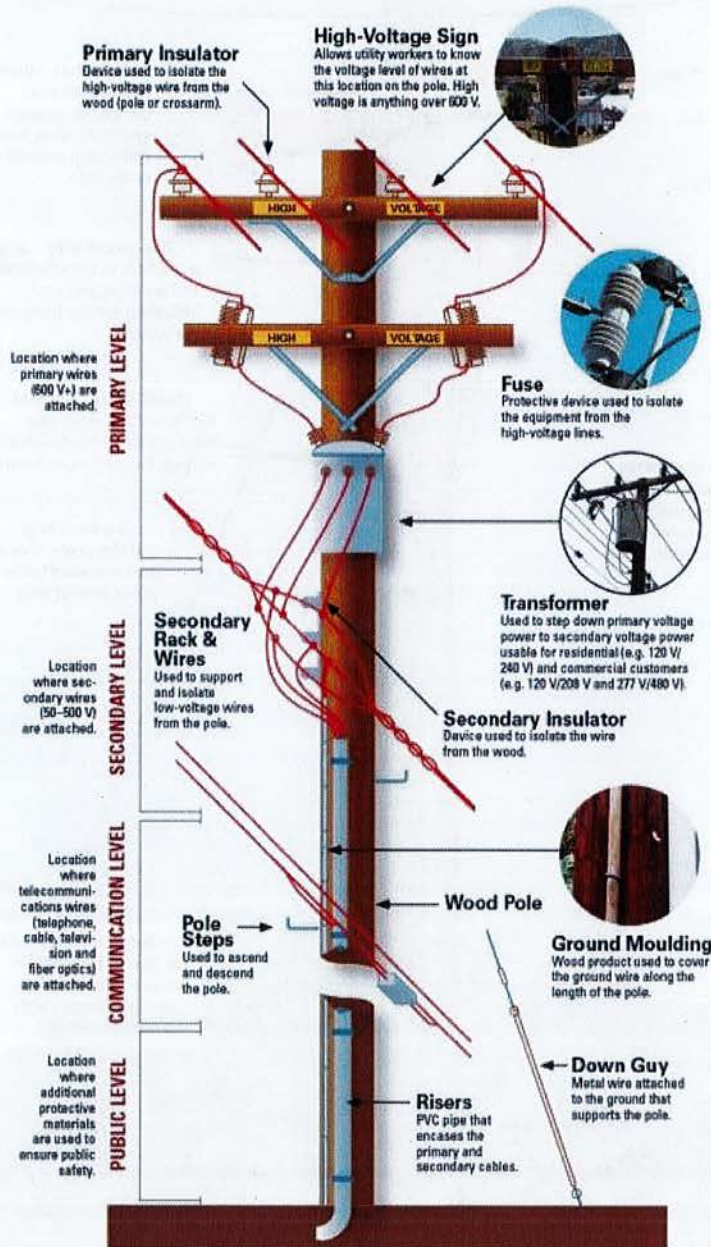


Figure 16

The following diagram, from Clay Electric Cooperative in Flora, Illinois, describes the basic electrical infrastructure on a utility pole:

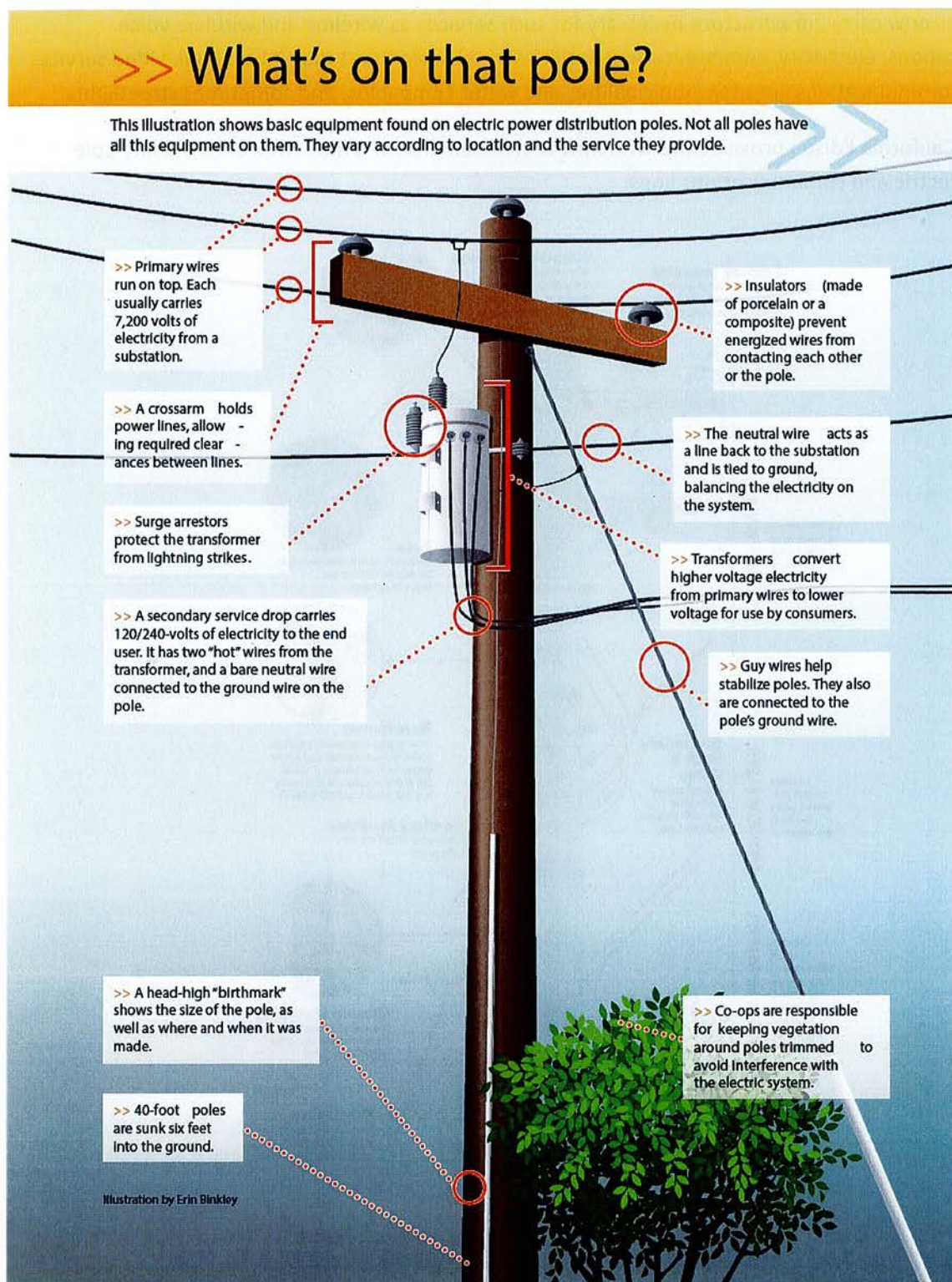


Figure 17

Of course, utility poles in the field rarely appear as neat and tidy as the utility poles in the diagrams above. The utility pole below was photographed in San Francisco in 2008:



Figure 18

The image below, from the San Francisco Planning Department, shows a potential arrangement of electric lines, communications attachments, and a streetlight.

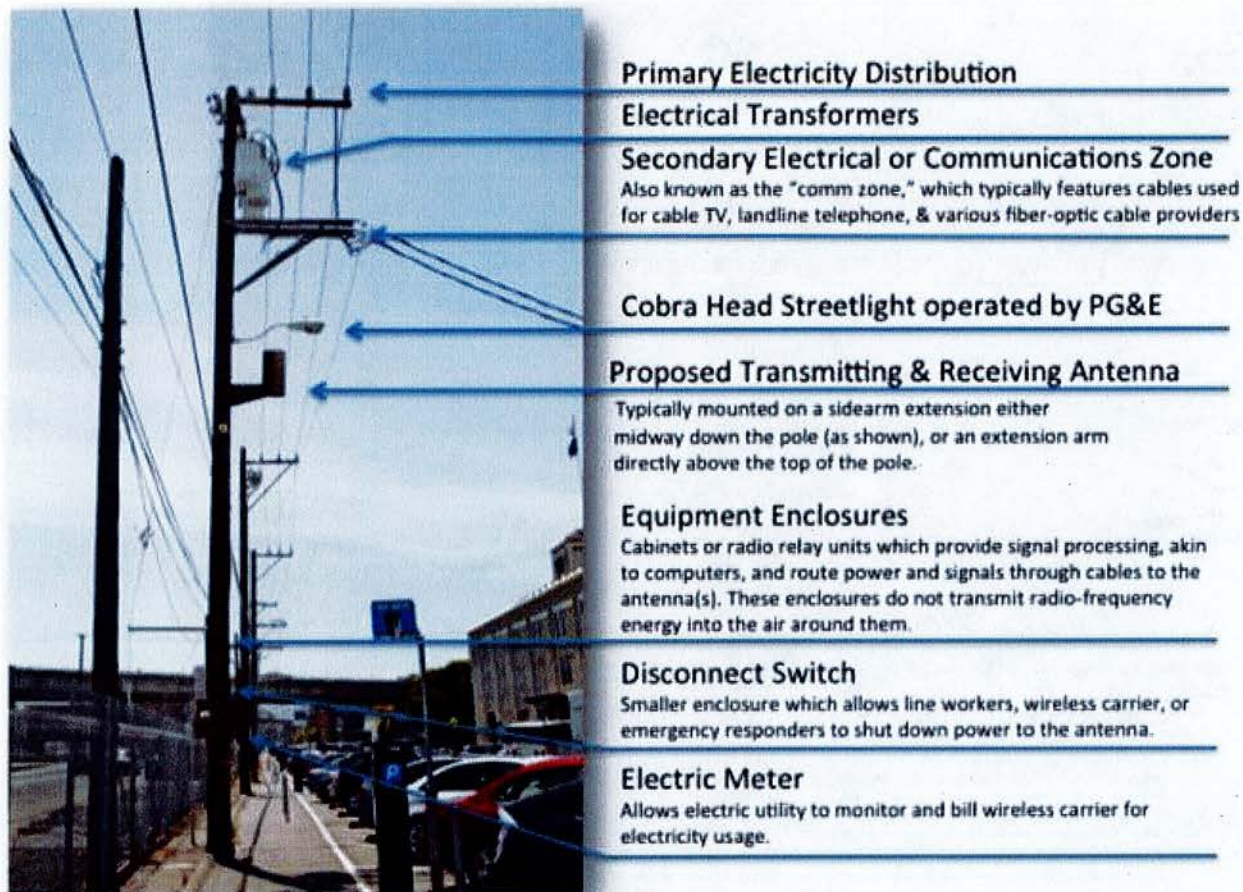


Figure 19

With all the different types of services competing for space on the pole, and the different providers competing with each other to offer those services, managing their shared use of the pole can be very complicated.

State and federal regulators enforce some rules regarding utility poles. For example, the California Public Utilities Commission has rules governing the operation and maintenance of utility poles and attachments. These rules, contained in General Order 95, consist of highly detailed engineering requirements designed to protect safety.

The Commission updates General Order 95 in response to changes in technology, engineering, or markets; for example, the Commission recently updated General Order 95 to ensure the safety of wireless attachments. The three slides below, from a 2016 Commission staff presentation, describe some of the changes:



GO 95 Safety Amendments

(page 1 of 3)

- Prohibit antenna installations that obstruct pole climbing space or interfere with fall-protection gear.



4

Figure 20



GO 95 Safety Amendments

(page 2 of 3)

- Require pole-overturning calculations for new pole-top antenna attachments.



5

Figure 21



GO 95 Safety Amendments

(page 3 of 3)

- Generally prohibit antennas on guard arms.
- Clarify requirements for signs regarding radio-frequency radiation of antennas.
- Clarify protocols for de-energizing antennas.
- Only qualified workers may work on wireless facilities installed above supply lines.



6

Figure 22

Double poles are another challenge arising from joint use. When a utility pole is replaced, all the joint users must transfer their attachments from the old pole to the new pole. Some joint users fail to transfer their attachments in a timely manner, creating unsightly double poles, such as those below, that last for months or years longer than is safe or necessary.



Figure 23

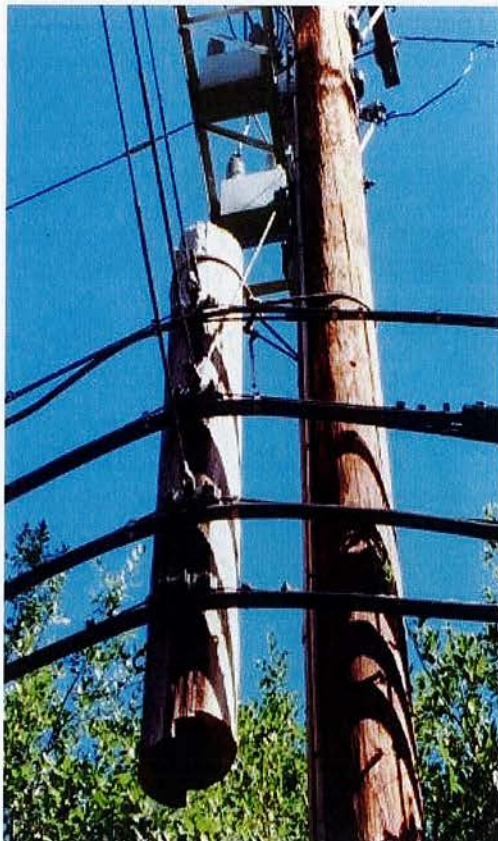


Figure 24

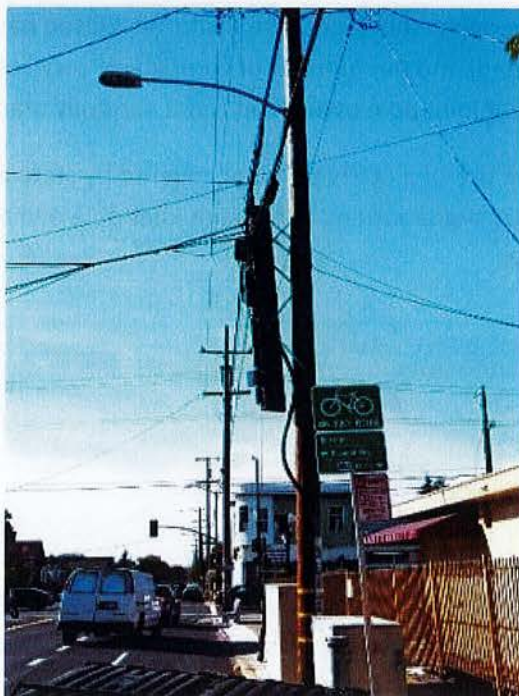


Figure 25

Another complication of joint use concerns abandoned or unused equipment on a pole. For example, loops of spare communications lines not being used to serve customers can frequently be seen attached to utility poles.

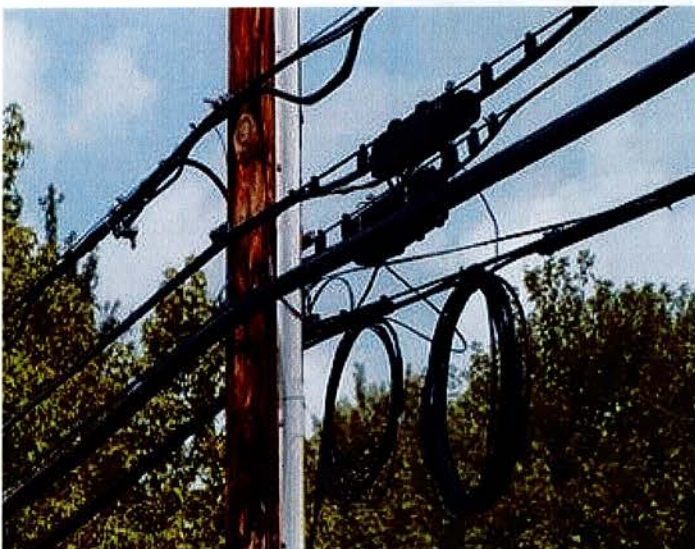


Figure 26

State and federal rules do not cover every possible question that might arise when sharing space on a utility pole. For example, if a company wants to rent space on a utility pole, or even become a joint owner of a utility pole, who do they call? What is the process?

Given the frequency of joint pole ownership (Southern California Edison has stated that 70% of the poles in its service area are jointly owned) and the number of companies, services, and technologies involved, reliability and safety could suffer if joint pole ownership is not carefully managed.

To handle aspects of their shared use of a utility pole not covered by state and federal law, some companies have formed voluntary organizations to manage joint pole ownership. In California, there are two such joint pole organizations.



The Northern California Joint Pole Association and the Southern California Joint Pole Committee handle many aspects of joint pole ownership, including: billing; joint pole planning process; pole abandonment and removal; and identifying poles and attachments for record-keeping purposes.

An example of the territory covered by the Northern California Joint Pole Association:

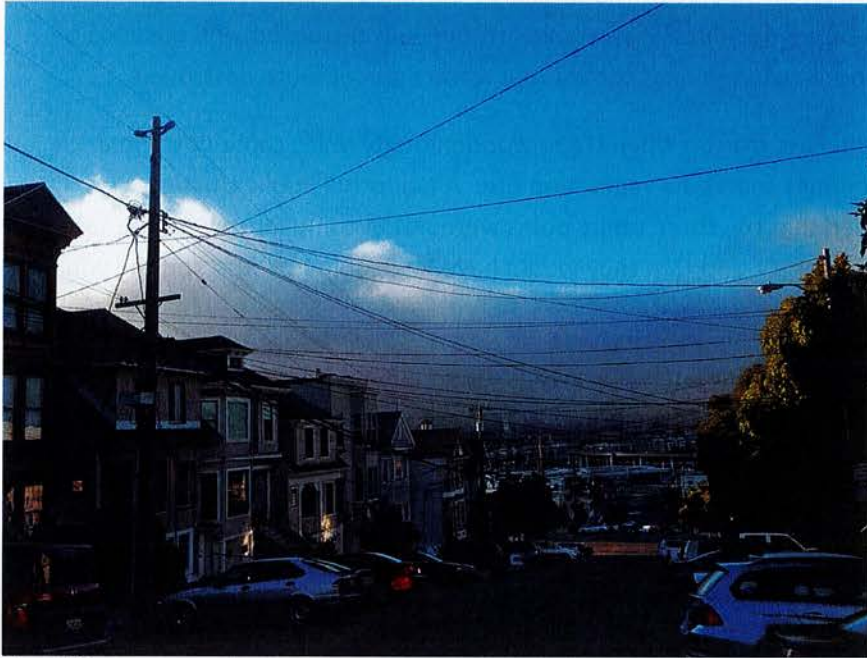


Figure 27

And an example of the territory covered by the Southern California Joint Pole Committee:



Figure 28

6. Safety

In October 2007, strong Santa Ana winds swept across Southern California and caused dozens of wildfires. Several of the worst wildfires were reportedly ignited by power lines. These included the Grass Valley Fire (1,247 acres); the Malibu Canyon Fire (4,521 acres); the Rice Fire (9,472 acres); the Sedgewick Fire (710 acres); and the Witch Fire (197,990 acres). The total area burned by these five power line fires was more than 334 square miles. During the Fire Siege, transportation was disrupted, and portions of the electric network, communications network, and community water sources were destroyed.

One of the fires, the Malibu Canyon Fire, started when three wooden utility poles came down in a windstorm and the downed power lines sparked a vegetation fire. A California Public Utilities Commission staff report determined that the three utility poles were not in compliance with the safety and engineering rules in General Order 95, and that they would have been able to withstand the wind gusts if they had been in compliance.

The California Public Utilities Commission ultimately approved settlement agreements between all the joint owners involved. Among the admissions made as part of the settlement agreement, one party admitted having placed attachments on a pole despite having been informed that the attachments would overload the pole, i.e. cause it to become too heavy, in violation of General Order 95.

The pictures below illustrate what can happen when companies do not follow utility pole safety rules:



Figure 29



Figure 30

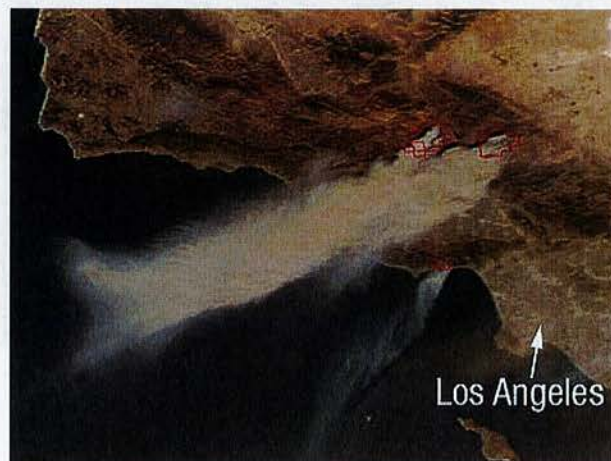
The pictures below were taken by NASA three hours apart on the first day of the Fire Siege. Although not every fire was caused by downed utility poles and electric lines, the pictures demonstrate how quickly fires can spread in California's dry, rugged terrain. According to NASA:

This pair of images, depicting the area around Los Angeles on October 21, 2007, shows just how quickly the fires grew.

The left image, captured by NASA's Terra satellite at 11:35 a.m. local time, shows several fires giving off small plumes of smoke. Just over 3 hours later, at 2:50 p.m. when NASA's Aqua satellite passed overhead, large amounts of smoke were pouring from blazes northwest of Los Angeles. Actively burning fires are outlined in red.



11:35 am (PDT)



2:50 pm (PDT)

Figure 31

7. Vegetation Management

Utility pole safety does not stop with engineering and maintenance of the poles and attachments and coordination between the joint owners. Vegetation management is an important component in maintaining the safety of the poles for utility employees and the general public, and for ensuring the reliability of the services carried on the poles.

The following two pictures show a utility pole in Walnut Creek, California, that is surrounded by vegetation. There is no safe climbing space for utility workers, and branches appear to be in contact with the communications lines. If the tree falls, either during a storm or because it is weakened by drought, it could conceivably take down the utility pole.



Figure 32



Figure 33

Fortunately, a rigorous vegetation management program at the utility company can prune back surrounding vegetation before it threatens service reliability, or the safety of utility employees or the general public.

Vegetation management at San Diego Gas & Electric...



Figure 34

...and at Pacific Gas & Electric



Figure 35

Customers have an important role to play in vegetation management. Customers may create threats to utility safety and reliability if they plant the wrong tree in the wrong place, where it can come into contact with utility lines. Fortunately, California's three large electric companies make information available to their customers concerning vegetation management and its role in safety.

San Diego Gas & Electric provides a recommended tree planting list with detailed tree characteristics, as well as a customer brochure on vegetation management, explaining why trees must be pruned in a way that prioritizes safety over aesthetics.²

Southern California Edison's consumer information page, "Let's Keep Trees Away From Power Lines," also provides information on what to plant, where to plant it, power line safety, and even how to use shade trees to lower energy costs.



Figure 36

Pacific Gas & Electric's information on Power Lines and Trees provides links to brochures on tree planting and management, including a tree selection guide managed by California Polytechnic State University.



Figure 37

² https://www.sdge.com/sites/default/files/documents/594331938/Tree_Planting_List.pdf?nid=19891;
<https://www.sdge.com/sites/default/files/documents/808851578/pruningTrees.pdf>

According to Pacific Gas & Electric, palm trees near utility poles create special challenges, because they cannot be pruned to grow away from the utility pole and any associated electric and communications lines. Pacific Gas & Electric recommends that palm trees be planted at least 50 feet away from utility poles to reduce the risk of contact from wind-blown palm fronds.

8. Animal Management

Utility poles are outside, so in addition to vegetation management, animal management is also necessary.

Bears

Bears rub, claw, and bite trees to communicate with other bears via scent, and to find food.



Figure 38



Figure 39

Unfortunately, bears are very bad at distinguishing living trees from utility poles. The utility poles below in West Virginia have been clawed and bitten nearly in half by bears. Appalachian Power utility workers began bear-proofing their wooden utility poles by swaddling the poles with layers of plastic pipe, which has proven to be an effective deterrent. Other utilities in the area are reportedly having luck installing a new utility pole next to the damaged utility pole, finding that the bears will continue to scratch the old pole and leave the new pole undisturbed.



Figure 40



Figure 41

Some bear incursions on utility poles are more adorable than others.

A customer in West Virginia called Mon Power to report a bear cub on top of a 40 foot wooden utility pole. Two linemen were able to de-energize the utility pole and rescue the cub, with the assistance of a state game commissioner who stood lookout for the bear cub's mother.



Figure 42

Southern California Edison shared this photograph of a bear with impressive climbing skills. No word on how the bear got down. The bear was doubtless disappointed by the lack of acorns on utility poles, although information shared at the California Public Utilities Commission's Utility Pole Safety En Banc in 2016 suggests that there is an ingredient in insulation materials that bears find irresistibly tasty.



Figure 43

Woodpeckers



Figure 44

Woodpeckers also treat wooden utility poles like trees, and peck holes in the wooden poles to store nuts. This damage can be quite extensive, and will weaken the pole by removing wood and exposing remaining wood to water and insects. Woodpeckers are impervious to topical chemical deterrents, sounds, and fake owls, although covering the pole with wire mesh may aid in deterrence.³

Birds and Electrocutation

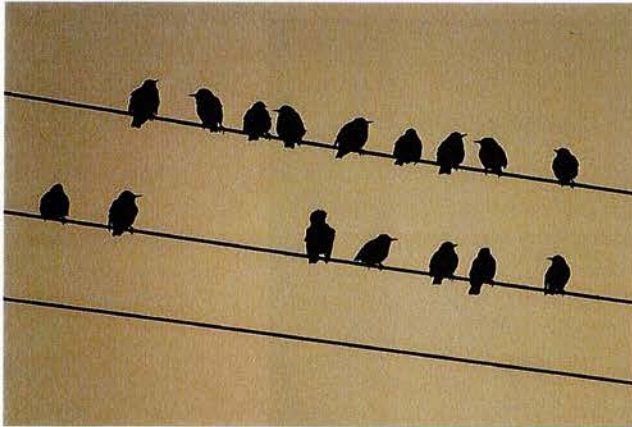


Figure 45

Have you ever looked at birds sitting on power lines and wondered why they aren't electrocuted?

It isn't because the power lines are shielded (they aren't), or because the birds are not good conductors of electricity (they are).

So why aren't the birds electrocuted?

The birds are not electrocuted because electrons are lazy. Electrical current travels along the path of least resistance; if the bird is only touching one power line, there is not a significant difference in electrical potential between the bird's feet and the power line sufficient to cause the electrons to deviate from their path, so the electrons will not leave the power line to travel through the bird's body.⁴

However, if the bird touches two power lines at the same time, especially if the power lines have different voltages, the bird will become a conductor between the different electrical potentials and the bird will be electrocuted.

