

I. DUTIES

A. Duties of Mayor

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

B. Duties of Councilmembers

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

C. Motions to be Stated by Chair

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

D. Decorum by Councilmembers

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

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

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

E. Voting Disqualification

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

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

F. Requests for Technical Assistance and/or Reports

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

II. MEETINGS

A. **Call to Order - Presiding Officer**

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

B. **Roll Call**

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

C. **Quorum Call**

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

D. **Council Meeting Conduct of Business**

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

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

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

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

E. Adjournment

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

F. Unfinished Business

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

G. City Council Schedule and Recess Periods

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

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

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

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

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

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

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

H. Pledge of Allegiance to the Flag

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

I. Ad Hoc Subcommittees

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

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

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

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

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

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

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

III. AGENDA

A. Declaration of Policy

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

B. Definitions

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

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

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

- In the original item as submitted by the Primary Author
- In a revised item submitted by the Primary Author at the Agenda & Rules Committee
- By verbal request of the Primary Author at the Agenda & Rules Committee
- In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
- By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full Council at which the item is considered

2. Agenda items shall contain all relevant documentation, including the information listed below:

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

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

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

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

C. Procedure for Bringing Matters Before City Council

1. Persons Who Can Place Matters on the Agenda.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Submission of Agenda Items.

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

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

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

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

4. Submission of Supplemental and Revised Agenda Material.

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

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

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

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

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

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

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

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

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

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

6. Scheduling a Presentation.

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

D. Packet Preparation and Posting

1. Preparation of the Packet.

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

2. Distribution and Posting of Agenda.

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

3. Distribution of the Agenda Packet.

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

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

4. Failure to Meet Deadlines.

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

E. Agenda Sequence and Order of Business

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

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

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

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

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

F. Closed Session Documents

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

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

G. Regulations Governing City Council Policy Committees

1. Legislative Item Process

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

Full Council Track

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

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

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

Policy Committee Track

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

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

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

Time Critical Track

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

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

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

2. Council Referrals to Committees

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

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

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

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

4. Functions of the Committees

Committees shall have the following qualities/components:

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

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

Within 120 days of the referral date, the committee must vote to either (1) accept the Primary Author's request that the item remain in committee until a date certain (more than one extension may be requested by the Primary Author); or (2) send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

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

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

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

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

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

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

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the Primary Author, and it will return to the Agenda & Rules Committee on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

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

5. Number and Make-up of Committees

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

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

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

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

6. Role of City Staff at Committee Meetings

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

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

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

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

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

1. Public Comment on Consent Calendar and Information Items.

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

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

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

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

2. Public Comment on Action Items.

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

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

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

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

3. Appeals Appearing on Action Calendar.

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

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

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

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

4. Public Comment on Non Agenda Matters.

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

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

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

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

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

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

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

B. Consent Calendar

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

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

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

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

C. Information Reports Called Up for Discussion

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

D. Written Communications

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

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

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

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

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

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

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

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

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

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

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

F. Work Sessions

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

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

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

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

G. Protocol

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

V. PROCEDURAL MATTERS

A. Persons Authorized to Sit at Tables

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

B. Decorum

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

C. Enforcement of Decorum

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

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

D. Precedence of Motions

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

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

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

E. Robert's Rules of Order

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

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

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

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

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

3. Interruptions.

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

4. Privilege of Closing Debate.

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

5. Motion to Reconsider.

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

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

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

G. Debate Limited

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

H. Motion to Lay on Table

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

I. Division of Question

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

J. Addressing the Council

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

1. Written Communications.

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

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

2. Public Hearings.

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

3. Public Comment.

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

K. Addressing the Council After Motion Made

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

L. Use of Cellular Phones and Electronic Devices

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

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

VI. FACILITIES

A. Meeting Location Capacity

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

B. Alternate Facilities for Council Meetings

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

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

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

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

C. Signs, Objects, and Symbolic Materials

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

D. Fire Safety

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

E. Overcrowding

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

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

Purpose

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

Objective

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

Section 1 – Lead Commission

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

Board of Library Trustees

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

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

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

Section 2 – General Policy

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

Section 3 – Criteria for Naming of Public Facilities

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

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

Section 4 –Naming Standards Involving a Major Contribution

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

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

Section 5 –Procedures for Naming or Renaming of Public Facilities

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

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

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

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

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

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

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

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

Guidelines for City Council Items:

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

1. Title

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

2. Consent/Action/Information Calendar

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

3. Recommendation

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

Common action options include:

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

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

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

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

5. Background

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

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

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

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

Review of all pertinent/applicable sections of:

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

Review of all applicable City Plans:

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

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

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

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

7. Actions/Alternatives Considered

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

8. Consultation/Outreach Overview and Results

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

9. Rationale for Recommendation

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

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

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

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

10. Implementation, Administration and Enforcement

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

11. Environmental Sustainability

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

12. Fiscal Impacts

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

13. Outcomes and Evaluation

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

14. Contact Information

15. Attachments/Supporting Materials

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

Mayor and Councilmember Speaking Time on Agenda Items

At the outset of the meeting, each Councilmember will have one minute to offer words of support, encouragement or appreciation to the public and City staff.

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

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

Time will toll during staff answers to questions; Councilmembers are urged to ask their questions before the meeting.

Procedure for Pulling Items from Consent or Information Calendar

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

Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once. Yielding of time to other speakers is not permitted for regular meetings of the City Council.

Public Comment on Non-Agenda Matters will be conducted in the order of hands raised on the Zoom platform, and will be limited to either the first 10 speakers during the initial round of Non-Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the meeting adjourns. Each speaker shall have two minutes. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

APPENDIX D. TEMPORARY RULES REGARDING POLICY COMMITTEES AND LEGISLATIVE WORKFLOW DURING THE COVID-19 LOCAL EMERGENCY

To support staff, councilmembers, and members of the public in their focused work to address the COVID-19 pandemic; manage health, mental health, and economic impacts; and navigate the complexities of reopening after more than a year of shelter-in-place, these temporary rules limiting Policy Committee and City Council consideration of new significant legislation are hereby adopted.

- 1) Except as provided below, “new significant legislation” is defined as any law, program, or policy that represents a significant change or addition to existing law, program, or policy, or is likely to call for or elicit significant study, analysis, or input from staff, Councilmembers or members of the public.
- 2) New significant legislation originating from the Council, Commissions, or Staff related to the City’s COVID-19 response, including but not limited to health and economic impacts of the pandemic or recovery, or addressing other health and safety concerns, the City Budget process, or other essential or ongoing City processes or business will be allowed to move forward, as well as legislative items that are urgent, time sensitive, smaller, or less impactful.
- 3) New significant legislation not related to the City’s COVID-19 response may be submitted to the Agenda process to be referred to the appropriate Policy Committee but will be placed on the committee’s unscheduled items list, and timelines will be tolled for the duration of these temporary rules.
- 4) Councilmembers, Commission Chairs/representatives, and Staff may request reconsideration of Agenda Committee determinations regarding significance/impacts, time sensitivity and/or relevance to factors listed in (2), above.
- 5) Policy Committees may take up items referred previous to adoption of these temporary rules or may place them on the unscheduled list where timelines will be tolled. Reconsideration of a determination to place an item on the unscheduled calendar may be requested by the author on the same basis as a reconsideration by the Agenda Committee. Policy Committees are asked to prioritize pending items related to categories listed in (2), above. When a Policy Committee has no active items the Committee will not meet.
- 6) The Agenda & Rules and Budget & Finance Policy Committees will continue to meet to carry out their essential agenda setting and budget policy making roles; other legislation before these committees may be placed on the unscheduled calendar where timelines will be automatically tolled for the duration that this policy is in place.
- 7) Any outstanding items voted out of Policy Committee should include staffing and budgetary needs and a budget referral. Implementation of new ordinances, programs or policies may be deferred for the duration of these temporary rules and/or if resources are not identified and allocated.

- 8) These temporary measures will automatically expire on July 28, 2021 unless the term is shortened or extended by a vote of the City Council.
- 9) When Policy Committees are reopened by the full City Council, items pending before the Committee will be prioritized by vote of the members of each Committee, based on a proposal by the Chair, in an order that takes into account and balances, among other things, (i) the amount of time items have been pending before the Committee, (ii) the time sensitivity of the issues/topics raised by the legislation, (iii) a fair distribution of items from all Councilmembers within the queue, and (iv) a fair distribution of topic areas.

Works-Wright, Jamie

From: Works-Wright, Jamie
Sent: Monday, April 26, 2021 2:05 PM
To: Works-Wright, Jamie
Subject: FW: Attached DOJ Report re: ADA Investigation Santa Rita Jail & John George and their treatment of people with mental health disabilities
Attachments: US DOJ Report re Invest Alameda Cty Santa Rita Jail John George Hospital.pdf

Please see the information below from MHC Chair Fine.

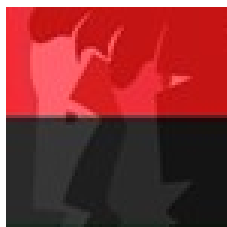
Jamie Works-Wright

Consumer Liaison

[Jworks-wright@cityofberkeley.info](mailto:jworks-wright@cityofberkeley.info)

510-423-8365 cl

510-981-7721 office



Please be aware that e-mail communication can be intercepted in transmission or misdirected. The information contained in this message may be privileged and confidential. If you are NOT the intended recipient, please notify the sender immediately with a copy to HIPAAPrivacy@cityofberkeley.info and destroy this message immediately.

From: Margaret Fine [mailto:margaretcarolfine@gmail.com]
Sent: Monday, April 26, 2021 1:11 PM
To: Works-Wright, Jamie <JWorks-Wright@cityofberkeley.info>
Subject: Attached DOJ Report re: ADA Investigation Santa Rita Jail & John George and their treatment of people with mental health disabilities

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hi Jamie - Would you kindly forward this email to the Mental Health Commissioners and the public?

As we know on April 22, 2021, the Department of Justice issued a scathing investigation report showing how Alameda County and its Sheriff's Office violate the Americans with Disabilities Act regarding the treatment of people with mental health disabilities. The Department of Justice further set forth the issues it examined (Report attached) and the narrowly tailored remedies to correct the conditions they found (Report, pp. 36-39).

The DOJ lawyers are seeking to address changes to policies, practices, training, supervision and accountability systems necessary for the County to overcome existing deficiencies and to come into compliance with these laws. This report emphasizes the DOJ attorneys' intent to work with the Alameda County staff and leadership to implement these remedies.

