

AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, October 1, 2024
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702
TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY, CA 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244. All Council meetings are recorded.

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1611781735>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 178 1735**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Government Code Section 84308 (Levine Act) - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

Preliminary Matters

Roll Call:

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

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Public Comment by Employee Unions (first regular meeting of the month): *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

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

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

- 1. Unrepresented Employee Manual Amendments for Measure KK Compliance**
From: City Attorney
Recommendation: Adopt a Resolution authorizing the amendment of the Unrepresented Employee Manual to conform to Section 113 of the City Charter (Measure KK).
Financial Implications: None
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Grant Application: Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program for the Bay Trail Extension**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to the Metropolitan Transportation Commission (MTC) Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (SR2TBT) for the fourth phase of the Berkeley Bay Trail Extension Project for up to \$4 Million; accept the grants if awarded, and execute any resulting agreements and amendments.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 3. Grant Contract: Housing and Urban Development (HUD) for the African American Holistic Resources Center Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or their designee to accept the U.S. Department of Housing and Urban Development (HUD) grant for the African American Holistic Resources Center Project in the amount of \$1,000,000, execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the pre-construction work and appropriation of funding for related expenses, subject to securing the grants.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

4. **Amending the Berkeley Hazardous Materials and Waste Management Code**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 15.12, Berkeley Hazardous Materials and Waste Management.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

5. **Grant Applications: Regional Measure 3: Safe Routes to Transit and Bay Trail Program**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to submit grant applications to the Metropolitan Transportation Commission (MTC) Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (SR2TBT) for the following projects: Southwest Berkeley Bike Boulevards for up to \$4 million; Adeline Street Quick-Build for up to \$1.05 million; accept the grants if awarded, and execute any resulting agreements and amendments.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300

Council Consent Items

6. **Budget Referral and Technical Support for La Peña Cultural Center**
From: Councilmember Hahn (Author), Councilmember Humbert (Author), Councilmember Bartlett (Author)
Recommendation:
 1. Direct the City Manager to work with La Peña Cultural Center to offer support during a post-pandemic time of temporary financial crisis, with all technical and financial assistance and any and all other resources at the City's disposal. Further request the City Manager connect La Peña Cultural Center with any potential outside resources and funding.
 2. Refer to the November Budget Process a one-time emergency grant of \$150,000 to La Peña Cultural Center, pending an evaluation of the organization's current financial situation and plans for long term recovery by the City's Economic Development and Civic Arts team.**Financial Implications:** See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during one of the Action Calendar public comment periods on the item. Public comment will occur for each Action item (excluding public hearings, appeals, and/or quasi-judicial matters) in one of two comment periods, either 1) before the Action Calendar is discussed; or 2) when the item is taken up by the Council.

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

Action Calendar

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

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

Action Calendar – Scheduled Public Comment Period

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

Action Calendar – New Business

7. Resolution Name a City of Berkeley Major Street in Honor of Daniel Ellsberg From: Peace and Justice Commission

Recommendation: Adopt a Resolution that the City of Berkeley Council name a Berkeley major street in honor Daniel Ellsberg to serve as an ongoing reminder of Berkeley's commitment to peace.

Financial Implications: None

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

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at:

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

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in

the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

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

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at clerk@berkeleyca.gov.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 19, 2024.***

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

Mark Numainville, City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **Item #6: Budget Referral and Technical Support for La Peña Cultural Center**

1. Six similarly-worded form letters

#### **URL's**

2. Russbumper (2)

#### **UA Theater**

3. 29 Similarly-worded form letters

#### **Burrowing Owls**

4. Mary Price
5. Crystal Brunzell
6. Basho
7. Anita Pereira
8. Martin Nicolaus
9. Pamela Michaud
10. Mari Metcalf

#### **Encampment Policy Concerns**

11. Pacia Sallomi
12. Suzanne P. McKee
13. Susan Kaplan
14. Julia Frantz
15. Heather Mulhall
16. William
17. Becca Freed
18. Peter Ross
19. Meryl & Aimee
20. Fran Haselsteiner
21. Eric Friedman

#### **Courtesy Notice**

22. Ilan Wurman

#### **Cal-Sailing & J-Dock**

23. Gordon Stout
24. Ben Lee
25. Camille Antinori
26. Edward Schlesinger
27. Ernest Galvan

- 28. Kevin Williams
- 29. 27 Similarly-worded form letters

**Rehabilitative Services**

- 30. Lucia Hammond

**Check Cashing**

- 31. Alexander Merenkov

**Chess Club Construction Concern**

- 32. Jesse Sheehan

**Middle Housing**

- 33. Jim McGrath

**Council Meeting Concerns**

- 34. 16 Similarly worded-form letters

**Keepers of the Creek**

- 35. Mark Merritt

**Public Comment Concern**

- 36. Russbumper

**Panoramic Hill**

- 37. Janice Thomas

**Zoning Conerns**

- 38. John J. Parman

**TOPA**

- 39. Julie Holland

**Police Accountability Board Texting Item**

- 40. Kandeia Mosley Gandhi on behalf of the League of Women Voters of Berkeley, Albany, Emeryville

**Ashby Park**

- 41. Carol Nyhoff

**Towing Concern**

- 42. Andrea Henson

**Ballot Measure Ratings**

- 43. Mike Henn

**Political Climate**

44. Mercedes Deboir

**Disposition of PRA Complaint**

45. Stephen A. Hylas, Acting Secretary, on behalf of the Open Government Commission

**Graffiti**

46. Dahlia Frydman

47. Dorothea Dorenz

**Loud Honking**

48. Elsa Tranter

**Apartment Review Concern**

49. Ann Marie Davis

**New Store Inquiry**

50. Josh Atwood

**Newsletter**

51. Russbumper

**Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.





Office of the City Attorney

CONSENT CALENDAR  
October 1, 2024

To: Honorable Mayor and Members of the City Council

From: Farimah Faiz Brown, City Attorney  
Bren Darrow, Assistant City Attorney

Subject: Unrepresented Employee Manual Amendments for Measure KK Compliance

RECOMMENDATION

Adopt a Resolution authorizing the amendment of the Unrepresented Employee Manual to conform to Section 113 of the City Charter (Measure KK).

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impacts have been identified; these amendments merely bring the Unrepresented Employee Manual into conformity with existing law.

CURRENT SITUATION AND ITS EFFECTS

The Charter provides that the City Attorney is appointed by the City Council, the budget of the City Attorney's Office is directly approved by the City Council, and the City Attorney has administrative control over the City Attorney's Office. These Charter provisions took effect on January 1, 2021, and the City has complied with them, including by amending outdated and superseded language in the Municipal Code on July 23, 2024. However, the Unrepresented Employee Manual has not yet been updated to conform to Measure KK.

BACKGROUND

On November 3, 2020, Berkeley voters approved Measure KK, which amended the City Charter to make the City Attorney a Charter Officer, removing the City Attorney from the supervision of the City Manager. Section 113 of the City Charter provides, in relevant part:

*Section 113: The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney's department (subject to available resources), which shall be under the administrative control of the City Attorney.*

The City Council took action to formally appoint Farimah Faiz Brown as City Attorney on April 20, 2021, by Resolution 69,787-N.S. The Council subsequently approved the City Attorney's Office budget as part of the ordinary budget cycle. On July 23, 2024, the City Council adopted Ordinance No. 7,929-N.S. amending various outdated and superseded provisions of the Municipal Code to conform to Measure KK. However, the Unrepresented Employee Manual continues to assign outdated and superseded authority to the City Manager with regard to the employees of the City Attorney's Office.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental sustainability or climate impacts have been identified; these amendments merely bring the Unrepresented Employee Manual into conformity with existing law.

RATIONALE FOR RECOMMENDATION

These amendments will bring the Unrepresented Employee Manual into compliance with existing provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farimah Faiz Brown, City Attorney, 510-981-6998

Attachments:

- 1: Resolution
2. Unrepresented Employee Manual (Amended)

RESOLUTION NO. -N.S.

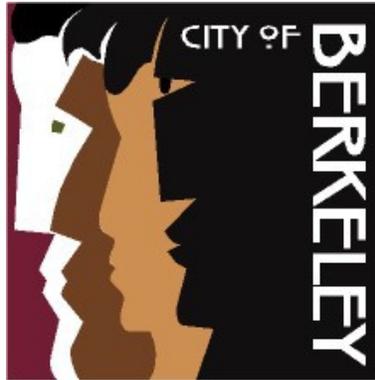
UNREPRESENTED EMPLOYEE MANUAL AMENDMENTS TO CONFORM TO  
CHARTER ARTICLE XVI, SECTION 113.

WHEREAS, the employees of the City Attorney's Office are unrepresented employees subject to the Unrepresented Employee Manual; and

WHEREAS, the City Attorney was granted administrative authority over the City Attorney's Office by Measure KK, which amended the City Charter (Article XVI, Section 113) to make the City Attorney a charter officer hired directly by the City Council; and

WHEREAS, the Unrepresented Employee Manual has not yet been amended to reallocate certain powers over the City Attorney's Office from the City Manager to the City Attorney, consistent with Measure KK.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to revise and execute a new Unrepresented Employee Manual and effectuate the following changes for the Unrepresented Employee Group: (1) amendments to Sections 1.6, 2.3, 6.1, 6.4, 7.1, 7.2, 10.8.1, 10.9.1, 10.13, 11.2, 12.2, 13.1, 13.31.2, and 13.31.3 to ensure that the City Attorney is the final decision maker for hiring, discipline and other employment decisions pertaining to the employees of the City Attorney's Office; (2) clarifying that the layoff procedure for the employees of the City Attorney's Office shall be treated separately at the initiation of the City Attorney and City Council; (3) authorizing the City Attorney to make determinations on vacation accruals for the City Attorney's Office; (4) requiring the City Attorney to be notified of appeals by employees under Article 12.



**City of Berkeley**  
**Unrepresented Employee Manual**

October 1 ~~June 25~~, 2024

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**[COUNCIL RESOLUTION]**

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## UNREPRESENTED EMPLOYEE MANUAL

This document establishes the rules governing benefits and working conditions, which are in effect for Unrepresented employees which have been approved by the City Council of the City of Berkeley.

This Unrepresented Employment Manual provides the personnel policies and procedures that affect the working conditions and benefits of unrepresented employees in the City of Berkeley. For purpose of categorization, all classifications are designated by a representation unit. Unrepresented employees are in classifications included in representation units Z-1; Z-2; Z-3; Z-9; X; and X-1, as noted in the City's Classification/Salary Resolution. The working conditions and benefits for represented employees are contained in their respective memoranda agreements. Rules, which describe general policies of the City's personnel system, are found in the City of Berkeley Personnel Rules and Regulations.

## **ARTICLE 1 - SALARY, OTHER PAY AND OVERTIME**

### **1.1 Intent**

This Section (Salary, Other Pay and Overtime) is intended only to define the normal hours of work and the time for which salary shall be paid, and to provide the basis for the calculation of overtime pay. Nothing in these rules shall be construed as a guarantee of hours of work per day or per week, or of days of work per week. The City's pay records, practices and procedures shall govern the payment of all wages.

### **1.2 Hours and Days of Work**

Hours and days of work shall be governed by rules established by the City.

### **1.3 Workweek**

The workweek shall consist of seven days beginning at 12:01 a.m. on Sunday to and including 12:00 midnight the following Saturday.

### **1.4 Regular Workweek**

The regular workweek shall consist of forty hours of work within the workweek.

### **1.5 Payment of Salaries**

Payment of salaries shall be bi-weekly and shall cover a pay period of two (2) consecutive workweeks. Each payment shall be made not later than Friday following the ending of each payroll period and shall include payment for all earnings reported during the previous payroll period.