Similarly, if the bird touches an electrical line and the wooden utility pole at the same time, the bird's body will provide the electrons with a path to ground through the utility pole and the bird will be electrocuted.

³ Woodpeckers and Utility Pole Damage, Richard E. Harness and Dr. Eric L. Walters, 2004, IEEE
<http://www.ericwalters.org/harnesswalters2004.pdf>

⁴ <https://engineering.mit.edu/engage/ask-an-engineer/how-do-birds-sit-on-high-voltage-power-lines-without-getting-electrocuted/>

The larger the bird's wingspan, the greater the risk that it will touch two energized lines at the same time, or an energized line and a grounded part of the pole, and be electrocuted. Because birds' contact with power lines endangers the integrity of the electrical line and public safety (an electrocuted bird started a 1.5 acre brushfire in Novato in 2012⁵), the Avian Power Line Action Committee⁶ recommends specific clearances between energized lines to prevent electrocution, and deterrent measures to prevent birds from nesting on utility poles.



Figure 46

9. The Future

A member of the public who is handed a paper on utility poles might be forgiven if they exclaimed: "Utility poles? Who cares about utility poles? I'm walking around downtown and I don't see a single utility pole, everything is underground."

It is true that new developments in many parts of the country tend to favor (and sometimes require) that utility facilities be placed underground rather than aboveground on utility poles. The California Public Utilities Commission mandated, in General Order 128, that residential subdivisions built after 1970 locate their electrical distribution lines underground.

Despite the fact that new residential and commercial construction projects underground their utility infrastructure, California still has more than 4 million utility poles, most of which are wood. Although

⁵ <https://patch.com/california/sanrafael/electrocuted-bird-sparks-fire-near-skywalker-ranch>

⁶ <http://www.aplic.org/index.php>

some utilities and municipalities are replacing wood utility poles with utility poles made of concrete, metal, or fiberglass composite, all of which are bear and woodpecker resistant, the North American Wood Pole Council estimates that there are 130 million wooden utility poles across North America.⁷

Although a wooden utility pole will never be as flashy as this metal Mickey Mouse-inspired utility pole outside of Disney World, the wooden utility pole has been an important part of our communications history since 1844 and will likely be with us for years to come.



Figure 47

⁷ <http://woodpoles.org/WhyWoodPoles/HowPolesAreMade.aspx>

10. In Case of Emergency

The California Public Utilities Commission puts safety first and offers the following tips on the importance of staying safe around overhead and underground power lines.⁸

What if I spot a downed wire?

Incidents related to accidents, severe weather, trees, etc., can cause a power line to fall to the ground. If you see a downed power wire, stay clear of it and call 9-1-1 immediately to report an electrical emergency. All lines down should be treated as dangerous. Never touch a downed power line or go near one. Always call 9-1-1 immediately.

What should I do if I see a person, animal, or object that is in contact with a downed power line?

Do not touch the person, animal, or object because the power line may still be energized. Call 9-1-1 immediately.

What if I need to do outside work near an overhead power line?

If your outside work requires you to be near an overhead power line, always remember to keep everything – and everybody – at least 10 feet away from the power line. If you have any questions or concerns, contact your local utility company before starting any work.

What if a power line falls on and/or comes into contact with my vehicle while I am still in it?

Remain calm and stay in your car, as the ground around your car may be energized. Call 9-1-1 on your cell phone or tell someone to call for you. Tell everyone to stay clear and do not touch the vehicle. If there is a fire and you have to exit your vehicle that has come in contact with a downed power line, remove loose items of clothing, keep your hands at your sides, and jump clear of the vehicle, so you are not touching the vehicle when your feet hit the ground. Keep both feet close together and shuffle away from the vehicle without picking up your feet.

A power line carries electricity, which can be dangerous and cause serious injury or even death if you come into contact with it. The California Public Utilities Commission wants you to stay informed and alert to stay safe.

11. Contact the Commission

If you ever see a downed power line, call 9-1-1 immediately. However, if you live in California, don't forget that you can also file utility pole complaints with the California Public Utilities Commission. You may file a complaint with the Commission after calling 9-1-1 to report an immediate threat, but you may

⁸ The Buzz About Power Line Safety, July 2016,

http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/News_Room/Fact_Sheets/English/PowerLineSafety.pdf

also contact the Commission about utility poles that appear unsafe or dangerous even if they do not present the immediate and obvious safety risk of a downed power line.

To file a public safety complaint with the California Public Utilities Commission:

The fastest way to file a complaint is using the [online complaint form](https://appsssl.cpuc.ca.gov/cpucapplication/), available at <https://appsssl.cpuc.ca.gov/cpucapplication/>

Please be aware that the CPUC cannot help you resolve issues with:

- Publicly owned or municipal utilities, such as SMUD or the Los Angeles Department of Water and Power
- Federal, city, or county taxes and surcharges on your bills
- Long-distance telephone, cable TV, cellular phone rates, paging, or Internet rates and services

The CPUC also cannot award claims for damages, or help you determine a utility's alleged negligence or liability. If you cannot resolve this type of problem with the utility directly, you can file a claim in civil court.

If you do not want to file your complaint online, you can send us a written complaint letter. Be sure to include:

- Your name
- The name the account is billed under (if it is different than your name)
- Your mailing address
- The service address (if it is different than your mailing address)
- The name of the utility or company
- The name of the utility or company's representative you contacted (if applicable)
- A brief description of the problem (no more than two pages)
- Daytime phone number where you can be reached
- The phone number or account number of the service (if applicable)

You can mail your written complaint to:

CPUC Utilities Safety Branch
505 Van Ness Avenue
San Francisco, CA 94102-3298

If you have any questions about mobile home park safety, you can call us at 1-415-703-1126. For all other public safety complaints, you can call us at 1-800-755-1447.

References:

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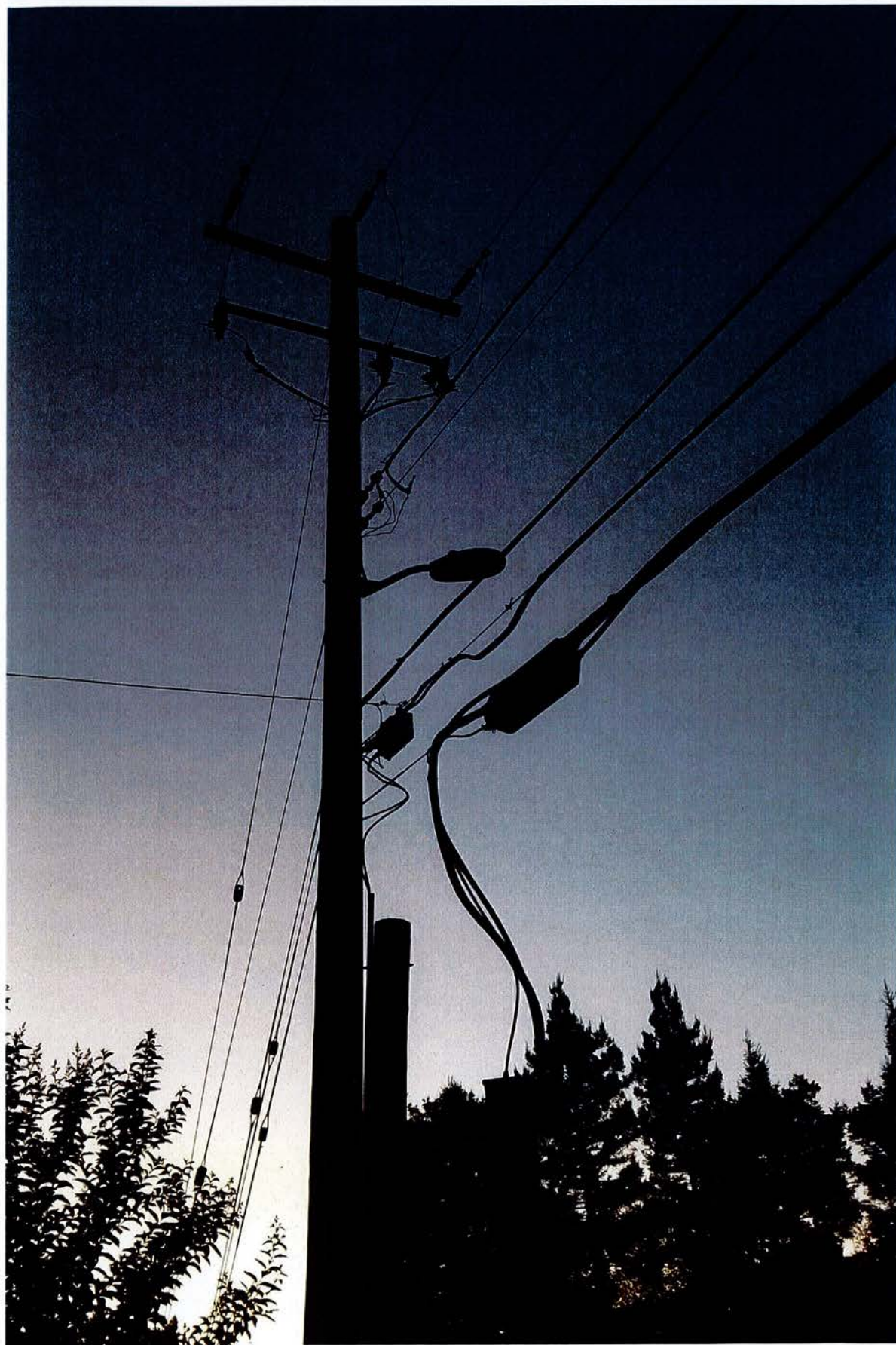
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Appendix G
Staff Proposal for Rule 20 Program Reform and Enhancements



EW2/nd3 2/13/2020

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Revisions to Electric Rule 20 and Related
Matters.

Rulemaking 17-05-010

ADMINISTRATIVE LAW JUDGE'S RULING (1) ISSUING AND ENTERING INTO THE RECORD AN ENERGY DIVISION STAFF PROPOSAL FOR IMPROVING THE ELECTRIC TARIFF RULE 20 UNDERGROUNDING PROGRAM; (2) REQUESTING COMMENTS ON THE PACIFIC GAS AND ELECTRIC COMPANY'S RULE 20A AUDIT REPORT; AND (3) SETTING A SCHEDULE FOR COMMENT

Summary

The Administrative Law Judge's (ALJ) Ruling of March 6, 2019, stated the Commission's Energy Division shall develop a staff proposal on improvements to Rule 20A, which shall be presented to the parties for comment by a subsequent ruling.

This ruling serves to issue, and to enter into the record, the attached Energy Division's *Staff Proposal for Rule 20 Program Reform and Enhancements (Staff Proposal)*. This ruling also establishes a schedule for providing comments on the *Staff Proposal* and the October 2019 *Audit of PG&E Rule 20A Undergrounding Program (PG&E Audit Report)* prepared by AzP Consulting, LLC and previously made part of this record by ruling of December 20, 2019.

This proceeding will be submitted following the receipt of comments and a proposed decision will follow, unless the ALJ requires further evidence or argument.

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1. Comments

The parties shall specifically identify the page and section of the *Staff Proposal* to which any comment refers. Parties shall file comments to the *Staff Proposal* on or before 30 days after the date of this ruling. Reply comments may be filed within 15 days thereafter.

The parties are also requested to provide comments on the *PG&E Audit Report*. Parties shall specifically identify the page and section of the *PG&E Audit Report* to which any comment refers and are asked to focus any comments regarding recommended program modifications on those that are applicable to all the investor-owned utilities. Parties shall file comments to the *Audit Report* on or before 40 days after the date of this ruling. Replies to comments on the *Audit Report* may be filed within 10 days thereafter

IT IS SO RULED.

Dated February 13, 2020, at San Francisco, California.

/s/ ERIC WILDGRUBE
Eric Wildgrube
Administrative Law Judge

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ATTACHMENT A

CALIFORNIA PUBLIC UTILITIES COMMISSION

Energy Division's Staff Proposal for Rule 20 Program Reform and Enhancements

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Undergrounding Proceeding (R.17-05-010) Staff Proposal for Rule 20 Program Reform and Enhancements

Jonathan Frost
Grid Planning and Reliability Section
Energy Division
California Public Utilities Commission

February 2020



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Glossary of Terms

1. **Active Communities:** Refers to communities that meet either one or more of the following criteria that was established in Resolution E-4971:
 - A. Formally adopts an undergrounding district ordinance which expires at completion of work within the district boundaries; or
 - B. Has started or completed construction of an undergrounding conversion project within the last 8 years; or
 - C. Has received Rule 20A allocations from the utility for only 5 years or fewer due to recent incorporation.
2. **Assessment District:** A financing mechanism the California Streets and Highways Code, Division 10 and 12 which enables cities, counties to designate Districts to collect special assessments to finance the improvements constructed or funded by the District. In Rule 20B, an assessment district is formed based on a petition to the city council or county board of supervisors from 60 percent or more of the residents of the affected area.
3. **Borrow Forward:** Also known as the “five-year borrow”. Refers to the process allowed under the Rule 20A Tariff in which municipalities may borrow up to five years of additional Rule 20A work credit allocations against their future allocations from the utility to help fund a project.
4. **Communities:** In the Rule 20A program, this refers to cities and unincorporated county entities that are served by the investor-owned utilities.
5. **Cultural Resources:** Tangible remains of past human activity. These may include buildings; structures; prehistoric sites; historic or prehistoric objects or collection; rock inscriptions; earthworks, or canals.
6. **Disadvantaged Communities:** These areas represent the 25% highest scoring census tracts in State of California’s CalEnviroScreen 3.0 tool.
7. **Facilities:** Also referred to as “equipment”. Refers to wires, conductors, antennas, guy wires, cables, and/or any other equipment used to facilitate the transmission of communications or energy.
8. **Five Year Borrow:** See “borrow forward.”

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9. **General Conditions Agreement:** (Or General Terms and Conditions) A document that is utilized by the electric utilities and the municipalities that clarifies the specific responsibilities for both the communities and the utilities in the preparation for and construction of a Rule 20A undergrounding project. It is referred to as the General Conditions Agreement, Sample Form 79-1127 by PG&E; General Conditions policy by SCE; and the General Conditions Form 106-35140F by SDG&E.
10. **High Fire Threat District:** Refers to the high fire threat areas in the CPUC's Fire-Threat Map which was adopted by the Commission in Decision (D.) 17-12-024. The map consists of three fire-threat areas (Zone 1; Tier 2 and Tier 3) that have increasing levels of risk of wildfires associated with overhead utility power lines or overhead utility power-line facilities that also support communication facilities.
11. **Inactive Communities:** Refers to communities that fail to meet any of the criteria described in the definition of Active Communities described above.
12. **Joint Trench Participants:** Refers to all the electric, telecommunication, and local government entities that are involved with a given undergrounding project.
13. **Non-Ratepayer Costs:** Refers to project costs that are not covered by Rule 20A. These include street lighting, repaving, sidewalk repair, undergrounding communication facilities, removal or replacement of other signage, environmental assessment, hazardous material removal, , discovery of archeological materials, permit fees and community administrative costs.
14. **Overhead Infrastructure:** Also referred to as above ground infrastructure. Refers to the conductors (wires), insulators, transformers, switches, reclosers, and other related equipment that span wooden or metal poles.
15. **Overhead Meter:** Refers to a meter at a home or business that is served by an overhead service drop.
16. **SDG&E Fire Threat Zone:** These are areas with extreme and very high fire threat risk within San Diego Gas & Electric's service territory that were identified in the Commission in Decision (D.) 09-08-029 and are currently the only areas where Rule 20D is applicable.
17. **Subsurface Equipment:** Refers to equipment that is installed in an underground vault, such as an underground transformer.

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18. **Underground Meter:** Refers to a meter at a home or business that is served by an underground service line.
19. **Underground Utility District:** Also referred to as an underground or undergrounding district, or UUD. An area in the City within which poles, overhead wires, and associated overhead structures are to be converted underground. Underground utility districts are legislated by communities' city councils or by county board of supervisors.
20. **Viewshed:** The natural environment that is visible from one or more viewing points.
21. **Work Credit Trading:** Refers to any form of work credit exchange in which two or more cities or counties buy, sell, loan, trade, or donate Rule 20A work credits. The utilities sometimes refer to this as work credit transfers.

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1. Executive Summary

This Staff Proposal presents recommendations for improving the Electric Tariff Rule 20 applicant-driven undergrounding program and for resolving significant issues in the existing program which includes the Rule 20 A, B, C and D programs. While much of the focus and attention of the public has been on Rule 20A, this Staff Proposal looks holistically at the Rule 20 undergrounding program as a whole and proposes changes across all four of the component programs. This Staff Proposal does not propose changes to undergrounding requirements along State Scenic Highways in Public Utilities Code (PUC) § 320, or for distribution line or service line extensions under Electric Tariff Rules 15 and 16 respectively. Nothing in this Staff Proposal inhibits utility-led undergrounding efforts for technical or safety reasons nor any local government-driven undergrounding separate from Rule 20.

The program reforms presented in this document are intended to make the program objectives relevant to current undergrounding goals held by various stakeholders by including a focus on safety, reliability, equity, and the alignment of cost allocation with cost-causation. The proposed reforms will allow communities to use their limited funds towards undergrounding the areas that pose the greatest safety threats and/or subject to chronic outages. These reforms seek to reduce the barriers to entry for program participation for communities that have had limited opportunities or resources to initiate undergrounding projects in the past. Additionally, the reforms are intended to lessen the burden on the general ratepayer and incentivize local communities to apply more of their own funding towards undergrounding. Furthermore, this proposal offers a plan to enhance program operation and efficiency and maintain regulatory efficiency of the program.

The California Public Utilities Commission (“CPUC”) Energy Division Staff (“Staff”) developed this proposal in response to the March 6, 2019 Administrative Law Judge’s (ALJ) the Guidance Ruling Outlining Additional Activities (“Guidance Ruling”). Staff based its recommendations on Staff’s evaluation of the comments that parties submitted on January 11, 2019 in response to the November 9, 2018 Scoping Memo and Ruling. Staff also relied on the ideas that parties shared during the April 2019 workshop that was focused on near-term improvements to the Rule 20 undergrounding program. Staff is also informed by our many years overseeing the program, our own analysis and data gained through our data requests, as well as CPUC studies on the program including a recent audit of PG&E’s Rule 20A program.

Throughout this document, Staff provides information on the history of the Rule 20 Program, program rules, data related to recent experience in the program, issues with the program, and various options for mitigating these issues.

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A summary of Staff's primary recommendations are as follows:

- **Refine and Expand the Rule 20 Public Interest Criteria:**
 This will consist of refinements to the existing criteria for Rule 20A and the addition of new criteria based on safety and reliability concerns, such as if the street serves as an egress, ingress, or is designated as an evacuation route, and if the overhead facilities cross through Tier 2 or Tier 3 areas of the State's High Fire Threat District (HFTD). These criteria would be applicable towards a Rule 20A sunset phase and a modified Rule 20B program should either come into fruition. (Section 4.1, pg.24-26)
- **Modify Rule 20B to Incorporate Tiered Ratepayer Contributions Commensurate with Public Benefits**
 The CPUC should utilize a three-tiered Rule 20B program with higher portions of ratepayer contribution commensurate with greater public benefits and public policy objectives. The three tiers are:

 - Tier 1 – 20% Ratepayer contribution – Meets existing Rule 20B criteria.
 - Tier 2 – 30 % Ratepayer contribution – Meets Tier 1 criteria **and** one or more of the expanded public interest criteria of this staff proposal, including wildfire safety mitigation.
 - Tier 3 – 50% Ratepayer contribution – Meets Tier 2 criteria **and** one or more equity criteria.

(Section 4.2, pg.31)
- **Sunset the Rule 20A and 20D Programs as Currently Designed:**
 The existing allocation-based Rule 20A and Rule 20D programs should be sunsetted over a 10-year period and either be replaced with the modified Rule 20 B program, other new programs or be terminated. (Section 4.3, pg. 37-38)
- **Incentivize Municipal Utility Surcharge Undergrounding Programs:**
 The CPUC encourages governmental bodies to pursue self-taxation programs in collaboration with their local utilities and Staff proposes for the utilities to provide municipalities matching funds of up to \$5 million per year per participating community. An example of such a program is the City of San Diego's utility surcharge program (see page 10) which has accelerated undergrounding in San Diego. The CPUC does not oversee this type of program but can authorize the utility to collect the franchise fee through rates that goes directly to funding the undergrounding. (Section 4.2, pg. 33)
- **Eliminate Work Credit Trading with Limited Exceptions:**
 The CPUC should prohibit the trading of work credits and review all utility requests to apply additional Rule 20A work credits to a project that has insufficient funds. The limited exceptions are to allow intra-county non-monetary transfers from a county government to cities and towns within the county and to allow credit pooling amongst

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two or more adjoining municipalities for a project with community benefit. (Section 4.4, pg. 41)

- **Modify the Rule 20A Annual Completion and Allocation Reports:**

The utilities should provide more details to the CPUC, communities and the public regarding the projects that are underway, cost breakdowns for projects, project cost trends, performance metrics, and modify the summary statistics. Additionally, the utilities' allocation reports should include how the utilities derive the allocations from the general rate case and the allocation formula in the Rule 20A Tariff. (Section 5, pg. 47-49)

- **Adopt an Updated Rule 20 Guidebook:**

The utilities should meet and confer with the League of California Cities, the California State Association of Counties, AT&T and the CPUC Staff to draft an updated version of the Rule 20 Guidebook that would be subject to CPUC review prior to its formal adoption and circulation among the cities and counties. (Section 5, pg. 49-50)

- **Improve Communications with the Communities and Publish Relevant Rule 20 Program Information, Documents and Reports Online**

New utility program communication strategies should include annual meetings with interested cities and counties to discuss their ten-year plans for undergrounding. The utilities should coordinate more closely with the communities and the broader public to enhance transparency and allow them public to have a greater voice in the planning process for projects. Staff also recommends publishing the relevant Rule 20A program information and reports online on dedicated utility and CPUC undergrounding webpages to enhance the public's access to information about the Rule 20 program. (Section 5, pg. 50)

- **Implement Incentives to Reduce Project Completion Timelines and Costs:**

These new incentives would include requiring the communities to serve as the default project lead, establishing threshold timeframes for project milestones, and delineating all Task and Cost Responsibilities in updated guidance documents. (Section 6, pg. 56-58)

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2. Background

2.1 Rule 20 Program Structure

The investor-owned utilities (IOUs) regulated by the CPUC have broad responsibilities to manage the electric utility distribution infrastructure. As part of their responsibilities, the IOUs build and maintain distribution facilities that service customers. Since the late 1960s, most new distribution facilities have been designed and installed underground. For communities developed prior to the late 1960s, most distribution infrastructure is overhead. Undergrounding is typically more expensive than overhead lines to build and maintain, so most existing overhead systems in California remain above ground.

Nevertheless, there are several ways that these historic overhead systems are converted to underground. Utility distribution planners may decide to convert an overhead system to underground, a process referred to as “undergrounding,” for safety, cost, reliability or maintenance reasons. To support non-utility driven overhead conversion, the CPUC adopted and oversees an Overhead Conversion Program known as Electric Tariff Rule 20. The program allows cities and unincorporated counties (collectively communities), and private applicants (such as residents and businesses) to identify areas for undergrounding. Depending on the project characteristics and eligibility under pre-established criteria, the utility may fund some, all, or none of the costs of an overhead conversion.

The Rule 20 undergrounding program directs the conversion of overhead electrical facilities to below ground for municipal or other applicant-identified projects. This program is focused primarily on aesthetic enhancement by removing overhead electric wires from an area’s viewshed. The Electric Rule 20 Tariff governs the undergrounding program which is divided into four subprograms – Rule 20A through Rule 20D – which provide diminishing levels of ratepayer contribution to projects.

Rule 20A projects are fully ratepayer-funded but must meet strict criteria to in order to demonstrate that they will be in the public interest (see Section 3.1 for more details on the criteria). The utilities annually allocate funds in the form of Rule 20A work credits (or “work credits”) to communities which they may accumulate indefinitely. According to Rule 20A Section 2, 50 percent of the allocation is based on the ratio of overhead meters in a community relative to the total utility overhead meters. The other 50 percent is based on the ratio of total meters (both overhead and underground-served meters) relative to the utility total system meters.

In addition to the annual allocations, the utilities also allow the communities to borrow forward the equivalent of an additional five years of allocations in order to more efficiently fund their projects. Once a community has accumulated and/or borrowed enough work credits, identified a project that is in the public interest, and passed a municipal resolution forming an

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undergrounding district, the community can then initiate the project with the utility. The Community must retire a sufficient quantity of work credits to cover the cost of the project.

Projects that do not meet the Rule 20A public interest criteria and are at a minimum of 600 feet may be completed as Rule 20B projects. Apart from the 600 feet minimum length, there are no other required criteria for 20B projects. For example, a 20B project could be carried out for wildfire safety reasons. The undergrounding is paid for by the applicant – typically a group of residents, commercial entities, or government entities – and funded in part by a ratepayer credit in the range of 20 to 40 percent. The credit is equal to the estimated cost of a new equivalent overhead system and the removal of the existing overhead system. Applicants may use Rule 20A work credits to “seed” their Rule 20B projects by initially covering the engineering and design costs and reimburse the utility later provided that the project goes forward.

In the case of projects that are unable to meet either the Rule 20A or 20B criteria, they may be completed under the Rule 20C program. In Rule 20C projects, the applicant – often an individual property owner – pays for the full cost of undergrounding, less the cost of the estimated salvage value and depreciation of the removed electrical facilities.

Rule 20D is currently only in SDG&E’s service territory and it applies specifically to undergrounding in SDG&E’s high fire threat areas where undergrounding is deemed by SDG&E to be a preferred method for wildfire mitigation in a given area. Rule 20D is structured similarly to the Rule 20A program and is similarly-community-driven. SDG&E annually allocates work credits to eligible communities and that they may borrow forward five years to obtain additional funds. Unlike Rule 20A, Rule 20D only allows communities to utilize work credits towards the conversion of primary distribution to underground. The program does not pay for undergrounding secondary lines or services, or for panel conversions for residences or businesses. Rule 20D has been in existence since 2014 and SDG&E has not started or completed a single project to date through this program.

Related to the Rule 20 program, the telecommunications entities such as AT&T have a Tariff Rule 32 that closely resembles the Rule 20 Tariff. Rule 32 is specific to the undergrounding of telecommunications facilities and it is virtually identical in structure as Rule 20. For instance, Rule 32 has the same public interest criteria in its Section A as are in Rule 20A.