The Department of Justice (Department) opened this investigation to examine five issues:

- (1) whether the County's reliance on psychiatric institutions to provide mental health services to adults with mental health disabilities violates the ADA;
- (2) whether the conditions of confinement and practices at Santa Rita Jail deprive persons with serious mental illness of their constitutional rights;
- (3) whether the conditions at Santa Rita Jail violate the rights of persons with mental health disabilities under the ADA;
- (4) whether the practices at John George Psychiatric Hospital violate the rights of persons with mental health disabilities under the ADA to receive services in the most integrated setting appropriate to their needs; and
- (5) whether the conditions at John George Psychiatric Hospital deprive persons with serious mental illness of their constitutional rights.

This Notice Letter applies to the first four issues. With regard to the remaining issue, the Department did not reach a conclusion as to whether there are systemic unconstitutional conditions at John George Psychiatric hospital and is closing its investigation.



*Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530*

April 22, 2021

Keith Carson
President
Alameda County Board of Supervisors
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Oakland, CA 94612

Gregory J. Ahern
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Santa Rita Jail
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Dublin, CA 94568

Mark Fratzke
Alameda Health System
Interim Chief Operating Officer
1411 E. 31st St.
Oakland, CA 94602

Re: Notice Regarding Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail

Dear President Carson, Sheriff Ahern, and Interim Chief Operating Officer Fratzke:

The Civil Rights Division has completed the investigation into the conditions and practices at Santa Rita Jail and John George Psychiatric Hospital, and into whether Alameda County's reliance on John George Psychiatric Hospital and sub-acute psychiatric facilities to provide mental health services to adults with mental health disabilities violates those individuals' right to receive services in the most integrated setting appropriate to their needs. The investigation was conducted under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–12134, and the ADA's implementing regulation, 28 C.F.R Part 35.

Consistent with the statutory requirements of CRIPA, we provide this Notice of the alleged conditions that we have reasonable cause to believe violate the Constitution and federal law and the supporting facts giving rise to those violations. 42 U.S.C. § 1997b(a)(1); 42 U.S.C. § 1997c(b)(1). This Notice also sets forth the Department's findings of fact and conclusions of law under the ADA. 42 U.S.C. §§ 12131–12134; 28 C.F.R. § 35.172(c). We also notify you of the minimum remedial measures that we believe may remedy the alleged violations.

After carefully reviewing the evidence, we conclude that there is reasonable cause to believe that Alameda County and the Alameda County Sheriff's Office violate the ADA and engage in a pattern or practice of constitutional violations in the conditions at the Santa Rita Jail, and that Alameda County violates the ADA as interpreted by *Olmstead v. L.C.*, 527 U.S. 581, 607 (1999). Specifically, we have reasonable cause to believe that: (1) Alameda County violates the ADA by failing to provide services to qualified individuals with mental health disabilities in the most integrated setting appropriate to their needs by unnecessarily institutionalizing them at John George Psychiatric Hospital and sub-acute facilities; (2) Santa Rita Jail fails to provide constitutionally adequate mental health care to prisoners with serious mental health needs, including those at risk of suicide; (3) Santa Rita Jail's use of prolonged restrictive housing under current conditions violates the Eighth and Fourteenth Amendment rights of prisoners with serious mental illness; and (4) Santa Rita Jail violates the ADA by denying prisoners with mental health disabilities access to services, programs, and activities because of their disabilities.¹

We thank Alameda County, Alameda Health System, and the Alameda County Sheriff's Office for accommodating our investigation and providing access to facilities, staff, documents, and data. We are obligated to advise you that 49 days after issuance of this Notice, the Attorney General may initiate a lawsuit under CRIPA to correct the alleged conditions we have identified if Alameda County officials have not satisfactorily addressed them. 42 U.S.C. § 1997b(a)(1). CRIPA also authorizes the Department to move to intervene in a related private suit 15 days after issuing the Notice. 42 U.S.C. § 1997c(b)(1).

We hope, however, to resolve this matter through a cooperative approach and look forward to working with Alameda County leadership and staff to address the violations of law we have identified. The lawyers assigned to this investigation will, therefore, contact Alameda County to discuss options for resolving this matter amicably. Please also note that this Notice is a public document. It will be posted on the Civil Rights Division's website.

¹ The Department of Justice (Department) opened this investigation to examine five issues: (1) whether the County's reliance on psychiatric institutions to provide mental health services to adults with mental health disabilities violates the ADA; (2) whether the conditions of confinement and practices at Santa Rita Jail deprive persons with serious mental illness of their constitutional rights; (3) whether the conditions at Santa Rita Jail violate the rights of persons with mental health disabilities under the ADA; (4) whether the practices at John George Psychiatric Hospital violate the rights of persons with mental health disabilities under the ADA to receive services in the most integrated setting appropriate to their needs; and (5) whether the conditions at John George Psychiatric Hospital deprive persons with serious mental illness of their constitutional rights. This Notice Letter applies to the first four issues. With regard to the remaining issue, the Department did not reach a conclusion as to whether there are systemic unconstitutional conditions at John George Psychiatric hospital and is closing its investigation.

If you have any questions regarding this correspondence, please call Steven H. Rosenbaum, Chief of the Special Litigation Section, at (202) 616-3244.

Sincerely,



Pamela S. Karlan
Principal Deputy Assistant Attorney General
Civil Rights Division

cc: Donna Ziegler
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Attachment: Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail

**INVESTIGATION OF ALAMEDA
COUNTY, JOHN GEORGE
PSYCHIATRIC HOSPITAL, AND SANTA
RITA JAIL**



United States Department of Justice
Civil Rights Division

April 22, 2021

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I. INTRODUCTION

After an extensive investigation, the United States provides notice, pursuant to Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131–12134, and the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, that there is reasonable cause to believe that Alameda County and the Alameda County Sheriff’s Office violate the ADA and engage in a pattern or practice of constitutional violations in the conditions at the Santa Rita Jail and that Alameda County violates the ADA in its provision of public mental health services. Specifically, we have reasonable cause to believe that: (1) Alameda County fails to provide services to qualified individuals with mental health disabilities in the most integrated setting appropriate to their needs, instead relying on John George Psychiatric Hospital and sub-acute psychiatric facilities (collectively, “psychiatric institutions”)¹ to provide such services; (2) Santa Rita Jail fails to provide constitutionally adequate mental health care to prisoners with serious mental health needs, including those at risk of suicide; (3) Santa Rita Jail’s use of prolonged restrictive housing under current conditions violates the constitutional rights of prisoners with serious mental illness; and (4) Santa Rita Jail denies prisoners with mental health disabilities access to services, programs, and activities because of their disabilities.²

Specifically, the United States provides notice of the following findings:

- **Alameda County relies on psychiatric institutions to serve adults with mental health disabilities who are eligible for public mental health services, rather than providing services in the most integrated setting appropriate to their needs.** On any given day in Alameda County, hundreds of people are institutionalized for lengthy stays at one of several large, locked, sub-acute psychiatric facilities or are hospitalized at John George Psychiatric Hospital (John George). Depending on the facility, people live at the sub-acute facilities for an average of anywhere from six months to two years. Of those hospitalized at John George, a significant subset will spend weeks or even months there; many, lacking any alternatives, are funneled to other segregated facilities on discharge. Even more adults with mental health disabilities are at serious risk of admission to these psychiatric institutions.

¹ For purposes of our findings related to the integration mandate of the ADA, we considered only *psychiatric* institutional settings. See 28 C.F.R. pt. 35, App. B, at 708 (2018); 28 C.F.R. § 35.130(d) (2019); *see also* 42 U.S.C. § 12101(a)(2), (b)(1). We did not consider Santa Rita Jail to be an institutional or segregated setting in making those findings. At the same time, for the CRIPA portion of our investigation, the Santa Rita Jail is an “institution” as defined by CRIPA. See 42 U.S.C. § 1997.

² The Department of Justice (Department) opened this investigation to examine five issues: (1) whether the County’s reliance on psychiatric institutions to provide mental health services to adults with mental health disabilities violates the ADA; (2) whether the conditions of confinement and practices at Santa Rita Jail deprive persons with serious mental illness of their constitutional rights; (3) whether the conditions at Santa Rita Jail violate the rights of persons with mental health disabilities under the ADA; (4) whether the practices at John George Psychiatric Hospital violate the rights of persons with mental health disabilities under the ADA to receive services in the most integrated setting appropriate to their needs; and (5) whether the conditions at John George Psychiatric Hospital deprive persons with serious mental illness of their constitutional rights. This Notice Letter applies to the first four issues. With regard to the remaining issue, the Department did not reach a conclusion as to whether there are systemic unconstitutional conditions at John George Psychiatric hospital and is closing its investigation.

- **With appropriate community-based services, supports, and coordination, people with mental health disabilities could live at home and be integrated in their communities.** Evidence-based services, such as Assertive Community Treatment and Permanent Supported Housing, are proven effective in enabling people to live in their own homes in the community, even for people with the highest level of need for mental health services. Community-based crisis response services are also critical to avoid unnecessary hospitalizations and maintain people successfully in the community. A strong crisis system, along with other comprehensive community-based services, can ensure that the majority of adults with mental health disabilities in Alameda County avoid psychiatric institutionalization. Alameda County fails to make these needed community-based services available in adequate capacity or intensity. Alameda County also fails to ensure that people who are in institutions receive professionally-adequate discharge planning and a connection upon discharge to needed services. Without connection to adequate community-based services, people return to John George in crisis again and again. Deficiencies in the community-based service system, including crisis services, at times also contribute to the incarceration of people with mental health disabilities in Santa Rita Jail (Jail). This incarceration further increases a person’s risk of institutionalization in John George and the sub-acute psychiatric facilities after release, due in part to the unconstitutional conditions described below.
- **For those who are incarcerated at Santa Rita Jail, the Jail fails to provide constitutionally adequate mental health treatment.** The Jail’s mental health program lacks many of the hallmarks of a constitutionally adequate system. Specifically, the Jail’s current program fails to: provide adequate psychotherapy; provide adequate treatment planning, discharge planning, and programming; and properly treat and supervise suicidal prisoners. As a result, prisoners with serious mental health needs can experience worsening mental health conditions, repeated cycling for acute care at John George, prolonged restrictive housing, and, at times, serious physical harm or death. From 2015 to 2019, at least 14 prisoners died by suicide in the Jail. Two other prisoners have died by suicide at the Jail within the last two months.
- **The Jail’s use of prolonged restrictive housing under current conditions, which include the failure to provide adequate mental health care, violates the constitutional rights of prisoners with serious mental illness.** The Jail subjects prisoners with serious mental illness to prolonged periods of restrictive housing under conditions that place them at a substantial risk of serious harm. Half of the people in “administrative segregation” at any given time in the Jail are estimated to have serious mental illness. On the date of our last visit to the Jail, there were 75 prisoners in administrative segregation who had been there for over 90 days. Eleven of the 14 people who died by suicide between 2015 and 2019 were held in restrictive housing at some point, and half of the other instances of self-harm that we reviewed occurred while prisoners were in restrictive housing.