### **1.6 Salary Ranges without Salary Steps**

In those classes of positions for which a salary range is established without a designation of salary steps, the City Manager [\(or, in the case of the City Attorney's Office, the City Attorney\)](#) is authorized to fix the salary rate at any point within the established salary range. Subsequent increases, if approved by the City Manager [\(or, in the case of the City Attorney's Office, the City Attorney\)](#), shall be effectuated at the start of the pay period closest to the employee's anniversary date (defined as the date of hire into the employee's current classification).

### **1.7 Automobile Allowances**

In addition to the salaries provided in the salary resolution, employees may be reimbursed for the use of automobiles owned by employees of the City of Berkeley and used on City business, as authorized by the City. Current automobile allowances are appended to this Manual, as shown in the Appendix, Section 13.27 (Automobile Allowance).

**1.8 Mandatory Professional Fees and Licenses**

The City will assume full payment of the mandatory professional fees and licenses required by employees in the following unrepresented classes in order to maintain their continued employment with the City of Berkeley:

|                                                      |                           |
|------------------------------------------------------|---------------------------|
| Director of Public Works                             | City Attorney             |
| Deputy Director of Public Works (Registered)         | The Attorney Class Series |
| Rent Stabilization Board Staff Attorney Class Series | Audit Manager             |
| Classes requiring a license to practice medicine     |                           |

**1.9 Bilingual Pay**

Employees appointed to positions requiring bilingual abilities, including Braille and sign language shall receive additional compensation as established by the City Council. Only those employees who possess second language competency, can demonstrate second language competency, and are serving in a position requiring competency in that particular language are entitled to receive the bilingual premium pay. The current level of approved compensation and procedures for qualifying and receiving bilingual pay are appended to these Rules, as shown in Appendix, Section 13.3 (Bilingual Premium Pay).

**1.10 Overtime for FLSA Non-Exempt Employees**

All employees who are covered by the overtime provisions of the Fair Labor Standards Act are designated as "FLSA non-exempt employees." Unless otherwise required by the Fair Labor Standards Act, all FLSA non-exempt employees, and employees in the classification of Battalion Chief, who are required to work in excess of their regular workweek shall be paid overtime compensation at the rate of one and one-half times the straight time rate based upon the regular monthly salaries or shall be given compensatory time off in lieu of payment at the rate of one and one-half hours off with pay for each overtime hour worked. The following provisions regarding overtime apply only to FLSA non-exempt employees and do not apply to FLSA exempt employees. FLSA non-exempt employees, temporarily promoted to FLSA exempt classifications, will be ineligible for overtime compensation for the duration of the appointment.

1.10.1 **Manner of Compensation:** An employee may be compensated for overtime by either compensatory time off or by payment; the method of overtime compensation shall be agreed upon by the employee and the supervisor at the time of obtaining approval to work overtime.

1.10.2 **Pre-Authorization:** No employee may work overtime without the express prior approval of his or her department head.

1.10.3 **Accrual Limit on Compensatory Time:** Compensatory time shall not accumulate in excess of sixty (60) overtime hours worked which is the equivalent of ninety (90) hours of compensatory time. Overtime accumulation in excess of sixty (60) hours shall be paid as compensation.

- 1.104 **Use of Compensatory Time:** All use of compensatory time off must be approved, in advance, by the employee's department head, on forms provided by the City.
- 1.105 **Effect of Termination on Compensatory Time:** An employee is entitled to compensation for any accumulated overtime upon resignation or termination.

### 1.11 Emergency Overtime

All FLSA non-exempt employees who are called to duty from their living quarters outside of their regular work hours and work days shall be paid emergency overtime compensation for the actual time worked provided, however, that each employee shall be paid a minimum of two (2) hours pay for emergency overtime unless such emergency overtime work is performed prior to the beginning of his or her work regularly scheduled work period without a break in service in which case, compensation shall be paid only for the actual time worked.

### 1.12 Shift Differential

All unrepresented FLSA non-exempt employees (except for Police Aides) who regularly work a shift of eight hours or more, which includes more than four hours between the hours of 5:00 p.m. and 12:00 a.m., or between 12:00 a.m. and 7:00 a.m., are paid a shift differential in addition to their regular base rate of pay in an amount established by the City Council. The current shift differential rate paid to unrepresented employees is in the Appendix to this Manual.

### 1.13 Fifty-Six (56) Hour per Week Work Schedule Leave Conversion Factor

The conversion factor for Fire Management employees accruing and using vacation leave, sick leave or sick leave bonus bank of hours is as shown below. The intent of the parties is to have the dollar value of the vacation leave, sick leave or sick leave bonus bank of hours accrued be the same whether an employee is assigned to a fifty-six (56) hour per week schedule or a forty (40) hour per week schedule.

- 1.13.1 **Leave Accrual for 56 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a fifty-six (56) hour per week scheduled is converted to a forty (40) hour per week schedule by multiplying number of hours of vacation leave or sick leave accrued by the conversion factor of 0.7143.
- 1.13.2 **Leave Accrual for 40 Hour per Week Schedule:** Vacation leave, sick leave or sick leave bonus bank of hours accrued on a forty (40) hour per week scheduled is converted to a fifty-six (56) hour per week schedule by multiplying number of hours of vacation leave accrued by the conversion factor of 1.4.

**1.14 One-Time Allocation**

Employees in Units Z-1, Z-2, Z-3, Z-6, and Z-9 who are in paid status as of July 29, 2018 will receive a one-time allocation of \$2,000.00 (prorated for part-time employees) on August 17, 2018, minus applicable local, state and/or federal taxes.

**1.15 Payroll Specialty Pay**

City shall provide (“payroll clerks”) identified by the City in Unrepresented Employees a one-time lump sum payment of \$500.00 effective the first full pay period after Council adoption of this successor agreement and a second \$500.00 one-time lump sum payment the first full pay period in January 2022 for only those employees in the Accounting Office Specialist III classification. Such payments are subject to applicable payroll taxes and will not be considered pensionable salary. At the time of each payment, employee must be still employed by the City and must still be in the Accounting Office Specialist III classification. Employees working less than full-time (40 hours per week, 2,080 hours per year) shall receive a pro rata share of the one-time lump sum payment based on the number of hours they are assigned to work. For example, an employee working 30 hours per week, shall receive 75% of the one-time lump sum payment (\$375 effective the first full pay period after Union ratification and Council adoption of this successor agreement and \$375.00 the first full pay period in January 2022).

**1.15.1 Salary Resolution**

Effective the first full pay period in July 2024 after Council adoption on its regular agenda, the salary ranges for those classifications covered by this Manual shall receive a salary increase of six percent (6.0%).

Effective the first full pay period in July 2025, the salary ranges for those classifications covered by this Manual shall be increased by four percent (4.0%)

Effective the first full pay period in July 2026, the salary ranges for those classifications covered by this Manual shall be increased by two-and-a-half percent (2.5%).

Effective the first full pay period in January 2027, the salary ranges for those classifications covered by this Manual as listed in Exhibit A shall be increased by two percent (2.0%).

**1.16 Employee Relations Manager Salary Differential**

The Employee Relations Manager in the Human Resources Department shall receive a 5% salary differential.

## **ARTICLE 2 - PROBATIONARY PERIOD**

### **2.1 Length of Probationary Period**

All original and promotional appointments to positions in the career service shall be tentative and subject to a probationary period. The length of the probationary period shall be determined for each class by the City Council. However, the length of the probationary period shall not be less than six months of actual service (1040 hours) or more than two years of actual service (4160 hours). A six (6) month probationary period must be completed in no more than one (1) year. A one (1) year probationary period (2080 hours) must be completed in no more than two (2) years. A two (2) year probationary period must be completed in no more than three (3) years. A current schedule of probationary periods for unrepresented classes is appended to this Manual, as shown in Appendix, Section 13.16 (Probationary Periods for Unrepresented Classifications).

### **2.2 Objectives of Probationary Period**

The probationary period shall be regarded as a part of the selection process and shall be used to closely observe and evaluate the employee's work, to secure the most effective adjustment of a new employee to his or her position, and to eliminate any probationary employee whose performance does not meet the required standards of work.

### **2.3 Rejection of Probationers**

During the probationary period, an employee may be rejected from employment at any time by the City Manager (or the City Attorney, in the case of the City Attorney's Office) without cause and without the right of appeal.

### **2.4 Rejection during Probationary Promotion**

An employee rejected during the probationary period following a promotional appointment shall be reinstated to the classification from which he or she was promoted unless charges are filed and he or she is discharged in the manner provided in the Personnel Ordinance and these rules.

## ARTICLE 3 - VACATION

### 3.1 Vacation Leave

All benefitted employees shall be entitled to annual vacation leave subject to the provisions in this chapter.

### 3.2 Vacation Approval

All vacations must be approved, in advance, by the employee's department head, on forms provided by the City.

### 3.3 Vacation Accrual

**3.3.1 Full Time Benefitted Employees:** During the first two (2) calendar years of employment, all full time benefitted employees shall be entitled to take only such annual vacation leave as the employees earn based on their continuous length of service measured from the date of hire. After two (2) years of service, employees may request, and upon approval, take up to a maximum of two (2) weeks of their annual vacation, in advance of actual earning. Approval of requests for advance vacation shall be solely at the discretion of management.

Vacation accrues according to schedules established by the City Council and can vary for different groups of employees. The current vacation schedules for full time unrepresented employees are in the Appendix to this Manual.

**3.3.2 Part Time and Temporary Employees:** Benefitted part-time employees working a minimum of twenty (20) hours per week accrue vacation benefits on a pro rata basis. Employees who work less than twenty (20) hours per week and temporary employees, unless otherwise authorized, do not accrue leave benefits

**3.3.3 Accrual of Vacation Credits:** Vacation leave credits are only accrued for each straight time hour for which the employee is paid.

**3.3.4 Effect of Extended Leave on Vacation Accrual:** An employee who has returned from extended military leave or an extended authorized leave of absence without pay of six (6) months or more or who has been re-employed or reinstated shall be entitled, during the calendar year in which the employee returns to the City service, to earn vacation according to a schedule based upon the total years in the career service with the City and upon the total number of months of actual service with the City during the said calendar year. For succeeding calendar years, the employee's vacation leave shall accrue as provided in this Manual.

- 3.3.5 **New Hire Vacation Accrual:** For new hires, the City Manager may authorize vacation accrual at a higher rate, up to the maximum accrual rate, depending upon the paid leave accrual of the potential employee at his or her present employer. The new hire must be able to document his or her current paid leave accrual, which has been earned for general use, such as vacation. The waiting period to advance to the next accrual rate would be the actual number of years between the respective accrual levels. The City Attorney may authorize vacation accrual at a higher rate for new employees of the City Attorney's Office and may increase the rate of vacation accrual for existing employees of the City Attorney's Office.
- 3.3.6 **Vacation Accrual for Unit Z1 Police Chief and Deputy Police Chief:** The vacation accrual rate for the Police Chief and Deputy Police Chief classifications will provide the same benefits as the vacation accrual for represented sworn police employees under the Berkeley Police Association (Units E & F) Memorandum of Understanding.
- 3.3.7 **Vacation Accrual for Unit Z1 Fire Chief and Deputy Fire Chief:** The vacation accrual rate for the Fire Chief and Deputy Police Chief classifications will provide the same benefits as the vacation accrual for represented sworn fire employees under the Berkeley Fire Fighters Association (Units B) Memorandum of Understanding.
- 3.3.8 The classifications identified within Sections 3.3.6 and 3.3.7 shall be allowed to participate in the annual vacation leave sell back to the extent such rights are afforded to the bargaining units they supervise in their respective memoranda of understanding.