The City of San Diego also has an undergrounding program in partnership with SDG&E that is not under CPUC oversight and is not subsidized by the general ratepayer. In December 2002, CPUC Resolution E-3788 authorized SDG&E to collect a 3.53% franchise fee surcharge within the City of San Diego for undergrounding work separate from Rule 20. By using this surcharge program to augment the Rule 20 program, the City of San Diego has managed to convert 429 miles of overhead electrical facilities to underground and 1,238 miles of overhead remain.¹ The

¹ Based on a July 17, 2019 email to Jonathan Frost from James Nabong, the City of San Diego’s Assistant Deputy Director for the Transportation and Storm Water Department.

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City of San Diego currently targets 15 miles of undergrounding per year through the surcharge program and seeks to underground all overhead facilities within its city limits.

2.2 Rule 20 Program History and Context: Undergrounding for Aesthetic Enhancement

The Rule 20 undergrounding program was initiated in 1967 by the CPUC in Decision D.73078 with the intent of enhancing the appearance of areas that had been “victimized by man’s handiwork” by the development of overhead electric infrastructure.² The Rule 20 program established a structured means of facilitating municipal-driven underground conversion projects in a consistent manner throughout the State with the costs covered by utility ratepayers. The program was developed around the same time as the State’s requirements to construct underground distribution lines and service line extension to new residential and commercial developments, as well as near State scenic highways took effect.³ Since the late 1960s, the Rule 20 undergrounding program has remained focused primarily on aesthetic enhancement and has seen limited changes to aspects of the program such as the Rule 20A work credit allocations (“work credits” or “allocations”) are determined, the public interest criteria for project eligibility, and the municipalities’ ability to borrow forward future work credit allocations.

Over the past 52 years, it is estimated that over 2,500 miles of overhead utility lines have been converted in California under the Rule 20A program.⁴ In recent years, the utilities have collectively completed on average 50 projects per year, equal to approximately 20-25 miles in length under Rule 20A at an average cost ranging from \$1.85 million to \$6.1 million per mile.⁵ The Rule 20B and 20C programs together see a total of 15 to 20 miles per year of lines converted to underground.⁶

Relative to the approximately 147,000 miles of overhead distribution infrastructure in California – enough wires to wrap around Earth six times – this is a modest rate of undergrounding. In fact, it would take nearly 3,300 years to underground the entire state at this rate. Figure 1 provides further context with a breakdown of the overhead and underground infrastructure for each of the utilities.

² Note that the Rule 20 program was initiated by the CPUC and is not grounded in statute.

³ See Electric [Tariff Rule 15](#) & [Tariff Rule 16](#), and [Public Utilities Code Section 320](#) for more information.

⁴ Kurtovich, Martin, “[Program Review – California Overhead Conversion Program, Rule 20A for Years 2011-2015 the Billion Dollar Risk!](#)” California Public Utilities Commission, January 2017.

⁵ This is based on the data provided by the utilities to Staff as part of their R.17-05-010 data request responses for the years 2005-2017.

⁶ Data from Staff June 2019 data request.

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Figure 1. Overhead and Underground Line Miles by Transmission and Distribution

Overhead vs. Underground Miles – CPUC Regulated Utilities						
	Transmission (in miles)			Distribution (in miles)		
	Overhead	Underground	Total	Overhead	Underground	Total
PG&E	18,000	180	18,180	81,000	18,000	99,000
	99%	1%		82%	18%	
SCE	13,259	270	13,529	52,731	39,607	92,338
	98%	2%		57%	43%	
SDG&E	1,840	166	2,006	9,049	14,719	23,768
	92%	8%		38%	62%	
PacifiCorp	729	0	729	2,340	633	2,973
	100%	0%		79%	21%	
Liberty	99	<1	99	1,405	538	1,942
	100%	0%		72%	28%	
Bear Valley	88	3	91	482	87	569
	97%	3%		85%	15%	
Total	34,015	619	34,634	147,007	73,583	220,590
	98%	2%		67%	33%	

(CPUC Data as of Dec. 2018)

2.3 “Winners and Losers” Under the Current Rule 20A Program Structure

Under the current Rule 20A program, the communities that benefitted the most are the largest cities and counties by population. These communities have received the highest levels of allocations and have seen the highest levels of expenditures over recent years. This is in part because the Rule 20A Tariff awards work credits to communities based on the number of meters that the IOUs serve relative to the total number of meters in their systems. The largest cities and counties have the highest proportion of meters and consequently receive the bulk of the work credit allocations. The larger communities likely are better able to dedicate greater internal staff and outside consulting services to help them plan for Rule 20A projects. Figure 2 below shows the top 10 communities in terms of expenditures in nominal dollars from 2005 to 2018. For

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more perspective, the utilities prepared maps in advance of the April 22-23, 2019 CPUC Rule 20 Workshop that provides a geospatial representation of the communities that have seen the highest level of benefits and those which have not. The maps suggest that the economic core coastal areas in California such as the San Francisco Bay Area and San Diego see the highest levels of undergrounding through the Rule 20A program. They also seem to indicate that rural areas may only see limited to no benefits from the program. See Appendix A for the utility maps.

As a caveat, it is worth noting that the maps are only reflective of undergrounding expenditure under Rule 20A. For instance, they do not reflect the benefits that communities have seen with new underground distribution and service line extensions in newer neighborhoods and commercial areas per Electric Tariff Rules 15 and 16.

Figure 2. Cities and Counties with the Highest Levels of Rule 20A Nominal Expenditures (2005-2018)

	Community	Total Work Credit Expenditures (2005-2018)
1	City and County of San Francisco	\$174,194,533
2	City of San Diego	\$123,959,969
3	Unincorporated Los Angeles County	\$80,199,098
4	Unincorporated San Diego County	\$66,219,539
5	City of Long Beach	\$66,113,635
6	City of Oakland	\$59,290,182
7	City of San Jose	\$54,445,341
8	Unincorporated San Bernardino County	\$38,824,162
9	City of Fresno	\$ 34,846,837
10	City of Chula Vista	\$30,601,828

(CPUC Data as of April 2019)

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While the communities shown above have completed projects worth hundreds of millions of dollars funded by general ratepayers' contributions, there are 82 communities across the State which have not completed a single project since 2005. Ratepayers in these communities have contributed to the cost of undergrounding projects outside of their communities without seeing any projects initiated or completed in their own communities. See Figure 3 below for the list of these communities.

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Figure 3. Communities that Did Not Complete Any Rule 20A Projects 2005-Present

Utility	Total Rule 20A Expenditures 1967-2018 (Million USD)	Total No. of Communities Served	Percent of Communities Which Have Not Completed Projects 2005-Present	Communities which have not completed projects 2005 – Present
PG&E	\$1,500	266	11%	(30 Total) Unincorporated Alpine County, Atherton, Biggs, Blue Lake, Brisbane, Buellton, Calistoga, Cloverdale, Corcoran, Dos Palos, Foster City, Ione, Lakeport, Lassen County, Livingston, Maricopa, Marysville, Mendota, Menlo Park, Monte Sereno, Oakley, Plymouth, Point Arena, Roseville, Unincorporated Sacramento County, Unincorporated San Benito County, San Bruno, San Joaquin, San Juan Bautista, Saratoga
SCE	\$1,200	208	12%	(24 Total) Aliso Viejo, Anaheim, Banning, Calabasas, Colton, Eastvale, Glendale, Goleta, Grand Terrace, Jurupa Valley, Laguna Hills, Laguna Niguel, Laguna Woods, City of Los Angeles, Menifee, Pasadena, Rancho Santa Margarita, City of Riverside, Unincorporated Imperial County, Unincorporated Madera County, Unincorporated San Diego County, Unincorporated Tuolumne County, Wildomar, Yucca Valley
SDG&E	\$735.3	27	11%	(3 Total) Dana Point, Laguna Beach, Mission Viejo
Liberty	\$20.10	10	80%	(8 Total) Alpine County, Mono County, Nevada County, Plumas County, El Dorado County, Portola, Loyalton, Sierra County
PacifiCorp	\$4.20	16	94%	(14 Total) Alturas, Modoc County, Crescent City, Del Norte County, Shasta County, Dorris, Dunsmuir, Etna, Fort Jones, Montague, Mt. Shasta, Tulelake, Yreka, Siskiyou County
Bear Valley	\$0	2	100%	(2 Total) Big Bear Lake, Unincorporated San Bernardino County
Total	\$3,460	529	16%	82 Total

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3. Rule 20 Program Goals, Challenges and Guiding Principles

3.1 Current Program Goals

The current Rule 20 program is focused on promoting the construction of city- and county-sited undergrounding projects that enhance the appearance of public areas such as major corridors, parks and natural areas. Broad participation in the program is encouraged by proportionately allocating work credits based on the number of meters in a community regardless of its location and if it is urban, suburban and rural. The program is also structured to assist communities that may not have enough work credits to initiate a project by allowing them to borrow work credits up to five-years ahead. The program also incentivizes businesses, homeowners, and governmental entities with a modest contribution to construct projects through its Rule 20B and Rule 20C sub-programs that may not necessarily benefit the general public.

The program is not currently focused on safety (i.e. wildfire or traffic safety) or reliability and does not prioritize projects based on these concerns, though these are benefits commonly associated with undergrounding in general. While the Rule 20 program is not oriented towards safety enhancement, the utilities engage in strategic undergrounding under limited circumstances for safety enhancement or for technical reasons. For instance, the utilities developed Wildfire Mitigation Plans (WMPs) in compliance with SB 901 to detail their plans for increasing system awareness and fire hardening their grids in high fire risk areas, known as the HFTD. In PG&E's 2019 WMP for example, PG&E proposed fire hardening 7,100 circuit miles of their system in the HFTD by "upgrading or replacing transformers to operate with more fire-resistant fluids, installing more resilient poles to increase pole strength and fire resistance, and in rare cases, undergrounding."⁷

The program does not offer any additional funding or assistance to communities who are smaller or disadvantaged. Furthermore, the program is not intended to underground all the overhead electric facilities in the State as that would be cost prohibitive.

3.2 Challenges to the Existing Program

Over the past several years, the CPUC's Rule 20 program has been fraught with issues related to the allocation of work credits and the buildup of unused Rule 20A work credits across the State. As of March 2019, there is a balance of \$489.3 million in equivalent unused and un-committed work credits among the communities served by all the utilities.⁸ Additionally, 57 communities

⁷ [PG&E 2019 Wildfire Mitigation Plan](#), p.13-14.

⁸ The total unused, uncommitted Rule 20A work credits by utility are as follows:

- PG&E – \$254 Million

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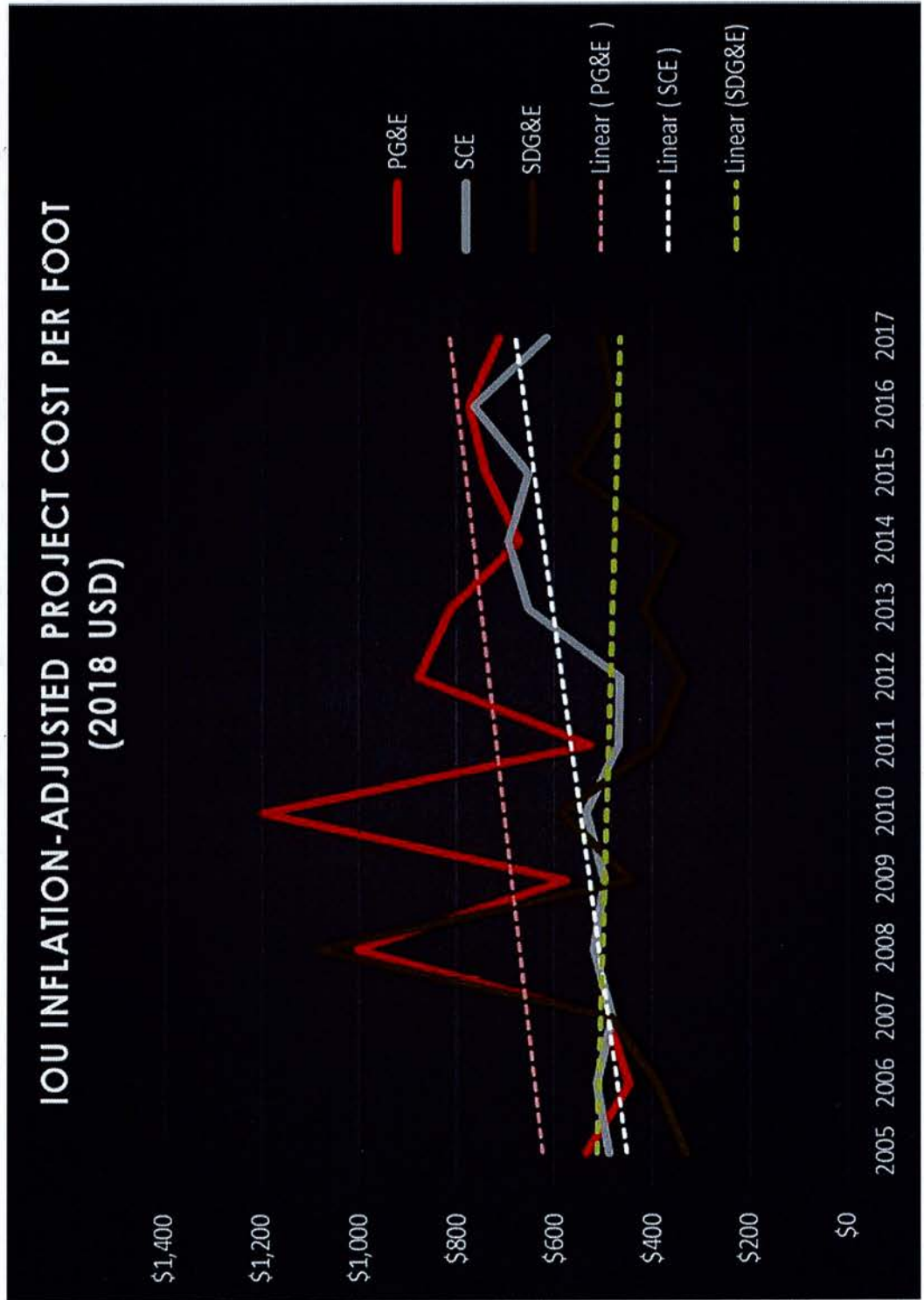
have borrowed beyond the 5 year forward limit placing them in “work credit debt” and some have work debt that exceeds 50 years in equivalent annual allocations. See Table 3 on page 49 for more details. Through an unsanctioned secondary work credit marketplace, some communities sell, trade, or donate their unused work credits to other communities that need them to complete a project. While there is a provision in the Rule 20A Tariff for reallocating unused work credits from inactive communities to those in need of additional credits, it has seen limited use and appears to be an unworkable solution to work credit shortfalls.

Numerous municipalities have expressed that the current Rule 20A is not meeting their needs as the program is too narrowly focused on aesthetic enhancement. Instead, these municipalities are eager to leverage the program to enhance wildfire mitigation and meet other community safety and reliability objectives. Additionally, some municipalities report that the electric utilities and telecommunications companies are challenging to work with due to a misalignment of incentives for timely and cost-efficient project completion and due to disagreements over cost responsibility. Consequently, there have been several instances where project costs have vastly exceeded design cost estimates and project timelines have been drawn out seven years or longer. Complicating the matter is that the utilities are incentivized to hold back on completing projects, to ensure that they do not overspend relative to their approved GRC budgeted amounts. Furthermore, by delaying project completion, the cost of the projects and in turn the cost of the capital of the underground facilities increases which allows the utilities to put higher amounts into ratebase than they would otherwise be able to.

Another issue with the program in recent years is the significant increase in project costs. Data from the R.17-05-010 discovery and the PG&E Rule 20A Audit (discussed in more detail below) demonstrate that the project costs in real terms have increased by approximately 33 percent and 44 percent for PG&E and SCE respectively. On the other hand, SDG&E’s costs appear to have declined modestly by less than six percent. See Figure 4 below.

-
- SCE – \$207.6 Million
 - SDG&E – (\$79.1Million); the \$489.3 million total excludes SDG&E’s over-commitment of \$79.1 million
 - Liberty – \$18.9 Million
 - PacifiCorp – \$8.8 Million
 - Bear Valley – \$0

Figure 4. Inflation-Adjusted Cost per Foot for all IOUs 2005-2017 (in 2018 USD)



(CPUC Data as of April 2019)

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Issues Uncovered in the PG&E Rule 20A Audit

The Rule 20A Program Audit, conducted by AzP Consulting in compliance with D.18-03-022 of the PG&E 2017 Test Year GRC Application (A.)15-09-001, uncovered several issues with PG&E's administration of the Rule 20A program.^{9,10} Between, 2007 and 2016, the Audit found that PG&E consistently underspent their annual Rule 20A GRC budgets for every year over the 10-year period. Of the \$555,776,000 that PG&E collected in rates for Rule 20A cumulatively over this period, PG&E spent \$123 million, or 22 percent, on programs other than Rule 20A. As a consequence of reprioritizing funds away from Rule 20A, several of PG&E's Rule 20A projects experienced project delays and project cost increases leading to great frustration by the affected communities. AzP Consulting's assessment of program metrics shows PG&E's assertion that measures such as creating Rule 20A government liaison positions and revising the Rule 20 Program Guidebook and Rule 20A General Conditions Agreement have increased the ability of PG&E to carry out Rule 20A projects is inconsistent with the data on PG&E's actual program performance. Furthermore, PG&E's internal controls were found to be insufficient and unable to facilitate the proper functioning and management of PG&E's Rule 20A program. The CPUC is still considering further actions to rectify these issues with PG&E's Rule 20A program.

The Audit also found that relative to recognized nation-wide industry costs reported in the Edison Electric Institute's (EEI) 2012 study on undergrounding, PG&E's costs per converted mile were higher than the "maximum" conversion cost for two out of the three population densities – rural (50 or fewer customers per square mile) and suburban (51 to 149 customers per square mile). EEI's suburban undergrounding costs range from \$329,280 to \$2,541,000 while PG&E's average cost was reported to be \$4,790,559. Similarly, EEI's rural undergrounding costs ranged from \$166,005 to \$2,058,000 while PG&E's average cost was \$2,540,321. Additionally, PG&E reported to the auditors that it did not perform any benchmarking studies from 2007 to present and did not provide any explanation as to why its costs were higher than nation-wide average undergrounding costs.¹¹

While the D.18-03-022 audit was specific to PG&E's Rule 20A program, the Audit Report recommendations may be applicable to other utilities and offer them a means of enhancing their Rule 20A programs. AzP Consulting's findings and recommendations were considered in the formation of Staff's recommendation for this proposal detailed in the subsequent sections.

⁹ For the full text for D.18-03-022, please visit: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

¹⁰ Please see the following link to the PG&E Rule 20A Audit final report: <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442462983>.

¹¹ While the audit was unable to provide an explanation for PG&E's relatively high conversion costs, cities such as the Town of Tiburon have reported that costs have increased in recent years due in part to constraints in the construction market. In a 2018 Tiburon Staff Report on a recently cancelled Rule 20A project, Tiburon Staff cited reconstruction efforts for the Oroville Dam, the Napa and Sonoma county rebuild post 2017 wildfires, increased spending by Caltrans, and labor shortages as drivers behind construction constraints and cost drivers. For more information, see: https://townoftiburon.granicus.com/MetaViewer.php?view_id=5&clip_id=197&meta_id=9477.

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3.3 Proposed Guiding Principles

Staff recommends the following guiding principles to guide the program reform of Rule 20:

- 1) **Program objectives should be defined and made relevant to current undergrounding goals held by various stakeholders including safety and reliability.**

These new objectives can include a focus on safety, reliability, equity and the alignment of cost allocation with cost causation. Undergrounding safety objectives will be focused on providing communities with the ability to use their limited funds to underground areas that pose the greatest risk for wildfires or impeding emergency evacuations. Similarly, the proposed reliability goals will allow communities to underground circuits that are subject to chronic weather-related outages. The equity objectives will be focused on providing ample undergrounding opportunities for large and small communities alike and the need to target communities which have historically not benefitted from the program.

- 2) **Program reform should be informed by the governmental entities which have benefitted from undergrounding and those which have not.**

As is described in Section 2.3 above, the primary beneficiaries of the Rule 20 program are the economic core cities in coastal California. However, it is not simply the largest cities that have seen the most benefits from the CPUC's various undergrounding programs, but also the outlying suburbs of the economic core which were built out with underground utilities since the 1970s.¹² All of these newer communities have seen significant benefits from underground utilities that have been subsidized in part by older communities which are served by overhead facilities.

- 3) **Maintain regulatory efficiency of the program.**

The utilities should remain responsible for day-to-day administration. Staff intends to keep its oversight role over the program and mediate issues when necessary. Staff does not support taking on additional program administration responsibilities unless it is warranted.

- 4) **Minimize general ratepayer impacts.**

Undergrounding for aesthetic purposes in localized areas benefits few ratepayers at the expense of the many. While society at large may benefit from the reduction of overhead facilities in scenic viewsheds, it is not a sustainable or equitable proposition to continue placing the burden on ratepayers at large. Undergrounding of overhead infrastructure can

¹² Electric Tariff Rules 15 and 16 have required that all new distribution line extensions and service extensions in both residential and commercial areas be constructed underground since the 1970s. These Tariff requirements are separate from the CPUC Rule 20 program.

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be conducted when desired by local communities, but costs should be primarily borne by those who will benefit directly from the projects.

5) Recognize and encourage projects that can leverage local funds.

Staff is promoting program reforms that will incentivize projects funded by local communities such through Rule 20B or 20C, and through municipal surcharge-based programs such as the City of San Diego's undergrounding surcharge program. The CPUC does not oversee this type of program but can authorize the utility to collect the franchise fee through rates that goes directly to funding the undergrounding. (See Section 2.1, pg. 10-11 and Section 4.2, pg. 36 for more details)

6) Improve program operation and efficiency.

Staff seeks to resolve common issues in the program that prevent timely and cost-efficient undergrounding. Furthermore, Staff intends to uncomplicate the design of the program and remove program barriers to entry.

4. Modifications to Rule 20 Tariff

This Section, in addition to Section 5 and 6, begins with background information on specific program issues related to recent experience with the Rule 20 program, and various options for resolving these problems. Many of the options presented are not mutually exclusive and those recommended by Staff are indicated as such in parenthesis.

4.1 Rule 20 Project Eligibility Criteria

Background

The Rule 20A project eligibility criteria were initially developed in 1967 in D.73078 and were focused specifically on aesthetics and traffic considerations.¹³ Since 1967, the criteria have seen subsequent refinements and any new proposed Rule 20A project must be at a minimum of 600 feet or one block (whichever is less) and meet one or more of the five criteria listed below:¹⁴

- 1) Such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities;

¹³ See [D.73078](#) for more information.

¹⁴ The criteria for Rule 20A projects are listed below. Note that the third criteria is only featured in [SDG&E's Rule 20A tariff](#). While not a public interest criteria per se, [PG&E's Rule 20A Tariff](#) requires in 1.A.c. that the governing body has: "Acknowledged that wheelchair access is in the public interest and will be considered as a basis for defining the boundaries of projects that otherwise qualify for Rule 20A under the existing criteria set forth in Section A(1)(a) above."

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- 2) The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic;
- 3) Wheelchair access is limited or impeded (SDG&E only);
- 4) The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public; or
- 5) The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines.

Several communities in recent years have argued that the criteria for Rule 20A is too restrictive and that they are interested in undergrounding for safety and reliability reasons. In the wake of the destructive wildfires that occurred across the state in 2017 and 2018, some communities have expressed interest in leveraging Rule 20A funds to underground overhead lines in high fire threat areas for wildfire risk mitigation and ingress and egress routes in communities to prevent poles and live wires from blocking evacuation routes. There is also an expressed interest among some communities to reduce vehicle-pole collisions in certain areas.

Another issue is that the existing criteria is not standard among all the utilities (as SDG&E is the only utility that lists impeded wheelchair access) and the first two criteria are not very specific with regards to an "unusually heavy concentration of overhead electric facilities" or a "heavy volume of pedestrian or vehicular traffic." There is a fair bit of confusion and dispute with these criteria, though the utilities have authority to interpret the criteria and determine if a proposed project meets any of them or not. For example, with the "heavy volume of pedestrian or vehicular traffic," PG&E has in practice interpreted this to mean that such streets carry through traffic as opposed to only serving local traffic and checks to see if the streets meet the major collector/arterial criterion as part of their evaluation. In the event that a community consults with the utility and disagree with its evaluation of the criteria for a given area, the community would have little recourse but to file a complaint with the CPUC.

Options

Note: Options B-F are not mutually exclusive.

A. Status Quo – Maintain Current Rule 20 Public Interest Criteria

Under the status quo scenario, the project eligibility criteria remain the same. The downside of status quo is the evolving public interest would not be fully met under criteria focused almost entirely on aesthetic enhancement.

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B. Safety and Reliability as additional criteria (Staff Recommendation)

Undergrounding can be an effective means of enhancing safety and reliability of the distribution system and under this proposal there are several additions to the Rule 20A eligibility criteria to encourage projects that meet these ends.

We recommend including wildfire mitigation as one additional safety criteria because of strong interest from stakeholders. Each community can leverage a limited pool of ratepayer funds for undergrounding projects. If a community wants to prioritize their limited Rule 20 funds on undergrounding to address wildfire safety, staff believes that this option should be added to the public interest criteria. See the proposed criteria below:

- 6) The existing above ground infrastructure is within a Tier 2 or Tier 3 area of the State's High Fire-Threat District as defined by the CPUC and the California Department Forestry and Fire Protection;

We caution the parties to have realistic expectations. Given that it will take over 3,000 years to covert the nearly 147,000 miles of overhead distribution lines to undergrounding and the high cost of conversion, this program change would have limited impact on wildfire safety. Additionally, the ALJ Guidance Ruling noted that there are several open wildfire-related dockets that may have a much greater impact on wildfire mitigation than the Rule 20A program. Staff agrees and finds that transforming Rule 20A into a wildfire mitigation program may not be the most cost-effective means of addressing wildfire risk. The utilities reported to Staff that undergrounding costs between \$2.6 million and \$6.1 million per mile which is far more expensive than other fire hardening measures such as replacing wooden poles with steel poles and installing covered conductors which the utilities report as costing \$480,000 per mile.¹⁵

In addition, projects that either underground overhead infrastructure along county-designated evacuation routes and/or major ingress and egress roads can reduce the risk of escape routes being blocked by fallen poles and live wires during natural disasters. To that end, the following proposed criterion states:

- 7) The street or road or right-of-way serves as an egress, ingress, or is designated an evacuation route by local or state government entities.

Another safety-related issue along roadways that could be addressed in revised Rule 20A criteria is that above ground infrastructure may reduce road users' visibility and increase the

¹⁵ Steel poles and covered conductors have been identified as a preferred method for fire hardening in the State's High Fire Threat District. According to SCE in its Grid Safety and Resiliency Program (GSRP) filing (A.18-09-002) the incremental cost of upgrading wooden poles to fire resistant steel composite poles is \$52,000 per mile and installing covered conductors is \$428,000 per mile. For more information, see pages 54-54 of SCE's GSRP testimony: <https://www.edison.com/content/dam/eix/documents/investors/wildfires-document-library/201809-gsrp-filing.pdf>.