- **The Jail denies prisoners with mental health disabilities equal access to needed programming and services.** The Jail offers an array of programming and transition services to prisoners in the general population, but prisoners with mental health disabilities who are held in the Jail’s segregated “mental health unit” or in administrative segregation are denied access to these programs.

Together, these alleged violations result in a system where people with mental health disabilities in Alameda County find themselves unnecessarily cycling in and out of psychiatric institutions, lacking access to proven, evidence-based practices that would allow them to recover and participate in community life. Many also have encounters with the criminal justice system driven in part by unmet mental health needs. Those who are incarcerated at Santa Rita Jail experience severely deficient mental health treatment, lengthy stays in restrictive housing, and discrimination on the basis of their disabilities, all of which can result in serious harm or even death while incarcerated, and place them at serious risk of repeated or unnecessarily lengthy psychiatric institutional stays after release.

The Department has received multiple complaints from and on behalf of prisoners with serious mental illness at Santa Rita Jail and people who rely on Alameda County for mental health services and experience unnecessary psychiatric institutionalization. Alameda County has long been on notice of the deficiencies in its mental health service system and the harmful conditions at Santa Rita Jail, but these problems continue. Reports by County bodies, including the Board of Supervisors’ own committees, and outside consultants have identified many of these and other concerns as far back as at least 2015. News articles repeatedly highlight deaths at Santa Rita Jail, the allegedly dangerous conditions that exist there, and the overcrowding in John George’s emergency room, among other issues. Several lawsuits have been filed in recent years alleging a litany of serious problems in the Jail, and California’s federally-designated protection and advocacy organization, Disability Rights California, in 2019 sent the County a “probable cause” findings letter regarding many of the same ADA violations we identify. Advocates and family members of those who have died in the Jail have called for an audit of the Alameda County Sheriff’s Office for years. In 2018, midway through our investigation, we shared many of our concerns and observations with the County and Jail leadership.

The County is well-positioned to make crucial changes, with many of the needed services already available in limited amounts in the community and with leadership that recognizes the need for change. But today, people with mental health disabilities continue to experience needless psychiatric institutionalization and unconstitutional, discriminatory, and harmful treatment at Santa Rita Jail as they wait for change that still has not come.

II. INVESTIGATION

In January 2017, the Department of Justice notified the County of Alameda, the Alameda County Sheriff’s Office, and Alameda Health System that it was opening an ADA and CRIPA investigation into whether the County of Alameda unnecessarily uses psychiatric institutional settings to provide services to adults with mental health disabilities and whether the conditions of confinement in John George Psychiatric Hospital and Santa Rita Jail subject individuals to

unlawful harm. Our ADA investigation focused on whether the County provides meaningful community-based services as alternatives to, and effective discharge planning to help people with mental health disabilities transition out of and avoid re-entering, psychiatric institutional care.

Two nationally recognized expert consultants assisted with our investigation: a forensic psychiatrist with over 20 years of clinical and forensic experience in a variety of academic and correctional settings, and a community psychiatrist with experience as a medical director of a statewide community services provider and as a bureau chief for a state mental health authority. These experts accompanied us on site visits, participated in interviews with County and facility staff and community members, reviewed documents, and provided their expert opinions and insight to help inform our investigation and its conclusions.

During our investigation, we visited Santa Rita Jail, John George Psychiatric Hospital, sub-acute psychiatric facilities, and board and care homes. During our site visits, we interviewed staff at these facilities, as well as people who were receiving services in the facilities. We also met with providers of community mental health services, individuals with mental health disabilities who receive community-based services from the County, and mental health and criminal justice advocates and other stakeholders in the County. Finally, we met with officials from Alameda County Behavioral Health Care Services and the Alameda County Sheriff's Office. In addition to these visits and interviews, we reviewed the documents and information provided by the County, reviewed publicly available data and reports, and considered the opinions of a wide range of individuals knowledgeable about the County's mental health system.

Following several visits, Department attorneys and experts provided briefings to County and Sheriff's Office staff and leadership about preliminary concerns identified by our experts. It is evident that County and Sheriff's Office leadership and staff took these briefings seriously. By the time of our last visit in August 2019, the County had taken some positive steps, described further in Sections IV.B.2 and IV.D, and leadership elaborated on its vision of and plans for further progress. We appreciate the commitment to making these urgently needed changes, but remain concerned that there has been little actual progress to resolve the discrimination that is occurring in the County's mental health system and the unconstitutional conditions and discrimination in the Santa Rita Jail.

We thank the County for the assistance and cooperation extended to the Department of Justice thus far and acknowledge the courtesy and professionalism of all of the County officials and counsel involved in this matter to date. We also thank the people we met who are affected by the violations we were investigating, especially for their willingness to share their often-difficult experiences with us and take time away from their jobs and lives to do so.

III. SYSTEM OVERVIEW

Alameda County administers, funds, and controls its public mental health system. Within Alameda County, responsibility for administering public mental health and substance use services falls primarily on Alameda County Behavioral Health Care Services (BHCS). BHCS is

responsible for providing mental health services for people with moderate to severe mental health needs as well as for substance use disorder services. Alameda County residents are generally eligible for services from BHCS if they have a mental health disability that impairs their daily functioning.³ California delegates responsibility to and authorizes counties to provide an array of mental health services under Medicaid (referred to in California as Medi-Cal) and state-only funds, including the Mental Health Services Act (MHSA).⁴ In delegating responsibility for behavioral health services to counties, California affords counties significant flexibility in administering both Medicaid and state-only-funded programs; however, California expects the emphasis of MHSA programs to be on evidence-based, recovery-oriented community services, including crisis services, employment services, preventative services, supported housing, and intensive support services.⁵ Counties also fund additional mental health services, such as long-term psychiatric institutional programs, that are not reimbursed by Medicaid or state programs.

Alameda County provides acute inpatient hospitalization and crisis stabilization services at John George Psychiatric Hospital, a County-owned, dedicated psychiatric emergency and inpatient facility in San Leandro, California. BHCS contracts with Alameda Health System for operation of and provision of services at John George. John George has three inpatient units with a total of 69 beds, as well as an emergency room, called Psychiatric Emergency Services (PES). PES is intended to provide crisis stabilization services. Utilization of these crisis services routinely exceeds capacity. Alameda County also funds and provides long-term, sub-acute inpatient and residential services for about 200 people at a time in several “sub-acute facilities” that range in size from 39 to 78 beds, where people regularly stay for months or years.⁶ Services provided in these locked facilities include medication management, psychosocial rehabilitation, support groups, and assistance with some activities of daily living, like grooming. Many more people in Alameda County are placed in “board and care” facilities which provide residential services as well as minimal daily supports.

Many of the same or equivalent supports provided in these inpatient and segregated settings in Alameda County are also available—but in extremely limited supply—through various

³ See CAL. WELF. & INST. CODE § 5600.3(b) (West 2019); CAL. CODE REGS. tit. 9, § 1830.205 (2020). A mental health disability is a qualifying disability under the ADA. 42 U.S.C § 12102 (2012) (defining “disability” as a “physical or mental impairment that substantially limits one or more major life activities”). Mental health disabilities include serious mental illness, or SMI, which is defined as “a diagnosable mental, behavior, or emotional disorder that causes serious functional impairment” of an individual over the age of 18 that “substantially interferes with or limits one or more major life activities” within the last year. *Mental Health and Substance Use Disorders*, SUBSTANCE ABUSE AND MENTAL HEALTH ADMIN., <https://www.samhsa.gov/find-help/disorders> (last visited Apr. 6, 2020).

⁴ Under the MHSA, California requires counties to provide safety net mental health services for people without insurance. Cal. Welf. & Inst. Code §§ 5801–5809; Cal. Prop. 63, Mental Health Services Act, § 3 (2005, 2020 supp.).

⁵ CAL. WELF. & INST. CODE §§ 5801(b)(9), 5802, 5848.5; Cal. Prop. 63, Mental Health Services Act, § 3 (2005, 2020 supp.).

⁶ These facilities are considered Institutes for Mental Disease under Medicaid, and must be paid solely with County, not Medicaid, funds; equivalent services provided in community-settings would instead be eligible for Federal Medicaid funds.

outpatient programs. Full Service Partnerships and less intensive Service Teams use multidisciplinary team models to provide high-intensity outpatient support services to people in the places where they live. Alameda County also funds and operates limited integrated residential services for people with mental health disabilities, such as permanent supported housing. Alameda County also makes some limited crisis services available through crisis stabilization units, crisis residential facilities, and mobile crisis services.

Alameda County also funds the Santa Rita Jail, which is administered and controlled by the Alameda County Sheriff's Office. Santa Rita Jail, opened in 1989, has the capacity to hold approximately 4000 prisoners. During most of the time of our investigation, however, the actual prisoner count has been closer to 2400. Until recently, Alameda County Sheriff's Office also operated the Glenn Dyer Jail in Oakland, but in mid-2019, it closed that jail and transferred its population to Santa Rita Jail. The Jail holds both pre-trial detainees and convicted prisoners (collectively referred to throughout this Notice as "prisoners").

Jail officials have stated that approximately 40% of Santa Rita Jail's population is on the mental health caseload, and have estimated that approximately 20–25% of the population has a serious mental illness. Mental health services at the Jail are provided by BHCS, through its Criminal Justice Mental Health arm.

IV. ALAMEDA COUNTY VIOLATES INDIVIDUALS' RIGHT TO RECEIVE SERVICES IN THE MOST INTEGRATED SETTING UNDER TITLE II OF THE ADA

Congress enacted the ADA in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1) (2012). Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2) (2012). For these reasons, Congress prohibited discrimination against individuals with disabilities by public entities when it provided that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2012). Accordingly, the "ADA is intended to insure that qualified individuals receive services in a manner consistent with basic human dignity rather than a manner which shunts them aside, hides, and ignores them." *Helen L. v. DiDario*, 46 F.3d 325, 335 (3d Cir. 1995).

One form of discrimination prohibited by Title II of the ADA is violation of the "integration mandate." *See* 28 C.F.R. § 35.130(d) (2019); *see also* 42 U.S.C. § 12101(a)(2), (b)(1). That is, under the ADA, public entities must "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). An integrated setting is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. pt. 35, App. B, at 708 (2018).