### 3.4 Vacation Scheduling

The times during the calendar year at which an employee shall take his or her vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head cannot permit the employee to take an annual vacation leave or any part of such leave within a particular calendar year, the employee may accrue vacation according to Section 3.3 (Vacation Accrual) of this Manual.

### 3.5 Maximum Vacation Accumulation

Employees may defer vacation earned up to a maximum cumulative total of eight (8) weeks. An employee who has attained maximum accumulation may be required to take all excess earned vacation at the option of the City. Not later than October 1 of each year, the City will advise employees who have attained a maximum accumulation of vacation whether such excess earned vacation must be scheduled as time off prior to March 31. Such time off shall be scheduled in accordance with the provisions of Section 3.2 (Vacation Approval).

The City shall require all employees to reduce their accrued vacation balances to no more than 320 hours, as of the last pay period in February of each year. To effectuate the requirement that employees not accrue more than 320 hours vacation leave, no later than November 15 of each year the City will provide Department Heads with a report identifying all employees who have accrued two

hundred and eighty (280) hours of vacation leave and appear in danger of exceeding the 320 hour limit.

Employees who have accrued 280 hours of vacation leave, as of that date, will be advised by their supervisor that they must take vacation leave to reduce their vacation leave accrual by February of the following year.

Supervisors should be flexible in granting employee vacation requests to those employees above, or approaching the 320 hours limit, and further, that with regard to employees who are in danger of exceeding the 320 hour limit, no vacation request by such an employee shall be unreasonably denied. If an employee who is in danger of exceeding the 320 hour limit fails by December 31 to schedule a vacation to be taken before the last pay period in February, the City has the authority to direct the employee to go on vacation leave to reduce the employee's accrued vacation.

If, due to operational necessity, a department head denies an employee vacation leave and does not provide the employee with an alternate vacation date, and as a result causes the employee to exceed the 320 vacation leave limit, said employee shall nonetheless be entitled to use that vacation leave in the next calendar year to the extent necessary to reduce their accrued vacation to not more than 320 hours. Under no circumstances will the City liquidate any vacation leave balances for any employee during employment.

### **3.6 Vacation Leave before Retirement**

Accumulated vacation shall not be used immediately prior to retirement, which has the effect of extending the date of retirement, but shall be paid out in full upon retirement.

### **3.7 Vacation Leave in Lieu of Sick Leave**

Except for absences that qualify for benefits under Administrative Regulation 2.4 (Family Care Leave) Vacation leave shall not be used in lieu of accrued sick leave for absences due to illness. If accrued sick leave is exhausted, vacation leave may be used for absences due to illness, only if such leave is approved by the employee's department head.

### **3.8 Payout upon Termination or Extended Unpaid Leave**

Upon termination, including death, extended military leave or other extended leave without pay, an employee or his or her estate shall be paid for all accrued unused vacation leave at the employee's base rate at the time of his or her termination, and such employee or his or her estate shall reimburse the City for any vacation leave taken before it had accrued, in accordance with provisions established by the City Manager.

### **3.9 Holidays Occurring during Vacation**

If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period.

## **ARTICLE 4 - SICK LEAVE**

### **4.1 Eligibility**

All full-time benefitted employees are eligible for one (1) sick leave day (eight [8] hours) per month of service, except that the Police Chief hired before September 11, 2012 is eligible for two (2) sick leave days for each month of service during the twenty-first (21) year of employment and thereafter. Employees in the classifications of Fire Chief and Deputy Fire Chief shall be credited with two (2) sick leave days for each month of service during the seventeenth (17<sup>th</sup>) year of employment and thereafter. Part time benefitted employees are eligible to accrue sick leave on a pro rata basis.

### **4.2 Sick Leave Not a Privilege**

Sick leave shall not be considered a privilege, which an employee may use at his or her discretion, but shall be allowed only in the case of his or her sickness or disability or in the case of illness within the defined family of the employee.

### **4.3 Family Sick Leave**

As of January 1, 1999, employees may use up to fifteen (15) working days of accrued sick leave in a calendar year to care for a family member, limited to one of the following: a legal dependent, parent, spouse, son, daughter or domestic partner.

### **4.4 Notice to Department Head**

In order to qualify for sick leave benefits, the employee shall notify his or her department head or designee prior to or within two (2) hours after the time set for the beginning of the employee's daily duties, or as otherwise required by the department head. Leave for non-emergency medical appointments shall be requested in advance of the workday.

### **4.5 Medical Verification**

The City of Berkeley retains the right to request a verification from a licensed medical practitioner under appropriate circumstances which include (1) showing that an employee's illness or disability has started or ended, before the City will allow an employee to take a leave or to return from leave, (2) showing regular updates during a medical leave of absence regarding the employee's medical status and the date the employee expects to return to work, (3) where reasonable cause exists to believe that the employee is not medically fit to perform the essential functions of the job or that the employee cannot perform the job without endangering the health and safety of the employee or others, and (4) where reasonable cause exists to believe that the employee is abusing sick leave or family sick leave. Sick leave pay may be withheld if a satisfactory verification is not received.

#### 4.6 Injury Incurred in Outside Employment

No sick leave shall be allowed for time off for an injury incurred while working for another employer, provided that the injury is covered by California's workers' compensation law or by provisions of the other employer granting payment for time off because of the injury. In the event the injury is not covered either by the workers' compensation law or by the other employer's provisions, sick leave will be granted in accordance with this chapter only if the outside employment had been authorized by the City before the injury occurred

#### 4.7 Bonus for Unused Sick Leave

For every six (6) months of perfect attendance, the employee will receive eight (8) hours of bonus time. "Perfect attendance" means the employee has not received sick leave or salary continuation benefits and has not taken or been placed on leave without pay. Benefitted part time employees will receive sick leave bonus time on a pro rata basis. Sick leave bonus can be used for any leave purpose authorized by this Manual.

#### 4.8 Accumulation of Sick Leave

Employees may accumulate sick leave up to a maximum of two hundred (200) days (1600 hours) except for the classifications named below.

The Police Chief and Fire Chief may accumulate sick leave in excess of the 1600-hour limit by 100 hours per year.

#### 4.9 Payout for Excessive Sick Leave for Employees Hired on or Before June 30, 2013

All employees, except employees in the classification of Deputy Fire Chief hired on or before June 30, 2013 in the career service who regularly work one-half time or more who have attained the two hundred (200) day maximum sick leave accumulation shall be entitled to receive payment for one-third (1/3) of the first twelve (12) days of sick leave days (or if earning sick leave at the rate of two (2) working days each month of service, one-third (1/3) of the first twenty-four (24) days of sick leave days), for which sick leave days they become eligible, they do not use and they would otherwise forfeit because of the two hundred (200) day maximum limitation. Determination of eligibility for such payment shall be made on an annual calendar year basis, and payment for such sick leave for any calendar year shall be made not later than the first full pay period in January. Such payment shall be at the employee's salary rate in effect on the preceding December 31, and shall be made only in units of whole days and will not be made for any fraction of a day.

4.9.1 **Deputy Fire Chief:** For employees in the classification of Deputy Fire Chief, the following provisions shall apply. In each year following that 1200 hour base year, the employee may, on a form provided by the City, elect to receive pay for excess sick leave or may elect to increase his or her sick leave accumulated base by the 96 hours and take any additional

excess sick leave in pay at the following prescribed rate: employees who choose to increase their sick leave accumulated base by the 96 hours will receive 50% pay off rate in March; employees who choose to receive pay out for excess sick leave over the base, and do not exercise the option of increasing their accumulated sick leave base by 96 hours in any particular year, will be paid for excess sick leave at the 38% pay off rate in March.

Forms, provided by the City along with projected excess sick leave balances, shall be distributed to affected employees by February of each year and shall be returned to the City by February 15th. If an employee uses part of an established “sick leave maximum accumulation level”, the employee may replenish the used portion at the applicable rate.

Determination of eligibility for such payment shall be made on an annual basis, and payment for such sick leave for any calendar year shall be made during the month of March each year. Such payment shall be made at the employee’s regular monthly salary rate in effect on the last day of the first pay period to end in March. An employee shall be eligible for this provision whether or not the employee is on the payroll as of the last day of the first pay period to begin and end in March.

- 4.9.2 **Police Chief and Fire Chief Hired on or before June 30, 2013:** For the Police Chief and Fire Chief hired on or before June 30, 2013, the maximum sick leave accrual allowed shall be adjusted at the rate of 100 additional hours per year above the 1600-hour limit. The employee may elect to receive pay for the excess sick leave or may elect to increase the base by 100 hours, in each subsequent year. Payment for excess sick leave is prescribed at 1/3 of the excess leave balance.

#### 4.10 Effect of Leave without Pay on Sick Leave Accrual

Sick leave will not accrue during any period of absence without pay. Sick leave credits are accrued on the basis of actual straight time hours worked or paid, based on a forty-hour workweek.

#### 4.11 Accrued Sick Leave Canceled Upon Termination

Except as otherwise provided under the CalPERS conversion of sick leave retirement credit benefit (California Government Code Section 20965) and the other exceptions set forth below, all accrued sick leave shall be canceled upon termination of an employee. Such leave shall be credited back to the employee if the employee returns to City employment within two (2) years of termination except as otherwise provided by the City Council, or within three (3) years of termination if re-employed under the City’s Layoff Policy provided in this Manual.

- 4.11.1 **CalPERS Miscellaneous Members, Chief of Police Hired on or before June 30, 2013 Sick Leave Payout:** For CalPERS

Miscellaneous members and Chief of Police hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty (20) years of benefitted City of Berkeley service or to employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City shall be entitled to liquidate a portion of their accrued but unused sick leave as follows: Upon termination, employees with between twenty (20) years and twenty-eight (28) years of benefitted City of Berkeley service shall be entitled to receive payment in an amount equal to 38% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days.

All employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

Employees hired on or before June 30, 2013 who voluntarily separate from service with a vested pension and at least twenty-eight (28) years of benefitted City of Berkeley service or employees retiring on permanent disability arising out of and incurred in the course and scope of their employment with the City, with at least twenty-eight years of benefitted City of Berkeley service, shall be entitled to receive payment in an amount equal to 50% of their accrued sick leave days up to a maximum of two hundred (200) unused sick leave days. Employees hired on or after July 1, 2013 shall not be eligible for payment of any unused sick leave days.

4.11.2 **Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout:** For employees hired on or before June 30, 2014 in the classification of Fire Chief and Deputy Fire Chief who retire or voluntarily terminate with twenty (20) years of service or who retire on permanent disability arising out of and incurred in the course and scope of their employment with the City, shall be entitled to receive payment at retirement or termination of unused sick leave days, based on the following schedule:

| Number of Days    | % of Payment |
|-------------------|--------------|
| 0-75 Days         | 38%          |
| 75-99 Days        | 41%          |
| 100-124 Days      | 44%          |
| 125-149 Days      | 47%          |
| 150 Days and over | 50%          |

Employees in classifications identified in this Section 4.11.2 (Fire Chief and Deputy Fire Chief Hired on or before June 30, 2014 Sick Leave Payout) hired on or after July 1, 2014 shall not be eligible for payment of any unused sick leave days.

#### **4.12 City of Berkeley Supplemental Retirement Plan [Termination 401(a)]**

Employees who retire on a vested pension shall be eligible to participate in the City of Berkeley Supplemental Retirement Plan. The Supplemental Retirement Plan provides for negotiated required roll-forwards of accrued but unused leave, and also permits the City to do a “tax pick-up” of employee contributions under Section 414(h)(2) of the Internal Revenue Code. A tax pick-up works through an irrevocable payroll deduction authorization, on an individual by individual elective basis, to contribute accrued but unused sick leave, vacation leave, compensatory time, floating holiday and bonus sick leave into an Internal Revenue Code 401(a) defined contribution plan. The Supplemental Retirement Plan Document shall govern administration of the Plan.