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risk of accidents in areas such as in intersections. To minimize this risk, the proposed criterion states:

- 8) The above ground infrastructure dangerously limits visibility for motorists, pedestrians, bicyclists, and/or other road users, particularly in intersections;

Additionally, the above ground infrastructure may be at high risk for vehicle damage, such as vehicle-pole collision, due to the placement of the poles along the road and the area's weather. The proposed criterion eight would allow for the conversion of such overhead equipment to qualify under Rule 20A:

- 9) The existing above ground infrastructure is along a road or right-of way that has a history of vehicle-pole collisions;

Similar to Section 4.3.B, these proposed new criteria would be applicable to Rule 20A if it is either continued or sunsetted, and to a modified Rule 20B program.

C. Refine and standardize existing Rule 20 public interest criteria (Staff Recommendation)

The CPUC would refine the existing public interest criteria used to determine project eligibility in the Rule 20A Tariff to include objective requirements, add clarity, and allow more projects to qualify that are in the public interest without changing the focus away from aesthetic and traffic concerns. These enhanced criteria would be applicable to Rule 20A if it is either continued or sunsetted, and to a modified Rule 20B program. See the proposed changes below in redline.

- 1) Such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities. This is defined as poles that serve circuits in addition to a single primary and secondary circuit;

This change would allow communities to utilize Rule 20A to underground not only poles that are unsightly due to too many electric wires, but also poles that may be unsafe due to pole overloading. The last sentence adds an objective description as to what an unusually heavy concentration of overhead electric facilities would be.

- 2) The street or road or right-of-way serves as a major thoroughfare for is extensively used by the general public and carries a heavy volume of pedestrian, bicycle, rail, vehicular, or other traffic. Heavy traffic volume means a minimum of 5,000 average trips per day among all personal and public transportation forms collectively;

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This removes “extensively used” which is vague and replaces it with a major thoroughfare. Bicycle and micro-mobility traffic are also included. Heavy traffic volume is clarified based on the State of California’s General Plan Guidelines minimum traffic volume for collectors.¹⁶

- 3) Wheelchair access is limited or impeded by existing above ground electric and/or telecommunications infrastructure including pad mounted facilities on sidewalks or in other areas in the pedestrian right-of-way that is otherwise not compliant with the Americans with Disabilities Act;

This adds clarity as to how wheelchair access is impeded and allows for any above ground infrastructure on sidewalks or other areas in the pedestrian right-of-way, such as plazas, that do not comply with the Americans with Disabilities Act to be undergrounded via Rule 20A.

- 4) The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of significant unusual scenic, cultural and/or historic interest to the general public; or

This allows other areas of importance to the public to be eligible under Rule 20A in addition to scenic areas.

- 5) The street or road or right-of-way is considered an arterial street or major collector as defined by the California Department of Transportation’s California Road System functional classification system, in the Governor’s Office of Planning and Research General Plan Guidelines.

This change conforms the definitions of arterial and major collector to the definitions used by the California Department of Transportation and the rest of the State of California.

D. Include benefit-to-cost metrics as additional criteria (Staff Recommendation)

Under the current criteria, there is no consideration of costs or using benefit-to-cost analysis as a criterion under the Rule 20A program. By creating a new criterion which states that projects which meet a benefit-to-cost ratio of one or greater would qualify under Rule 20A, the program could encourage projects that would yield quantifiable positive net benefits for the ratepayers and the general public. Possible benefit streams could include safety, reliability, efficiency/economies of scale from combining undergrounding with other planned civil construction projects and/or constructing large-scale undergrounding projects, and replacement of aging overhead infrastructure. Alternatively, there could be a minimum benefit-to-cost threshold that would need to be met by any prospective project to qualify under Rule 20A to ensure that they are a prudent investment of ratepayer funds. The challenges with benefit-to-cost criteria are that there are limited third-party benefit-cost

¹⁶ 2003 General Plan Guidelines, page 256-257. For the full text of the State’s 2003 General Plan Guidelines, see: http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf.

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studies that exist to draw from at this time for underground conversion, so the utilities would have to play a considerable role in determining the costs and benefits for the time being. Additional studies may be needed first by the utilities and/or third parties before the CPUC may be able to adopt benefit-to-cost metrics as additional criteria for the Rule 20A program.

E. Minimum Project Distance, Service Laterals, Panel Conversions – Rule 20A Section 3 (Staff Recommendation)

In Rule 20A Section 3, the utilities specify their requirements for the minimum project distance is the lesser of 600 feet or one block. Staff proposes to increase the minimum distance to the lesser of half a mile or five blocks to minimize ratepayer liability created by short, relatively expensive projects. Projects less than five blocks may be constructed as a Rule 20B project, if eligible, or as a Rule 20C project. Rural communities would be exempt from this minimum.

In terms of service laterals, the Tariff limits the length for installing underground service laterals at “no more than 100 feet” in Rule 20A Section three. However, some customers may require longer service laterals as the service lines may be routed through an alley, or because a 100-foot service lateral is otherwise infeasible. Staff recommends making 100 feet as an average for service laterals, rather than a maximum, so the utilities do not need to seek out a deviation from Rule 20A in order to underground a service line that exceeds 100 feet.

In Section three of the Rule 20A Tariff, the utilities currently limit the conversion of electric service panels to accept underground service at \$1,500 per service entrance, excluding permit fees. It is unclear how the \$1,500 figure was arrived at or if it is still a relevant figure today. Thus, Staff recommends changing the language of the fourth paragraph of Rule 20A Section three to:

The conversion of electric service panels to accept underground service. ~~up~~
to \$1,500 per service entrance, excluding permit fees.

F. Project Viability and Actionability (Staff Recommendation)

A final criterion to add to the prospective new list would be for the community to sufficiently demonstrate that the project is sufficiently funded and can be completed within seven years. To meet this criteria, the community would need to demonstrate that it could absorb at least a 100% increase in price, which is not a reasonable expectation for Class 5 project cost estimate during the project initiation or planning phase in accordance with the Association of the Advancement of Cost Engineering’s (AACE) estimation guidelines, with additional work credits or pre-arranged community funds.¹⁷ Furthermore, the prospective

¹⁷ Estimates at the planning phase of a project are based on less detailed information and assumed precision than estimates during the construction phase of a project. For more information about the AACE’s cost estimation guidelines, please visit the AAC website: <https://web.aacei.org/>.

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joint trench participants (i.e. city, telecommunications companies, electric utility) for the project would draft a binding charter for the project in which they would agree to complete the project in seven years or less and plan to execute it following the formation of the undergrounding district. This new criterion could act as a safeguard against projects dragging on for years or being prematurely cancelled due to a lack of adequate preparation or funding.

Questions for Parties:

- 4.1.i. If the CPUC ultimately decides to sunset the Rule 20A program, should any of the modified criteria be adopted for the sunset period?
- 4.1.ii. Is half a mile or 5 blocks a reasonable minimum distance for Rule 20A projects?
- 4.1.iii. How can the “unusually heavy concentration of overhead electric facilities” and “heavy volume of pedestrian or vehicular traffic” criteria be more objectively and concretely defined?
- 4.1.iv. How will the telecommunications companies modify their Rule 32 programs to align with any changes that may occur to the Rule 20 program as a result of this proceeding?
- 4.1.v. Are there other safety and reliability criteria that can be considered aside from those listed above in section D?

4.2 Rule 20A Work Credit Allocation Methodology

Background

Under the current allocation methodology, each IOU has a limit to the number of allocations that is set in their general rate cases for the Rule 20A program. The utilities allocate the Rule 20A work credits proportionately based on the number of meters (representing customer accounts) to all of their cities and counties within their service territories.¹⁸ All the utilities, except for PG&E, provide a baseline allocation based on the 1990 allocation amount to each of the communities and utilize an allocation formula to determine the additional amount of work credits to allocate.¹⁹ The allocation formula bases 50 percent of the allocations on the proportion of a municipality’s total overhead meters to the total system overhead meters that the utility serves. The other 50 percent is based on the total meters (both overhead and underground-served meters) in a municipality to the total utility system meters.

¹⁸ In 2019, the total allocations were \$102 million in total for 2019 for all the utilities. The breakdown of 2019 allocation amounts are as follows: Liberty Utilities – \$1.43 Million, PacifiCorp – \$520,000, Bear Valley – \$0, PG&E – \$41.3 Million, SCE – \$30.1 Million, and SDG&E – \$28.7 Million.

¹⁹ PG&E does not use a 1990 baseline; it simply uses the weighted allocation formula based on overhead and total meters. See [PG&E’s Rule 20 Tariff](#) for more information.

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This allocation structure has proven to be problematic in recent years as many communities receive too few work credits to undertake a project. There are many small communities that are put at a disadvantage by this methodology as they receive annual allocations that are less than \$250,000 – the minimum allocation amount needed to save enough work credits over a five year period to complete a project of five city blocks (about 3000 feet) in length.²⁰ Under the current allocation methodology, many of these communities face a significant financial barrier to entry and are fortunate to have completed any projects over the past 50 years. Smaller communities with insufficient allocations may save up work credits for decades but see the value of their saved allocations diminish in value due to inflation and rising project costs.

Further complicating matters is the fact that the current work credit allocation rules do not distinguish between communities that have an expressed interest in undergrounding, disadvantaged communities, or urban, rural and suburban communities. Many communities which either have most if not all of their system underground, or have not developed a five or ten year plan, or have not formed an undergrounding district, or otherwise have not expressed any interest in participating in Rule 20A still receive work credits each year under the current program structure. Partly as a result, there are \$489.3 million in unused and uncommitted work credits that are held by numerous communities across the state.

Another issue with the current allocation methodology is that it apportions work credits no differently to wealthy active communities as it does to disadvantaged communities which have completed few or no underground conversions through Rule 20A. The Rule 20A maps that the utilities developed in response to the R.17-05-010 show that the bulk of undergrounding investments in the state have occurred in the state's affluent and economic core areas, such as the San Francisco Bay Area and San Diego.

In recent years, the CPUC has become more focused on promoting environmental and social justice and has committed to advance equity in CPUC programs and policies. However, the Rule 20A program current allocation structure predates environmental and social justice objectives and, in some cases, underserves disadvantaged communities. The level of allocations can be insufficient for some disadvantaged communities, and allocations do not cover municipal administrative costs, which may represent a significant financial burden on disadvantaged communities and a barrier to entry for this program. However,

Finally, the current methodology is structured such that communities that are simply larger and have more meters are awarded more work credits. This process fails to consider factors such as the community's level of interest in the program, the level of potential aesthetic impacts, or urban density. Some communities may receive large allocations but do not

²⁰ This assumes a median project cost of \$825 per foot and that the community will utilize its five-year borrow. According to the data the utilities provided in response to the Staff data request for R.17-05-010, the cost per foot for Rule 20A projects ranges from \$500-\$1,150.

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prioritize aesthetic utility undergrounding in their neighborhoods for whatever reason. While the program is designed to enhance aesthetics there is no prioritization of allocations to areas where the highest societal aesthetic benefits can be made, such as near scenic coastlines, state parks or historical landmarks. Similarly, this allocation structure ignores urban density, which experts have associated with greater benefits relative to costs for undergrounding than in less dense areas due to greater economies of scale and due to existing and extensive underground rights-of-way.^{21,22}

Options

Note: Options B-G are not mutually exclusive.

A. Status quo Rule 20A Program

With the status quo option, the allocation methodology would remain unchanged and assumes that the CPUC does nothing to address work credit reallocation or trading and keeps the borrowing limit at five years. Should the CPUC choose this path, none of the equity issues would be resolved for the small and disadvantaged communities. Furthermore, many communities would still have to rely on the informal, unregulated work credit trading market, reallocation and the five year borrow in order to make up for insufficient allocation levels.

B. Eliminate Rule 20A, require cities and counties to leverage Rule 20B and 20C as written

In this scenario, the CPUC eliminates the Rule 20A program which leaves the cities and counties with Rule 20B and 20C programs to construct undergrounding projects in their respective jurisdictions. Under Rule 20B, a city or county can construct an undergrounding project that otherwise would not meet any of the Rule 20A criteria and receive a 20 to 40 percent ratepayer contribution provided that the project would include both sides of the street for a minimum of one block or 600 feet. In Rule 20C, there is no minimum length requirement and like Rule 20B, there is no public interest that the community's project would need to meet.

There are several benefits to this proposal. The equity issues around the buying, selling, and reallocating work credits would no longer be present if 20A is eliminated. The Communities would continue to benefit from a 20-40 percent ratepayer contribution from the utility for projects and can choose projects without the constraint of the Rule 20A project eligibility

²¹ Larsen, Peter H., "[Severe Weather, Power Outages, and A Decision To Improve Electric Utility Reliability](#)," PhD dissertation, Stanford University, 2016, p.114.

²² To put this in perspective, a community such as Maywood in unincorporated Los Angeles County with a population density of 23,216 per square mile would not receive a higher weighting with its Rule 20A allocation than Long Beach which has less than half of Maywood's population density at 9,191 people per square mile. Only the aggregate number of meters are considered in the allocation formula.

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criteria. There would not be any dispute as to whether projects would qualify or not under the five Rule 20A criteria. Finally, the allocation of undergrounding costs in the Rule 20 program would better match cost causation as the communities would have to pay for the bulk of their projects rather than the ratepayers who may not live in the community.

However, there are several drawbacks of this option. For instance, the 20-40 percent ratepayer contribution might not be insufficient to reduce barriers to entry to the Rule 20 program for smaller and disadvantaged communities. The CPUC may want to consider increasing the ratepayer contribution to 50 percent for smaller and disadvantaged communities or institute a matching fund scheme to enable these communities to obtain enough funding to construct projects through the Rule 20B program. Cities and counties would likely not be in favor of eliminating 20A without providing a comparable substitute. Furthermore, with the elimination of the public interest criteria, there would be no guarantee that undergrounding would occur in areas of interest to the general public or in disadvantaged communities.

C. Modify Rule 20B to Incorporate Tiered Ratepayer Contributions and Sunset the Rule 20A Allocation-Based Program (Staff Recommendation)

Another option for moving away from the allocation-based Rule 20A program would be for the CPUC to end Rule 20A and replace it with an enhanced Rule 20B program which would provide higher levels of ratepayer contributions to applicants on a tiered basis. The modified Rule 20B program would have three ratepayer contribution tiers for applicants based on public interest criteria and policy objectives:

Tier 1 – Ratepayer Contribution = 20%

Minimum distance of one block or 600 feet on both sides of the street, whichever the lesser. Tier 1 is roughly equivalent to the current 20B program.

Tier 2 – Ratepayer Contribution = 30%

Tier 1 and meets one or more of the revised Rule 20A public interest criteria proposed in the staff proposal including aesthetics, safety, and fire threat mitigation.

Tier 3 – Ratepayer Contribution = 50%

Tier 2 and meets one or more of the following equity criteria:

- Lies within or is adjacent to a disadvantaged community census tract the time of creating the undergrounding district;
- Community has not completed a Rule 20 project in 10 or more years²³;

²³ If a community is in work credit debt in excess of 5 years, then it cannot meet this criterion.

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Replacing the Rule 20A program with a tiered Rule 20B program could potentially resolve many of the equity issues and administrative challenges that have plagued the program:

- Applicants will be responsible for most of the costs of undergrounding which better reflects cost causation principles;
- Projects would be less of a burden on the general ratepayer than in the case of Rule 20A;
- Communities will be encouraged to form utility surcharge programs to accelerate local undergrounding;
- The playing field would be more even as communities would no longer be reliant on unequal levels of work credit allocations;
- Projects that address one or more of the expanded public interest criteria will receive a modestly higher level of ratepayer contribution;
- The program would be simplified through the elimination of the work credits, and program flaws related to the allocations, borrowing, trading, etc.;
- Expanded public interest criteria enable many different community interests to be served by undergrounding; and
- Disadvantaged and underserved communities will have a greater opportunity to complete projects using the higher tier of ratepayer contribution.

Transition Sunset of the Rule 20A Program

To move towards the new 20B style program requires an orderly transition and sunset of the existing Rule 20A program. The 10-year transition can follow these steps:

Year 1 – As of January 1st of year 1, there will be no issuance of work credit allocations and work credit trading shall be prohibited. One exception is counties may distribute their county-level work credits to municipalities within the county provided there is no exchange of money or things of value. Communities may continue to redeem their existing work credits for Rule 20A projects throughout the 10-year transition. They may also continue to use their Rule 20A credits to “seed” the pre-project engineering and design costs of Rule 20B projects per current rules.

Year 10 – At the end of the transition period any remaining Rule 20A credits must be applied to a designated undergrounding district in the community. Any unused Rule 20A credits will be eliminated and all work credit balances will revert to zero.

With the equity benefits and flexibility of this new program design it is still possible that some of the smaller communities with fewer resources may have difficulty engaging in this program due to competing priorities or limited resources. To address this issue, it may be necessary to issue a one-time amount of work credits to historically underserved communities that have long paid into Rule 20A but received little benefit. The purpose of

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this one-time allocation is to allow these communities to have the opportunity to complete an undergrounding project in the near term. One way to operationalize this one-time allocation of funds would be for the communities to apply into a grant program, such as the one described below in Option H.

D. Incentivize Municipal Undergrounding Surcharge Programs (Staff Recommendation)

As described earlier in the proposed program guidelines, Staff is interested in promoting more projects that can leverage local funding. Not only is Staff interested in increasing the subsidy that is available to Rule 20B applicants under certain circumstances, but Staff would also like to encourage municipalities to institute self-taxation programs such as the City of San Diego's program. To that end, Staff recommends instituting a dollar-per-dollar match of up to \$2 million per year per participating municipality that would be funded by the IOUs. In order to be eligible, a community must have a self-taxation program such as a municipal utility surcharge that is operational.

There are several benefits that this proposal offers. Self-taxation programs significantly lessen the burden on the general ratepayer by requiring only the ratepayers or taxpayers within a given municipality to be responsible for most of the costs. This matching structure would provide a significant level of assistance to communities, while capping the rate impact of the matching funds.

Surcharge or self-taxation programs also simplify the ratemaking aspect of a utility's undergrounding program as the costs simply pass through to the ratepayers within a municipality. The costs would not need to be approved as part of a forecast in a utility general rate case. However, the matching funds would need to be approved in a general rate case which adds some complication to the process.

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Options E and F described below assume that work credit allocations are to continue. Revising the work credit methodology will be unnecessary if Option C is adopted.

E. PG&E's, SCE's and SDG&E's proposal: Rule 20A allocation methodology based solely on overhead meters

During the April 2019 workshop, the investor-owned utilities (IOUs) recommended that the allocation methodology be changed so that the formula would be based entirely on the overhead fed meters in a community and eliminate the 1990 allocation baseline. According to the IOUs, this would simplify the calculation, which is currently based 50 percent on the total meters and 50 percent on the number of overhead fed meters for each community. Furthermore, it would eliminate the outdated "1990 base" from the calculations.

The effect of this allocation methodology change would be an increase in allocations to communities that have a higher ratio of overhead fed meters, such as the City of Long Beach, while lowering the allocations to communities that have a high ratio of underground served meters, such as Foster City. This could potentially reduce the buildup of unused work credits across the state and reduce work credit trading as the communities with more overhead facilities and greater interest in Rule 20A would receive more work credits than communities that are already underground and may not have much need for their work credits and prefer to sell them instead. However, this may not make much of a difference to communities with small allocation levels and they may still struggle to come up with enough work credits for constructing projects. Additionally, this change does not address the transparency and efficiency issues around the unregulated buying, selling, and reallocating work credits. Furthermore, overhead fed meters are not the most accurate proxy for the total volume of overhead facilities; they are only representative of the actual service lines to homes and businesses and not primary and secondary circuits, which make up a significant portion of the overhead facilities. It may be that there are communities with few overhead fed meters that would end up receiving fewer work credits under this new methodology despite having many overhead facilities within their boundaries.

F. Overhead line miles as the basis of determining work credits

Another option for modifying the allocation methodology that the IOUs brought up during the workshop is to have overhead distribution line miles within a community's boundaries serve as the basis for determining the work credit allocation. As mentioned earlier meters fed by overhead service are not the most accurate proxy for the total volume of overhead distribution facilities. Thus, by having at least a percentage of the allocation formula be based on overhead line miles, the allocation formula would better reflect the full scope of overhead distribution facilities within a community's boundary. However, the IOUs did not recommend what percentage of the allocation would be based on the overhead line miles. The challenge with using the line miles as a basis for the allocation is that communities may

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receive a disproportionately large number of allocations simply by encompassing large geographic areas, such as Mono and Inyo Counties, though their population sizes and densities are small. Should the CPUC keep Rule 20A as an allocation-based program, then Staff recommends that line mileage should factor in no more than 25 percent of the allocation formula.

G. Allocation of mile points rather than work credits

Also referred to as “decoupling of dollars from miles,” this proposed methodology that the IOUs shared as an alternative during the workshop would change the allocation of work credits based on dollars to mile points. The annual mileage allocation would be based on the equivalent number of miles afforded by the utility’s 2019 work credit allocations unless otherwise changed in the GRC (e.g. SCE would allocate about 10 miles points among of its communities based on its 2019 allocation of \$30.1 million). Some communities would be eligible for an additional one-time baseline allocation of points equal to 3000 feet (equal to 5 city blocks or roughly half a mile)²⁴ and be allowed to use a one-time conversion of their unused Rule 20A work credits to mile points if they meet one or more of the following:

- The community has never completed a Rule 20A project;
- The community has 80 percent or more of its population living within disadvantaged community census tracts; or
- The community received \$100,000 or less in annual work credits in its 2019 allocation.

One advantage is that mile points protect against inflation and construction cost increases. Additionally, the mile points would not be marketable if the CPUC prohibits their selling, giving and trading. The borrowing-forward and reallocation provisions could still apply, so active communities would be able obtain additional points when needed. Furthermore, the proposed baseline and one-time conversion of work credits to points would help ensure that every community would have the opportunity to complete a project.

The challenges with the mile point system are that the mile point allocations may still be insufficient to reduce barriers to entry for smaller and disadvantaged communities as municipal administrative costs and constraints may prevent them from moving forward with a Rule 20A project. Moreover, mile points would not cover municipal administrative costs. Additionally, it is mile points would not apply to subsurface transformers, securing and paying for easements contaminated soils, and cultural resource findings without a change to the utilities’ general conditions agreements. One additional challenge with mile points is assigning their value in GRC budgets. It would be hard to project the cost of mile points as a

²⁴ A project of this length for an individual community would come at an estimated cost of between \$1.5 million and \$3.45 million.

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variety of factor can increase the cost of a project. Mile points could exasperate the unfunded liability problem already present with the existence of nearly half a billion dollars of unused work credits.

H. Replace the allocations with a grant program

While several of the modifications above (Options D, E and F) are focused on different variants of an allocation-based program for distributing work credits or mile points to the municipalities, this option would instead require municipalities to apply for grant funding to complete a project. With this Rule 20A program variant, the utilities would each separately create a pool of funds based on their approved Rule 20A budgets in the general rate case. The program administrator could award funds to communities based on a variety of criteria such as the population size and density of the community, if it is proposing a project in a disadvantaged community, if it is replacing aging or overhead infrastructure, if it would measurably enhance safety and reliability, scale of the project (i.e. large-scale), and if it has a benefit-to-cost ratio approaching 1:1 or better. This program design offers a centralized mechanism to award projects that will yield the highest societal benefits. Dedicated set asides in the funding pool for smaller and larger communities will ensure that large and small communities do not have to compete against each other for funding. Grant funding in the form of matching funds could also be provided to communities that establish a surcharge or self-taxation-based program such as in the case of the City of San Diego in the first year of such a program. The grant-based program could be part of the 10-year phaseout of Rule 20A.

There are several benefits that a grant-based program design would yield. For instance, a grant-based Rule 20A would create a more level playing field for cities and counties, particularly small and disadvantaged communities, as they would no longer be dependent on varying magnitudes of allocations or having to purchase work credits from other communities. The grant system would allow communities to move forward more quickly with projects by obtaining funds all at once rather than having to wait for many years to save enough work credit allocations. Grant funds if held in an interest-bearing, one-way balancing account could accumulate interest unlike a community's work credit balance, which loses value over time due to inflation and rising project completion costs. Furthermore, the grant program could incentivize projects that would yield high levels of benefits from various streams such as enhancing safety, reliability, efficiency/economies of scale, and/or by raising property values.

A grant-based Rule 20A would be challenging to administer regardless if it is administered by the utility, the CPUC, or a third-party such as the California Energy Commission. Additionally, it will take more time to design and implement relative to other options for continuing or modifying the current allocation-based program.

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Questions for Parties:

- 4.2.i. Are there other allocation or grant designs from other utility or civil construction programs that could serve as a better model than ideas that have currently been proposed?
- 4.2.ii. What are some grant-based programs that could serve as an appropriate model for a grant-based Rule 20A program should one be adopted?
- 4.2.iii. Are there definitions for “urban,” “suburban” (or “urban clusters”) and “rural” areas that would be more appropriate for this proceeding and the Rule 20A program than U.S. Census Bureau’s definitions?
- 4.2.iv. Is one block or 600 feet a reasonable minimum distance for Rule 20A and Rule 20B or would five blocks or 3,000 feet be more reasonable?
- 4.2.v. Are there other items that would be reasonable for the Tier 1 or Tier 2 categories that can be objectively measured? (Such as a threshold of annual vehicle-pole collisions?)
- 4.2.vi. Is it necessary to have a one-time transition allocation of Rule 20A work credits to underserved/disadvantaged communities at the start of the transition to a revised Rule 20 program? If so, how much would be appropriate and what criteria should be used to determine eligibility?
- 4.2.vii. Who should bear the cost of the approximately \$93 million in work credit debt held among 58 communities if work credit balances are reverted to zero under the tiered Rule 20B program proposal? (See Section 6, page 50 for more information on communities in work credit debt)
- 4.2.viii. Should Rule 20B in its current or any revised form be subject to any annual limitations for the amount of rate payer funds a community can spend or the miles of lines that a community can convert to underground?
- 4.2.ix. Are there ways that the CPUC can better encourage or incentivize self-taxation or surcharge programs among the cities and counties to accelerate undergrounding?
- 4.2.x. How should local surcharge programs interact with the Rule 20 program, for example matching funds?

4.3 Sunsetting the Rule 20A and 20D Programs

Background

The notion of sunsetting the Rule 20A program was considered in the Scoping Ruling in question 27, “If the Rule 20A program is discontinued, how should the existing program be sunset?” Only the City of San Jose and Town of Portola Valley responded in their filed comments on the Scoping Memo and recommended against discontinuing the program.