In *Olmstead v. L.C.*, the Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. 527 U.S. 581, 607 (1999). In so holding, the Court explained that unnecessary institutional placement “perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” *Id.* at 600.

The ADA’s integration mandate applies both to people who are currently institutionalized and to people who are at serious risk of institutionalization. *Steimel v. Wernert*, 823 F.3d 902, 913 (7th Cir. 2016); *Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307, 321–22 (4th Cir. 2013); *M.R. v. Dreyfus*, 663 F.3d 1100, 1115–18 (9th Cir. 2011), *opinion amended and superseded on denial of reh’g*, 697 F.3d 706 (9th Cir. 2012); *United States v. Mississippi*, 400 F. Supp. 3d 546, 553–55 (S.D. Miss. 2019). As the Tenth Circuit reasoned, the integration mandate “would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation.” *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003); *see also Pitts v. Greenstein*, No. 10-635-JJB-SR, 2011 WL 1897552, *3 (M.D. La. May 18, 2011) (“A State’s program violates the ADA’s integration mandate if it creates the *risk* of segregation; neither present nor inevitable segregation is required.”) (emphasis in original). A State’s failure to provide community services may create a serious risk of institutionalization. *Pashby*, 709 F.3d at 322; *see also Mississippi*, 400 F. Supp. 3d at 553–55 (upholding plaintiff’s *Olmstead* claim that when people with serious mental illness are discharged from state psychiatric hospitals, the state’s “ongoing lack of community-based services means they are at serious risk of re-institutionalization”).

A. Alameda County Subjects Adults with Mental Health Disabilities to Unnecessary Psychiatric Institutionalization and the Serious Risk of Psychiatric Institutionalization

Alameda County relies unnecessarily on segregated psychiatric institutions to serve its residents with mental health disabilities who need intensive treatment and long-term services and supports and who are eligible for public mental health services. Institutions such as John George and the sub-acute facilities in Alameda County isolate and segregate people with mental health disabilities from those without disabilities. *Cf., e.g., Benjamin v. Dep’t of Pub. Welfare*, 768 F. Supp. 2d 747, 750 (M.D. Pa. 2011) (individuals in facilities were segregated where they lived in units ranging from 16 to 20 people, primarily received services on the grounds of the facilities and had limited opportunities to interact with non-disabled peers); *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184, 224 (E.D.N.Y. 2009) (finding that “many people with mental illness living together in [an adult home] setting with few or no nondisabled persons contributes to the segregation of [a]dult [h]ome residents from the community”), *judgment vacated on other grounds*, 675 F.3d 149 (2d Cir. 2012); *Joseph S. v. Hogan*, 561 F. Supp. 2d 280, 285 (E.D.N.Y. 2008) (denying motion to dismiss in case involving plaintiffs with mental illness who were institutionalized in nursing facilities). Residents of these facilities are exclusively people with

disabilities, and the facilities provide services nearly entirely within their walls. These institutions' doors are locked from the outside, and the facilities place restrictions on residents' ability to leave. Even short stays in these facilities isolate people from their friends and families and interrupt participation in community life.

Alameda County is distinct in California in that it has more beds per capita in long-term sub-acute psychiatric facilities than any other similarly sized California county, and these beds are nearly always full. The primary sub-acute facilities the County relies on to serve people with mental health disabilities are Villa Fairmont, Gladman Mental Health Rehabilitation Center, and Morton Bakar Center, a nursing facility, which have a combined 187 beds. Depending on the facility, people may stay for months or live in these facilities for years. At Villa Fairmont, the average length of stay in 2017 was 156 days. Most people stay at Morton Bakar for nearly two years and the average length of stay at Gladman is between two-and-a-half and three years.

Outside of these sub-acute facilities, people with mental health disabilities in Alameda County experience shorter, but often repeated, stays at John George Psychiatric Hospital in order to get needed services. Based on the data provided by the County, an average of 1111 people in need of crisis stabilization are evaluated at John George PES each month and remain there for up to 72 hours. Of these, almost 240 people each month are then admitted into John George's acute inpatient units. The average length of stay is nine days in these units, and increasing, but many stays last weeks or even months. Between August 2017 and July 2019, 844 admissions lasted two weeks or more in John George's inpatient unit, and 236 were for 30 days or more. Alameda County's utilization of John George's inpatient unit is 6.3 times the statewide average in California for utilization of state and county psychiatric hospitals. One complainant wrote to us about her experiences at John George and told us that County authorities "concentrate [M]edicaid crazies like myself there, as opposed to using clinics in the community." She was taken there involuntarily by law enforcement from her home after she called them to report domestic abuse and then spent two weeks in "the closest thing to Hell I've encountered." She felt that, while there, she had no clear treatment or release plan; when she eventually was released, she did not receive medications or other assistance, except for a bus pass with a single fare.

A high number of people cycle through John George again and again. Nearly 1600 people experienced four or more crisis stabilization admissions to John George's PES during the two-year period from August 2017 to July 2019.⁷ During the same period, over 1000 people experienced at least two admissions to the inpatient units. In fiscal year 2019, nearly 11% of individuals discharged from John George's inpatient unit were readmitted within just 14 days. This rate, which already far exceeds both national averages for state hospitals and statewide averages, appears to be increasing.

A history of admissions to John George—which alone is disruptive to people's lives and can put people at risk of losing jobs and housing—in turn often becomes the gateway to

⁷ The County similarly reported in 2016 that roughly 17.5% of all emergency room admissions to John George came from "high utilizers": people with more than four emergency admissions in the previous 12 months.

segregating people for longer periods in the sub-acute facilities. John George directly refers people needing longer-term services to the sub-acute facilities. Between 2012 and 2017, more than 10% of admissions to John George's inpatient units resulted in a placement in a sub-acute facility within 14 days of discharge. The County itself plays a direct role in institutional placements through its monthly Acute Care Coordination Committee meeting. In this meeting, representatives from John George, the sub-acute facilities, and community providers discuss individuals who have cycled through hospitals, and sometimes also jail, in an attempt to place these individuals in the sub-acute facilities or, for those who have been lingering at the sub-acute facilities, into a board and care home. However, few are connected with intensive community services through this process.

As discussed in Section IV.B–D, our investigation determined that nearly all of the people who are placed in the sub-acute facilities or in John George's inpatient units could have avoided or spent less time in these psychiatric institutions with appropriate community-based services, and few would oppose such services, rendering Alameda County's reliance upon psychiatric institutions unnecessary. But because Alameda County does not make appropriate community-based services available in sufficient capacity, people have little choice but to enter these psychiatric institutions to get the help they need.

People with mental health disabilities incarcerated at the Santa Rita Jail face further serious risk of institutionalization in a psychiatric facility upon their release from the Jail. Some people are sent directly to John George upon release from the Jail, and others make their way to the hospital soon after, because of a lack of community-based mental health services or because the County fails to connect them to those services that do exist. Between 2012 and 2017, there were more than 4200 instances when a person released from Santa Rita Jail was seen at John George PES within just 30 days. Of the people who spent time in John George's inpatient unit between 2012 and 2017, 41% had previously been incarcerated in Santa Rita Jail. Of those with four or more inpatient stays at John George, 53% had spent time in the Jail.

As discussed further in Sections V–VII, Santa Rita Jail denies prisoners adequate mental health treatment, isolates people with serious mental illness for prolonged periods in restrictive housing, and severely limits access to pre-release programming and transition services for this population. These conditions contribute to people with serious mental illness being sent repeatedly for brief stints to John George while incarcerated and often leads to institutionalization upon release. The inadequate discharge planning the County provides to prisoners with mental health disabilities at the Jail compounds this problem. The County's discharge and treatment planning often fails to anticipate a person's needs in advance of release and almost never includes goals for community stabilization. According to Jail mental health staff and our expert's review, prisoners commonly receive, at most, bridge medications and a list of resources. Although Alameda County BHCS is responsible for mental health treatment at the Jail, the County does not ensure that community providers meet with prisoners before their release to coordinate treatment. Because of these practices, people being released from jail, a time when they are particularly vulnerable, often do not successfully connect with community services. A lack of successful connection to community services leads to housing instability and

a lack of effective mental health treatment. This results in an increased risk of additional mental health crisis and eventual placement at John George and the sub-acute facilities.

Alameda County further places people at serious risk of psychiatric institutionalization due to its lack of community-based behavioral health crisis services. Instead of providing community crisis services by trained mental health clinicians, such as mobile crisis services and crisis residential services, that are effective in preventing unnecessary hospitalizations, the County relies heavily on law enforcement to respond to crises. The Alameda County Board of Supervisors’ Mental Health Board observed in 2015 that “Police officers in the field responding to individuals with mental illness have few options other than bringing them to Santa Rita or John George. Although they may have received Crisis Intervention Training, without adequate diversion resources, police officers must frequently use John George and/or Santa Rita Jail as their only option.”⁸ We heard from multiple stakeholders, including those who had themselves experienced a mental health crisis, that it is typically law enforcement who respond to psychiatric emergencies and that there is a degree of chance with respect to whether one is taken to jail or the hospital. Multiple reports have found that the lack of access to community-based mental health services—including crisis services, diversion mechanisms, long-term community supports, and re-entry discharge planning—may all contribute to people with mental health disabilities encountering law enforcement and ultimately becoming hospitalized or incarcerated in Santa Rita Jail. Our experts’ findings and national studies also support this conclusion.⁹

The death of A.A.¹⁰ illustrates the problems that can occur due to the lack of community-based mental health services, including crisis services. A.A. was experiencing a mental health crisis in early June 2019. After a brief psychiatric hospitalization, nurses told his parents on discharge to call 911 and ask for police if he needed further help, and that he would be brought back in for mental health treatment. Days later, A.A. was still in crisis, and his parents called 911, asking for help. A.A.’s father told the police who responded that A.A. was not a danger and that he needed to be taken for mental health treatment. This would have been an appropriate situation in which to bring in community-based crisis services or call a mobile crisis team, but it appears that this did not occur. Instead, police arrested A.A., and, as described in more detail below, he was taken to Santa Rita Jail, where he sustained severe injuries and later died. A.A.’s parents have publicly expressed deep regrets that they ever sought assistance from police for their son.¹¹

Another person’s experience similarly illustrates how the lack of effective community-based services and a history of repeated institutionalization can also result in engagement with the criminal justice system. B.B. was well known to BHCS—she had more than 100 “episodes”

⁸ ALAMEDA CNTY. MENTAL HEALTH BD., ANNUAL REPORT TO THE ALAMEDA COUNTY BOARD OF SUPERVISORS, FISCAL YEAR 2014–2015 at 7 (2015), http://www.acbhcs.org/mhb/Resources/MHB_Annual_Report_2015.pdf.