#### **4.13 Accrued Sick Leave Applied to CalPERS Retirement Credit**

The conversion of unused sick leave to retirement credit benefit under Government Code Section 20965 offered by CalPERS as an optional benefit to contracting agencies shall be made available to employees who retire with a vested pension.

#### **4.14 Sick Leave Benefits and State Disability Insurance**

Employees may use their accrued sick leave benefits during the normal seven day period before the eligible employees are paid benefits from State Disability Insurance. Following the seven day period, an employee will continue to receive accrued sick pay until exhausted and then, upon approval by the department head, accrued vacation or compensatory pay, less the disability benefits actually received.

#### **4.15 Workers' Compensation and Salary Continuation**

Workers' compensation payments shall commence in accordance with State law, on the fourth day following an industrial injury, unless the employee is hospitalized in which case payment commences on the first day of injury. For the purpose of this Section (Workers' Compensation and Salary Continuation), "hospitalized" means confinement.

For all career and regular at-will employees who are receiving or shall receive workers' compensation benefits for an industrial injury, the City will pay retroactive compensation benefits to the eligible employee for the normal three day waiting period before the employee is paid workers' compensation benefits for temporary disability pursuant to California law governing the industrial injury or illness.

Payments under the workers' compensation law for temporary disability or a recurrence thereof arising out of and in the course of employment shall be paid for a period not to exceed 365 days at a maximum payment of the employee's pre-disability pay, but shall not exclude any salary adjustments to which the employee is entitled. Thereafter, the employee will continue to receive only the temporary disability payments provided under State law and the City shall cease to pay the difference.

#### 4.15.1 Salary Continuation Benefit

1. New Accepted Claim with Overlapping Previously Accepted Injury - Where an Employee sustains a subsequent industrial injury as part of a new accepted workers' compensation claim that includes a previously accepted body part in the same five (5) year period, Employee shall be entitled to a period of time not to exceed 183 days of Salary Continuation Benefits.
2. New Accepted Claim with No Overlapping Previously Accepted Injury - Where an Employee sustains another industrial injury resulting in a new accepted workers' compensation claim within the same five (5) year period that does not include a previously accepted body part, the Employee's new accepted claim shall be entitled to a period of time not to exceed 365 days of the Salary Continuation Benefit.
3. New Accepted Claim for Same Previously Accepted Injury after Five (5) Years - Where an Employee sustains an industrial injury to a previously claimed body part after five (5) years from the initial Date of Injury, the Employee shall be entitled to a new period of time not to exceed 365 days of the Salary Continuation Benefit. In effect, after five (5) years from the initial Date of Injury, the benefit resets with respect to a previously claimed body part.
4. Workers' Compensation Medical Appointments and Salary Continuation - For the purposes of the Salary Continuation Benefit, effective January 1, 2019, the City shall calculate absences from work to attend medical appointments for the treatment of an accepted industrial injury in one (1) hour increments for the purposes of running against the maximum 365 days of Salary Continuation.

#### 4.16 Sick Leave Accrual for Department Heads and Deputy City Managers

At the time of appointment of new hires in regular at-will department head classifications and Deputy City Managers, the City Manager may authorize credit for accrual of sick leave based on sick leave accrual with a prior employer in an amount that does not exceed four weeks of sick leave credit.

**ARTICLE 5 - HOLIDAYS**

**5.1 Holidays**

The City observes the following holidays and provides all full time regular, at-will and career employees.

| <b>Holiday</b>                     | <b>Day Observed</b>             |
|------------------------------------|---------------------------------|
| New Year's Day                     | January 1                       |
| Martin Luther King, Jr.'s Birthday | Third Monday in January         |
| Lincoln's Birthday                 | February 12                     |
| Washington's Birthday              | Third Monday in February        |
| Cesar Chavez Day                   | Last Monday in March            |
| Malcolm X's Birthday               | Monday or Friday nearest May 19 |
| Memorial Day                       | Last Monday in May              |
| Juneteenth                         | June 19                         |
| Independence Day                   | July 4                          |
| Labor Day                          | First Monday in September       |
| Indigenous People's Day            | Second Monday in October        |
| Veterans' Day                      | November 11                     |
| Thanksgiving Day                   | Fourth Thursday in November     |
| The Day After Thanksgiving         | Fourth Friday in November       |
| Christmas                          | December 25                     |

**5.2 Floating Holidays**

Full time, regular at-will, and career employees who have worked for the City six (6) months or more shall be granted three (3) floating holidays each calendar year. Employees may take floating holidays in one (1) hour increments. Employees who terminate employment within the first six (6) months of initial employment shall not be eligible for payout of any accrued but unused floating holiday.

In the first calendar year of employment, employees shall be granted prorated floating holidays as follows:

| <b>Date of Hire</b>            | <b>Number of Floating Holidays</b> |
|--------------------------------|------------------------------------|
| Hired January 1 - April 30     | 3 days                             |
| Hired May 1 - August 31        | 2 days                             |
| Hired September 1- December 31 | 1 day                              |

All use of floating holidays must be approved, in advance, by the employee's department head, on forms approved by the City. The days on which the employee shall take his or her floating holiday(s) shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the service. If the requirements of the service are such that a department head

cannot permit the employee to take the floating holiday(s) within a particular calendar year, the employee shall add the unused floating holiday(s) to the employee's accrued vacation according to Section 3.5 (Maximum Vacation Accumulation).

**5.3 Eligibility**

In order to be eligible for holiday pay, an employee must be on paid leave status on his or her regularly scheduled workdays before the holiday.

**5.4 Part-Time Employee Eligibility**

Benefitted part time employees are eligible for holiday benefits on a pro rata basis.

**5.5 No Work on the Holiday**

Employees in the career service who are not scheduled to work on the day observed as a holiday will be granted an alternative scheduled holiday. The alternative holiday must be scheduled, by the department head, during the same workweek.

**5.6 Work on the Holiday**

FLSA non-exempt benefitted employees who work on a scheduled holiday shall be paid at one and one-half times their normal base rate for all hours worked or shall be granted the equivalent amount of compensatory time off. In either event, the holiday pay shall be in addition to the employees' regular salary.

## ARTICLE 6 - OTHER PAID LEAVES OF ABSENCE

### 6.1 Family Bereavement Leave

Any benefitted employee who experiences a death in the immediate family is granted death leave of up to three (3) working days for the purpose of attending the funeral or memorial service in the State of California, or up to five (5) working days for the purpose of attending the funeral or memorial service outside the State of California. Employees in the classification of Fire Chief and Deputy Fire Chief shall be granted one week (five (5) consecutive calendar days) for a death in the immediate family whether in state or out of state for the purpose of attending the funeral or memorial service.

For all employees except those employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren, dependent or domestic partner. For employees in the classification of Fire Chief and Deputy Fire Chief, "immediate family" is limited to wife, husband, domestic partner mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchildren or dependent residing within the household.

Bereavement leave will be paid at the employee's normal base rate of pay for the actual time lost and is allowed solely for the purpose of attending funeral or memorial services. The department head may, within his or her discretion, grant the employee additional time off provided that all accrued vacation and/or sick leave shall be used prior to taking a leave of absence without pay for this purpose.

In special cases, with the approval of the department head, the City Manager [\(or the City Attorney, in the case of the City Attorney's Office\)](#) may grant death leave within his or her discretion to allow an employee to attend a funeral or memorial services because of the death of persons not included within the definition of immediate family.

### 6.2 Jury Duty Leave

Any benefitted employee who is called or required to serve as a trial juror, upon notification and appropriate verification submitted to his or her department head, shall be entitled to be absent with pay from his or her duties with the City during the period of such service and while necessarily being present in court as a result of such call. An employee is required to be present at work when not serving as a trial juror or as a member of a jury selection panel. An employee will notify his or her supervisor of any requirements (on-call status) made by the court that may affect the employee's ability to simultaneously fulfill his or her jury duty service and employment obligations. The employee will keep any payment received for jury service including mileage reimbursement.

### 6.3 Continuing Education Leave

The City will grant a continuing education leave of absence with pay up to forty hours per year to benefitted employees who are required by their employment or continuing employment with the City of Berkeley to pursue course work in order to:

- (a) renew a license issued by the State of California; or
- (b) obtain a license issued by the State of California provided that employees verify to the City that the course work for the initial license was not offered as a part of their basic curriculum.

Upon prior approval of the department head, FLSA non-exempt employees who take required course work during non-scheduled work hours in order to obtain or renew a job-required license shall be allowed time off from work on an hour-for-hour basis without loss of compensation or other benefits.

### 6.4 Administrative Leave Program

The City Manager (or, in the case of the City Attorney's Office, the City Attorney) provides for paid administrative leave to eligible employees as set forth in the Appendix to this Manual. Administrative leave is not charged against other accrued leave balances.

### 6.5 Temporary Employees – Earned Leave

A temporary employee who works one thousand forty (1040) hours or more in a calendar year and is in active employment during December of such year, shall be credited with forty (40) hours of paid time off to be used by such employee in the subsequent calendar year for either paid vacation or paid sick leave. The following conditions shall apply to the use of this earned leave as paid time off:

- a. To qualify for earned leave as vacation, the employee must apply, in writing, to the employee's supervisor at least thirty calendar days in advance of the desired time off. The granting or denial of the requested time off shall be in writing and shall be controlled by program considerations as established by the City.
- b. To qualify for earned as sick leave, the employee must notify the employee's supervisor of an inability to report to work by reason of illness or injury in advance of the scheduled work.
- c. An employee who has any unused earned leave credit shall receive payment for such time upon termination of temporary employment. All credited earned leave not utilized by employees at the end of the calendar year in which the employees are eligible to take such leave will be paid at the end of such year as wages and this earned leave shall not be accumulated from year to year.

## 6.6 Abolishment of Temporary Employees – Earned Leave

Effective July 1, 2015, Section 6.5 (Temporary Employees – Earned Leave) is abolished in its entirety and replaced with the following Section 6.7 (Temporary Employees Sick Leave).

## 6.7 Temporary Employees Sick Leave

Effective January 1, 2015, Temporary Employees who have been employed for at least 90 days on July 1, 2015 are eligible to accrue and use sick leave based on hours worked after July 1, 2015 as provided in Section 6.8 (Sick Leave Accrual) below.

## 6.8 Sick Leave Accrual

Effective July 1, 2015, once a temporary employee works for 30 days within a calendar year, the employee shall be eligible to accrue one (1) hour of sick leave for every 30 hours worked thereafter, to a maximum accumulation of 48 hours. Once an employee accrues 48 hours sick leave, the employee shall not accrue any additional sick leave hours until his or her sick leave balance is below the maximum of 48 hours. Under no circumstances will an employee be allowed to accrue more than 48 hours sick leave.

## 6.9 Sick Leave Use

Temporary Employees shall be eligible to use sick leave beginning on the 90<sup>th</sup> day of work. Sick leave shall be used in a minimum of two (2) hours increments, and limited to a maximum of 24 hours use each calendar year. Unused accrued sick leave hours shall carry over to the following calendar year. The following conditions shall apply to the use of this sick leave as paid time off:

- a. Sick Leave may be used for the following purposes: Diagnosis, care, or treatment, of an existing health condition or, preventive care for, an employee or an employee's family member; for an employee who is a victim of domestic violence, sexual assault, or stalking. To qualify for earned as sick leave and if the need for sick leave is foreseeable, the employee must notify the employee's supervisor of an inability to report to work in advance of the scheduled work. If the need for sick leave is unforeseeable, the employee shall provide notice to the immediate supervisor of the need for the leave as soon as practicable.
- b. All accrued and unused sick leave shall be cancelled upon separation/termination of employment. Such previously accrued and unused sick leave shall be credited back to the employee if the employee returns to City employment within one (1) year from the date of separation.