Rule 20D may no longer serve a function in light of the utilities’ wildfire mitigation plans (“WMP”) which are intended to fire harden overhead infrastructure in the same high fire threat areas that would be eligible for Rule 20D projects. The utilities’ WMPs are not

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precluded from including undergrounding as a mitigation measure. Rule 20D projects may place higher costs on ratepayers than simply installing steel poles and covered conductors. Furthermore, the program may be too slow to complete undergrounding projects in light of the growing wildfire risk. Not a single Rule 20D project has been initiated since the program began in 2014 and any projects could take up to seven years to complete.

Staff Recommendation

Staff recommends gradually phasing out the existing Rule 20A and 20D programs over a 10-year period, which would allow projects that are either underway or about to be initiated to be completed with the funds that the communities have already committed to them. Annual allocations of work credits would , and communities would not be allowed to sell their remaining work credits with each other, but county entities may donate them to cities that are within the county. Staff recommends that this gradual sunset of Rule 20A be combined with option 4.2.C. to modify the Rule 20B program to incorporate tiered ratepayer contributions shown on page 20.

Questions for Parties:

- 4.3.i. Is 10 years a reasonable and sufficient amount of time to phase out the Rule 20A program in its current form?
- 4.3.ii. Should unused, uncommitted Rule 20A work credits be applicable to Rule 20B following the sunset period? If so, should there be a limit to the percentage of a Rule 20B project that can be funded through legacy Rule 20A work credits?

4.4 Options for Obtaining Additional Rule 20A Work Credits

Background

When communities require additional funding for projects beyond what they can accumulate through their annual allocations, there are a few of options that they commonly turn to obtain additional work credits. The most common approach is for communities to borrow forward against their future work credit allocations from the utility. The Rule 20A tariff allows for communities to borrow forward for a maximum of five years.

If five years' worth of additional work credits is insufficient for funding a project, the tariff allows for the utilities to reallocate unused work credits from communities that have been inactive in the Rule 20A program. Inactive communities are defined as cities or unincorporated counties that have not formally adopted a utility undergrounding, started, or completed construction of an undergrounding conversion project within the last eight years, or have received Rule 20A allocations from the utility for only five years or fewer due to recent incorporation. Based on the language in the Rule 20A tariff and the precedent set in

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Resolution E-4971, the reallocation provision may be invoked when additional funding is necessary for projects underway due to unforeseen funding shortfalls, but only after demonstrating that all alternatives for obtaining funding for the project have been exhausted. Rule 20A at Section 2.c states:

“When amounts are not expended or carried over for the community to which they are initially allocated, they shall be assigned when additional participation on a project is warranted or be reallocated to communities with active undergrounding programs.”

The reallocation provision in the Rule 20A tariff has been invoked only twice over the past two decades and many communities and the utilities have expressed concern over equity issues that the reallocation provision poses. In circumstances in which a community experiences an unexpected increase in the cost estimates or a cost overrun during construction, the utilities would more commonly work with the community to reduce the scope of the project to lower the cost, or recommend that the community come up with additional funding on their own rather than invoke the reallocation provision. This practice causes frustration for everyone involved. The utility is forced to minimize the project and the community must lower its expectations or apply more funding. Even if the project is excellent and clearly in the spirit of the Rule 20A Tariff, the parties have in some cases little option but to shrink the project and leave facilities overhead in some areas in order to fit into the budget constraints. In some cases, communities would either pause or cancel their projects altogether as a result of cost increases.

In other cases, communities have engaged in work credit exchanges – such as buying, selling, trading, loaning, and donating – as a work-around so communities can obtain additional work credits and move forward with projects that they otherwise would not be able to fund. This work credit trading is mentioned nowhere in the tariff and at least 87.6 million work credits have been exchanged in an informal, unregulated secondary market.²⁵ While work credit trading can lend to greater market efficiency by allowing communities with greater interest in the program to purchase additional work credits from communities that have no immediate interest in constructing a Rule 20A project, there is no CPUC regulatory oversight or reporting of the transactions to the CPUC. There are no set terms for buying and selling, there is no market clearing house, and only a handful of communities appear to be privy to the work credit informal market. Furthermore, there are no restrictions as to how the proceeds may be used and there are instances of communities using proceeds towards projects unrelated to the provision of safe and reliable electric services.²⁶ Additionally, the utilities claim to be largely uninvolved with the process, though they are complicit by

²⁵ Per the utility R.17-05-010 Staff data request responses transmitted to the parties via email in January 2020.

²⁶ For instance, the City of Sonora used proceeds from selling 500,000 work credits to the City of Half Moon Bay to fund the construction of public restrooms. For more information, see: <http://www.uniondemocrat.com/localnews/5607248-151/sonora-council-approves-sale-of-utility-credits-to>.

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facilitating the final transfer of work credits from one community's work credit ledger to another.

Options (Assuming Rule 20A Continues)

A. Status Quo — unregulated work credit trading

Should no changes be made with regards to work credit trading, borrowing forward, and reallocation in this proceeding, it is likely that the communities that either receive high levels of allocations or are well versed in the program will continue to reap the benefits of the program while others struggle to get their projects underway. One can argue that the work credit trading process has demonstrated success and is able to reduce the unused work credit balance that has built up among the cities and counties. However, not many communities are aware that they can buy additional work credits and not all communities have the finances to purchase additional work credits.

Additionally, the reallocation process is controversial, as the utility must take away work credits without compensation and has been traditionally a slow process due to formal CPUC review and notification to inactive communities.

B. Regulated work credit trading

Under this scenario, the CPUC would formally recognize work credit trading as part of the Rule 20A program and implement guidelines with increased transparency for the process. For instance, communities would be free to sell to one another at rates between 25 cents to the dollar and dollar per dollar, but the final negotiated price must be included in a transaction request addressed to the utility. Communities that sell their work credits would be required to use their windfall for electric rate relief and would be prohibited from using their earnings to augment their general funds. The communities would be free to loan work credits to one another and are free to negotiate rates with one another at no higher than five percent subject to utility approval. Additionally, unincorporated counties would be free to donate work credits to cities within their boundaries subject to utility approval. The utility would be required to review all work credit transactions prior to granting approval and ensure that the buyers have a legislated undergrounding district for a workable project and that the seller's terms are reasonable. The utilities should be transparent about the guidelines by including this information in their updated Rule 20A guidebooks, in their annual allocation letters to the communities, during in-person meetings with the communities, and on their public websites. The utilities should also provide information about all work credit exchanges in their annual reporting to the CPUC.

By modifying the current work credit trading practices as described above, the process can potentially be made more transparent and more efficient at drawing down the balance of

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unused, uncommitted work credits. Additionally, by requiring sellers to use profits specifically for rate relief, the CPUC can ensure that ratepayers who have been paying into the Rule 20A program for years but have had few or no projects constructed in their area would see some form of relief since they cannot opt-out of paying into the program.

However, even with these rule modifications and rate relief for selling communities, many communities that do not receive enough work credits relative to their needs and interest in the program will likely continue to inject public funds into Rule 20A projects by purchasing work credits from other communities. This is problematic as the intent of Rule 20A is to have the ratepayers fund these costs. It is unclear whether it is reasonable to require the municipalities to cover these costs simply because the Rule 20A allocation process does not efficiently allocate funds to communities with an expressed interest in the program.

C. Prohibit unregulated work credit trading and only allow intra-county transfers (Staff Recommendation)

Under this proposal, the CPUC would forbid the trading of work credits effective for the remainder of the Rule 20A program. However, one important exception to the prohibition on credit trading is to allow county governments to distribute county level work credits to municipalities within their county borders. There are several reasons to allow this type of non-monetary transfer activity, such as:

- The benefitting cities are part of the same county;
- The county can have a transparent way of deciding which cities in its jurisdiction to transfer credits to; and
- Small municipalities find it difficult to accumulate sufficient work credits to conduct a Rule 20A project. Sharing the county level allocations can help small municipalities reach a sufficient quantity of credits for a project.

One final additional exception should be allowing adjacent municipalities to pool their credits to enable an undergrounding project that benefits the county or the adjoining communities even if not in the same county. These types of non-monetary credit transfers should be allowed.

The benefit of ending work credit trading include:

- Ends an opaque trading process;
- Prevents work credits from being monetized for non-undergrounding purposes; the exceptions listed above will retain a means for communities to easily access additional work credits when the allocations and five-year borrow do not suffice without having to spend municipal funds to obtain additional work credits.

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The downside of this proposal is that communities with no interest in participating in the Rule 20A program would no longer be able to monetize their unused work credits.

D. Borrowing forward up to ten years, or \$1 million

Another potential modification to the Rule 20A Tariff aside from adjusting the rules for work credit trading and reallocation would be to allow communities to borrow forward ten years of allocations or \$1 million, whichever is greater. As is the case under the current borrowing practice, it is clear from the experience of many of the communities that the five-year borrow is only effective for some communities and not those that receive small allocations of \$250,000 or less. By allowing communities to borrow forward at least \$1 million regardless of the size of the community, the program would allow communities of all sizes to move forward much faster with projects, rather than having to wait out a decade or more to accumulate the same level of work credits. As a result, project completion rates could potentially increase.

Conversely, allowing the communities to borrow forward at least \$1 million per project could represent a higher potential ratepayer liability due to a potentially higher number of projects going into ratebase. Another issue is that communities would likely go into work credit debt for 10 years or longer, thus limiting their future participation in the Rule 20A program. Additionally, 10 years or \$1 million may not be enough to meet a project's funding shortfall and the community may need to either put their project on hold or leverage its general fund in order to fund the project.

Another variant of this option would be to allow a community to request a "grant" to cover the work credit shortfall, especially if a community has not completed a project or if the project offers multiple benefits in addition to aesthetic enhancement. See Option H under Section 4.2.

Questions for Parties:

- 4.4.i. Is 90 calendar days enough time for cities and counties to form a workable underground utility district? Would 90 business days be more appropriate?
- 4.4.ii. Should the definitions for active and inactive communities be based on different criteria than project statuses or an active utility undergrounding district, such as having a current 5-year plan, 10-year plan, or sending the utility and the CPUC a letter of intent?
- 4.4.iii. How have the communities benefitted from Rule 20A work credit trading?
- 4.4.iv. Should the CPUC continue to allow work credit trading among the communities?
- 4.4.v. How should the CPUC approach work credit debt should the Rule 20A program continue?

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4.5 Potential Rule 20D Modifications

Background

In comparison to the Rule 20A, 20B and 20C programs, Rule 20D is a fledgling program of limited scope that has yet to produce a project. Established in 2014 by D.14-01-002 exclusively for SDG&E's Fire Threat Zone (now recognized as part of the State's High Fire Threat District), Rule 20D was established to allow communities to work with SDG&E to identify undergrounding projects exclusively for wildfire risk mitigation.²⁷ To qualify, a project must be identified by SDG&E as a preferred method of wildfire mitigation for the given area. Rule 20D is structured to mirror Rule 20A with similar work credit-based structure, of which \$1 million were allocated by SDG&E in 2019, that allows for a five-year borrow and work credit reallocation.

However, Rule 20D is only focused on undergrounding the high-voltage primary circuits on the poles. Under the current Rule 20D structure, poles could remain standing after a project is complete as the program does not pay for the undergrounding of the communications facilities, secondary and service lines below 600 volts, or panel upgrades to accept underground service. According to SDG&E, these costs are not included in the Rule 20D program as the Program is only designed to convert the high-voltage (distribution lines 600 volts or greater) to underground as these pose the greatest wildfire risk.²⁸ However, it is possible that the lower-voltage secondary and service lines may still pose a wildfire risk. Additionally, the Rule 20D and Rule 20A work credits are held in separate balances by the utilities and cannot be intermingled for use in Rule 20D projects.

Options

Options A-B are mutually exclusive

A. Status Quo – continue current Rule 20D program

Under the status quo scenario, the Rule 20D program will remain exclusive to SDG&E and continue to see limited use due to the program's relatively small allocation amounts and restrictions for only covering the costs of undergrounding primary distribution lines and from allowing communities to utilize Rule 20A funds. A benefit to this option is that the Rule 20D program does not interfere with SDG&E's priorities for wildfire mitigation as set in its 2019 Wildfire Mitigation Plan, as proposed Rule 20D projects are few and have been identified to be a preferred means of wildfire mitigation. However, due to the small

²⁷ Please see the following link for the full text of D.14-01-002:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M086/K541/86541422.PDF>.

²⁸ See SDG&E Opening Brief of A.11-00-002 at page 12

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M031/K744/31744373.PDF> and SDG&E's Rule 20 Tariff.

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allocation amounts and the limitations described above, it is unclear if any projects will be completed soon. Another downside to this option is that many of the communities outside of SDG&E's Fire Threat Zone that are eager to utilize Rule 20D would be unable to do so.

B. Expand a refined Rule 20D

In this scenario, the CPUC would expand a refined Rule 20D program to all the utilities and encompass the State's High Fire Threat District Tier 2 and Tier 3 areas rather than SDG&E's Fire Threat Zone.²⁹ The refinements would allow the program to cover the costs of undergrounding all the electrical and telecommunications facilities, such as in Rule 20A and allow the communities to leverage their Rule 20A work credits to fund Rule 20D projects.³⁰ A refined version of the Rule 20D program that is expanded to beyond SDG&E's Fire Threat Zone would facilitate significantly higher levels of Rule 20D project completion in communities throughout the state. Should the program be expanded as described above, the utilities will need to plan carefully with interested communities to ensure that the Rule 20D program does not interfere with the utilities' priorities for wildfire mitigation as set in their Wildfire Mitigation Plans.

C. Terminate the Rule 20D Program (Staff Recommendation)

Rather than expand the Rule 20D program which has little to show for in SDG&E's service territory, Staff Recommends terminating the program and sunsetting it gradually as described in Section 4.1. In the event that Rule 20 program modifications take place, such as expanding the Rule 20 public interest criteria and/or establishing a replacement for the current Rule 20A program, Rule 20D will no longer serve a purpose as communities will have other opportunities to underground for wildfire mitigation outside of the WMP framework. Rule 20 D program goals could be met through adding wildfire mitigation to the 20 A and B programs.

²⁹ During the April 22-23 workshop for R.17-05-010, the Joint Local Governments expressed interest in leveraging Rule 20D in PG&E's service territory.

³⁰ Cost sharing among the electric and telecommunications companies in the joint trench would be structured similar to the structure in Rule 20A in which the facility owners bear the costs related to converting their own infrastructure to underground.

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5. Rule 20 Program Reporting, Communication and Transparency

Background

Under the current Rule 20 program, the utilities inform communities, the CPUC and the public about the program primarily through their annual allocation letters to the communities, the annual allocation and completion reports to the CPUC, and information on their undergrounding webpages to the extent that they have one. The utilities have also dedicated staff to collaborate with municipal agencies and participate in community meetings. For instance, PG&E has several regional Rule 20 liaisons that assist the project managers and coordinate directly with the government agencies.

The allocation letters are sent to each of the communities in each utilities' service territory that receives work credits to explain what a given community's work credit allocation is for the year. The letters also explain the community's total work credit balance, mention the five-year borrow as a means of obtaining additional work credits, and provide contact information to dedicated staff. Apart from these items, the allocation letters are otherwise sparse on information. The letters make no mention of how the allocation for a given community was determined, what the allocation formula is or any reasons behind changes from prior years. The letters do not convey what current or recent project costs are in nearby communities to put the work credit balance into perspective. Additionally, the letters do not mention anything about work credit reallocation, the community's active or inactive status, any relevant contacts at the utility or the CPUC, a program website or handbook, and whether the community can sell its work credits or purchase more. Moreover, the letters do not contain information as to who to contact and what the process is to file a complaint with the CPUC. See Appendix B for an example allocation letter that PG&E sent to Humboldt County in 2017.

The annual allocation reports to the CPUC are similarly sparse on information and only show the individual allocations to the communities and the total allocation for all the communities. There is no mention of how the allocation formula was applied, the change in allocations, the work credit balances, which communities are active and inactive, or which have borrowed forward five or more years of allocations. See Appendix C for an example allocation report that SCE sent to the CPUC in 2018.

The annual completion reports offer much more detail in comparison, but they could benefit from refinements. The completion report shows high-level summary statistics for program expenditures and unexpended work credits for the year and cumulative, breakdowns by Rule 20A, 20B and 20C projects.

See Appendix D for an example completion report that SDG&E submitted for calendar year 2018. During the April 2019 workshop, the utilities and various parties pointed out shortfalls

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with the current reporting structure such as the lack of data on Rule 20A project activity over the report year, particularly with projects in the queue or in-progress. The parties as explained that the reports omit data on actual project costs inclusive of the telecommunications costs, an explanation of the cost components, what the project costs estimates and any variances are, and costs on a dollar per foot/mile basis. Additionally, the utilities expressed concern over the sections that focus on Rule 20B and 20C given how labor-intensive it is to prepare that information for the report.

In addition to the undergrounding letters, reports and webpages, the utilities have also attempted to utilize a Rule 20 Guidebook, based on PG&E's 1996 "Underground Utilities Conversion Planning Guide" with the cities and counties, but it was never adopted by the League of California Cities (LOCC) and is not in use. From the 1980s to the early 2000s, PG&E, Pacific Bell (now AT&T) and the League of California Cities jointly developed and adopted two versions of a Rule 20 Guidebook to help inform the communities engaging in the program on topics ranging from project planning, funding, coordination and construction. It is unclear how widely these guidebooks were used, but during the April 2019 workshop, the City of San Jose had remarked that the guidebooks were inaccurate and had led the city to rely on inaccurate information. Following the CPUC's order in D.01-12-009 from the last Undergrounding Proceeding to revise the guidebook, the utilities attempted to work with Pacific Bell and the LOCC to update the Undergrounding Planning Guide but failed to do so as described earlier.

Despite the utilities' various forms of communication and reporting for the program, communities and ratepayer advocates have expressed that there is a lack of adequate transparency and the level of knowledge varies among the municipalities about basic information such as how the program works, how the allocations are calculated, how much the ratepayers are paying for the program, how much projects cost, what the cost components are and their unit cost ranges, how long projects typically take, what the responsibilities for all of the joint trench participants (the electric utility, the telecommunications companies and the governmental body) are, and what is in the Rule 20 Tariff.

Similarly, communities are often only able to obtain limited information regarding project cost increases and the utilities' bid results due to confidentiality protection, though the bids are for projects intended for the public benefit. The communities are often left with very little explanation when they encounter significant increases in their project cost estimates and in some cases have to request their city councils to authorize the purchase of millions of additional work credits from an unsanctioned secondary market for reasons they do not fully understand and are not communicated to them by the utility.

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Options*Options B-G are not mutually exclusive.***A. Status Quo – continue current reporting requirements**

While maintaining the current reporting and communications protocol may be convenient and less of an administrative burden than adopting new protocols, it has become clear that these protocols are insufficient for disseminating the information that the CPUC and communities need for planning purposes and for informing the public about the program. Should no changes occur here, then information about the program will continue to disseminate unevenly and the utilities may continue to report on areas such as Rule 20B and 20C in more detail than is needed and underreport on information concerning Rule 20A.

B. Implement refinements to the allocation letters and reports (Staff Recommendation)

Under this proposal, the utilities will modify their allocation letters to the communities and reports to the CPUC to provide some additional background and context. The updated letters and reports will briefly explain how the allocation was calculated based on the number of meters and the formula, include relevant citations to the Tariff and the most recent general rate case where the allocation totals were approved. The allocation letters and reports are to explain whether communities are inactive or inactive and include information as to how they can become active. Both the letter and report should include an attachment that shows the allocations over the past ten years for each of the communities with the allocation factors and meter totals similar to what the utilities provided the CPUC Staff as part of the R.17-05-010 data request. The utilities would also provide each community with a complete detailed invoice accounting for all the costs associated with any projects for which the community's work credit balance is deducted at project conclusion in the allocation letters. This could be supplemented with a year-end activity summary letter for communities that have active projects. In the allocation report specifically, the utilities should report the work credit balances, indicate and which communities have borrowed forward five or more years of allocations, and which obtained work credits through an exchange with another community. However, should Rule 20A be eliminated or be replaced by a grant-based program, then the allocation letter and report would no longer be necessary and can be replaced with an additional line item in the completion report detailing the growth or decline in funds available for projects. The letter template should be approved by the CPUC via Advice Letter.

C. Implement refinements to the completion reports based in part on the utilities' recommendations (Staff Recommendation)

During the workshop, the utilities shared some preliminary ideas for modifying their completion reports and better focusing the reports on data for Rule 20A for the year. The

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utilities proposed removing the data reported on Rule 20B and 20C projects, which consists of the location, job/work order number, the project applicant's costs and the total net utility costs for each of the Rule 20B and 20C projects completed during the year. By removing the 20B and 20C sections, the utilities would be able to focus their time and attention to reporting data on the Rule 20A program, which they think would provide the most value to the CPUC.

The utilities recommended that the format could be more focused on expenditures for projects in various stages rather than just plant closing data. This would allow the utilities to provide more information regarding the annual expenditures and developments with projects underway rather than the final costs to projects that have been completed. The utilities also suggested that there could be a recap of the annual budget, expenditures by project and variance explanations for being above or below design cost estimates. The utilities further proposed modifying the exhibit for Rule 20A completed projects to be consistent with actual costs for each project. The utilities suggested the use of a consistent definition of "complete," which would be defined as "operational and either the poles removed or topped just above the telecommunications facilities".

Staff's additional refinements to supplement the utilities' proposal

To help make the completion report more understandable to the communities and the public would be for the utilities to include an introduction and expanded definitions section that clearly explained the contents of the report and defined all of the terms and explained all of the cost components that make up the expenditure statistics in the report. This could include an explanation for what costs the Rule 20A work credits pay for and what costs the municipalities and the telecommunications companies are responsible for. The utilities could also provide project costs on a per mile basis over the past five years averaged by county for on-going and recently completed projects to convey trends in project costs. The utilities could supplement this with aggregate costs that could be made public for the various project cost components (both hard and soft costs) from on-going and recently completed projects. In addition to this cost information, the utilities could also include the balancing account balances for Rule 20A and any other Rule 20 programs that have balancing accounts established as a result of this proceeding. All this information could provide significant value for planning purposes to the communities and the public and convey key insights into the program to the CPUC.

In addition to including this information in the introduction, the utilities could also include basic details about the projects completed such as job ID, project name, street location, length of the project, and a breakdown of costs to show what the costs were that all the entities were responsible for after any adjustments have been made to date. The utilities could also report on expenditures made since the last completion report was issued for the completed projects and those that are still underway. Additionally, the utilities should submit

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an Excel version of the report in addition to the pdf version so the data would be more accessible to the CPUC Staff, the communities and the public.

An additional requirement to convey the utilities' program performance and allow the CPUC to evaluate and prescribe changes as needed would be for the utilities to report various program metrics. The completion reports could utilize similar metrics to the Balanced Scorecard methodology³¹ that CPUC Staff used in the January 2017 "Program Review California Overhead Conversion Program, Rule 20A for Years 2011-2015".³² The utilities could report on the following risk factors identified in the report:

- 1) compliance,
- 2) negative balance (number and magnitude),
- 3) low balance or allocation, and
- 4) program reporting.

These could be supplemented with performance factors such as:

- 1) accuracy of design cost estimates,
- 2) efficient timelines and planning, and
- 3) mileage converted relative to the size and number of customers served.

Based on the above factors, the CPUC Staff can evaluate the utilities management of the program and address any performance issues, such as lengthy project timelines or large deviations from design cost estimates. The utilities should be required to file a report template for CPUC approval via an Advice Letter.

In addition to the recommended improvements above, the utilities could file this report to the CPUC on a bi-annual basis and serve it publicly to the members of the R.17-05-010 and/or future undergrounding proceeding service list for comment.

D. Update and adopt the Rule 20 Guidebook (Staff Recommendation)

Another means of more effectively disseminating information about the Rule 20 program to the communities is by revising the 2007 draft Rule 20 Guidebook that was never adopted. The utilities could meet and confer with the CPUC Staff, AT&T, the LOCC, and the California State Association of Counties (CSAC) following the issuance of the phase I decision and any potential changes to the Rule 20 program. The Guidebooks should be comprehensive for Rule 20 and all of its sub-programs (A, B, C, and D) and would be

³¹ The Balanced Scorecard is an established performance management tool that uses key performance indicators to track strategic performance in a program. For more information see: <https://www.balancedscorecard.org/BSC-Basics/About-the-Balanced-Scorecard>.

³² See the following link for the full report:

[https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/PPD_Work_Products_\(2014_forward\)\(1\)/PPD_Rule_20-A.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/PPD_Work_Products_(2014_forward)(1)/PPD_Rule_20-A.pdf).

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standardized between the utilities.³³ The Guidebooks should largely be uniform across the IOUs. The Guidebooks would be subject to approval by the CPUC via Resolution or Decision and any subsequent updates to it would be submitted to the CPUC's Energy Division via Advice Letter. Once ratified, the utilities and CPUC Staff would put the Guidebooks on their respective public websites and circulate them among the cities and counties serve by the investor-owned utilities.

E. Publish all the relevant program information, documents, and reports on dedicated undergrounding webpages (Staff Recommendation)

To ensure that the information is widely available for the public, the communities, ratepayer and community advocates, the utilities and the CPUC should develop dedicated undergrounding webpages (to the extent that they have not already).³⁴ The webpages would include detailed information about Rule 20, information about the costs of projects and estimates bill impacts, links to information about related undergrounding programs (such as PUC Code Section 320), links to the Rule 20 Tariff, the updated Rule 20 Guidebook, and the allocation and completion reports for all years since the beginning of the program.³⁵ The utilities shall also maintain links to their maps that were presented during the April 2019 Workshop and update then on a quarterly basis. The utilities shall also detail the work credit balances of all the communities, include links to the project queues for Rule 20A, 20B, and 20C and have a calendar with upcoming undergrounding community meetings. The websites shall also have contact information and application forms and instructions for prospective Rule 20B and 20C applicants. This information should include the process for how to file a complaint with the CPUC and who to contact regarding recommended program changes. Additionally, there should be a web portal for governmental agencies to review data regarding project status and work credit balance. The webpages should be updated at least on a quarterly basis.

F. Implement the utilities' suggestions for improved communications

During the April 2019 workshop, the utilities proposed several different ways they could improve their in-person and written communications with the communities and the broader public. For instance, they proposed providing more frequent updates to the municipalities as to the availability of their work credits so they can be made more aware of their existence and better track any updates throughout the year such as from project true ups. The utilities also suggested improved collaboration with local governmental body and community groups and providing updates during construction to the wider group of impacted residents and

³³ Items that are specific to any individual utility can be called out specifically or footnoted for reference.