⁹ In fact, California law specifically permits pre-trial diversion to mental health treatment for individuals with mental illness where the mental illness played a significant factor in the commission of the charged offense, excluding certain violent and serious charges, CAL. PENAL CODE § 1001.36 (West 2020), but without community-based treatment options, this law may have little impact on diversion.

¹⁰ To protect the identity of people, we use coded initials.

¹¹ Despite multiple requests, Alameda County did not provide records related to A.A.’s death.

dating back to 2002. In 2016, without access to intensive community-based services, B.B. experienced a mental health crisis, attempted to admit herself to John George, and was ultimately arrested for trespassing after John George denied her admission without contacting a mobile crisis team or otherwise connecting her to services. B.B. was rearrested a few months later, but her mental health deteriorated and she was forensically admitted to a state psychiatric hospital for nearly two years before being released back to Santa Rita Jail in July 2019.

B. People with Mental Health Disabilities in Alameda County Can Be Appropriately and Effectively Served in the Community

People with mental health disabilities who are institutionalized or at serious risk of institutionalization at John George or a sub-acute facility in Alameda County could avoid placement in psychiatric institutions with appropriate integrated, community-based services, if such services were available. Many established, evidence-based practices exist that are proven to support people with serious mental illness or other mental health disabilities in their own homes and community-based settings, and to reduce needless psychiatric institutionalization. However, Alameda County has not appropriately implemented these practices, and services are in too short supply. It is the County's failure to provide evidence-based, community-based treatment, including crisis services and processes to divert people from psychiatric institutionalization, that results in and perpetuates the cycle of needless institutionalization described above.

1. People Cycling Through Psychiatric Institutions Are Appropriate for Community-Based Services

Most of the people who cycle in and out of John George and the sub-acute facilities in Alameda County could be provided appropriate mental health treatment in the community. At two points during the Department's investigation, our consultant, a national expert in the provision of community-based treatment to people with serious mental illness, conducted a review of people in John George's inpatient unit. Both times, our expert found that nearly all of the individuals there would have avoided hospitalization altogether or spent less time in the hospital had they been provided appropriate community-based treatment and received professionally adequate discharge planning to connect with those services.

People regularly stay longer than is needed at John George. On any given day at John George, a significant portion of the residents have been determined by John George professionals to be appropriate to leave but remain in the hospital because they are awaiting a placement elsewhere. On July 31, 2019, 24 of the 69 inpatient beds—or 35%—were occupied by individuals whom John George had determined no longer met criteria for an inpatient stay. In the year between August 2018 and July 2019, 123 people spent two weeks or more institutionalized at John George after they were cleared for discharge, simply because there was nowhere for them to go. Instead, they were held at John George, waiting for an opening in an intensive community-based mental health program, or for space at one of the sub-acute facilities—discussed below. John George staff estimated that in a given week, about 10 of their inpatient residents who are ready for discharge are of enough concern to be discussed at the

weekly Acute Care Coordination Committee meeting in order to locate a community placement; each week, the resources are found to support only about half of them. Staff reported that in some cases, people have waited in the inpatient unit for months for a placement, simply because there were no community resources available to support them outside of the hospital. Similarly, the County has estimated that 75% of people placed on involuntary holds at John George do not even meet medical necessity to be there. This is likely because, as one John George administrator put it, the “dearth of resources” in the community lands far too many people in their institution, again and again.

People living in the sub-acute facilities could also largely live in their own homes and communities with appropriate services. Facility staff themselves stated that many of the people living at these facilities could live in the community with appropriate services, and this opinion was echoed by stakeholders in various roles in the County. Our expert agreed that Alameda County overly relies on the sub-acute facilities instead of community-based treatment. Our expert reviewed a sample of people at one sub-acute facility, Villa Fairmont, and concluded that, like those at John George, nearly all would have avoided admission or could have spent less time in the facility, had they been provided appropriate community-based treatment. Yet many are stuck, waiting for slots in community service programs that simply do not exist or that are inadequate to meet their needs.

Our expert found that people served by BHCS are often at serious risk of psychiatric institutionalization because of a lack of available community supports. Having interviewed individuals in and at risk of entry to many of the psychiatric institutions in Alameda County, our expert confirmed that the people he met in Alameda County’s institutions were no different from people he had served or observed receiving services successfully in their own homes around the country.

2. Alameda County Fails to Provide Adequate Community-Based Services that Could Prevent Needless Psychiatric Institutionalization

It is well-established that an appropriate array of evidence-based services can enable people with serious mental illness or other mental health disabilities to avoid psychiatric institutionalization and live safely in integrated, community-based settings. The County has implemented some critical community-based services, but it has not fully funded them to ensure they are available in sufficient capacity, adequate intensity, and with fidelity to evidence-based practices so as to prevent individuals from cycling through psychiatric institutional stays.

Community-based mental health services and practices are necessary to enable individuals with mental health disabilities to live in the community. These are critical, evidence-based practices that can be individually tailored to the needs of each person and minimize costly, unnecessary, and repeated psychiatric institutionalization. These services are appropriate for Alameda County residents who have serious mental illness and are currently in or at serious risk of entering psychiatric institutions and, if fully developed in Alameda County, would prevent unnecessary institutionalization. These services are also proven to reduce arrests and incarceration and could thus further help to break the cycle of unnecessary psychiatric

institutionalization and incarceration. These services or their equivalents are provided in John George and the sub-acute facilities, but do not currently exist in sufficient supply or intensity in the community. These services include the following:

- **Crisis Services:** Community-based crisis supports are a crucial component of a system that prevents needless psychiatric institutionalization. These services include crisis hotlines, mobile crisis teams, crisis apartments, and walk-in crisis centers. For example, mobile crisis is an evidence-based intervention that is available 24 hours a day to respond rapidly to people experiencing a mental health crisis at their homes or at whatever location they may be experiencing the crisis. These services are proven to decrease psychiatric hospitalizations, arrest rates, and incarceration. However, as of our last visit to Alameda County, there were just two mobile crisis programs, which do not operate at all times. Instead, law enforcement officers alone typically handle mental health crisis calls.¹² In our expert's review of individuals at John George and Villa Fairmont, he found that none had had access to the kind of mobile crisis services that could have diverted them from admission. County leadership has recognized the important role of mobile crisis and the gaps in this service in Alameda County and is in the process of expanding mobile crisis response. At the time of our last visit, the County described plans to add six new mobile crisis teams, one of which would include an EMT to conduct medical clearance so that individuals in crisis could be taken to a location other than John George or Santa Rita Jail, expanding the options that currently are used by existing mobile crisis teams. This is among the most promising plans for improvement in the County. However, even if the County creates all of the crisis teams as planned, it will not have mobile crisis services available 24 hours a day, mobile crisis response will not be available in all areas of the County, and only one team will be able to conduct medical clearances.

Similarly, crisis services should also include alternatives to hospitalization such as crisis residential programs or crisis apartments, which typically contain a few beds in a home-like environment with full-time staff. These programs are intended to allow people to stabilize in these settings and avoid going to the hospital. The County has a few crisis residential programs, but people typically come to those settings from an acute setting, typically John George, instead of using them to avoid hospitalization in the first place. This is counter to the purpose of having a crisis residential program and uses up beds that could otherwise be used as a diversion or alternative to hospitalization.¹³

¹² In 74% of the involuntary holds (also known as 5150 holds) conducted by Alameda County Sheriff's Office that we reviewed, the individual was neither threatening nor violent. In 88% of these incidents, no restraints were used. And this does not include mental health crisis calls that did not rise to the level of severity that resulted in an involuntary hold.

¹³ In fact, the entire behavioral health system seems to be permeated by a step-down philosophy, requiring individuals to graduate out of more restrictive care to gradually less restrictive settings, which does not comport with the ADA's requirement that people receive community-based services when they are appropriate. Standards in the field today, which align with the requirements of the ADA, reject the step-down philosophy. Professional standards instead dictate that individuals are best supported in their own homes with intensive, appropriate community-based services.

To be effective, community-based crisis services must also include and be paired with mechanisms specifically designed to divert people with mental health disabilities from psychiatric institutions and the criminal justice system, which are notably absent in Alameda County. For example, the County has acknowledged that law enforcement overutilizes involuntary holds at John George due to the lack of alternative crisis resources or a formal mechanism at initial detention to connect people with mental health disabilities to community-based services, which would reduce the serious risk of subsequent psychiatric institutionalization.

- **Full Service Partnerships:** Assertive Community Treatment, or California’s model, called Full Service Partnerships, is designed to support service recipients with the highest mental health needs and most frequent hospitalizations to transition from institutions and live in the community. Full Service Partnerships provide a multidisciplinary team that is intended to help people stay in treatment, manage medication, address crises, secure and maintain housing and employment, and engage in their communities. Teams should be available 24 hours a day and be able to respond to crises and other needs on a flexible basis, including assisting in the coordination of services if a client enters or is at risk of entering an institutional setting. Both California and Alameda County have recognized that Full Service Partnerships reduce institutionalization, criminal justice involvement, and emergency room use, and community members in Alameda County have identified Full Service Partnerships as the most effective mental health service in the County. Alameda County administrators have acknowledged that the capacity is far from sufficient, although the County has not conducted an analysis of the actual need. One County administrator estimated the need to serve 4000 to 6000 people with the Full Service Partnership program. At the same time, Alameda County had funded capacity to serve only 850 adults with Full Service Partnerships and in practice serves fewer than 725 adults in a given month.¹⁴ Alameda County also operates a forensic Full Service Partnership that is designed to engage people with a history of significant criminal justice involvement. Yet, based on documents provided by the County, of the 290 people whom the County has identified to be eligible for this program, just 17 appear to have been connected with that service. Evidence we reviewed indicates that the County fails to effectively connect people with needed Full Service Partnership services and that, once connected, such services are often not provided in an intensity or with the flexibility needed to address crises and provide appropriate supports.
- **Permanent Supported Housing:** Permanent supported housing is an evidence-based mental health service that serves individuals with disabilities and provides flexible supports including medical, behavioral health, and services to support sobriety. Permanent supported housing promotes mental health recovery by enabling individuals to maintain housing and avoid the inherent stress of housing instability; by helping service recipients achieve maximum independence, positive health benefits, and overall higher

¹⁴ The County also offers another multidisciplinary team-based service, called Service Teams, which offers a lower-intensity of service and a higher client-to-staff ratio than Full Service Partnership teams.

quality of life; and by providing a stable place from which a person can engage with other services. It is a cost-effective service that is proven to reduce psychiatric institutionalization, as well as precursors to institutionalization including expensive hospitalizations, emergency room visits, incarceration, and, of course, homelessness. Alameda County BHCS acknowledges that there “is a direct link between housing and behavioral health.”¹⁵ However, Alameda County lacks sufficient supported housing capacity to meet the needs of individuals with mental health disabilities. In fiscal year 2017–2018, 10% of the people entering County programs for people with mental health disabilities—a total of 2702 unique individuals—were homeless.¹⁶ This number has steadily increased in recent years. Similarly, approximately 39% of all homeless individuals in the County self-reported a mental health condition that year.¹⁷ The County’s contractor to coordinate homelessness issues explained that these and other data points show “the considerable overlap between chronic homelessness and serious mental illness.” In 2018, Alameda County’s contractor estimated that the County needed to create an additional 2800 “permanent supportive housing” units to meet the need for this service. In 2019, there was an 8000-person waitlist for the County’s system to access housing services or subsidies, and only about a quarter of people with serious mental illness who attempt to join the waitlist are successful in even getting their names on the list. Unable to access this evidence-based service, many individuals go to board and care homes instead. Board and care homes provide some minimal care and supervision, but residents frequently lack access to needed services and meaningful community life; further, these facilities tend to be overcrowded and highly variable in quality.