## ARTICLE 7 - LEAVES OF ABSENCE WITHOUT PAY

### 7.1 Power to Grant Leave

The City Manager (or the City Attorney, in the case of the City Attorney's Office) shall have the power within his or her sole discretion to grant leaves of absence, with and without pay.

### 7.2 Authorized Leave Without Pay

Upon request of the employee, a department head may grant or deny a leave of absence to an employee within his or her department without pay for a period not to exceed thirty working days. No leave without pay shall be granted for more than thirty working days except upon written request of the employee and written approval of the City Manager (or the City Attorney, in the case of the City Attorney's Office).

**7.2.1 Required Exhaustion of Accrued Leave:** In the event of an authorized absence due to illness, the employee must use all accrued sick, compensatory and vacation leave prior to receiving authorization for leave without pay. In the event of personal leaves not related to sickness, the employee must use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay. However, employees in the classifications of Legislative Assistant and Assistant to the Mayor are not required to use all accrued compensatory and vacation leave prior to receiving authorization for leave without pay for the employee's respective appointing Councilmember or the Mayor. This subsection does not apply to parental leave or to the exhaustion of sick leave by employees in the classification of Deputy Fire Chief as referenced in Section 7.2.2 (Fire Chief and Deputy Fire Chief Use of Sick Leave), below.

**7.2.2 Fire Chief and Deputy Fire Chief Use of Sick Leave:** In the event of illness or injury of an employee in the classification of Fire Chief and Deputy Fire Chief requiring the use of sick leave, the employee has the option to notify the City in writing that he/she wishes to freeze the use of sick leave after thirty (30) days, prior to receiving authorization for leave without pay, in order to utilize the International Association of Fire Fighters sponsored Long Term Disability benefit.

**7.2.3 Grounds for Discharge:** Failure on the part of an employee to report to work promptly at the expiration of the authorized leave without pay will result in discipline up to and including termination.

### 7.3 Unauthorized Leave of Absence

All paid and unpaid leaves of absence must be approved in accordance with the applicable sections of this Manual. Any absence on the part of the employee who has failed to obtain such approval or failure of an employee to report for duty without appropriate authorization as required by each department will result in the employee being placed on unauthorized leave of absence without pay.

7.3.1 **Grounds for Discharge:** Unauthorized leave of absence without pay shall be cause for disciplinary action up to and including termination.

#### 7.4 Parental Leave

Any employee with one or more years of benefitted employment with the City of Berkeley shall be entitled to up to one year of parental leave upon the birth of a child or the adoption of a child who is five years or younger as provided in Administrative Regulation 2.4 (Family Care Leave).

#### 7.5 Family Care Leave

The City will fully comply with the requirements of the state and federal law regarding pregnancy disability leave and medical/family illness/child care leave where their provisions are more generous than those provided elsewhere in this Manual or Administrative Regulation 2.4 (Family Care Leave). Leaves under this Section 7.5 (Family Care Leave) and Section 7.4 (Parental Leave) and as provided in Administrative Regulation 2.4 may not be combined to yield a larger amount of leave than the state or federal maximums and may not be combined to exceed the maximum one year period of parental leave provided by the City of Berkeley.

#### 7.6 Military Leave

Employees will be granted a leave of absence without pay with appropriate seniority, pay, status and vacation as required by law for the purpose of fulfilling any required military obligation.

## ARTICLE 8 - EMPLOYEE FRINGE BENEFITS

### 8.1 Group Medical-Dental-Vision Insurance Benefits

Benefitted employees and their dependents may participate in the City's group medical and dental benefits, which are summarized in the Appendix. Benefitted employees may participate in the City's group vision benefits, effective January 2025.

8.1.1 **Part Time Employment:** All benefitted employees who work a minimum of twenty hours, but less than forty hours per week, qualify to receive prorated health and dental benefits and shall pay a pro rata portion of the health and dental insurance premiums. Full time career employees who accept part time employment in lieu of layoff shall continue to receive full health and dental benefits paid by the City.

8.1.2 **Medical Plan for Part-Time Employees:** Effective November 1, 2016, the City will pay 75% of the cost of the medical plan which is fully paid for full-time employees for those benefitted part-time employees who work twenty (20) to twenty-nine (29) hours per week. The City will pay 100% of the cost of the medical plan which is fully paid for benefitted full-time employees for those part-time employees who work thirty (30) or more hours per week.

8.1.3 **Medical Contribution Executive Managers:** Effective July 1, 2019, the City Manager, Deputy City Manager, and all department heads shall pay fifty dollars (\$50.00) per month via pre-tax payroll deduction toward their health premium, and the City will pay an amount equal to the balance of the Kaiser monthly premium rate for the employee's applicable single, two-party, or family employee category.

### 8.2 Life Insurance

The City provides basic group life insurance coverage by a carrier of the City's choice to all benefitted employees and pays the full amount of the life insurance coverage. The City also provides the option to benefitted employees to purchase additional coverage, at their own expense. A summary of the terms of the life insurance coverage is in the Appendix.

### 8.3 Hourly Rated Employees in Lieu of Benefits

Except for employees in the Aquatics Specialist II and Senior Aquatics Specialist classifications, the Salary Resolution shall provide that hourly-rated employees working in career benefitted classifications will receive an additional seven percent (7.0%) in lieu of benefits.

### 8.4 Public Employees Retirement System:

8.4.1 **Participation:** The City shall continue to participate in the Miscellaneous Employees Plan, the Safety Fire Plan and the Safety

Police Plan of the California Public Employees Retirement System ("CalPERS"). All benefitted employees shall participate in one of these plans.

8.4.2 **“Classic Employees” Definition:** Classic Employees are defined as current employees and future employees who do not qualify as “New Members” under the California Public Employees’ Pension Reform Act of 2013 (PEPRA).

8.4.3 **CalPERS Retirement Formula for Miscellaneous Employees “New Members” as Defined under PEPRA:** Miscellaneous Employees “New Members” as defined by PEPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2% at age 62 retirement formula with the highest three (3) year average compensation as set forth in PEPRA.

8.4.4 **CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees:** Effective January 1, 2003, the City amended its Miscellaneous Employees Plan contract with CalPERS to provide the 2.7% at age 55-retirement formula benefit improvement and the City’s contribution to CalPERS on behalf of Miscellaneous employees increased from 7% to 8%. Effective July 3, 1994, contributions made pursuant to this Section shall be reported to CalPERS as “special compensation” as provided in Government Code Section 20636(c)(4) pursuant to Section 20691. Said contributions shall not apply in the case of temporary or provisional employees.

The contributions in Section 8.4.4 (CalPERS Miscellaneous Employees Retirement Formula and Employer Paid Member Contribution for Classic Employees) shall not be considered as a part of an employee's salary for the purpose of computing straight time earnings, compensation for overtime worked or for other differentials; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

The City will not treat these contributions as compensation subject to income tax withholding unless the Internal Revenue Service or Franchise Tax Board indicates that such contributions are taxable income subject to withholding. Each employee shall be solely and personally responsible for any federal, state or local tax liability of the employee that may arise out of the implementation of this Section or any penalty that may be imposed therefore.

8.4.5 **Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment**

- 8.4.5.1 **June 4, 2017:** Effective June 4, 2017, Miscellaneous employees will contribute one percent (1%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allows such contributions via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.
- 8.4.5.2 **December 31, 2017:** Effective December 31, 2017, Miscellaneous employees will contribute an additional seven percent (7%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions on a pre-tax basis, for a total of eight percent (8.0%), via automatic payroll deduction on a pre-tax basis. Such employee deductions by the City shall be used towards the City's CalPERS required contributions. The parties recognize that the Employer Paid Member Contributions (EPMC) shall remain in effect as long as the CalPERS amendment stays in effect.
- 8.4.5.3 If legislation is enacted requiring employers under the CalPERS retirement system to pay all of the employee's share of retirement, thus eliminating the Employer Paid Member Contribution, the City may convert the employee's contribution to the employer's share under this Section 20516 CalPERS contract amendment to the employee's share toward retirement and may continue to pay the 5.58% wage increase provided on December 31, 2017 associated with the CalPERS swap for Miscellaneous Classic Employees.

#### 8.4.6 **Miscellaneous New Members' Pension Contribution**

- 8.4.6.1 Miscellaneous New Members as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA), shall continue to pay 50% of the Normal Cost required under PEPRA.
- ~~8.4.6.2 **June 4, 2017:** Effective June 4, 2017, in addition to the contribution in Section 8.4.6.1, Miscellaneous New Members shall contribute one percent (1.0%) toward the City's CalPERS employer share of pension through a 20516 CalPERS amendment that allow such contributions as pre-tax via automatic payroll deduction. Such employee deductions by the City shall be used toward the City's CalPERS required contributions.~~
- ~~8.4.6.3 **December 31, 2017:** Effective December 31, 2017, in addition to the contributions in Sections 8.4.6.1 and 8.4.6.2 above,~~

~~Miscellaneous New Members shall contribute an additional seven percent (7.0%) towards the City's CalPERS employer share of pension through a 20516 CalPERS contract amendment that allows such contributions as pre-tax, for a total of eight percent (8.0%) via automatic payroll deduction. Such employee deductions by the City shall be used towards the City's CalPERS required contributions.~~

~~8.4.6.4 Miscellaneous New Member contributions in Sections 8.4.6.2 and 8.4.6.3 to the CalPERS 20516 employee contributions towards the employer rate are in addition to the required 50% of the normal share of cost of "New Members" (required pursuant to PEPPRA) benefits and made in consideration of additional salary increases effective June 4, 2017 and December 31, 2017 and set forth in the Salary Resolution (a total of 5.58% in exchange for employees paying an additional eight percent (8.0%) towards CalPERS pension costs).~~

~~8.4.6.5 Miscellaneous New Member contributions in Sections 8.4.6.2, 8.4.6.3, and 8.4.6.4 to the CalPERS 20516 employee contributions towards the employer rate will be amended and reduced as follows:~~

~~8.4.6.5.a~~

- ~~● FY2021-22: 1% (Effective as soon as administratively possible following adoption of successor contract by the City Council)~~
- ~~● FY2022-23: 1% effective July 1, 2022~~
- ~~● FY2023-24: 1% effective July 1, 2023~~
- ~~● FY2024-25: 2% effective July 1, 2024~~
- ~~● FY2025-26: 2% effective July 1, 2025~~
- ~~● FY 2026-27: 1% effective July 1, 2026~~

~~8.4.6.5.b No change to Classic members' contributions during the contract term.~~

**8.4.7 Public Safety CalPERS Retirement Formula for "New Members" as Defined Under PEPPRA:** Public Safety "New Members" as defined by PEPPRA who are hired by the City on or after January 1, 2013 shall be entitled to the 2.7% at age 57 retirement formula with the highest three (3) year average compensation as set forth in PEPPRA.

**8.4.8 Public Safety Classic Employees CalPERS Retirement Formula:** The City agrees to provide the 3% at age 50-retirement formula benefit

improvement (December 22, 2000 for Classic Fire Safety; and July 7, 2002 for Classic Police Safety hired prior to December 28, 2011).

For Classic Police Safety Employees hired on or after December 28, 2011, the City provides the 3% at age 55-retirement formula benefit.

- 8.4.9 **Public Safety Fire Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Fire Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

**Cost Share:** Effective November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Public Safety Fire Classic Employees shall contribute two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.10 **Public Safety Police Classic Employees' CalPERS Pension Contribution:** On July 1, 1994, the City increased the base salary of Classic Employees participating in the Safety Police Plan, in the amount of nine percent (9%). Employees then assumed, and shall continue to assume responsibility for payment of the normal employee retirement contribution to CalPERS. The City shall designate such payments as an Employer Pickup as defined under the provisions of Section 414(h)(2) of the Internal Revenue Code. The employee contributions shall be made through automatic payroll deduction.