³⁴ Please see the following links to the [PG&E](#) and [SCE](#) undergrounding webpages. SDG&E, Liberty CalPeco, PacifiCorp and Bear Valley do not currently have dedicated undergrounding webpages.

³⁵ The Commission's [undergrounding webpage](#) includes the utilities allocation and completion reports that were filed since the late 1960s in pdf format.

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businesses. This could improve transparency on the job progress and allow for community members to have a greater voice in the Rule 20 planning and construction process.

Additionally, the utilities proposed to have a pole-out ceremony to mark the conclusion of projects with the communities and celebrate the accomplishment. While this could build rapport with the communities and the residents, it may not make sense in all cases due to costs unless they are larger projects in scope and were identified by the community to be a high priority.

While these suggestions could lead to greater input from the municipalities, it is not clear that they all will encourage a higher level of municipal engagement in the program. Thus, it may make sense to pilot different methods and fine-tune them accordingly.

G. Enhanced written communications to the communities (Staff Recommendation)

An additional suggestion that Staff recommends is to require the utilities to write to the communities to coordinate an annual in-person meeting to discuss ten-year plans with the communities that would like to participate in Rule 20. The utilities should maintain a service list of municipal program participants and stakeholders and should be updated annually in order to maintain a comprehensive and accurate list of phone and email contacts. The utilities could send a letter to each of the communities informing them about the program, provide a contact list for relevant utility and CPUC personnel, the community's annual allocation and work credit balance, and put the work credit balance in context with current project costs in their area. This could be a modified version of the current annual allocation letter. Additionally, the utilities should ask if the communities are interested in initiating a project within the next five years and require them to sign a form acknowledging that they have read the Rule 20 Tariff and that their work credits can be taken away from them if they do not participate in the program. For the communities that indicate that they are interested, they can indicate if they would be interested in having a coordination meeting with the utility to discuss their ten-year plan and any future or on-going projects.

H. Require the utilities to report on aggregate costs for project cost categories based on bids that the utilities receive (Staff Recommendation)

In order to provide information on the individual project cost categories (such as labor, parts, trenching, overhead costs, etc.) without disclosing confidential bid information, the utilities would report on aggregate costs for each of the individual cost categories under this proposal. This would allow the communities and the public to better understand what the major cost drivers are in a project and more effectively budget and plan for projects. Aggregating the costs could be accomplished based on a three-year averaging of costs and on a regional basis to help capture any regional variations in construction costs.

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Questions for Parties:

5.i. Can the cities and counties sign a non-disclosure agreement with the utilities so they can have access to project bid information and other confidential information?

6. Rule 20 Project Completion Issues

Background

In the current Rule 20A program, the average project takes between two to seven years (not including delays) to complete from forming an underground utility district to the restoration of service following removal of the last pole.³⁶ The cost of the projects on average are around \$3.8 million per mile across all the utilities' service territories. Over the course of the various planning, design and construction phases over the project lifecycle, the project cost estimates are continually refined, and the variability tends to decrease significantly. For instance, during the design phase (AACE Class 4), the costs can vary as much as 50 percent higher and 30 percent lower from design cost estimates. By the time the project has received bids in the pre-construction phase, the estimates (AACE Class 2) can be reasonably expected to vary by +20 percent and -15 percent.

There have been several cases in recent years that have been of great concern due to high project cost variances that merit greater scrutiny in the project cost estimation process. For instance, the County of Napa and City of St. Helena's joint project that was completed in 2013, the project was estimated to cost \$8 million and more than doubled in cost to over \$17 million. As a result, the County of Napa, which had a work credit balance of \$6.15 million in 2010, an allocation of about \$360 thousand Rule 20A work credits and was responsible for the majority of the costs ended up with over 75 years of work credit debt to the dramatic and unexpected rises in the project costs. 58 communities across the State are currently in work credit debt, and some have work debt that exceeds 50 years in equivalent annual allocations. As of 2019, these 58 communities held a cumulative work credit of approximately \$93 million. See Figure 3 below for the communities with the highest levels of work credit debt. To date, the Rule 20A program does not offer any mechanisms for eliminating this debt and the utilities have chosen to continue allocating work credits to indebted communities and forbid them from initiating any projects until they have a positive balance.

³⁶ This is based on the average taken from all the utilities and assumes there are 261 workdays a year for projects. Within this timeframe, it takes about three to five years from project design to completion.

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Figure 3. Top 20 Communities with the Highest Levels of Work Credit Debt

Community	Utility	2019 Allocation	2019 Balance	Years in Work Credit Debt
Chino Hills	SCE	\$ 10,204	\$ (893,909)	87.6
Napa County	PG&E	\$ 152,605	\$ (11,331,024)	74.3
Firebaugh	PG&E	\$ 17,599	\$ (989,237)	56.2
Anderson	PG&E	\$ 40,122	\$ (2,016,864)	50.3
San Marcos	SDG&E	\$ 6,200.00	\$ (296,131.00)	47.8
Riverbank	PG&E	\$ 35,243	\$ (1,653,339)	46.9
La Canada-Flintridge	SCE	\$ 76,772	\$ (3,465,161)	45.1
Belvedere	PG&E	\$ 6,036	\$ (262,373)	43.5
Angels Camp	PG&E	\$ 16,682	\$ (624,828)	37.5
Hillsborough	PG&E	\$ 28,109	\$ (861,117)	30.6
Manhattan Beach	SCE	\$ 167,484	\$ (4,028,934)	24.1
Laguna Hills	SDG&E	\$ 1,833.00	\$ (38,559.00)	21.0
Campbell	PG&E	\$ 162,665	\$ (2,911,057)	17.9
Fowler	PG&E	\$ 16,848	\$ (269,867)	16.0
Brea	SCE	\$ 76,795	\$ (1,222,996)	15.9
San Francisco	PG&E	\$ 2,970,435	\$ (42,687,251)	14.4
Atwater	PG&E	\$ 68,848	\$ (875,490)	12.7
Mill Valley	PG&E	\$ 61,858	\$ (674,340)	10.9
Irwindale	SCE	\$ 10,237	\$ (103,365)	10.1
Malibu	SCE	\$ 39,702	\$ (381,408)	9.6

(Source: IOU R.17-05-010 Data Request Responses and 2019 Allocation Reports)

While it did not enter work credit debt, the City of Tiburon was forced to cancel their Tiburon Boulevard Rule 20A project as the costs increased from \$925,980 in 2014 at the initial estimate to \$3,744,566 in 2018 before breaking ground on construction. According to the Town of Tiburon, this was in part attributed to increased construction costs due to shortages in the construction market.³⁷

Similarly, the City of Newport Beach saw the initial project estimate of \$4.1 million for a scope of 7,480 linear feet of overhead removal (\$500 per foot) saw its design cost estimate more than double to \$8.6 million and later receive a bid of \$6.43 million. According to SCE, the high prices can be attributed to contractor bids that have become significantly less competitive and overhead costs that collectively represented 35 percent of the project cost

³⁷ According to the Town of Tiburon, the construction market in 2018 was constrained due to reconstruction efforts for the Oroville Dam, the Napa and Sonoma county rebuild post 2017 wildfires, increased spending by Caltrans, and labor shortages. For more information, see the May 2018 Town of Tiburon Staff Update on the Rule 20A Undergrounding project: https://townoftiburon.granicus.com/MetaViewer.php?view_id=5&clip_id=197&meta_id=9477.

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estimate.³⁸ With SCE's approval, the City of Newport Beach decided to manage and re-bid the project on its own in 2019 and received a final bid at \$4.5 million, which included both the Rule 20A component of the Balboa Blvd project and the Rule 20B components for the adjacent residential areas.³⁹

Another issue that some communities have encountered is that the project timelines can get drawn out due to unforeseen circumstances. Situations behind such delays could include a lack of sufficient utility financial and personnel resources, third party delays such as from labor market shortages for contractors, encountering contaminated soils or archeological remains, project cost increases that require the community to obtain additional work credits, and disagreements over project cost and leadership responsibilities. For example, there were several communities in PG&E's service territory that were unwilling to move forward with projects both prospective and planned projects due to the legal and financial uncertainty surrounding PG&E's revision of its Rule 20A General Conditions Agreement (GCA). From 2012 to May 2018, PG&E worked with the LOCC, the CSAC and interested local governments to revise the GCA that was established in 2010 as it contained terms that were too burdensome for many of the communities. Many communities chose to hold out for six years on projects in hopes of constructing projects under more favorable terms. During this time, the CPUC was not only unaware of those negotiations but also unaware of the issues the communities were facing at that time. PG&E eventually filed two Advice Letters following the negotiations which were hotly contested by the Cities of San Jose and Cupertino and required the Commission to issue Resolution E-4919 to resolve the issues and adopt the revised PG&E GCA.

Also associated with increased project timelines are increased costs as described earlier. Typically, these increased costs have been paid for by communities which opt to purchase additional Rule 20A work credits or they are borne by the ratepayers. Given that the costs are often the result of third-party delays or unanticipated consequences, the CPUC in the 2006 Resolution E-4001 did not find it to be reasonable to require the ratepayers to bear these associated costs under all circumstances. In Resolution E-4001, the utilities were ordered not to commit the ratepayers to the costs of Rule 20A projects that cannot be paid for through banked work credits and the five-year borrow alone without prior CPUC approval. Any costs not approved by the CPUC are to be paid either by pre-arranged community funds (general funds) or by the utility shareholders.⁴⁰ However, having the communities trade for additional

³⁸ For more information see: <https://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-utilities-undergrounding-20180615-story.html>.

³⁹ For more information see: <https://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-peninsula-utilities-20190412-story.html>

⁴⁰ For more information on Resolution E-4001, see: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/59265.PDF.

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work credits or otherwise pay with pre-arranged funds from their general fund to proceed with a project is problematic as it is not aligned with the intent of the Rule 20A Tariff.

In addition to the above, some communities have expressed frustration over the lack of clarity over which pre-construction and construction tasks and costs the utility is responsible for and which the communities are responsible for. While the Rule 20A Tariff specifies that the utility “will at its expense, replace its existing overhead electric facilities with underground electric facilities,” there is no explanation if the utility is responsible for all costs and tasks or if it is more reasonable for the communities to bear some of the burden. For instance, the Rule 20A tariff makes no mention of who is responsible for paying for underground transformers, which the utilities consider to be non-standard installations. To make up for this lack of guidance in the tariff, the utilities have clarified in their Rule 20A general terms and conditions which tasks and costs the community and the utility are responsible for subject to approval by the CPUC. This has led to a variable approach by the utilities which rely on terms that are inconsistent from one another. For example, PG&E’s GCA allows communities to elect to install subsurface transformers and pay for them using their Rule 20A work credits, while SDG&E only installs pad-mounted, above ground transformers.⁴¹ One consequence of this variable approach is that some communities have come to question whether the utilities’ general terms and conditions are even consistent with the Rule 20A tariff and the CPUC’s intent for the program. For instance, the utilities expect in the general terms and conditions that the communities to pay for securing easements, which appears contradictory to the Rule 20A Tariff which specifically says that the utility is to obtain the rights-of-way at its own expense.

Options

Note that Options B-E are not mutually exclusive.

A. Status quo – no Rule 20A project completion incentives

Under the status quo scenario, the CPUC would not implement any policy changes that aim to incentivize more efficient project completion and lower costs and would not require any changes to the way the utilities delineate which entities bear which cost and task responsibility. Currently, the utilities Rule 20A general terms and conditions documents in effect spell out the community and utility responsibilities for project planning and they are not subject to a significant level of debate. Thus, one could argue that it is not necessary to revise the Tariff and Guidebooks to delineate the project responsibilities and it is unclear if any of the responsibilities need to change to be consistent with the Rule 20A Tariff.

⁴¹ PG&E requires in its GCA that the city or county that elects to install underground transformers to pay a one-time maintenance fee representing the difference in maintenance costs between a pad-mounted facility and a subsurface facility.

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However, by not implementing any policy changes, it is unclear how effectively the utilities' and communities' incentives can be aligned to enhance the efficient and timely project completion. Additionally, the status quo scenario does nothing to resolve the issues surrounding growing costs and timelines and does not address the dilemma of who should bear the associated costs.

- B. Require cities and counties to be the trench lead by default and allow for them to bid for their own contractors (Staff Recommendation)

Currently, the electric utilities are designated as the default trench lead unless a community elects to be the project lead. This means that the electric utility is responsible for the project design, planning, bid solicitations and contracting, coordination with the joint trench participants. By designating the community as the default trench lead – unless they assign the electric utility or one of the telecommunications utilities as the trench lead – the community can better ensure that project management and coordination matches their expectations and that these tasks do not get de-prioritized by the utility when circumstances like wildfires arise. Additionally, by allowing the communities to conduct their own bids, they may be able to receive lower bids than the electric utilities and that the results will be made public. To make up for the increased administrative costs for communities leading a project, the community's costs could be reimbursable by the electric utility. However, not all cities and counties would be able to take on this level of responsibility for managing the project and soliciting their own bids. Furthermore, there is little evidence that shows the bids communities receive are lower when they conduct them themselves given that they would still have to rely on a limited pool of pre-approved contractors.

- C. Establish threshold timeframes for project milestones (Staff Recommendation)

Under this proposal, the CPUC would specify what acceptable timelines are for project milestones in the design, pre-construction, construction and closing phases with a certain degree of flexibility for unforeseen circumstances. If any given milestone is not reached within a specified timeframe, then the utility shareholders will be required to bear any project costs associated with delays in excess of 30 days. When these timelines are exceeded, the utility must additionally notify CPUC Staff within 10 business with the following information in writing:

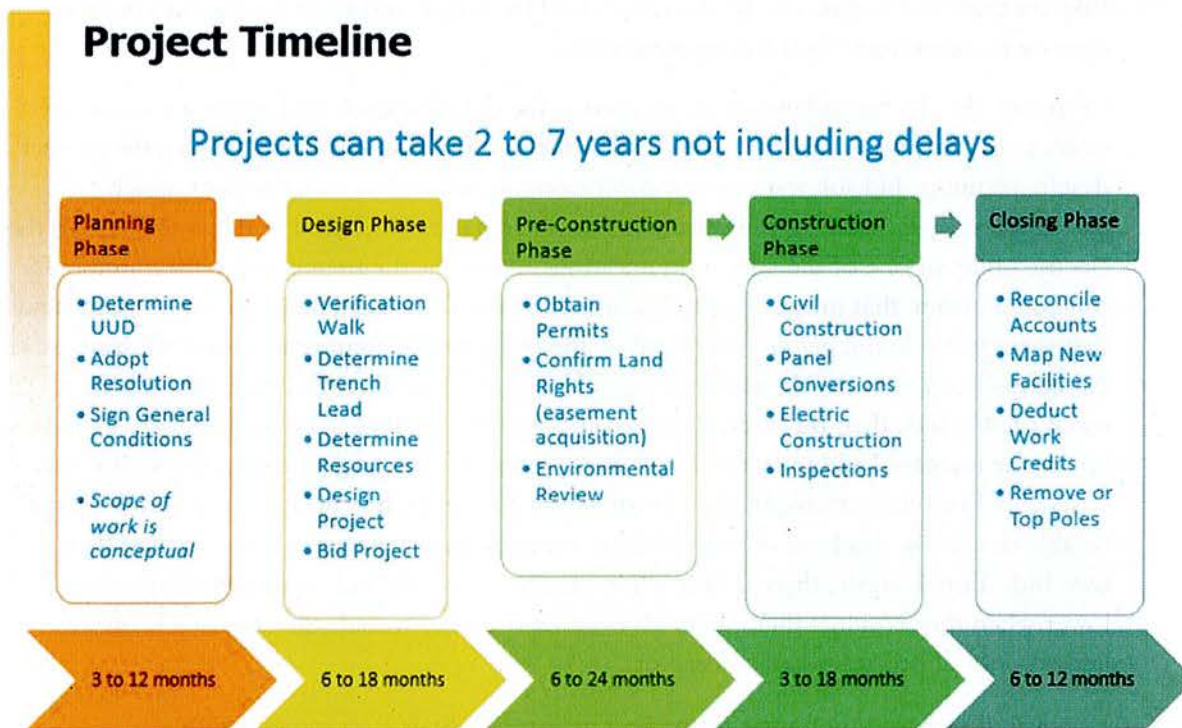
- i. Background on the project
- ii. Targeted timeline for all work steps involved project and actual timeline for completed steps
- iii. An explanation as to why there is a delay and what efforts have been taken to resolve it
- iv. An estimated timeline for the resolution of the delay and
- v. Estimated cost impacts of the delay and how they are to be funded

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Staff proposes to use the same timelines that the IOUs presented during the April 22-23 workshop for R.17-05-010 as common Rule 20A project timelines. These timelines are shown below in Figure 5.

Figure 5. Typical IOU Rule 20A Project Timeline



(Source: Joint IOU Presentation on Project Completion Issues. April 2019)

To illustrate how this would work, if the pre-construction phase was to exceed 24 months, the utility would be required to notify the CPUC in writing and bear any costs associated with delays in excess of 25 months.

By requiring the utility to report on the delays and bear the costs of excessive delays, this promotes greater transparency into delays and could directly incentivizes the utility to resolve them as quickly as possible.

- D. Delineate costs and responsibilities for Rule 20A projects in the Tariff, General Terms and Conditions, and Updated Rule 20A Guidebooks (Staff Recommendation)

Under this proposal, the CPUC would require the Utilities to modify the Rule 20A Tariff, general terms and conditions, and the Rule 20A Guidebooks to include a complete list of community & utility responsibilities. This would help clarify for the

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communities which costs and tasks they are responsible for versus what the utility is responsible for. This would also ensure that these terms are consistent with the Rule 20A Tariff and the CPUC's intent for the Rule 20A program and are communicated consistently by all the Rule 20A guiding documents to the communities. The IOUs' general terms and conditions documents should be largely the same among the IOUs and be subject to CPUC approval.

- E. Establish one-way balancing accounts for the Rule 20A, 20B, and 20D programs to the extent the utilities do not have them (Staff Recommendation)

In order to prevent the utilities from redirecting funds the CPUC approves in the general rate case for the Rule 20 program, the CPUC could require that the utilities establish one-way balancing accounts for the program. This requirement will help ensure that the utility has adequate financial resources to devote to the program and can hire additional personnel as needed to best manage the program. Furthermore, it would help the utility pay for projects even if they were to exceed their GRC expectations if there are unused funds in the balancing account. Currently PG&E and SCE have one-way balancing accounts for their Rule 20A programs, but none of the utilities have one for their Rule 20B program nor does SDG&E for its Rule 20D program. Rule 20C is paid for almost entirely by the applicant, so establishing a one-way balancing account would be of little use.

Questions for Parties:

- 6.i. Are there other policies that the CPUC can implement to incentivize more efficient and less expensive project completion?
- 6.ii. What are reasonable time thresholds for the project milestones?
- 6.iii. Are there any additional project planning and construction processes that can be outsourced in order to achieve greater cost savings?
- 6.iv. Are there ways to incentivize more efficient construction processes? For instance, directional boring could potentially save time and money by eliminating the need for extensive trenching.
- 6.v. What are additional ways to help align the incentives of all the joint trench participants and enhance greater coordination?
- 6.vi. Should the costs and responsibilities currently borne by the telecommunications companies be modified to enhance project completion and minimize project costs on the electric ratepayers? If so, how can this be accomplished?

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Feb. 16	<ol style="list-style-type: none"> 1. BMASP/Berkeley Pier-WETA Ferry 2. Systems Realignment 3. Presentation: Report on Homeless Outreach during COVID 19 Pandemic
March 16	<ol style="list-style-type: none"> 1. Capital Improvement Plan (Parks & Public Works) 2. Digital Strategic Plan/FUND\$ Replacement/Website Update 3. FY 2021 Mid-Year Report and the Unfunded Liabilities Report (tentative)
May 18	<ol style="list-style-type: none"> 1. Bayer Development Agreement (tentative) 2. Affordable Housing Policy Reform (tentative)

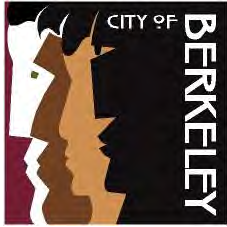
Unscheduled Workshops
<ol style="list-style-type: none"> 1. Cannabis Health Considerations 2. Berkeley Police Department Hiring Practices (referred by the Public Safety Committee)

Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> 1. Update: Zero Waste Priorities 2. Civic Arts Grantmaking Process & Capital Grant Program

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	<p>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i></p> <p>From: Councilmember Harrison</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. <p>Financial Implications: See report Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>
2.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i></p> <p>From: City Manager</p> <p>Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.</p> <p>Financial Implications: None Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000 <i>Note: Referred to Agenda & Rules for future scheduling.</i></p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS				
BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
NOD – Notices of Decision				
Public Hearings Scheduled				
0 (2435) San Pablo Ave (construct mixed-use building)	ZAB			1/21/2021
1915 Berryman St (Payson House)	LPC			1/21/2021
1850 Arch St (add bedrooms to multi-family residential building)	ZAB			1/26/2021
1862 Arch St (add bedrooms to multi-family residential building)	ZAB			1/26/2021
1200-1214 San Pablo Ave (construct mixed-use building)	ZAB			3/23/2021
Remanded to ZAB or LPC				
Notes				

12/30/2020



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, 2020

To: Mayor and Council
From: Dee Williams-Ridley, City Manager
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachments:

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

**November 10, 2020 - Item 20
Supplemental Information**

<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

**November 10, 2020 - Item 20
Supplemental Information**

<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.

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
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Children, Youth, and Recreation Commission
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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



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Affirming the Right to Boycott as a Tactic for Social and Political Change

RECOMMENDATION

Adopt a Resolution with the following actions:

1. Support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity;
2. The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions;
3. The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all;
4. The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources
5. Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

BACKGROUND

Berkeley's municipal code defines "Peace and Justice" as "the goal of creating a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression" and the city has found that "the residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples"¹.

Boycotts have been effectively used in the United States by advocates for equal rights since the Boston Tea Party and include boycotts led by civil rights activists during the 1950s and 1960s in order to advocate for racial equality, such as the Montgomery bus boycott², and promote workers' rights, such as the United Farm Workers-led boycott of table grapes.

¹ Ord. 5705-NS § 3, 1986

² Anne Brice, B., & Brice, A. (2020, February 18). The Montgomery bus boycott and the women who made it possible. Retrieved November 23, 2020, from <https://news.berkeley.edu/2020/02/11/podcast-montgomery-bus-boycott-womens-political-council/>

Berkeley has a long history of enacting and supporting boycotts on various issues of importance to the People of Berkeley, including boycotts against corporations including Motorola, Kaiser Aluminum, Shell, Honda, IBM, Coca-Cola, Hewlett-Packard, and others, sometimes targeting all companies doing business in a country or area (Burma, Occupied Tibet, Nigeria), or companies supplying weapons technology (a violation of the Nuclear-Free ordinance).

All forms of bigotry, including racism, classism, sexism, Islamophobia, anti-Semitism, homophobia, ableism, and all forms of hatred that target people based on their religion, ethnicity, nationality, disability, gender or sexual orientation, are unacceptable and inconsistent with Berkeley's commitment to equity and justice.

Criticism of the actions of corporations and nations is critical to healthy public discourse and must be protected in a democracy, and criticism of a nation, including by means of a non-violent citizens' boycott, does not constitute bigotry against the citizens of that nation. Rather, boycott is often a strategic and necessary means by which to encourage a government to abandon policies that are inconsistent with the ideals of peace and justice.

Boycotts and their importance are written into the Berkeley Municipal Code, including in the mandate of the Labor commission which reads "...encouraging support for officially sanctioned boycotts".

The right to boycott has repeatedly been reaffirmed as protected free speech by the first amendment of the United States' Constitution³, a protection that is of particular pride and importance to the City of Berkeley⁴, as the birthplace of the Free Speech Movement.

Despite its important history in social movements and its constitutional protections, governments and non-governmental organizations alike have sought to criminalize⁵, stigmatize, and delegitimize⁶ the use of boycotts in an attempt to stifle constitutionally protected political expression.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting the community's right to boycott as a Tactic for Social and Political Change is an act of environmental sustainability.

³ The Supreme Court, in the 1966 case *Rosenblatt v. Baer*, held that the First Amendment to the Constitution ensures that "criticism of government is at the very center of the constitutionally protected area of free discussion". Then, in 1982, in *NAACP v. Claiborne Hardware* they held that "the right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott".

⁴ UC Berkeley Library. (n.d.). Retrieved November 23, 2020, from <https://www.lib.berkeley.edu/libraries/bancroft-library/oral-history-center/projects/fsm>

⁵ Greenwald, G., & Grim, R. (2017, July 19). U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel. Retrieved November 23, 2020, from <https://theintercept.com/2017/07/19/u-s-lawmakers-seek-to-criminally-outlaw-support-for-boycott-campaign-against-israel/>

⁶ Carol Morello, S. (2020, November 19). Pompeo sets off debate on boycott of Israel, calling it an anti-Semitic 'cancer'. Retrieved November 23, 2020, from https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4c8a-2a7d-11eb-b847-66c66ace1afb_story.html

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA
SUPPORT AFFIRMING THE RIGHT TO BOYCOTT AS A TACTIC FOR SOCIAL AND
POLITICAL CHANGE

WHEREAS, Berkeley's municipal code defines "Peace and Justice" as "the goal of creating a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression" and the city has found that "the residents of Berkeley have continually demonstrated their concern for peace and justice based on equality among all peoples"⁷; and

WHEREAS, boycotts have been effectively used in the United States by advocates for equal rights since the Boston Tea Party and include boycotts led by civil rights activists during the 1950s and 1960s in order to advocate for racial equality, such as the Montgomery bus boycott⁸, and promote workers' rights, such as the United Farm Workers-led boycott of table grapes; and

WHEREAS, Berkeley has a long history of enacting and supporting boycotts on various issues of importance to the People of Berkeley, including boycotts against corporations including Motorola, Kaiser Aluminum, Shell, Honda, IBM, Coca-Cola, Hewlett-Packard, and others, sometimes targeting all companies doing business in a country or area (Burma, Occupied Tibet, Nigeria), or companies supplying weapons technology (a violation of the Nuclear-Free ordinance); and

WHEREAS, all forms of bigotry, including racism, sexism, Islamophobia, anti-Semitism, homophobia, ableism, and all forms of hatred that target people based on their religion, ethnicity, nationality, disability, gender or sexual orientation, are unacceptable and inconsistent with Berkeley's commitment to equity and justice; and

WHEREAS, criticism of the actions of corporations and nations is critical to healthy public discourse and must be protected in a democracy, and criticism of a nation, including by means of a non-violent citizens' boycott, does not constitute bigotry against the citizens of that nation. Rather, boycott is often a strategic and necessary means by which to encourage a government to abandon policies that are inconsistent with the ideals of peace and justice; and

WHEREAS, boycotts and their importance are written into the Berkeley Municipal Code, including in the mandate of the Labor commission which reads "...encouraging support for officially sanctioned boycotts"; and

WHEREAS, the right to boycott has repeatedly been reaffirmed as protected free speech by the first amendment of the United States' Constitution⁹, a protection that is of particular pride and importance to the City of Berkeley¹⁰, as the birthplace of the Free Speech Movement; and

⁷ Ord. 5705-NS § 3, 1986

⁸ Anne Brice, B., & Brice, A. (2020, February 18). The Montgomery bus boycott and the women who made it possible. Retrieved November 23, 2020, from <https://news.berkeley.edu/2020/02/11/podcast-montgomery-bus-boycott-womens-political-council/>

⁹ The Supreme Court, in the 1966 case *Rosenblatt v. Baer*, held that the First Amendment to the Constitution ensures that "criticism of government is at the very center of the constitutionally protected area of free discussion". Then, in 1982, in *NAACP v. Claiborne Hardware* they held that "the right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott".