- **Peer Support Services:** Peer support services are an evidence-based practice where trained and certified individuals or family members of individuals who have lived experience with mental health disabilities and receipt of mental health services provide supports. Peer supports are proven to help individuals with serious mental illness engage in treatment and to prevent or reduce hospitalization and incarceration. California’s Council on Mentally Ill Offenders has explained that peer support services “clearly stood out . . . as one of the most impactful and desired resources to reduce incarceration among those with mental illness and substance use disorders.”¹⁸ Multiple groups in Alameda County have recommended expanding peer support services throughout the service system. Nevertheless, we heard from several stakeholders that peer support services remain in too short supply in Alameda County.
- **Supported Employment Services:** Supported employment is an evidence-based service that assists people with serious mental illness to obtain and maintain competitive employment. Supported employment supports people with disabilities to live integrated lives in their communities. Alameda County has recognized the importance of supported

¹⁵ *Housing Service Office*, ALAMEDA CNTY. BEHAVIORAL HEALTH CARE SERV., <http://www.acbhcs.org/housing-services> (last visited Apr. 6, 2020).

¹⁶ EVERYONEHOME, PLAN TO END HOMELESSNESS: ALAMEDA COUNTY, CA: 2018 STRATEGIC UPDATE at 31 (2018), <https://everyonehome.org/wp-content/uploads/2018/12/EveryOne-Home-Strategic-Update-Report-Final.pdf>.

¹⁷ *Id.*

¹⁸ COUNCIL ON MENTALLY ILL OFFENDERS, 15TH ANNUAL REPORT at 17 (2016).

employment to support recovery for people with serious mental illness, but fewer than 530 people with serious mental illness received the County's supported employment services in fiscal year 2019.

- **Services for People with Co-occurring Diagnoses:** Community-based services to support people with serious mental illness who also have co-occurring diagnoses, such as intellectual disability, substance use disorder, or chronic illnesses, are important to help such individuals avoid placement in long-term institutional settings. John George staff explained that in recent years they have seen an increase in people with co-occurring intellectual and developmental disabilities, people with co-occurring substance use disorders, and older adults who may have age-related disabilities—all of whom have begun utilizing John George's acute services more because of a lack of services in the community to support their needs. Although there are evidence-based approaches that have proven to decrease hospital use for most people—for example, integrated dual diagnosis treatment—these services are largely unavailable in Alameda County.

3. Alameda County Fails to Identify and Connect People with the Community-Based Services Necessary to Avoid Needless Institutionalization

In order to avoid needless cycling through institutions, it is crucial that individuals with mental health disabilities have a way to access community-based mental health services. However, Alameda County does not utilize available opportunities to identify people—whether in the community or in institutional settings—who need to be connected to community-based services and to connect them to those services. In particular, Alameda County does not provide adequate discharge planning and transition services to individuals who are institutionalized in John George and the sub-acute facilities in order to connect them to community-based services.¹⁹ In a recent review of treatment plans at John George, our expert found that not one reflected professionally adequate discharge planning. Discharge planning at John George is often not informed by important clinical and practical considerations for the person, and there is inadequate communication between treatment providers. Treatment plans also fail to promote transition to the most integrated setting for the person or to anticipate key goals, opportunities, and important factors for transition.

In addition, the County fails to adequately connect people to the community-based services that could help them avoid institutionalization. For example, as noted above, while the County operates a forensic Full Service Partnership designed to engage people with intensive needs who have a history of significant criminal justice involvement, and has identified 290 people eligible for the program, as of September 2019, fewer than 20 of those individuals had been connected with that service. Similarly, the County has identified the individuals who utilize the most mental health services, as measured by the top 3% of its mental health spending. However, fewer than one-third of those individuals were connected to Full Service Partnerships

¹⁹ And, as discussed above, Alameda County does not adequately provide for the discharge and transition planning of prisoners who will be released from Santa Rita Jail. This further places people with mental health disabilities at serious risk of psychiatric institutionalization upon release.

as of September 2019, and as of that time, the County did not track people who were eligible for those services other than those eligible for forensic Full Service Partnerships, in order to facilitate these linkages. Furthermore, of the top ten mental health service utilizers, all ten were hospitalized during the year, and nine of the ten were in sub-acute facilities. Yet, only three of those ten individuals received Full Service Partnership services during that 12-month period, and only one was placed on a service team, all for seemingly brief periods. While the County has started the process to identify people who need more intensive services, it has failed to take the necessary steps to actually connect them.

The County's failure to successfully connect people to services is hampered by lack of community-based options. This is particularly true for people with co-occurring diagnoses, such as intellectual and developmental disabilities, substance use disorders, and physical health needs. Many people are discharged without adequate supports and services, resulting in frequent readmissions to John George or sub-acute facilities or contacts with the criminal justice system. One person who had received treatment several times at John George described discharge planning there as: "Here's a bus pass, now get the hell out." Others described similar experiences with discharge from John George.

John George staff confirmed many of these issues. Staff report that there are few good options when they discharge patients to the community. They told us that at times, people are discharged to shelters or other forms of homelessness. Without housing, people rapidly lose connection with providers or with transition staff, so that the only way to get services is to return again to John George. Additionally, staff reported challenges with informing County behavioral health services when their clients were at the hospital and a regular failure of service providers to meet with their clients when at John George. John George leadership admitted that being linked to community services upon discharge is the single highest correlate with success in the community.

C. Most People with Mental Health Disabilities in Psychiatric Facilities in Alameda County Do Not Oppose Community-Based Services

Most people with mental health disabilities in Alameda County psychiatric institutions do not oppose receiving community-based services. The majority of people who find themselves at John George or the sub-acute facilities are there involuntarily, or because they had no other way to get services they needed. In fact, Alameda County has the highest rate of involuntary holds of adults in the state—a rate that is three-and-a-half times the statewide average. In his assessment of individuals at John George and Villa Fairmont, our expert found that nearly all individuals reviewed or their guardians would very likely choose to live in the community if they were fully informed of and had access to appropriate community-based services. He found in his most recent review that there was no recorded evidence, for any individual reviewed, that the person or their guardian would oppose receiving services in the community. For many individuals and their guardians, emergency room or inpatient hospitalization, or in some cases incarceration, appeared to be the only option to get help. But, in our expert's view, when there are viable options for receiving treatment at home and in integrated settings, very few people or their guardians would choose options that restrict their freedom and segregate them.

Our interviews with individuals at John George and the sub-acute facilities confirmed this conclusion. Many told us of their desire to leave, or expressed interest in receiving services in the community. One man we met at John George, who had also been to Santa Rita Jail four or five times and was otherwise homeless as of the time of our interview, explained that he would like a program that would help him transition out of John George and find a place to live, and not just be discharged to the street. Another man at John George told us he “wanted to be anywhere else,” but that after he left John George the last time, he relapsed and needed help, and so he returned. A woman we met who was living at a sub-acute facility told us she wanted to go home, and maybe go to college, but knew she would need support to do so. “Who is going to support me and be with me?” she questioned. Another man at a sub-acute facility told us that he wanted to leave as soon as possible, but felt that nobody was helping him with this. Others echoed these sentiments. A staff member at one of the sub-acute facilities told us that residents who want to leave the sub-acute facility sometimes “act up” in order to be sent to John George or to jail, because they mistakenly believe that they would subsequently be released into the community after their stay in the hospital or jail.

D. Alameda County Can Make Reasonable Modifications to Prevent Unnecessary Psychiatric Institutionalization

Alameda County can reasonably modify its mental health service system to provide home- and community-based services to prevent unnecessary psychiatric institutionalization. The County already makes available a range of services that can support people with mental health disabilities in their own homes. As discussed above, community-based services, diversion programs, and professionally-adequate discharge planning are proven to be effective in preventing unnecessary psychiatric institutionalization. The County has taken some positive steps to address unnecessary psychiatric institutionalization, including, as of our last visit, the recent funding of 100 Full Service Partnership slots for people with a history of forensic involvement (although providers have had difficulty staffing these slots); the proposal to pilot 100 additional Full Service Partnership slots, combined with housing subsidies, for individuals who are homeless and have co-occurring physical health or substance use disorders; and the plan to significantly expand mobile crisis services. The County also conducts some limited in-reach to John George and Santa Rita Jail with the goal of helping people to connect with services upon discharge. While the supply of these services and scope of existing programs remain insufficient to meet the need, the County can modify and expand these services to serve all individuals who are, or are at serious risk of becoming, unnecessarily institutionalized; ensure that each person receives an appropriate intensity and frequency of services to meet their needs; and eliminate barriers that lead to unnecessary psychiatric institutionalization.

In addition, the County already conducted a Sequential Intercept Mapping process in 2017 and 2019 in which it identified the potential “intercepts,” such as arrest, where individuals with mental health disabilities come into contact with the criminal justice system, but can instead be identified and connected to community-based services. Alameda County has identified the resources and gaps that exist at these intercepts and is well-positioned to develop the needed mechanisms to use these intercepts to connect people who are at serious risk of psychiatric institutionalization with services, but has not done so yet.

Further, County leadership has acknowledged, and studies have repeatedly shown, that providing community-based services for people with serious mental illness is cost effective. Alameda County currently spends disproportionately on institutional services as compared to community-based services. For example, based on information provided by the County, annually each individual in the County's top 3% of mental health spending utilizers uses services costing an average of \$120,410 as of 2019. This group is largely made up of people who spend the majority of their time in a sub-acute facility or have four or more hospitalizations and accounts for 32% of all system costs. However, few of the people in this group received intensive community services, which are known to cost significantly less.²⁰ Even including costs for housing supports, serving these individuals in the community could dramatically reduce the costs for the County.