Effective January 3, 2016, Police Public Safety Classic Employees shall contribute one percent (1%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety Classic employees shall contribute an additional one percent (1%), for a total of two percent (2%) toward the City's CalPERS employer contribution rate via automatic payroll deduction on a pre-tax basis.

- 8.4.11 **Public Safety Fire New Members CalPERS Pension Contribution:** Public Safety Fire New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost as required pursuant to PEPRA.

**Cost Share: Effective** November 8, 2015 (the first full pay period after Council approval of this Unrepresented Employee Manual), Fire New

Members shall also contribute an additional two percent (2%) of pensionable compensation, in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis

- 8.4.12 **Public Safety Police New Members CalPERS Pension Contribution:** Public Safety Police New Members New Members hired on or after January 1, 2013 shall pay fifty percent (50%) of the normal share of cost required by PEPRA.

**Cost Share:** Effective January 3, 2016, Public Safety Police New Members shall also contribute one percent (1%) of pensionable compensation (in addition to contributing 50% of the normal share of cost) towards the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis. And, effective July 3, 2016, Police Public Safety New Members shall contribute an additional one percent (1%), for a total of two percent (2%), in addition to the PEPRA mandated 50% of the normal share of cost, toward the City's CalPERS employer contribution rate through automatic payroll deduction on a pre-tax basis.

- 8.4.13 **CalPERS Options Available to Berkeley Employees:** The City's contract with CalPERS includes the following optional benefits:

- a) Classic Employees Only - One-Year Final Compensation as provided in Section 20042 (July 9, 1978 for Miscellaneous; July 22, 1976 for Fire and Police).
- b) Post Retirement Survivor Allowance as provided in Sections 21624, 21626 and 21628 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
- c) Post Retirement Survivor Allowance to Continue after Remarriage as provided in Section 21635 (July 18, 1986).
- d) Credit for Unused Sick Leave as provided in Section 20965 (June 26, 1988).
- e) 1959 Survivor Benefits to Surviving Spouse at Age 60 as provided in Section 21580 (December 16, 1973 for Miscellaneous; March 1, 1973 for Fire and Police).
- f) Third Level of 1959 Survivor Benefits as provided in Section 21573 (November 28, 1996).

- g) Fourth Level of 1959 Survivor Benefits as provided in Section 21574 for Police Safety only (October 15, 1998).
- h) Military Service Credit as Public Service as provided in Section 21024 (April 9, 1999 for Miscellaneous; July 14, 2000 for Fire; November 6, 1998 for Police).
- i) Public Service Credit for Peace Corps or America Corps: Vista Service as provided in Section 21023.5. (April 14, 2000).
- j) Classic Fire - 3% @ 50 for Local Safety Members as provided in Section 21362.2 for Fire members only, (December 22, 2000); and for Police members only (July 7, 2002.).
- k) Classic Police Hired Prior to December 28, 2012: 3% @ 50 for Local Safety Classic Members as provided in Section 21362.2 for Police members only (July 7, 2002).
- l) Classic Police: 3% @ 55 for Local Safety Classic Members as provided in Section 21363.1 for Police members only (December 28, 2012).
- m) Classic Miscellaneous: 2.7% at age 55 for miscellaneous members as provided in Section 21354.2 on January 5, 2003.
- n) New Members Miscellaneous: 2% at age 62 for Miscellaneous New Members as defined by PEPRA on January 1, 2013.
- o) New Members Police and Fire: 2.7% @ 57 for Local Safety New Members as defined by PEPRA (January 1, 2013).
- p) Indexed Level of 1959 Survivor Benefits as provided in Section 21574.5 for Fire Safety only (June 13, 2003).

8.4.14 **Unused Sick Leave Conversion:** The conversion of unused sick leave to CalPERS Retirement Credit for Unused Sick Leave under Government Section 20965 shall be made available to qualified retiring employees. This allows employees to convert unused accumulated sick leave at time of retirement, for which the employee receives no compensation, to additional service credit at the rate of 0.004 year of service credit for each day. This credit applies to qualified employees

whose effective date of retirement is within four months of separation from employment. The CalPERS sick leave conversion applies to accumulated sick leave, exclusive of the amount of accumulated sick leave paid out to the employee pursuant to Section 4.11 (Accrued Sick Leave Cancellation Upon Termination), of this Manual.

- 8.4.15 **Retirement Benefit Allowance:** CalPERS retirement benefits are calculated on a formula based on the participating employee's years of service, age at retirement, and percentage of highest year compensation. For employees participating in the Local Miscellaneous Employees Plan, the percentage is 2.7% at age 55 effective January 5, 2003. For Classic Employees participating in the Fire Safety Employees Plan, the percentage is three percent (3%) at age 50 effective December 22, 2000. For Classic Employees participating in the Police Safety Employees Plan, the percentage is three percent (3%) at age 50 effective July 7, 2002. For Classic Employees participating in the Police Safety Employee Plan effective December 28, 2012, the percentage is three percent (3%) at age 55.

## 8.5 Supplementary Retirement and Income Plans

In lieu of participating in the Federal Social Security Program, the City provides a supplemental retirement and income plan to most benefitted employees. There are three supplementary retirement and income plans: Supplementary Retirement and Income Plans I, II and III ("SRIP I, II and III"). The City's contributions to these plans on behalf of participating employees is not subject to income tax until it is paid out to the employees upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

- 8.5.1 **SRIP I:** In SRIP I, the City contributes 5.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and 1% into a long term permanent disability plan. SRIP I was closed to new participants on July 22, 1988.
- 8.5.2 **SRIP II:** In SRIP II, the City contributes 6.7% of the participating employee's salary (up to a maximum annual salary of \$32,400) into an investment account and pays into a disability insurance benefit plan on the employee's behalf; and employees may also borrow up to 50% of the balance in their SRIP II investment accounts, subject to certain limitations. All employees, including the Fire Chief, hired (or who are subsequently enrolled by resolution of the City Council) after July 22, 1988 are automatically enrolled in SRIP II.

The Deputy Fire Chief is enrolled, effective July 1, 1993.

- 8.5.3 **SRIP III:** For eligible Police Safety employees, the City contributes 2% of the employee's salary (up to a maximum annual salary of \$32,400) into the investment account, SRIP III.

## 8.6 Deferred Compensation

Benefitted City employees are eligible to participate in the City's Deferred Compensation Plan through voluntary payroll deductions from the employee's salary. The Deferred Compensation Plan allows employees to defer part of their salaries, in accordance with Internal Revenue Service limits, to a separate fund, which is not subject to income tax until it is paid out to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.7 PARS

At-will employees who are not eligible to receive fringe benefits under this chapter are automatically enrolled in the Public Agency Retirement System ("PARS"). Each pay period, such employee shall contribute 3.75% of his or her salary into the employee's PARS account on a tax deferred basis and the City shall contribute a matching amount equaling 3.75 % of the employee's salary. The employee's PARS account balance will be distributed to the employee upon retirement or termination, or to the employee's beneficiary in the event of the employee's death.

## 8.8 Public Safety Uniform Allowance

Due to the requirement for sworn fire and police department management personnel to wear standard and dress uniforms in the performance of their duties, the City Manager may provide for the payment of uniform allowance, in keeping with the allowance provided to other fire and police personnel, as shown in the Appendix. The uniform allowance is intended to cover uniform expenses incurred during active service prior to the payment and shall be paid semi-annually, in installments of equal amounts. To comply with CALPERS requirement, Union allowance payments shall be paid over twenty-six (26) equal biweekly installments instead of twice a year payment.

## 8.9 Supplemental Retirement Plan and Trust Agreement

Effective July 1, 2001, the City adopted a Supplemental Retirement Plan and Trust Agreement to provide supplemental retirement income and other benefits for eligible unrepresented career benefitted and regular at-will employees through the liquidation of termination pay. Termination pay means pay due to an eligible unrepresented career benefitted and regular at-will employee from the City on account of termination of his or her employment, but only including the commuted value of the following such accumulated pay: vacation, sick leave, sick leave bonus, compensatory time and floating holidays. The Supplemental Retirement Plan includes both mandatory contributions of termination pay and voluntary contributions for employees who provide the City with an irrevocable payroll deduction authorization at least 90 days in advance of the date of termination.

## **ARTICLE 9 - EMPLOYMENT AT-WILL**

### **9.1 Employment At-Will**

An employee who is employed in a position that is excluded from the career service by Berkeley Municipal Code Section 4.04.120 of the Personnel Ordinance is employed by the City in an "at-will" status. This means that both the at-will employee and the City have the right to terminate employment at any time, with or without advance notice, and with or without cause. No employee or officer of the City of Berkeley has the authority to alter the employee's at-will status or to enter into an oral or written agreement for employment for a specified period of time, or to make any promises, assurances or agreements contrary to this the provisions of this Section.

### **9.2 No Right to Appeal Discharge**

An at-will employee who is discharged has no right of appeal or hearing in any manner provided by this Manual.

### **9.3 Benefits**

Those offices, positions and employments named in the Berkeley Municipal Code, Sections 4.04.120 (A), (B) and (C) who regularly work twenty or more hours per week are classified as regular at-will employees and shall be entitled to those benefits as specified for benefitted employees by this. A list of regular at-will positions entitled to receive such benefits is in the Appendix.

All other offices, positions and employments named in the Berkeley Municipal Code, Section 4.04.120, are not eligible for any benefits provided under these Rules, except those expressly specified for temporary employees, such as the Earned Leave benefit or those required by State or Federal law such as Family Care Leave and enrollment in the City's PARS retirement plan, as provided in this Manual.

### **9.4 Standards of Conduct**

At-will employees are subject to the same standards of conduct that prevail over employees in the career service. Any evaluations, warnings or disciplinary action provided to at-will employees regarding their conduct or job performance does not create any obligation or duty on the City's part to provide a warning or evaluation or corrective progressive discipline prior to discharge and in no way negates or otherwise abrogates the City's right to discharge at-will employees for any reason without notice at any time during their employment and without right of appeal.

### **9.5 Transfer or Appointment of Career Employee to an At-Will Position**

Any employee in the career service who accepts a transfer or appointment to an at-will position shall be reinstated to the career position from which he or she was transferred or appointed if within six months after such transfer or appointment, action is taken to dismiss the employee, unless charges are filed and the employee

is discharged in accordance with these Rules. After expiration of the six month period, the employee is excluded from the career service and from any retreat rights to former career positions and is subject to termination at any time, with or without advance notice, with or without cause, and without the right of appeal.

## ARTICLE 10 - LAYOFF POLICY AND PROCEDURE

### 10.1 Statement of Intent

This layoff policy is intended to provide the maximum employment protection to employees in the career service and to minimize the impact on the City's affirmative action accomplishments should a layoff become necessary.

### 10.2 Announcement of Layoff

The City Council, City Manager and department heads shall make every reasonable effort to manage and budget the City's resources effectively, and to plan for the delivery of City services in a manner which will avoid the necessity to lay off career City employees. A reduction in the workforce for more than thirty calendar days is necessitated by, but not limited to, the following a material change in duties and organization, adverse working conditions, return of employee from leave of absence, or shortage of work or fund. In the event of a layoff, the City Manager shall notify the Director of Human Resources of the intended action and the reason for the layoff.