¹⁰ UC Berkeley Library. (n.d.). Retrieved November 23, 2020, from <https://www.lib.berkeley.edu/libraries/bancroft-library/oral-history-center/projects/fsm>

WHEREAS, despite its important history in social movements and its constitutional protections, governments and non-governmental organizations alike have sought to criminalize¹¹, stigmatize, and delegitimize¹² the use of boycotts in an attempt to stifle constitutionally protected political expression.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley hereby support Affirming the Right to Boycott as a Tactic for Social and Political Change, and celebrate the People of Berkeley for their commitment to Peace, Justice and Equity; and

BE IT FURTHER RESOLVED, The City of Berkeley affirms the right of all people to participate in boycotts of any entity when they have conscientious concerns with the entity's policies or actions;

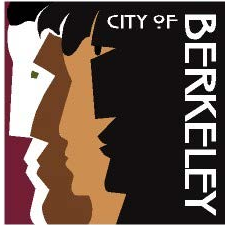
BE IT FURTHER RESOLVED, The City of Berkeley condemns attempts by governments to infringe upon the right to peaceful boycotts by criminalizing that participation, denying participants state contracts, or otherwise impeding the freedom of advocacy for all;

BE IT FURTHER RESOLVED, The City Council encourages City Commissions to recommend boycott policies to the City Council when appropriate, so that the City Council may be well informed in its oversight of City resources

BE IT FURTHER RESOLVED, Send a copy of this resolution to Governor Gavin Newsom, Attorney General Xavier Becerra, State Assemblymember Buffy Wicks, State Senator Nancy Skinner, United States Senators Bernie Sanders, Kamala Harris, Dianne Feinstein, and United States Congressional Representatives Barbara Lee, Ro Khanna, Alexandria Ocasio-Cortez, Ilhan Omar, Ayanna Pressley, Rashida Harbi Tlaib, and Pramila Jayapal.

¹¹ Greenwald, G., & Grim, R. (2017, July 19). U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel. Retrieved November 23, 2020, from <https://theintercept.com/2017/07/19/u-s-lawmakers-seek-to-criminally-outlaw-support-for-boycott-campaign-against-israel/>

¹² Carol Morello, S. (2020, November 19). Pompeo sets off debate on boycott of Israel, calling it an anti-Semitic 'cancer'. Retrieved November 23, 2020, from https://www.washingtonpost.com/national-security/pompeo-israel-bds-movement-boycott/2020/11/19/79fe4cba-2a7d-11eb-b847-66c66ace1afb_story.html



[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



SOPHIE HAHN
Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

ACTION CALENDAR
February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, “such as a newsletter or brochure, [...] delivered, by any means [...] to a person’s residence, place of employment or business, or post office box.”³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or “Officeholder”) funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

⁴ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.⁵ For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

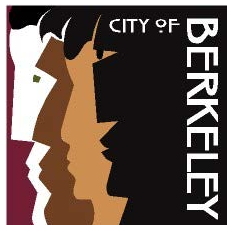
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to “speak” and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State’s restrictions, to ensure funds are not used for things like family members’ travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.⁶

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

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

⁶ <http://www2.oaklandnet.com/w/OAK052051>



Fair Campaign Practices Commission

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 4, 2020

Item Number: 2

Item Description: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Samuel Harvey; Deputy City Attorney / Secretary, Fair Campaign Practices Commission

Attachment 4 to the report (“Memorandum signed by City Attorney Manuela Albuquerque”) included an attachment which was erroneously omitted from the Council item. Attached is Attachment 4 (for context) along with the additional pages which should be included to appear as pages 16 -17 of the item.



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

PAUSERSUBEL2\offhldr.mem.doc

² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS
December 9, 1991
Page 2

in opposition to the nomination or election of one or more candidates (Emphasis added.)

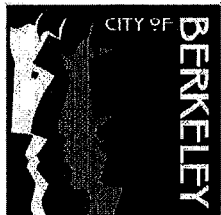
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.^{1/} (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

^{1/}I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.



Office of the City Auditor
Ann-Marie Hogan, City Auditor

MEMORANDUM

Date: March 14, 2017
To: Councilmember Harrison
From: Ann-Marie Hogan, City Auditor
Re: Council Expense Reimbursement Guidance

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4¹. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

In July 2006, the Berkeley City Council passed Resolution No. 63,412–N.S. to comply with state bill AB1234, which requires all cities to adopt an expense reimbursement policy for legislators in local government, and sets specific requirements for that policy. In September 2013, at the recommendation of the City Attorney, Council rescinded Resolution No. 63,412–N.S. and replaced it with Resolution No. 66,295–N.S. (See attached.) Council adopted the new resolution to incorporate a budget relinquishment and grant policy, and also to clarify the criteria and spending limitations associated with reimbursements for the Mayor and Council Members. Some of the spending limitations include:

- **Mileage and Transit**:- Mileage is reimbursed at the current year's IRS mileage rate and must be accompanied by supporting documentation, such as a Google Maps printout. Use the most economical mode of transportation practical.
- **Meals**: Meals are reimbursed at the per diem rates set forth in City Administrative Regulation 3.9, or the actual cost of the meal, whichever is *lower*.² The per diem rate covers the meal, tax,

¹ Administrative Regulation 3.4: <http://icobweb/AR/PDF/AR3-4.pdf>

² Administrative Regulation 3.9: [http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.pdf](http://icobweb/AR/PDF/2016/Administrative%20Regulation%203.9.pdf)

tip, and nonalcoholic beverages (alcoholic beverages are not reimbursable). The per diem rate also applies when Council Members are requesting reimbursement for meals paid on behalf of individuals who are conducting city related business, such as Legislative Assistants. Council Members must submit original receipts, a list of attendees and the Statement of Municipal Purpose form (explaining how the expense benefits the City), as part of the reimbursement request. Any expense in excess of the individual meal allowance will not be reimbursed. The current per diem rates are:

- Breakfast \$10
 - Lunch \$15
 - Dinner \$26
- **Airfare:** Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council’s next revision of that resolution.
 - **Lodging:** Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration’s Per Diem Rates Look-Up tool.³ Council Members should select the specific location they are traveling to in the look-up tool.
 - **Registration:** Generally, Council Members should use a purchase order for conference, seminar, and training registrations as defined by Administrative Regulation 3.9. However, Council Members may use their credit card to register, if that is the vendor’s required form of payment. Council Members may not submit their reimbursement request until after the event has taken place, and must include proof of payment, and should include evidence of attendance with their request. Resolution No. 66,295–N.S. also requires that Council members provide a report to Council on training they attend, but we will be recommending that this requirement be deleted since it is not required by AB1234.

³ Hotel fee tool: <http://www.gsa.gov/portal/category/100120>

When completing a reimbursement request, Council Members must complete and provide the following:

1. FN-024 payment voucher: available in Administration Regulation 3.14⁴, on the City's intranet⁵, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

Council Members must include account codes on the FN-024 payment voucher. The City's standard account codes are *14 digits* long and include both an element and an object code as the last four digits. The most commonly used element and object codes are:

- 4064: mileage/transportation (including taxi or ride-sharing service, such as Uber or Lyft)
- 4063: registration
- 4062: meals and lodging related to conferences, seminars, training, workshops, and similar
- 4061: airfare
- 5550: meals and food for city business, events, functions, and similar business meals

City Administrative Regulation (A.R.) 3.9 establishes the policies and procedures for reimbursing expenses incurred by City staff to attend conferences, meetings, seminars, trainings, and workshops. The regulation complements Resolution No. 66,295–N.S., which establishes the procedures for Council Members. A.R. 3.9 includes the following exceptions for Mayor and Council Members' expenses:

- **Attendance and travel request form:** The Mayor, Council Members, and Legislative Assistants are not required to submit an Attendance and Travel Request form. (A.R. 3.9, page two)
- **Paying for another employee's expenses:** The Mayor, Council Members, and Legislative Assistants may be reimbursed for paying for other legislative staff's or Council Members' expenses incurred for city related business. This is an exception to A.R. 3.9, noted on page three.
- **Business meals:** The Mayor and Council Members may be reimbursed for meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents). City Auditor review and approval is required. Council Members must describe the purpose of their business meal, e.g. issues discussed and how they relate to adopted priorities of Council, on the Statement of Municipal Purpose form and list the attendees. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower.* (A.R. 3.9, page four) **Note that AB1234 requires that members of a legislative body shall**

⁴ A.R. 3.14: <http://icobweb/AR/PDF/AR3-14.pdf>

⁵ City Intranet: <http://icobweb/finance/GroupwareAP.FN-024&PettyCash.htm>

provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

- **Receipts:** The Mayor, Council Members, and Legislative Assistants must submit meal receipts. Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower. (A.R. 3.9, page four)

cc: Sheila Soo, Administrative Assistant, Auditor's Office

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
- 5. Alcoholic beverages;
- 6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- 7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:


Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.4
ORIGINAL DATE: 07/94
POSTING DATE: 4/14/2009
PAGE 1 of 5 PAGES

SUBJECT: Purchasing Policy & Purchasing Manual

PURPOSE

To ensure that the City receives the most favorable price, quality, and/or service available for all purchases, while adhering to City Council directives. The Precautionary Principle (PP) and Environmentally Preferable Purchasing Policies (EP3) should be considered whenever feasible, and in accordance with the adopted budget. Furthermore, the complete AR provides City employees with appropriate procedures to knowledgeably participate in the procurement process. This is the Executive Summary of AR 3.4, with an introduction to procedures for the City's Purchasing Policy. The Purchasing Manual is the full AR 3.4, and includes the complete policy and procedures. The City Purchasing Manual can be found online at [Groupware – Finance: Purchasing Manual](#).

POLICY

It is the policy of the City Manager that all City purchases, with only specified and approved exceptions, shall be made through a competitive process. Regardless of the value of the purchase, more than one documented quotation, bid, or proposal is strongly encouraged. The City Council periodically sets or adjusts cost levels of purchases for Council review and approval, and the parameters for the formally documented competitive processes.

Responsibility for City Purchases rests with designated positions for implementation of this policy:

1. The City maintains a centralized General Services office through which all purchases of goods and services are processed. Each Department originates requests for procurement.
2. Departments are responsible for requesting the type and quality of product or service required. Sole and single source contracts are discouraged, but may be utilized if approved as provided in the Purchasing Manual. The FUNDS system maintains lists of vendors cross-referenced to commodities and services.
3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.
4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.
5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

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- A) On January 29, 2008 Council requested the City Manager prohibit purchases from Chevron Corporation whenever possible.
 - B) On October 28, 2008 Council requested the City Manager research limiting the purchase of bottled water. In response, the City Manager directed staff to eliminate as much as possible the purchasing of individual bottles of water. Bottled water can still be purchased for emergency preparedness and for field events where health and safety are a concern. For all other events, carafes and tap water should be used.

PROCEDURE

See the current version of the City Purchasing Manual, available online at [Groupware – Finance: Purchasing Manual](#), for complete information and procedures. The following is the table of contents for the Purchasing Manual:

- I. General Procedures, Responsibilities and Requirements
- II. Purchasing Requirements by Price
- III. Purchasing Procedures
- IV. Glossary of Terms
- V. Frequently Asked Questions (FAQs)
- VI. Requirement on Contracting with Certain Entities (Forms & Council Actions)
- VII. Council Guidelines on Purchasing Services and Goods
- VIII. How to Guide
- IX. Reports (In Development)
- X. Forms

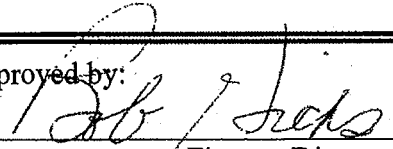
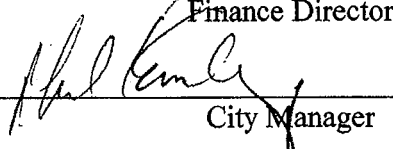
DEFINITIONS

1. **Procurement:** Procurement refers to the process of managing activities associated with an organization's need to obtain the goods and services required for its operation. To ensure that the correct amount of the product or service is received at the appropriate time, specific steps are taken in the procurement process, including: value assurance; determining which commodities or services are best; choosing the right suppliers and vendors; negotiating the best prices; and awarding contracts. For General Services to conduct the procurement process responsibly, its functions include spend analysis, sourcing, supplier implementation, transaction management, category management, and supplier performance management.
2. **Purchasing:** The processing of a purchase order. The key steps in the process are: departments place and approve requisitions; General Services or departments find the item (sourcing); General Services issues the purchase order (PO); and General Services sends PO to vendor. Upon fulfillment of the order, the City is invoiced and the vendor is paid.

3. Purchasing Requisition (PR): A purchasing requisition is a document that instructs General Services to spend a designated and approved amount from a specific department/division budget account for needed goods or services.
4. Purchase Order (PO): A purchase order is used for the purchase of goods. The PO represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.
5. Blue-Backed Contract: A blue backed contract is used for the purchase of services. A blue-backed contract represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

Attachments:

1. Purchasing Thresholds: Ordinance No. 6,875 – N.S.
2. Purchasing Thresholds: Ordinance No. 7,035 – N.S.

<p>RESPONSIBLE DEPARTMENT: Finance Department</p> <p>TO BE REVIEWED/REVISED: Every year</p>	<p>Approved by:</p> <p> _____ Finance Director</p> <p> _____ City Manager</p>
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ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010B REGARDING EXPENDITURES FOR SPECIFIC IMPROVEMENTS, INCLUDING PLAY AREA IMPROVEMENTS AND EQUIPMENT WHICH EXCEED \$200,000; AMENDING SECTION 7.18.010C REGARDING EXPENDITURES FOR THE PURCHASE OF SUPPLIES, EQUIPMENT, AND MATERIALS WHICH EXCEED \$100,000; AND AMENDING SECTION 7.18.020A REGARDING EXPENDITURE LIMITATIONS IN CASE OF EMERGENCY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$25,000 shall require Council approval.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

Section 2. That Berkeley Municipal Code Section 7.18.020A is amended as follows:

Section 7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4 Emergencies.

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of \$100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of \$200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.

ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010 REGARDING EXPENDITURES FOR SERVICE CONTRACTS TO INCREASE CITY MANAGER'S AUTHORITY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended to read as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of \$50,000 shall require Council approval.

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

At a regular meeting of the Council of the City of Berkeley held on April 22, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 6, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

ATTEST: Deanna Despain
Deanna Despain, Deputy City Clerk

Tom Bates
Tom Bates, Mayor

Date signed: 9 May 08

A.R. NUMBER: 3.9
ORIGINAL DATE: 07/94
POSTING DATE: 11/3/16
PAGE 1 of 9 PAGES

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

**SUBJECT: Attendance and Payment of Expenses Associated with
Conferences, Meetings, Seminars, Trainings, and Workshops**

PURPOSE

To establish policies and procedures for City staff to obtain approval to attend conferences, meetings, seminars, trainings, and workshops; and to establish procedures for the City's direct payment of authorized expenses incurred by an individual for attendance at an approved event or meeting. Obtaining approval of an Attendance & Travel (A&T) Request for an event or meeting, along with associated expenses, ensures that appropriate supervisors and Department Directors have determined an employee's attendance at an event or meeting benefits the City, and that expenses are consistent and in line with the department's adopted budget.

This Administrative Regulation (AR) also complements **Resolution No. 66,295, City Council Expenditure and Reimbursement Policies** for the Mayor and Council (Attachment B); and **Resolution No. 63,413, Establishing Travel and Training Reimbursement Policy for Board and Commission Members** of the Rent Stabilization Board, Board of Library Trustees, and members of other boards or commissions (Attachment C).

POLICY

It is the policy of the City Manager to authorize Department Directors and Supervisors to approve an employee's request to attend, and to receive payment for expenses associated with conferences, meetings, seminars, training, and workshops.

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I. APPROVALS

Note: Employee Must Submit and Obtain Approval for A&T Request before incurring any allowable expenses

City Approval to attend and incur authorized expenses for an eligible event is based on the following factors:

- A. Expectation that the City will derive a specific benefit from staff attendance.
- B. Employee submission of the authorized A&T Request form (the current version in Groupware), and receipt of approval from her/his Supervisor &/or Department Director in advance of an authorized event, including approval for all associated expenses.
- C. All expenditures and reimbursements for the Mayor and Council must adhere to Resolution No. 66,295 and be approved by the City Auditor.
- D. For routine and, or, recurring meetings an A&T Request must be submitted, approved, and on file in the department in advance of the initial date, and must be renewed annually for each fiscal year.
- E. Department Directors are to complete and submit an A&T Request; no other signature is required for approval.
- F. Exceptions to use of the A&T Request form are: Mayor, Council, and Legislative Assistants (when allowed under Resolution No. 66,295); and members of the Rent Stabilization Board, and Board of Library Trustees. Resolution No. 66,295 or Resolution No. 63,413 governs their approvals, expenditures, and related matters.
- G. Expenditures are provided for in the adopted budget for the employee's department. For specific procedures, see item III. Allowable Expenses.

II. EXPENDITURES BASICS

Expenditures must be documented in accordance with all related City ARs and other associated policies, using current forms (published in Groupware), including and not limited to:

- AR 3.4 Purchasing Manual: Employees and Mayor/Council must make full use of the City's Procurement procedures and submit purchase requisitions to generate payment for registration prior to travel. Note: Expenses for Board/Commission members and other non-staff or elected officials eligible to attend an event pursuant to the standards in Resolution No. 63,413 must have payments processed by the designated board or commission Secretary, using FN-024 Payment Vouchers through Accounts Payable.
- AR 3.14 FN-024 Voucher Processing
- AR 7.2 Use of Private Vehicles and Mileage Reimbursement
- Auto Record for Mileage Reimbursement: for further details, see AR 7.2 and Transportation: Private Vehicle, below.

- City Council Resolution No. 66,295 City Council Expenditure and Reimbursement Policies.
- City Council Resolution No. 63,413 Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

In addition:

- Statement of Expense forms and receipts, for reconciliation of an advance &/or reimbursement of expenses incurred, must be submitted to Finance – Accounts Payable within 60 calendar days (30 days for Council/Commission, unless revised) after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and individuals assume full, personal responsibility for the costs they incurred.
- Advances or reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of any other employee. Exception to this restriction is for reimbursements only of expenses for Mayor and Council and their Legislative Assistants.

See item V. Advance Payments and Reconciliation.

III. ALLOWABLE EXPENSES

Expenditures should adhere to the following guidelines. In the event that expenses are incurred that exceed these guidelines, the cost borne or reimbursed by the City will be limited to those that fall within these guidelines, unless approved by an appropriate, designated authority. Proof of payment for all expenses must be provided when reconciling the Statement of Expense form, except as indicated.

- A. **Registration:** Registration fee charged for an authorized conference, meeting, seminar, training or workshop is allowable. Employees should register in a timely manner to take advantage of registration discounts. Payments can be made by Purchase Orders (PO). See also: Payments by Check Using a Purchase Order, below.
- B. **Transportation:** Employees must use the most economical mode and class of transportation reasonably consistent with scheduling needs, coordination with other employees traveling together, and cargo space requirements, and following the most direct and time-efficient route incorporating these factors. If an employee chooses a more expensive mode of travel based on personal criteria, reimbursement will be for the lesser cost of transportation.
 1. **Public Transit** should be used for travel to events and meetings outside the City of Berkeley and in other locations, where accessible by transit. Receipts are not required for these expenses.
 2. **Fleet Vehicle:** see AR 7.1 Use of Fleet Vehicles for details.
 3. **Private Vehicle:** see AR 7.2 Use of Private Vehicles & Mileage Reimbursement for details. If use of a private vehicle is authorized, mileage is reimbursed at IRS

rates currently in effect, in addition to parking fees, bridge and road tolls, which are also reimbursable.

- Unless an alternative is proposed by a department and acceptable to Accounts Payable, expenses for approved use of a private vehicle should be submitted with other expenses associated with attendance at an authorized event or meeting on the Statement of Expense.
4. **Rental Vehicle** charges may be reimbursed under this provision with Department Director approval. Rental fees, receipted fuel expenses, and authorized parking fees, **bridge and road tolls will be reimbursed**.
 5. **Air/Train** fares for reimbursement under this policy should be the most economical and reasonable amount available after the Attendance and Travel Request is approved.
 6. **Travel to/from Airports: Employees will be reimbursed for the most economical and** appropriate means; if there's any question about this, obtain department approval before incurring the expense.
 7. **Taxi or Shuttle** fares may be reimbursed with receipts.
- C. **Lodging:** Cost of accommodations will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.
1. When travel status is more than twelve (12) hours; or when the location is more than 50 miles from the employee's worksite and residence based on odometer, MapQuest or other reliable documentation; or when an event begins before 8:00am or ends after 5:00pm and a documented evening event requires the employee's attendance.
 2. If lodging is associated with a conference, employees should register in a timely manner to take advantage of discounts or conference rates. Lodging expenses that exceed the group rate published by the conference sponsor must be approved by an appropriate, designated authority.
 3. For non-conference lodging, travelers must request government rates, when available and must be authorized by Department Director.
 4. Costs to upgrade rooms from the basic accommodations provided are not reimbursable, unless authorized by the Department Director.
- D. **Meals: Meals are reimbursable only if travel status is over twelve hours or requires overnight lodging.**
1. **Meal expenses**, including non-alcoholic beverages, tax, and tips, are reimbursable up to a total per diem of \$51: the amounts per meal are \$10 breakfast; \$15 lunch; \$26 dinner; and receipts are not required. Expenses above the authorized amounts are the responsibility of the employee.
 2. **Breakfast &/or evening meetings with meals**, which are scheduled before conferences or meetings commence, or after they adjourn, and that require the employee's attendance, will be considered for reimbursement when

documentation is submitted reflecting the requirement of the employee's attendance for the meeting and location.

3. **Meals included with registration or lodging that are taken at additional expense** will only be considered for reimbursement at the authorized per diem by approval of the Department Director when documentation is submitted reflecting the necessity of this expense, such as:
 4. **Meals during approved travel time** to/from an event or meeting destination may be reimbursable with approval by the employee's Department Director, at the authorized amount for the individual meal(s) (see Meal expenses, above).
 5. **NOTE:** Business meals with other employees, commissioners or elected officials of the City of Berkeley are specifically NOT reimbursable. Exceptions for Mayor and Council must be reviewed and approved by the City Auditor. City funds may also NOT be used for expenses related to holiday activities or other office parties or events, unless exempted by AR 3.3.
- E. **Other Travel Related Expenses:** Expenses for which City staff or officials receive reimbursement from another agency are not reimbursable.

IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

- A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.
- B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.
- C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.
- D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10th working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

A. Requesting an Advance

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

B. Reconciling an Advance

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.

4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

- A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.
- B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- C. Tips, except where documented, are not reimbursable.
- D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:
 1. Authorized signature/s (see AR 3.12).
 2. Attendance and Travel Request approved by Supervisor &/or Department Director.
 3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
 4. Statement of Expense, completed with all required original receipts.
 5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.

Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

VIII. DEFINITIONS (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

Advance: Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

Event: Conference: A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

Event: Workshop, Training Session, or Seminar: A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

Meeting: Non-Routine Meeting: A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

Meeting: Routine or Recurring Meeting: A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

Overnight Stay: Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

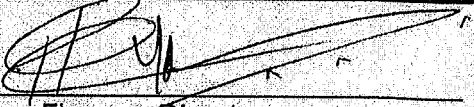
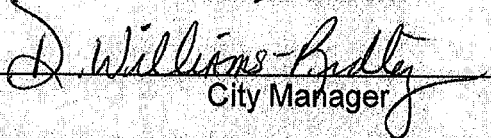
Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

Point of Origin: Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

Worksite: Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

IX. ATTACHMENTS/LINKS

- A. Classifications NOT eligible for advances
- B. Resolution 66,295 (Mayor/Council Departments)
- C. Resolution 63,413 (Rent Board/Library Trustees)
- D. Attendance & Travel Request
- E. Statement of Expense
- F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
- G. Auto Record for Mileage Reimbursement
- H. FN-024 Payment Voucher

RESPONSIBLE DEPARTMENT: Finance Department	Approved by: 
TO BE REVIEWED/REVISED: Every year	_____  City Manager

Attachment A

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE	JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1350	M	Accounting Manager	1374	Z1	Economic Development Manager
1317	M	Animal Services Manager	2923	M	Economic Development Project Mgr.
1213	Z1	Assistant City Attorney	1417	Z1	Emergency Services Manager
1118	Z1	Assistant City Manager	1402	Z1	Employee Relations Officer
8174	Z1	Assistant Fire Chief	1426	M	Energy Officer
1801	Z1	Assistant to the City Manager	1348	M	Equipment Superintendent
1301	Z1	Audit Manager	1121	Z5	Executive Director of Rent Board
1323	Z1	Budget Manager	1344	M	Facilities Maintenance Superintendent
1306	M	Building and Safety Manager	8155	B	Fire Apparatus Operator EMT
1320	Z1	Capital Improvement Programs Manager	8167	B	Fire Captain EMT
1107	Z1	City Attorney	1105	Z1	Fire Chief
1102	Z1	City Auditor	8158	B	Fire Lieutenant EMT
1120	Z1	City Clerk	8164	B	Fire Lieutenant Training EMT
1101	Z1	City Manager	8160	B	Fire Prevention Inspector I EMT
1315	M	Customer Services Manager	8161	B	Fire Prevention Inspector II EMT
2303	Z2	Deputy City Attorney II	1418	Z1	Fire Prevention Manager
2311	Z2	Deputy City Attorney III	1321	M	General Services Manager
1366	Z1	Deputy City Auditor for Payroll Mgmt.	1377	M	Hazardous Materials Manager
1219	Z1	Deputy City Clerk	1223	Z1	Health Officer
1103	Z1	Deputy City Manager	1224	Z1	Health Officer (Cert)
1227	Z1	Deputy Director of Finance	1363	M	Housing Authority Manager
1229	Z1	Deputy Director of Health & Human Services	1352	M	Housing Services Manager
1211	Z1	Deputy Director of Library Services	1380	Z1	Human Resources Manager
1228	Z1	Deputy Director of Parks, Recreation & Waterfront	1221	Z1	Information Systems Manager
1230	Z1	Deputy Director of Planning	1354	M	Land Use Planning Manager
1205	Z1	Deputy Director of Public Works	1803	Z5	Library Building Project Manager
1209	Z1	Deputy Director of Public Works (Reg)	1466	Z2	Library Financial Manager
1204	Z1	Deputy Fire Chief	1465	Z5	Library Network Administrator
8182	B	Deputy Fire Marshal EMT	1373	M	Manager of Economic Development
1203	Z1	Deputy Police Chief	1310	M	Manager of Engineering
1123	Z1	Director of Community Development	1368	M	Manager of Environmental Health
1104	Z1	Director of Finance	1360	M	Manager of Health Promotion
1125	Z1	Director of Health and Human Services	1339	M	Manager of Mental Health Services
1126	Z1	Director of Housing	1362	M	Manager of Program Planning and Administration
1108	Z1	Director of Human Resources	8186	Z1	Paramedic Program Supervisor
1127	Z1	Director of Information Technology	8111	B	Paramedic Supervisor I
1115	Z1	Director of Library Services	8113	B	Paramedic Supervisor II
1112	Z1	Director of Parks, Recreation & Waterfront	1327	M	Parking Services Manager
1124	Z1	Director of Planning	1332	M	Parks Superintendent
1111	Z1	Director of Public Works	1326	M	Planning Manager

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE	JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1307	M	Disability Programs Manager			
8148	E	Police Captain	1353	M	Revenue Collection Manager
1110	Z1	Police Chief	2716	Z2	Senior Human Resources Analyst
8145	F	Police Inspector	1325	M	Seniors Program Administrator
8147	F	Police Lieutenant	1314	M	Solid Waste and Recycling Manager
1473	Z1	Police Review Commission Officer	2316	Z2	Staff Attorney II
8142	F	Police Sergeant	2317	Z2	Staff Attorney III
2458	Z1	Psychiatrist Supervisor	1404	M	Supervising Civil Engineer
1322	M	Public Safety Business Manager	1476	M	Supervising Systems Analyst
1312	M	Public Works Maintenance Superintendent	1340	M	Supervising Traffic Engineer
1475	M	Real Property Administrator	2712	Z2	Training Officer
2890	M	Recycling Program Manager	1369	M	Waterfront Manager

RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412-N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

- expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to \$1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numainville, CMC, City Clerk

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function as a *municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS

A. Authorized Activities.

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.
7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.
8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem).
9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

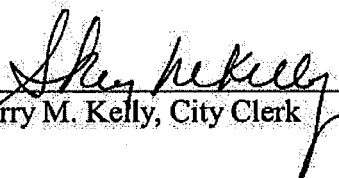
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest:


Sherry M. Kelly, City Clerk



Tom Bates, Mayor

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.14
ORIGINAL DATE: 03/01/96
POSTING DATE: 08/30/07
PAGE 1 of 7 PAGES

SUBJECT: FN-024 Voucher Processing

PURPOSE

This AR establishes criteria and procedures for payments using an FN-024.

POLICY

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners¹, or Library Trustees:
1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
 2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
 3. Mayor and Council reimbursement for authorized expenses² (see Resolution 63,412-NS)
 4. Commissioner and Library Trustee³ payments^{Note} (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
1. State and Federal taxes
 2. Loan repayment
 3. Various payments associated with payroll and employee benefits
 4. Certain 1-time miscellaneous items under \$5,000
 5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)*

¹ “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

² Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

³ These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.

All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

PROCEDURE

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

FN-024 Payments

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
 - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
 - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees

A. Vendor Information

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

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2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
 3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
 4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.
Payments to qualifying Commissioners⁴ or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
 1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
 2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
 1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
 2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner*, enter the date of the conference or the last date of the reimbursement period.

Payments for Refunds

- A. Vendor Information
 1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
 2. VENDOR NO.: enter the assigned miscellaneous vendor number.
 3. ADDRESS: enter the payee mailing address.
 4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
 5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
 1. DESCRIPTION 1: enter nature of purchase or service.

⁴ Including members of the Rent Stabilization Board for reimbursements or other approved payments.

2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUND\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

Other Designated Payments (see list under Policy on 1st page)

A. Vendor Information

FIRST – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUND\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUND\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUND\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUND\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.



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2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
 2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
 2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
 3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
 4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.

Check Printing & Disbursement

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

EXCEPTIONS

Any exceptions to this AR must be approved in writing by the Director of Finance.

<p>RESPONSIBLE DEPARTMENT: Finance Department</p>	<p>Approved by:  Finance Director</p>
<p>TO BE REVIEWED/REVISED: Every year</p>	<p> City Manager</p>

The following items are related to this AR, and can be found on Groupware – Finance:

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

CONSENT CALENDAR

July 28, 2020

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

POLICY COMMITTEE RECOMMENDATION

On June 29, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Wengraf) to make a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission. The item will be calendared for the Consent Calendar on the July 28, 2020 agenda. Vote: All Ayes.

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an “officeholder account” refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for “paying expenses associated with holding public office.” Officeholder Account funds cannot be used to pay “campaign expenses.” This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, [Section 18531.62](#) (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA’s reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley’s [Public Access Portal](#).) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.¹ Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

¹ Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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


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TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.)

CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321]

(Article 3 added June 7, 1988, by initiative Proposition 73.)

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder-

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney *MA*
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.¹ For similar reasons, the BERA does not

¹ However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert
Re: Application of Berkeley Election Reform Act To Officeholder Accounts
December 28, 1999
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.² Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE.1. and IILG.

CCM

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² Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing 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 January 30, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



Open Government Commission

ACTION CALENDAR  
September 15, 2020

To: Honorable Mayor and Members of the City Council  
 From: Open Government Commission  
 Submitted by: Brad Smith, Chair, Open Government Commission  
 Subject: Relinquishments and grants from Councilmembers' office budgets

RECOMMENDATION

Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The issue of D-13 accounts (Council Budget Funds) being used for purposes other than office expenses has been raised at the OGC. While commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may provide unfair advantage to an incumbent.

The two main concerns identified by some commissioners with the current practice are:

1. Councilmembers are able to initiate grants to organizations, at their discretion, which may raise their public profile.
2. Attaching the name of a Councilmember to a grant from the City of Berkeley may confer an advantage for the incumbent over would-be challengers.

The current practice was established in the early 2000's because councilmembers were granting public money to individuals and organizations, without approval of the Council.

This led to a concern about the potential for corruption and favoritism. The City Attorney established the existing system, though because the councilmembers' names are attached to the grants, some concern remains.

From recent discussion at OGC, commissioners are in general agreement that ending the practice of attaching the name of a councilmember to a grant will help to alleviate the main concerns: 1 & 2 above. At the OGC's April 23, 2020 meeting, commissioners unanimously approved forwarding a recommendation to Council to not include the name of an individual councilmember attached to a discretionary grant.

A review of the grants and relinquishment of funds from city council members for 2019 amounts to \$30,130. These are funds that could have been used for office, travel (on city business) and other expenses.

Commission members have discussed recommending to Council for consideration options to address the issue:

1. An amendment requiring that all disbursements from the General Fund be designated as coming from the Council as a whole, without individual names attached to the donations.
2. Create another account specifically for discretionary grants, without reducing the D-13 account budget, to allow Councilmembers to continue recommending a grant or donation to a particular organization, without an individual name attached to the donation.
3. Eliminate discretionary grants.

#### BACKGROUND

On May 21, 2020, the OGC directed four of its members to draft a proposed recommendation to Council related to relinquishment of Councilmembers' office budget funds.

On June 18, 2020, the OGC voted to present this recommendation to Council.

#### ENVIRONMENTAL SUSTAINABILITY

Not applicable.

#### RATIONALE FOR RECOMMENDATION

An advisory committee will enable collaborative discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

#### ALTERNATIVE ACTIONS CONSIDERED

The OGC has discussed recommending removal of councilmember names from office budget relinquishments, banning relinquishments for grants to organizations, and



creating and funding a separate account for donations to organizations that Council would control, but which would not have councilmember names attached to it.

CITY MANAGER

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

CONTACT PERSON

Brad Smith, Chair, Open Government Commission

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION CREATING A TEMPORARY JOINT ADVISORY COMMITTEE TO  
REVIEW COUNCIL OFFICE BUDGET RELINQUISHMENTS AND GRANTS

WHEREAS, pursuant to Berkeley Municipal Code § 2.06.190.A.2, the Open Government Commission (“OGC” or “Commission”) may “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley”; and

WHEREAS, while Commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers’ names to the donation may raise the public profile of a Councilmember and provide unfair advantage to an incumbent; and

WHEREAS, the Commission has expressed a desire to work collaboratively with the City Council to consider recommendations governing grants made from relinquishments of funds from Councilmembers’ office budgets.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that a temporary joint advisory committee consisting of three (3) members of the City Council and three (3) members of the Open Government Commission is hereby created to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers’ office budgets.

BE IT FURTHER RESOLVED that the City Council and the Open Government Commission each shall, as soon as practicable and by majority vote, appoint three members to the committee created by this resolution.

BE IT FUTHER RESOLVED that the committee created by this resolution shall hold its first meeting within 60 days of passage of this resolution and at that first meeting shall determine the need for any subsequent meetings and shall adopt a schedule for any such subsequent meetings.



Lori Droste  
Councilmember, District 8

## **ACTION CALENDAR**

June 30, 2020

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

**From:** Councilmember Lori Droste (Author) and Councilmembers Rigel Robinson (Co-Sponsor) and Rashi Kesarwani (Co-Sponsor)

**Subject:** Commission Reorganization for Post-COVID19 Budget Recovery

### **RECOMMENDATION**

- 1) Reorganize existing commissions with the goal of achieving 20 total commissions.
- 2) Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions.
- 3) Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions.
- 4) Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.

## **PROBLEM/SUMMARY STATEMENT**

Demand for city workers staffing commissions is larger than the City's ability to supply it at an acceptable financial and public health cost. Thirty-seven commissions require valuable city staff time and funding that could be better spent providing essential services. The COVID-19 pandemic has impacted the City of Berkeley in a myriad of ways, resulting in enormous once-in-a-lifetime socioeconomic and public health impacts. While the City Manager and department heads are addressing how to best prepare and protect our residents, particularly our most vulnerable, they are also required to oversee an inordinate amount of commissions for a medium-sized city at a significant cost.

The City of Berkeley faces many challenges, including the COVID-19 pandemic and its resultant budget and staffing impacts. Prior to the onset of COVID-19, the City Council and staff spent significant Council time on items originating with the City's advisory commissions. As the Shelter in Place is gradually lifted, critical city staff will resume staffing these 37 commissions. As a result, too much valuable staff time will continue to be spent on supporting an excessive amount of commissions in Berkeley rather than addressing the basic needs of the City.

## **BACKGROUND**

### **Review of Existing Plans, Programs, Policies, and Laws**

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)

- 12. Police Review Commission (ballot measure)
- 13. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley’s Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California’s Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

| Comparable Bay Area City | Population (est.) | Number of Commissions | Links                                                                                                                                                                                                         |
|--------------------------|-------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Berkeley                 | 121,000           | 37                    | <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf</a> |
| Antioch                  | 112,000           | 6                     | <a href="https://www.antiochca.gov/government/boards-commissions/">https://www.antiochca.gov/government/boards-commissions/</a>                                                                               |
| Concord                  | 130,000           | 14                    | <a href="https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm">https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm</a>                                             |
| Daly City                | 107,000           | 7                     | <a href="http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm">http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm</a>         |
| Fairfield                | 117,000           | 7                     | <a href="https://www.fairfield.ca.gov/gov/comms/default.asp">https://www.fairfield.ca.gov/gov/comms/default.asp</a>                                                                                           |
| Fremont                  | 238,000           | 15                    | <a href="https://www.fremont.gov/76/Boards-Commissions-Committees">https://www.fremont.gov/76/Boards-Commissions-Committees</a>                                                                               |
| Hayward                  | 160,000           | 12                    | <a href="https://www.hayward-ca.gov/your-government/boards-commissions">https://www.hayward-ca.gov/your-government/boards-commissions</a>                                                                     |
| Richmond                 | 110,000           | 29                    | <a href="https://www.ci.richmond.ca.us/256/Boards-and-Commissions">https://www.ci.richmond.ca.us/256/Boards-and-Commissions</a>                                                                               |
| San Mateo                | 105,000           | 7                     | <a href="https://www.cityofsanmateo.org/60/Commissions-Boards">https://www.cityofsanmateo.org/60/Commissions-Boards</a>                                                                                       |

|           |         |    |                                                                                                                                                           |
|-----------|---------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sunnyvale | 153,000 | 10 | <a href="https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804">https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804</a> |
| Vallejo   | 122,000 | 17 | <a href="http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192">http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192</a>                                 |

### Consultation and Outreach

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

| Commission Name                                                | Overseeing Department<br>(Total Commissions in<br>Department) |
|----------------------------------------------------------------|---------------------------------------------------------------|
| Animal Care Commission                                         | City Manager (7)                                              |
| Civic Arts Commission                                          | City Manager (7)                                              |
| Commission on the Status of Women                              | City Manager (7)                                              |
| Elmwood BID Advisory Board                                     | City Manager (7)                                              |
| Loan Administration Board                                      | City Manager (7)                                              |
| Peace and Justice Commission                                   | City Manager (7)                                              |
| Solano Ave BID Advisory Board                                  | City Manager (7)                                              |
|                                                                |                                                               |
| Cannabis Commission                                            | Planning (8)                                                  |
| Community Environmental Advisory Commission                    | Planning (8)                                                  |
| Design Review Committee                                        | Planning (8)                                                  |
| Energy Commission                                              | Planning (8)                                                  |
| Joint Subcommittee on the Implementation of State Housing Laws | Planning (8)                                                  |
| Landmarks Preservation Commission                              | Planning (8)                                                  |
| Planning Commission                                            | Planning (8)                                                  |
| Zoning Adjustments Board                                       | Planning (8)                                                  |
|                                                                |                                                               |
| Children, Youth, and Recreation Commission                     | Parks (3)                                                     |
| Parks and Waterfront Commission                                | Parks (3)                                                     |
| Youth Commission                                               | Parks (3)                                                     |
|                                                                |                                                               |
| Commission on Aging                                            | Health, Housing, and<br>Community Services<br>(HHCS) (10)     |
| Commission on Labor                                            | HHCS (10)                                                     |
| Community Health Commission                                    | HHCS (10)                                                     |

|                                                               |                     |
|---------------------------------------------------------------|---------------------|
| Homeless Commission                                           | HHCS (10)           |
| Homeless Services Panel of Experts                            | HHCS(10)            |
| Housing Advisory Commission                                   | HHCS (10)           |
| Human Welfare & Community Action Commission                   | HHCS (10)           |
| Measure O Bond Oversight Committee                            | HHCS (10)           |
| Mental Health Commission                                      | HHCS (10)           |
| Sugar-Sweetened Beverage Product Panel of Experts             | HHCS (10)           |
|                                                               |                     |
| Disaster and Fire Safety Commission                           | Fire (1)            |
|                                                               |                     |
| Commission on Disability                                      | Public Works (5)    |
| Public Works Commission                                       | Public Works (5)    |
| Traffic Circle Task Force                                     | Public Works (5)    |
| Transportation Commission                                     | Public Works (5)    |
| Zero Waste Commission                                         | Public Works (5)    |
|                                                               |                     |
| Fair Campaign Practices Commission/Open Government Commission | City Attorney (1)   |
|                                                               |                     |
| Personnel Board                                               | Human Resources (1) |
|                                                               |                     |
| Police Review Commission                                      | Police (1)          |
|                                                               |                     |
| Board of Library Trustees                                     | Library (1)         |

Gray=charter  
 Red=state/federal mandate  
 Yellow=quasi-judicial  
 Blue=ballot initiative  
 Orange=state/federal mandate and quasi-judicial  
 Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (8 commissions), and the City Manager’s department (7 commissions). At the same time, some smaller departments (e.g. the City Attorney’s office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular

content area aligned with the City of Berkeley's strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

### **Department and Policy Committee alignment**

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

### **CRITERIA CONSIDERED**

#### **Effectiveness**

*How does this proposal maximize public interest?* For this analysis, the effectiveness criterion includes analysis of the *benefits* to the entire community equitably with specific emphasis on public health, racial justice and safety.

#### **Fiscal Impacts/Staffing Costs**

*What are the costs?* The fiscal impact of the proposed recommendation and various alternatives considered includes direct costs of commissions.

#### **Administrative Burden/Productivity Loss**

*What are the operational requirements or productivity gains or losses from this proposal?*

The administrative burden criterion guides the analysis in considering operational considerations and productivity gains and losses. While operational considerations and tradeoffs are difficult to quantify in dollar amounts, productivity losses were considered in its absence.

#### **Environmental Sustainability**

The environmental sustainability criterion guides legislation in order to avoid depletion or degradation of the natural resources and allow for long-term environmental quality.



## **ALTERNATIVES**

### **Alternative #1–The Current Situation**

The current situation is the status quo. The City of Berkeley would retain all commissions and no changes would be made.

### **Alternative #2–Collaborative Approach with Quantity Parameters**

This approach would specify a specific number (20) of commissions the City of Berkeley should manage and set parameters around individual department responsibilities. Furthermore, it requires a collaborative approach and outreach to address specific policy areas by referring it to the Council policy committees for further analysis and specific recommendations.

### **Alternative #3–Committee Alignment, Mandated and Quasi-Judicial Commissions**

This alternative would consist of five commissions aligned directly with the policy committees in addition to quasi-judicial bodies and ones required by charter, ballot measure or law.

- *Budget and Finance Commission*
- *Facilities, Infrastructure, Transportation, Environment and Sustainability Commission (state/federal mandate--CUPA)*
- *Health, Equity, and Life Enrichment*
- *Land Use and Economic Development*
- *Public Safety*
- Board of Library Trustees (charter)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission (state/federal mandate--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Housing Advisory Commission (state/federal mandate)
- Human Welfare and Community Action (state/federal mandate)
- Landmarks Commission (quasi-judicial)
- Measure O Bond Oversight Committee (ballot measure)
- Mental Health Commission (state/federal mandate)
- Planning (quasi-judicial)
- Personnel (charter)
- Police Review Commission (ballot measure)
- Sugar-Sweetened Beverages (ballot measure)
- Zoning Adjustments Board (quasi-judicial)

**Alternative #4: Extreme Consolidation**

This alternative represents a prescriptive approach with maximum consolidation in content area and mandated commissions, absent charter amendments.

- Board of Library Trustees (charter)
- Business Improvement District (state/federal mandate)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission/Energy/Zero Waste (state/federal--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Human Welfare and Community Action (state/federal mandate)
- Measure O Bond Oversight Committee (ballot measure)/Housing Advisory Commission (state/federal mandate)
- Mental Health Commission (state/federal mandate)
- Personnel (charter)
- Planning Commission (quasi-judicial and appeals)
- Board of Appeals (land use appeals)
- Police Review Commission (ballot measure)
- Health and Sugar-Sweetened Beverages (ballot measure)

**PROJECTED OUTCOMES (CRITERIA X ALTERNATIVES)**

|                                       | <b>Current Situation</b> | <b>Collaborative Approach</b> | <b>Policy Committee Alignment</b> | <b>Extreme Consolidation</b> |
|---------------------------------------|--------------------------|-------------------------------|-----------------------------------|------------------------------|
| <b>Benefit/ Effectiveness</b>         | medium                   | high                          | medium                            | low                          |
| <b>Cost</b>                           | high                     | medium                        | low                               | low                          |
| <b>Administrative Burden</b>          | high                     | low                           | low                               | medium                       |
| <b>Relative Environmental Benefit</b> | low                      | medium                        | medium                            | high                         |

**Current Situation and Its Effects (Alternative #1)**

*Effectiveness of the Current Situation*

Commissions serve a vital role in the City of Berkeley’s rich process of resident engagement. An analysis of agendas over the past several years shows that the

commissions have created policy that have benefited the community in meaningful and important ways. In 2019, approximately two-thirds of commission items submitted to Council passed. From 2016-2019, an average of 39 items were submitted by commissions to Council for consideration. Every year roughly 15-18 (~40-45%) commissions do not submit any items for Council policy consideration in any given year. The reason for this varies. Some commissions don't submit policy recommendations (BIDs) and some commissions recommendations may not rise to Council level at all or come to Council as a staff recommendation (e.g. ZAB and DRC). Additionally, a few commissions struggle to reach monthly quorum as there are currently 64 vacancies on the various commissions, excluding alternative commissioners.

It is also important to consider equitable outcomes and the beneficiaries as well. For example, the City's Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley's size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

*Staffing Costs*

Based upon preliminary calculations of staff titles and salary classifications, the average staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

| Commission                        | Step 5 Rate of Pay | Reported Hours a Month | Total <b>Direct</b> Cost of Commission <b>per Month</b> |
|-----------------------------------|--------------------|------------------------|---------------------------------------------------------|
| Animal Care                       | \$70.90            | 8                      | \$567.20                                                |
| Landmarks Preservation Commission | \$57.96            | 80                     | \$4,636.80                                              |
| Design Review Commission          | \$52.76            | 60                     | \$3,165.60                                              |
| Peace and Justice                 | \$60.82            | 32                     | \$1946.24                                               |

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

#### *Productivity Losses and Administrative Burden*

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach. The Joint Subcommittee on the Interpretation of State Housing Laws is another example. Planners dedicate 50 hours a month to that commission. Meanwhile, this commission has limited ability in affecting state law and the City Attorney's office is responsible for interpreting state law. While this commission does important work on other issues, there is little nexus in interpreting state housing laws and could be disbanded and consolidated with an existing commission. If this commission were disbanded, the current planner could dedicate significant hours to Council's top priorities in Planning. This year's top Council priority is the displacement of Berkeley's residents of color and African Americans (Davila).

#### *Environmental Sustainability*

The current commission structure doesn't have a large impact on the environment but, in relative terms, is the most burdensome because of the potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs associated with a large number of commissions.

## **ALTERNATIVES CONSIDERED**

### **Effectiveness**

#### *Alternative #2–Collaborative approach*

While the outcome is unknown, a collaborative approach with a specified target quantity of commissions and departmental responsibility would likely yield significant benefit to the community. Due to the projected budget cuts, city staff will need to have more bandwidth to deliver baseline services and priority projects. Civic engagement will still be retained due to a myriad of ways to provide public input but more importantly, current commissioners and civic partners are invited to provide feedback to the policy committees for consideration. Additionally, this approach is a less prescriptive approach which allows Council to acknowledge that the current number of commissions is unsustainable and impacts baseline services. Instead of recommending specific commission cuts at this moment, this approach simply allows Council to state an appropriate number of commissions (20) and acknowledge the severe staffing impacts of the current configuration. Furthermore, twenty commissions is a reasonable starting point, especially when considering that most area cities that are approximately Berkeley's size have seven commissions.

#### *Alternative 3--Policy Committee Alignment*

This approach would yield some benefit in that commissions would reflect current policy committees and would directly advise those bodies. This is beneficial because commissions directly aligned with policy committees would be an independent civic replica of the appointed policy committee bodies. It further retains mandated commissions. However, this prescriptive approach doesn't allow for flexibility in retaining historically important commissions and it does not address the benefit of potentially consolidating two commissions that address the same policy content area. For instance, it may be possible to combine the sugar-sweetened beverage oversight panel with the Health, Life, and Equity commission or the CEAC with the Facilities, Infrastructure, Transportation, Environment and Sustainability.

#### *Alternative 4–Extreme Consolidation–*

This approach is the most drastic alternative and the overall effectiveness is likely low, mainly due to potential community backlash due to Berkeley's long history of civic engagement. Furthermore, the Planning Commission would likely become overburdened and less effective because land use appeals would have to be routed through the Planning Commission.

## **Costs/Fiscal Impact**

### *Alternative 2--Collaborative Approach*

The fiscal impact of the Collaborative Approach is unknown at this time because this recommendation does not prescribe specific commission consolidations or cuts. However, if commissions are reorganized such that Berkeley will have 20 instead of 38, there will be significant direct cost savings. One can reasonably assume that the direct financial cost could reduce to almost half the current amount.

### *Alternative 3--Policy Committee Alignment*

The fiscal impact of Policy Committee Alignment would yield significant savings due to commission consolidation. One can reasonably assume that the direct financial cost could reduce to more than half the current amount.

### *Alternative 4--Extreme Consolidation*

Extreme Consolidation would yield the most savings due to commission consolidation. One can reasonably assume that the direct financial cost would reduce to 25%-30% of the current amount spent on commission work.

## **Productivity**

### *Alternative 2--Collaborative Approach*

The most glaring impact on the current commission structure is administrative impacts and productivity. Whether City Council consolidates commissions or not, attributable salary costs will still exist. The primary benefit of pursuing the Collaborative Approach would center on productivity. The City of Berkeley is likely to garner significant productivity gains by specifying a target number of commissions overall and within departments. Using the Peace and Justice and Joint Subcommittee on the Interpretation of State Housing Laws examples above, more staff will be able to focus on core services and priority programs. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

### *Alternative 3--Policy Committee Alignment*

This alternative likely will yield the same productivity benefits as the collaborative approach, if not more. The City of Berkeley would likely garner significant productivity gains by specifying less than twenty commissions. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

*Alternative 4–Extreme Consolidation*

This alternative would likely provide the most productivity gains and lessen administrative burdens overall. However, there could be unintended consequences of productivity within the planning department absent additional policy changes. For example, the quasi-judicial Zoning Adjustments Board and Planning Commission agendas are packed year round. It is unclear whether eliminating one of these commissions would lessen the administrative burden and increase productivity in the Planning Department or whether those responsibilities would merely shift commissions. At the same time, the Planning Department could benefit from reducing commissions to increase productivity within the planning department.

**Environmental Sustainability**

*Alternative 2–Collaborative approach*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 3--Policy Committee Alignment*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 4–Extreme Consolidation*

This alternative would have negligible impacts on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs.

**RATIONALE FOR RECOMMENDATION**

The Collaborative Approach is the best path forward in order to pursue Berkeley's commitment to

- Create affordable housing and housing support services for our most vulnerable community members
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment
- Champion and demonstrate social and racial equity
- Provide an efficient and financially-healthy City government
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Foster a dynamic, sustainable, and locally-based economy
- Create a resilient, safe, connected, and prepared City

- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community
- Attract and retain a talented and diverse City government workforce

The status quo—37 commissions— is too costly and unproductive. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.