Alameda County can also maximize federal and state funding opportunities to develop community-based services. For example, most hospital and sub-acute stays are funded solely by County funds, while community-based services are typically eligible for federal Medicaid match dollars. Moreover, California provides a significant amount of funding through the Mental Health Services Act funds, which can be used for critical services such as Full Service Partnerships, permanent supported housing, and diversion programs. Yet Alameda County in recent years has left a significant amount of its MHSA funds unspent, and these are at risk of reverting to the state.

The lack of community-based services drives individuals with serious mental illness into costly psychiatric facilities, but it also can lead to costly incarceration. Alameda County spent \$177.2 million in fiscal year 2016–2017 on Santa Rita Jail, not including mental health services, with around 25% of its population having serious mental illness. The County has recognized both its significant reliance on the Jail for people with mental illness and that appropriate mental health treatment could address this problem. The Alameda County Board of Supervisors' Mental Health Board recognized in 2015 that "Santa Rita Jail has become a warehouse for people with mental illness."²¹ The Board further explained that "since there is nowhere to place [individuals with mental health disabilities], they languish in jail, often isolated in jail cells. We need to develop a system so that this population can be diverted out of the criminal justice system and into treatment."²² More recent County and external reports have echoed these conclusions. As discussed above, studies have shown that evidence-based community mental health services have been effective at reducing arrest rates and incarceration in California and across the country. For example, a 2010 study in California found that the probability of arrest dropped by 56% for

²⁰ See, e.g., SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., CRISIS SERVICES: EFFECTIVENESS, COST-EFFECTIVENESS, AND FUNDING STRATEGIES (2014); SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., ASSERTIVE COMMUNITY TREATMENT: THE EVIDENCE (2008); SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN., PERMANENT SUPPORTIVE HOUSING: THE EVIDENCE (2010); NATIONAL COUNCIL ON DISABILITY, HOME AND COMMUNITY-BASED SERVICES: CREATING SYSTEMS FOR SUCCESS AT HOME, AT WORK AND IN THE COMMUNITY (2015), <https://ncd.gov/publications/2015/02242015>.

²¹ ALAMEDA CNTY. MENTAL HEALTH BD., ANNUAL REPORT TO THE ALAMEDA COUNTY BOARD OF SUPERVISORS, FISCAL YEAR 2014–2015 at 7 (2015), http://www.acbhcs.org/mhb/Resources/MHB_Annual_Report_2015.pdf.

²² *Id.*

individuals who were involved in Full Service Partnerships.²³ Thus, in implementing community-based services to prevent psychiatric institutionalization, the County will also likely reduce incarceration and, in the process, reduce its expenditures for incarceration. The Mental Health Board’s Criminal Justice Subcommittee has reported to the Board of Supervisors that, according to national data, it costs two to three times more for a person with serious mental illness to be incarcerated compared to being housed and receiving treatment in the community, and that mental health programs that included housing led to fewer arrests and shorter jail stays among people with mental illness. Making the needed modifications may thus also result in a smaller population of prisoners with mental health needs at Santa Rita Jail, which could free up funds to support community-based mental health services and potentially ease the Jail’s implementation of remedies to address the conditions we identify in Sections V–VII.

Alameda County government has long been on notice of its needless institutionalization of people with serious mental illness. In 2015, the Alameda County Board of Supervisors’ Mental Health Board wrote of the “dire need” for intensive outpatient services to address the overcrowding and high readmission rates at John George, explaining that “John George remains the single most utilized point of entry into the County mental health care system.”²⁴ The same report concluded that “[f]ar too many Alameda County residents with mental illness cycle in and out of Santa Rita Jail and John George Psychiatric Hospital,” and called for a “comprehensive, integrated system which offers a continuum of care.”²⁵ In a January 2016 presentation to the Board of Supervisors’ Health Committee, BHCS identified several concerns around the lack of coordinated mental health and substance use services, insufficient service coordination across settings, and a lack of 24/7 crisis service coverage, resulting in psychiatric emergency room admissions. And several other County reports have similarly acknowledged these problems and the needed solutions.

As described at several points above, the County has begun to develop many of the needed services and programs: it offers too-limited mobile crisis services, crisis residential services, Full Service Partnership teams, peer support services, permanent supported housing, supported employment, and substance use disorder services, as described in Section IV.B.2. It has the framework to divert people from institutions and conduct discharge planning in institutions to help people access these community services. Yet the scope and supply of each of these services and programs falls short of the need, in many cases as acknowledged by the County, instead causing the County to rely on institutional services. Though the County could use existing and available resources to rebalance its service system, and although County officials have expressed goals of doing so, the County must complete this work to ensure an adequate array and capacity of community-based services, including crisis services, diversion programs, and appropriate discharge planning, in order to fulfill County residents’ right to

²³ NICHOLAS C. PETRIS CENTER ON HEALTH CARE MARKETS AND CONSUMER WELFARE SCHOOL OF PUBLIC HEALTH, UNIVERSITY OF CALIFORNIA, BERKELEY, EVIDENCE ON THE EFFECTIVENESS OF FULL SERVICE PARTNERSHIP PROGRAMS IN CALIFORNIA’S PUBLIC MENTAL HEALTH SYSTEM (2010), <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.172.8620&rep=rep1&type=pdf>.

²⁴ ALAMEDA CNTY. MENTAL HEALTH BD., ANNUAL REPORT TO THE ALAMEDA COUNTY BOARD OF SUPERVISORS, FISCAL YEAR 2014–2015 at 6 (2015), http://www.acbhcs.org/mhb/Resources/MHB_Annual_Report_2015.pdf.

²⁵ *Id.* at 7.

receive services in the most integrated setting. The minimum remedial measures necessary to achieve this goal are described in Section VIII.

V. MENTAL HEALTH CARE AT SANTA RITA JAIL IS INADEQUATE IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF PRISONERS WITH SERIOUS MENTAL HEALTH NEEDS

After making several trips to the Santa Rita Jail with our experts; speaking with Jail management, security staff, mental health staff, and hundreds of prisoners; and reviewing thousands of pages of documents, including numerous mental health and other records, the Department has reasonable cause to believe that the Jail fails to provide prisoners with serious mental health needs with adequate mental health care, in violation of their Eighth and Fourteenth Amendment rights.

As discussed above in Section III, Alameda County funds the Jail, which is administered and controlled by the Alameda County Sheriff's Office. The Jail has the capacity to hold approximately 4000 prisoners. During most of the period encompassed by our investigation, however, the actual prisoner count has been closer to 2400.²⁶ The Jail holds both pre-trial detainees and convicted prisoners. Approximately 85% of the Jail's population is pre-trial detainees.

While the population of the Jail is, by its very nature, constantly in flux, it includes a large number of individuals with serious mental health needs. Although the Jail does not specifically categorize prisoners as having "serious mental illness," Jail representatives have stated that approximately 40% of its population is on the mental health caseload.²⁷ And in our interviews with the Jail's chief psychiatrist and other key mental health staff, they estimated that approximately 20–25% of the population likely has a serious mental illness. For those in various specialized housing units, the numbers are likely even higher. According to the Jail's chief psychiatrist, for example, approximately 50% of the prisoners in the administrative segregation units²⁸—the most restrictive in the Jail, other than short-term "safety cells" used up to 72 hours for actively suicidal prisoners—have a serious mental illness. Our observations of prisoners we

²⁶ While the population at the Jail had declined to approximately 1800 prisoners in May 2020 due to changes to booking and release procedures that were instituted in response to the COVID-19 pandemic, the population has since rebounded to 2200 prisoners as of April 5, 2021. See *Covid-19 Update*, ALAMEDA CNTY. SHERIFF'S OFFICE, https://www.alamedacountysheriff.org/admin_covid19.php (visited June 19, 2020; visited April 6, 2021).

²⁷ This estimate may undercount the number of prisoners with mental health needs. A March 25, 2021, report by the California State Auditor found that the Jail fails to "conduct a mental health screening of every inmate, as state regulations require" and instead "only assesses those inmates who exhibit erratic behaviors or disclose a history of mental illness to jail staff." The report explained that the Jail therefore lacks "sufficient data regarding whether inmates have mental illnesses," information which is "critical" to "minimize the risk of violence, injury, or death." CALIFORNIA STATE AUDITOR REPORT 2020-102, PUBLIC SAFETY REALIGNMENT REPORT at 22-25 (March 2021).

²⁸ During the course of our investigation, the Jail changed its nomenclature in relation to these units, so that it now uses the term "Administrative Separation," or "Ad Sep," instead of "Administrative Segregation," or "Ad Seg." For the sake of consistency, we refer to these units as "administrative segregation."

interviewed in administrative segregation suggested that the chief psychiatrist's estimate was accurate, if not perhaps an undercount. As discussed in other sections of this Notice, many of the individuals with serious mental illness at the Jail cycle repeatedly in and out of the Jail, as well as in and out of John George and other institutional settings.

There is one primary unit at the Jail—Unit 9—for male prisoners with mental health needs with any security classification. While Jail officials refer to Unit 9 as a mental health unit, it largely functions not as a therapeutic setting but rather, in all but name, as a restrictive housing unit, because these prisoners are confined to their cells for the vast majority of the day, alone or with another prisoner.²⁹ Within Unit 9 are different pods, based on security classification. Most prisoners in these pods are placed in two-person cells and are locked in those cells for the vast majority of their waking hours. Jail records show that, depending on their pod, prisoners were limited to less than 1.5 to three hours out of their cells each day. And prisoners on most pods received yard time outdoors for as little as one hour per week, with many receiving no yard time.

Instead of going to the clinic for mental health care, or to a classroom for educational or other programming, prisoners in Unit 9 remain on the Unit. They have access to few group programs on the Unit, and are prohibited from attending the many other programs available to general population prisoners. Mental health staff meet with the prisoners on the Unit, at large tables in the day-room-type area. Prisoners on Unit 9 must wear different color uniforms from the rest of the population, which not only discloses sensitive health information, because staff and other prisoners know that the uniform signifies a mental health diagnosis, but also serves to stigmatize them and marginalize them.

Not all prisoners with serious mental health needs are housed on Unit 9. Women prisoners are housed in a different area of the facility, and there are also men with serious mental health needs housed throughout the facility. Significantly, a number of them are in administrative segregation, which is another form of restrictive housing. Prisoners in administrative segregation are, by policy, permitted at most only five hours outside of their cells per week. Our review of a sample of records revealed many receiving only one or two hours outside of their cells on given weeks, a fact repeatedly mentioned by prisoners in administrative segregation in our conversations with them. When prisoners are permitted to leave their cells, they do so alone—with no opportunity to interact with others—and are still confined to the common indoor pod space. They may not go outdoors.