10.2.1 Layoffs in City Attorney's Office: Layoffs in the City Attorney's Office shall be treated independently of layoffs initiated by the City Manager. Only the City Attorney may recommend reductions in the workforce of the City Attorney's Office, and such reductions must be approved by City Council action. Unless otherwise directed by the City Council, layoffs in the City Attorney's Office shall proceed in the Order of Layoff specified in Section 10.6

### 10.3 Vacancy Freeze

Immediately following a decision which may involve the potential layoff of career City employees, the City Manager shall freeze all current City vacancies in the career service in similar and related classes to those likely to be targeted for layoff. The City Manager shall notify the department heads of a freeze of vacancies in their departments and shall require that requisitions continue to be submitted for any budgeted positions which the department head intends to fill and for which funding is available.

### 10.4 Seniority Service Date

All service in the employ of the City shall be counted toward the establishment of an employee's Seniority Service Date, including permanent, probationary, provisional, temporary, part time (on a prorated basis), seasonal, regular at-will employment, and approved military and parental leaves of absence. All other leaves without pay, including time off as a result of formal disciplinary action will be subtracted from the Seniority Service Date.

### 10.5 Establishment of Seniority Lists

Layoffs shall be made according to City-wide class Seniority Lists which the Human Resources Department will immediately establish for probationary and permanent employees in each class targeted for layoff. The names of all City employees holding permanent and probationary appointments in a given class will

be listed on the appropriate list in descending order by Seniority Service Date.

Probationary or permanent employees temporarily acting out of class and holding a provisional appointment in another class will be listed on the Seniority List of the class in which they hold permanent or probationary status.

## 10.6 Order of Layoff

Employees within a specific class shall be laid off on the basis of their Seniority Service Date; i.e., employees with the least amount of total service shall be laid off first. All emergency, temporary and provisional employees working in classes similar to those identified for layoff must be terminated prior to the layoff of probationary and permanent employees. Probationary employees will be laid off prior to permanent employees for a specific class.

10.6.1 **Tie:** If two or more employees on a Seniority List have an identical Seniority Service Date, the tie shall be broken in the following order: (1) time in class--the employee having least time in the class shall be laid off first, and (2) by lot.

10.6.2 **Administrative & Fiscal Services Manager Position in the Berkeley Public Library:** This is a specialty designated position within the Administrative & Fiscal Services Manager classification, and will be treated as a separate classification for the purpose of administering the Layoff Policy and Procedure.

## 10.7 Notification

Permanent and probationary employees should be notified individually, in writing, of pending layoffs as soon as possible, with no less than thirty calendar days notification if targeted for termination or retreat to a lower class.

All other employees to be laid off shall be given, whenever possible, at least a fourteen (14) calendar day prior notice.

## 10.8 Employee Retreat Rights

A probationary or permanent employee affected by layoff shall have the right to displace an employee in a lower level class in which the affected employee once had permanent status or in a subsequently created intermediate level career class which provides normal progression through the class series. Retreat rights shall also extend to employees who have not previously been promoted through a class but for whom the class is a natural progression or beginning in the class series. Retreat rights into a lower class will be granted in order of the highest seniority date on the Seniority List for employees in that class.

10.8.1 **Qualified to Retreat into More than One Classification:** When an employee is qualified to retreat into more than one class, the options shall be discussed with the employee and due consideration given to the employee's preferences. However, it is the prerogative of the City Manager (or the City Attorney, in the case of the City Attorney's Office) to determine the final placement offer to the employee

~~10.8.2~~ **Salary Step:** Employees retreating to a lower class or being flexibly placed in a similar class shall be placed at the salary step representing\_

the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

~~10.8.3~~10.8.2 **Reinstatement after Transfer:** An employee whose position is abolished and is transferred in lieu of layoff shall have the right to return to the position if it is restored within one year of the date of the transfer.

## 10.9 Flexible Placement Program

After all frozen vacant positions have been filled by employees entitled to retreat rights under Section 10.8 (Employee Retreat Rights) of this chapter, the Human Resources Department will review and identify the remaining frozen vacant classes into which career employees targeted for layoff who have not retreated into a lower class may be placed on the basis of total experience and education.

10.9.1 **Failure to Meet Minimum Requirements:** Where the targeted employee does not meet the minimum qualifications of a frozen vacant position, the City Manager has the discretion to either waive the minimum qualifications and/or substitute the targeted employee's job-related experience and education for the minimum qualifications, but under no circumstances is the City Manager required to do so. Where the employee does not meet the minimum qualifications, flexible placement can occur only if the City Manager determines that management and supervisory personnel are able to provide adequate supervised on-the-job training to the employee to meet the requirements of the job. The employee must successfully complete the training within six months as determined by the Director of Human Resources or the employee shall be again subject to the layoff procedures. For the City Attorney's Office, the City Attorney shall have the authority granted to the City Manager and Director of Human Resources otherwise allocated by this paragraph.

10.9.2 **Salary Range:** Assignments under the Flexible Placement Program shall be limited to positions in the same or lesser salary range as the classification from which the employee is to be laid off.

10.9.3 **Order of Assignment:** Offers to positions under the Flexible Placement Program shall be made according to the employee's standing on the Seniority List.

## 10.10 Failure to Accept Offer under Layoff

Failure on the part of an employee to accept a written bona fide offer to retreat to a lower class or be flexibly placed in an alternative job within ten calendar days after the offer is made shall result in forfeiture of any further right to employment retention. Acceptance of a reassignment to a lower class does not remove the employee's right of appeal under Section 10.12 (Appeal Procedures) nor does acceptance of an alternative job under the Flexible Placement Program jeopardize an employee's standing on the re-employment lists as further provided in this Section 10.10 (Failure to Accept Offer under Layoff).

## 10.11 Re-Employment List

The names of probationary and permanent employees laid off in accordance with this chapter shall be entered on a re-employment list for both those classes from which they were separated as well as other classes to which they have retreat rights.

- 10.11.1 **Duration of List:** Re-employment lists for laid off employees who are separated from City service shall remain in effect for three years. Re-employment lists for laid off employees who are demoted shall remain in effect indefinitely.
- 10.11.2 **Use of List:** Re-employment lists shall be used by each department when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
- 10.11.3 **Order of Appointment:** Employees on the re-employment list shall be certified and appointed to a vacancy in the appropriate class according to their standing on the Seniority List.
- 10.11.4 **Failure to Appoint from Re-Employment List:** If a vacancy is filled from an eligible list in a class for which a re-employment list exists which is a violation of this Section, the employee on the re-employment list who should have been appointed shall be appointed to the vacancy and paid retroactively from the date the vacancy occurred.
- 10.11.5 **Failure to Accept Bona Fide Offer:** Failure on the part of the employee on the re-employment list to accept a bona fide written offer of re-employment within fifteen calendar days will result in removal of the employee's name from the re-employment list from which the offer was made. Failure to accept an offer of re-employment to the class with the highest salary range for which the employee is eligible for re-employment will result in automatic removal of the employee's name from all re-employment lists. The employee may, however, accept or decline temporary re-employment without jeopardizing his or her standing the re-employment list for the class from which he or she was originally terminated.
- 10.11.6 **Salary Step:** Upon reappointment to the class from which the employee was originally separated or demoted, the employee shall be placed at the salary step that the employee held at the time of the separation or demotion.
- 10.11.7 **Reinstatement List:** Any former employee on a re-employment list shall be included as an eligible on the reinstatement list for a specific class at or below the class from which layoff occurred, upon written request by the employee for reinstatement which is submitted with a current, completed City of Berkeley application and upon meeting the

minimum qualifications of the specific class unless waived by the City Manager as provided under flexible placement.

### 10.12 Appeal Procedures

The decision of the City Manager (or the City Attorney, in the case of the City Attorney's Office) to implement a layoff is not appealable. Any unrepresented career employee who believes that the layoff procedure, as defined herein, has been improperly administered as to the employee may appeal the action under the Complaints, Appeals and Hearing Procedure of this Manual. Employees are entitled to review all records pertaining to their class and their rights under the provisions of the layoff policy.

### 10.13 Audit

In the event of a dispute between an employee and the City over the application of the re-employment list and if either party so requests, the City Manager's Office shall order an audit by an outside auditor of all vacant positions filled in each department to determine whether vacancies were filled in compliance with the procedures for appointments from re-employment lists set forth in Section 10.11 (Re-Employment List) of this Manual. In the event vacancies for which re-employment lists were in existence remain unfilled, the auditor shall offer an opinion as to whether or not the reasons for leaving the positions vacant appear to be legitimate. A report of the audit shall be transmitted to the City Manager, City Attorney, and the City Council.

## ARTICLE 11 - DISCIPLINARY ACTION

### 11.1 Policy

Prior to the suspension, disciplinary demotion or discharge of an employee in the career service for disciplinary purposes, the procedure set forth in this Article 11 (Disciplinary Action) shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to the notice, rights and procedures provided under Section 11.3 (Disciplinary Actions).

### 11.2 Final Decision Maker for Disciplinary Action

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees, except that: (1) the City Attorney is the final decision maker for City Attorney's Office employees; (2)- tThe Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees; and (3)- The~~the~~ Library Board of Trustees is the final decision maker for Library employees.

### 11.3 Disciplinary Actions

The department head shall initiate disciplinary procedures, as set forth here. The department head may suspend a subordinate employee for not more than three working days at any one time. For suspensions of more than three days, disciplinary demotions and discharge, the department head shall make a recommendation to the final decision-maker. The final decision-maker may suspend an employee from a position at any time for cause. Suspension without pay shall not exceed thirty working days, nor shall any employee be penalized by suspension for more than thirty working days in any continuous twelve month period. However, FLSA exempt employees shall not be suspended in less than regular workweek increments except for safety or security violations. A "regular workweek" is defined elsewhere by this Manual.

### 11.4 Written Reprimands for Fire Safety Employees

Consistent with the Firefighter Bill of Rights Act, the Deputy Fire Chief receiving a written reprimand shall have the right to a non-evidentiary administrative appeal to the Fire Chief or Fire Chief's designee. The employee must request an administrative appeal in writing to the Fire Chief within ten (10) working days of receipt of the written reprimand. Failure to do so shall be deemed a waiver of the employee's right to appeal. The Fire Chief or Fire Chief's designee shall have discretion regarding how the appeal meeting is conducted, including whether and the extent to which witnesses other than the employee and employee's representative are required and may participate. The Fire Chief or Fire Chief's designee shall notify the employee of his or her decision within ten (10) working days of the appeal meeting. An employee and the Association have no further right to appeal or grieve a written reprimand beyond the administrative appeal described in this paragraph.

### 11.5 Written Reprimands for Non- Safety Employees

In the event that an employee receives a written reprimand, the employee may write a rebuttal within thirty (30) calendar days of receiving the written reprimand and such rebuttal will be placed in the Personnel File along with the written reprimand. Employees have not right to appeal or grieve a written reprimand.

## ARTICLE 12 - COMPLAINTS, APPEALS AND HEARINGS

### 12.1 Policy

The procedure for filing complaints and appeals by employees set forth under this Article 12 shall be complied with provided, however, that only those employees in the career service who are not represented by a labor organization shall be entitled to file complaints with the City and appeals to the Personnel Board pursuant to the provisions of this Manual.

### 12.2 Final Decision Maker for Purposes of this Article

For purposes of this chapter, the City Manager is the final decision maker for City of Berkeley employees, except that (1) the City Attorney is the final decision maker for City Attorney's Office employees; (2)- The-the Rent Stabilization Board is the final decision maker for Rent Stabilization Program employees; and (3)- tThe Library Board of Trustees is the final decision maker for Library employees.

### 12.3 Complaints

Disciplinary action shall be taken in accordance with Article 11 (Disciplinary Action) of this Manual. All other complaints by employees, except complaints about compensation, which allege a violation of the Personnel Ordinance or this Manual shall be filed through proper channels, commencing with the department head, and then to the final decision maker.