²⁹ Restrictive housing, elsewhere sometimes referred to as solitary confinement, segregation, or isolation, is any type of detention that involves three basic elements: removal from the general prisoner population, whether voluntary or involuntary; placement in a locked room or cell, whether alone or with another prisoner; and the inability to leave the room or cell for the vast majority of the day. *Porter v. Clarke*, 290 F. Supp. 3d 518, 528 (E.D. Va. 2018) (citing U.S. DEP'T OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING at 3 (2016)); *see also, e.g., Wilkinson v. Austin*, 545 U.S. 209, 214, 223–24 (2005) (describing restrictive housing as limiting human contact for 23 hours per day); *Sweet v. Tillery v. Owens*, 907 F.2d 418, 422 (3d Cir. 1990) (describing restrictive housing as being limited to a cell for 21 to 22 hours per day); *Sweet v. S.C. Dep't of Corr.*, 529 F.2d 854, 867 (4th Cir. 1975) (Butzner, J., concurring) (categorizing as restrictive housing being alone in a cell for 24 hours per day, save for two, one-hour periods a week for exercise and a shower).

The Eighth Amendment’s prohibition against cruel and unusual punishment requires jails to provide prisoners with adequate mental health care. *See Doty v. Cnty. of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994) (“[T]he requirements for mental health care are the same as those for physical health care needs.”); *see also Brown v. Plata*, 563 U.S. 493, 503 (2011) (prisoners “with serious mental illness” lacked access to adequate mental health care). The protections afforded pre-trial detainees under the Fourteenth Amendment are at least as great as a convicted prisoner’s Eighth Amendment rights. *See Gibson v. Cnty. of Washoe, Nev.*, 290 F.3d 1175, 1187–88 (9th Cir. 2002), *overruled on other grounds by Castro v. Cnty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). While a pre-trial detainee may be afforded greater protections, we have conducted our analysis under the Eighth Amendment standard, to which all prisoners at the Jail are at least entitled, because the populations are mixed at the Jail.

The rights of any prisoner under the Eighth Amendment are violated when “officials remain deliberately indifferent to their serious medical needs.” *Id.* at 1187 (internal quotation marks omitted). The analysis examines if inadequate medical or mental health care creates a “substantial risk of serious harm” to prisoners, incorporating the possibility of future harm as well as present harm. *See id.* at 1188 (applying “substantial risk of serious harm” language in the Eighth Amendment medical care context); *see also Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“That the Eighth Amendment protects against future harm to prisoners is not a novel proposition.”).

The existence of serious systematic deficiencies can demonstrate that jail officials are deliberately indifferent to prisoners’ medical needs, in violation of the Constitution. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1256 (N.D. Cal. 1995) (“[C]ourts have traditionally held that deliberate indifference can be shown by proving either a pattern of negligent acts or serious systemic deficiencies in the prison’s health care program.”); *Casey v. Lewis*, 834 F. Supp. 1477, 1543 (D. Ariz. 1993) (“In cases in which the system’s constitutionality is at issue, deliberate indifference to the serious medical needs of prisoners may also be ‘evidenced by repeated examples of negligent acts’ . . . or by ‘proving there are such systemic and gross deficiencies in staffing, facilities, equipment or procedures that the inmate population is effectively denied access to adequate medical care.’”) (internal citation omitted). Furthermore, a system-wide policy or practice that leads to a substantial risk of serious harm may be considered holistically to demonstrate a constitutional violation. *See Brown*, 563 U.S. at 505 n.3 (noting that in assertion of system-wide deficiencies in medical and mental health care, there was no need to consider whether specific instances violate the Constitution, because the state of medical and mental health care “taken as a whole” created a constitutional violation).

A. Many Prisoners at the Jail Have Serious Mental Health Needs, Requiring Treatment

Prisoners with serious mental health needs require treatment in order to ensure that their illnesses are not exacerbated. *See Madrid*, 889 F. Supp. at 1205–06 (“For inmates with serious or painful symptoms, delays lasting days or even weeks can cause unnecessary suffering, exacerbate illness, and have life-threatening medical consequences.”). As acknowledged by Jail staff, at least 20–25% of prisoners in the Jail have serious mental illness. By not adequately

addressing these prisoners' mental health needs, the Jail places them at significant risk of harm. At least in part as a result of the Jail's failure to address their needs, and as described in more detail below, these prisoners' mental health often deteriorates; they may engage in self-harm, and many are transferred to John George for acute mental health care. Many former prisoners are admitted to John George or other psychiatric institutions, without ever receiving adequate mental health treatment that could avert these admissions and break this pattern of cycling repeatedly into segregated psychiatric institutions. Of the charts our expert reviewed, over 20% showed that the prisoner had to be transferred to John George while in the Jail, and many more showed stays at John George either prior to booking or after release. Of 21 prisoners known to have died in the Jail or from injuries or other causes sustained in the Jail between January 12, 2017, when we opened our investigation and 2020, at least 13 either had apparent indicators of serious mental illness or died due to suicide.

B. Prisoners with Serious Mental Health Needs Are Subject to a Substantial Risk of Serious Harm as a Result of Inadequate Mental Health Care

The Jail's inadequate mental health care places prisoners with serious mental health needs at substantial risk of harm. The Jail's mental health program is inadequate because it fails to provide essential components that have been identified by courts as being minimally necessary for such a program, including adequate psychotherapy and individualized treatment plans that include close supervision of the prisoner. *See, e.g., Coleman v. Wilson*, 912 F. Supp. 1282, 1298 (E.D. Cal. 1995); *see also Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1188 (M.D. Ala. 2017); *Madrid*, 889 F. Supp. at 1256–58; *Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1577 (D. Idaho 1984); *Ruiz v. Estelle*, 503 F. Supp. 1265, 1339 (S.D. Tex. 1980), *aff'd in part and rev'd in part on other grounds*, 679 F.2d 1115 (5th Cir. 1982). While a denial of any one of these factors alone may not necessarily amount to a constitutional violation, courts have examined these factors together to evaluate the constitutional adequacy of a correctional facility's mental health program.

1. Prisoners with Serious Mental Health Needs Are Subject to Harm Because of a Lack of Individualized Treatment, Including Inadequate Psychotherapy and Programming

The failure to treat mental illness can lead to a substantial risk of serious harm, including decompensation and suicidal ideation, constituting a serious medical need under the Eighth Amendment. *See Conn v. City of Reno*, 572 F.3d 1047, 1054–56 (9th Cir. 2009), *judgment vacated on other grounds by Connick v. Thompson*, 563 U.S. 51 (2011); *Madrid*, 889 F. Supp. at 1222. Courts have found mental health care insufficient when use of psychotropic medications supplants the use of mental health therapy. *See, e.g., Braggs*, 257 F. Supp. 3d at 1188 (“The ‘basic’ mental-health care that States must provide if needed by a prisoner includes not only medication but also psychotherapeutic treatment.”) (citation omitted); *Balla*, 595 F. Supp. at 1577 (“[P]rescription of [psychotropic] drugs cannot supplant the necessity of psychiatric counseling.”). Without therapy and programs that might, for example, help them learn cognitive or emotional skills, plan for recovery from substance use disorder, and make healthy life choices,

prisoners with serious mental health needs are at risk of deterioration and eventual re-institutionalization upon their release from incarceration.

The Jail, however, provides little to no individualized treatment, including psychotherapy, to prisoners with serious mental health needs. Instead, mental health care on Unit 9—the unit specifically designated for people with mental health needs—is generally limited to medication administration, screenings for suicidal ideation, and brief conversations with clinicians. Our expert found these conversations to be insufficiently frequent, as well as too brief. In addition, these conversations are usually not held in therapeutic environments, but rather “cell side,” or in day rooms within earshot of other prisoners and of security staff. As the Alameda County Sheriff’s Office itself has previously acknowledged: “For those housed in high security units, the vast majority of these meetings [for therapy or counseling] take place in the dining area of the housing unit, providing little to no privacy, in an environment not designed for this type of activity.”³⁰ Prisoners are often reluctant to disclose sensitive information necessary to treatment where that information can easily be overheard by staff and other inmates. “[C]ell-front check-ins are insufficient as counseling and do not constitute actual mental-health treatment,” as they fail to provide a therapeutic environment. *Braggs*, 257 F. Supp. 3d at 1210; see also *Robinson v. Purcell*, No. 2:14-CV-0790, 2019 WL 1330874, at *6 (E.D. Cal. Mar. 25, 2019) (finding “cell-door consultations posed risks to plaintiff’s mental health” because of the need to speak softly for privacy and the impediment plaintiff faced to “speak[ing] freely” due to the “non-confidential nature of these visits”). Prisoners receiving cell-side visits are often reluctant to speak freely, and therefore do not receive the treatment they need, and are thus at risk of further harm and increased risk of poor outcomes such as self-harm, according to our expert. During their brief conversations, clinicians generally encourage prisoners to take medication, rather than utilizing any therapeutic techniques. Further, the Jail provides no group therapy (only a sole educational class) to prisoners on Unit 9. Jail clinicians often are unable to provide even a minimally adequate level of care to the large number of prisoners who need it, resulting in serious harm, including suicide. See *Conn*, 591 F.3d at 1095 (“A heightened suicide risk or an attempted suicide is a serious medical need.”). One of the most critical components of a minimally adequate mental health treatment program is the “identification, treatment, and supervision of inmates with suicidal tendencies.” *Ruiz*, 503 F. Supp. at 1339. Suicide watches at the Jail—known as “IOL status” (referring to an intensive observation log)—feature unduly harsh conditions, including a prohibition on access to socks, underwear, hygiene products, sheets, reading material, and the commissary. Such punitive conditions are known to discourage prisoners from reporting suicidality.

From 2015 through 2019, there were at least 14 suicides in the Jail, which equates to a rate of suicides that is more than twice the national average. While there were no suicides in 2020, two other suicides occurred at the Jail in the first four months of 2021. In one instance in 2017, L.L., a 29-year-old former Marine, who had previously spent time at both the Jail and John George, hanged himself in administrative segregation 18 days after entering the Jail. Despite his

³⁰ ALAMEDA CNTY. SHERIFF’S OFFICE, MENTAL HEALTH SERVICES IN SANTA RITA JAIL at 9 (2015), http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_10_8_15/PUBLIC%20PROTECTION/Regular%20Calendar/Mental_Health_Services_Santa_Rita_Jail.pdf.