**12.3.1 Compensation Complaints:** All complaints involving or concerning the payment of compensation shall be initially filed in writing with the Director of Human Resources. The Director of Human Resources shall respond in writing within thirty (30) working days. If the complaint has not been resolved within thirty (30) working days of filing with the Director of Human Resources, the complaint may be moved to the final decision maker. Only complaints, which allege that employees are not being compensated in accordance with the policies, rules and resolutions of the City Council, shall be considered as complaints under this Section. No compensation adjustment shall be retroactive for more than thirty calendar days from the date upon which the complaint was filed or thirty calendar days from the date when an employee may reasonably be expected to have learned of the claimed violation.

**Appeal:** If the grievant is not satisfied with the decision of the Director of Human Resources or his or her designee, the grievant may move the complaint to the final decision maker within ten (10) days of receipt of the decision rendered under Section 12.3.1 above. Failure by the employee to file an appeal within the specified time limits specified constitutes a dropping of the complaint. If both parties agree, the time limits may be waived for a specific period of time at any step in this procedure.

- 12.3.2 **Discrimination Complaints:** An employee may file a complaint concerning a violation of the "FAIR EMPLOYMENT" provision specified by the rules of this Manual, and the complaint shall be processed in accordance with the EEO Complaint Investigation and Resolution Procedure of the City of Berkeley EEO/Affirmative Action Program, as established in Resolution No. 54,926-N.S., as amended from time to time.

## 12.4 Right of Appeal

An aggrieved employee shall have the right to appeal the decision of the final decision-maker regarding the aggrieved employee's disciplinary dismissal, demotion, suspension or complaint to the Personnel Board except in instances where the right to appeal is prohibited by the Personnel Ordinance or the provisions of this Manual.

## 12.5 Method of Appeal

Appeals to the Personnel Board shall be in writing, signed by the aggrieved employee and filed with the Director of Human Resources within ten calendar days after the action is imposed. The appeal shall be a written statement, addressed to the Chair of the Personnel Board, explaining the matter appealed from and setting forth a statement of the action desired by the aggrieved employee, supported by his or her reasons. The Director of Human Resources shall, within ten calendar days after receipt of the appeal, inform the Chair of the Personnel Board, the City Manager, the City Attorney, and the affected department head of the filing and contents of the appeal with the Board.

## 12.6 Investigations and Hearings

Upon receipt of any appeal, the Personnel Board shall make such investigation, as it may deem necessary.

An aggrieved employee who has been demoted for a disciplinary purpose, suspended or discharged is entitled to a hearing upon appeal before the Personnel Board. As to all other appeals, the Personnel Board may grant a hearing or decide the appeal without a hearing as it may deem warranted.

## 12.7 Hearing Procedures

In cases where the employee is entitled to a hearing as a matter of right and in other cases whenever the Board may deem it advisable to hold a hearing, these procedures shall apply.

- 12.7.1 **Notice:** The Personnel Board shall schedule a hearing on the appeal within forty-five calendar days from the date of the filing of an appeal. The Director of Human Resources shall notify all interested parties of the date, time and place of the hearing at such places as the Personnel Board shall prescribe.

12.7.2 **Hearing Procedure:** The aggrieved employee shall appear personally unless physically unable to do so before the Personnel Board at the time and place of the hearing. The aggrieved employee may be represented by any person or attorney as may be selected and may at the hearing produce relevant oral or documentary evidence. The party who has the burden of proof shall state the case first after which opposition matter may be presented. Rebuttal matter that is not repetitive may be allowed at the discretion of the Personnel Board. Cross-examination of witnesses shall be permitted. Hearings need not be conducted according to technical rules relating to evidence and witnesses, but shall be conducted according to any rules of applicable procedures. Hearings shall be closed unless otherwise required by the Ralph M. Brown Act, Government Code Section 54950, as amended from time to time, or any other applicable law.

## 12.8 Findings and Recommendations

The Personnel Board shall, within thirty calendar days after the conclusion of the hearing, or if no hearing was conducted, within thirty calendar days of its decision, certify its findings and recommendation(s) in writing to the aggrieved employee and to the final decision-maker. The final decision maker shall review the findings and recommendation(s) of the Personnel Board and may then affirm, reject or modify the Personnel Board's findings and recommendation(s) as, in his or her judgment, seems warranted, and the final decision maker's decision shall be final. Any member of the Personnel Board may submit a minority or supplemental report which shall be attached to the findings and recommendation(s) of the Board.

## APPENDIX

This Appendix contains detailed information regarding benefits and compensation which covers unrepresented benefitted employees. It is appended to the Unrepresented Employee Manual but the contents are not part of the resolution establishing the Unrepresented Employee Manual and may be changed to reflect changes in benefit details, as approved by the City Council by resolution.

### 13.1 Administrative Leave

Employees who are in career, benefitted, or at-will benefitted classifications which are FLSA Exempt may be approved by the City Manager (or the City Attorney, in the case of the City Attorney's Office) to receive up to an additional 50 hours of compensated administrative leave beginning on January 1, 2016, and at the beginning of each calendar year thereafter, or prorated during the course of the year when employed less than a full year. This administrative leave is granted to employees whose job responsibilities cause them to work numerous hours in excess of the normal City workweek. The City Manager (or the City Attorney, in the case of the City Attorney's Office) has the authority to rescind administrative leave in those instances of abuse or misuse of the intent of this provision.

Administrative leave taken must be approved in advance by the department head and posted to the employee's timecard. Unused administrative leave may be carried over to the next calendar year, providing the total of excess vacation and unused administrative leave do not exceed 320 hours. Otherwise, the excess administrative leave must be taken within the calendar year in which it was earned or it may be forfeited. Upon termination or retirement, no monetary award will be authorized for unused accumulated administrative leave.

**13.1.1 Prorated Administrative Leave:** A benefitted employee who is otherwise eligible for overtime and who is on a temporary or provisional benefitted appointment in an FLSA Exempt classification for a period of one month or longer, and is ineligible to earn overtime, shall be entitled to prorated Administrative leave for the duration of the temporary or provisional appointment. Any unused administrative leave at the end of the temporary or provisional appointment will roll into vacation, provided the total of accrued and unused vacation and accrued administrative leave do not exceed 320 hours.

### 13.2 Automobile Allowance

The City reimbursement rate for the use of a private automobile on authorized City business will be equal to the amount established by the Internal Revenue Service.

### 13.3 Bilingual Premium Pay

**13.3.1 As Part of Regular Job Assignment:** An employee who is required as an essential part of his or her job to provide non-English language services, including Braille and sign language, routinely and consistently as part of his or her regular job assignment as determined by the City

will receive a Bilingual Premium Pay Differential of 5%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 5% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.3.2 **Occasional Assignments:** An employee assigned occasionally to provide non-English language services, including Braille and sign language, when either a) assigned by management, or b) at the request of the employee with the supervisor's agreement, or, c) after a job audit will receive a Bilingual Premium Pay Differential of 2%. The employee must agree to use the bilingual skill during his or her normal work shift regardless of assignment. The Bilingual Premium Pay Differential of 2% will be reported to CalPERS as Bilingual Premium Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.
- 13.3.3 **Competency and Management Rights:** The bilingual premium will not be applicable under any circumstances except to an employee who possesses second language competency. Management reserves the right to test for second language appropriate competency prior to a Bilingual Premium Pay Differential.
- 13.3.4 **Temporary Designation:** The City may designate an employee to receive either the 5% or 2% Bilingual Premium Pay Differential on a temporary basis for a specified period provided the employee met the requirements contained in the first or second paragraph of this Section.

#### 13.4 Cash-In-Lieu Payments

For those employees who are able to show proof of ongoing alternate group medical coverage, the City will compensate employees \$560.00 per month, prorated for less than full-time employees. This benefit shall be frozen at this amount. To comply with FLSA laws, health insurance in-lieu payments shall be paid over twenty-six (26) equal biweekly installments instead of once a month.

#### 13.5 Dependent Care

Employees shall be allowed to designate a specific amount of salary, consistent with State and Federal tax laws, to be redirected to pay for dependent care costs through pre-tax salary deductions. The amount of funds designated should be considered carefully, because under the current tax code, any unexpended funds which have not been spent for the specific purpose of paid dependent care and remain in the employee's account at the end of the year, will be forfeited.

### 13.6 Life Insurance

The City shall provide paid group life insurance, by a carrier of the City's choice, in the amount of \$25,000 which shall include a standard accidental death and dismemberment provision of a like amount. Employees in the classification of Police Chief and Fire Chief shall be provided with life insurance in the amount of \$100,000, which shall include a standard accidental death and dismemberment provision of a like amount. Life insurance shall become effective the first day of the calendar month following appointment, and shall continue until the last day of the calendar month in a pay status.

In addition, all unrepresented benefitted employees may purchase additional coverage, in increments of \$10,000, up to a maximum of \$300,000, at the rate offered by the City's insurance carrier, subject to any rules and restrictions of the carrier, including but not limited to any medical exam that might be required by the insurance carrier.

### 13.7 Medical/Dental Insurance for Employees/Dependents

Except as provided in Section 8.1 (Group Medical-Dental Insurance Benefits), the City offers fully paid and/ or partially paid health insurance plans and a fully paid dental plan for the employee and eligible dependents, including a domestic partner. The dental plan currently provides orthodontic coverage for the employee's dependent children through age 26 and 90% of the Bay Area Usual, Customary and Reasonable charges. Effective January 1, 2007, the maximum annual coverage will be \$2,000 annual coverage, and \$2,000 lifetime orthodontia limit. Any employee, who is required to partially pay premiums, shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their 26<sup>th</sup> birthday, providing they meet the Internal Revenue Service definition of "dependent". If an employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for his or her domestic partner, the employee shall be subject to federal and state income tax withholding.

Medical and dental benefits shall begin the first day of the calendar month following the date of hire, and end the last day of the month an employee is in pay status, except in the case of parental and Family and Medical Leave Act, as described in the Administrative Regulation No. 2.4. Maximum annual coverage amounts are found in the Employee Benefits Handbook.

- 13.7.1 **Dental Coverage for Fire Management:** Effective January 15, 2015, employees in the classification of Fire Chief and Deputy Fire Chief, shall be provided with dental insurance with an annual maximum coverage of \$3,000 and lifetime orthodontia limit of \$3,000.

**13.8 Retiree Medical Plan**

The terms and conditions of this benefit shall be set forth in a separate document which shall contain a full plan description and shall control the administration of the retiree medical plan.

**13.9 Amendment of Retiree Health Premium Assistance Plans I and II, effective June 28, 1998, Restated and Amended effective March 22, 2011**

Employees who retire on or after June 21, 2015, shall be permitted, at their discretion, to enroll in non-City sponsored health plans. After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow enrollment in non-City sponsored health plans. In the event a retiree elects to enroll in a non-City sponsored health plan, the City shall make medical insurance premium payments directly to the health insurance provider in an amount equal to what the City would contribute to the City sponsored health plan. Retiree shall be solely responsible for all aspects of the requirements to enroll in a non-City sponsored health plan and maintain eligibility for such a plan; the City's sole obligation is to pay the medical insurance premium contribution required under this section, as directed by the retiree to a non-City sponsored health plan. The City shall not be responsible for any excess cost differentials associated with the direct payment of premiums to non-City sponsored plans. The City will only make payments through its third party administrator to provide medical insurance premium payments for an individual plan and will not make payments for a group plan. The retiree and/or surviving spouse or domestic partner that enroll in non-City sponsored health plans shall be solely responsible for paying the administrative set up fee, the monthly administrative fee, and/or any other fees established by the third party administrator, and said fees will be deducted directly from the retiree's monthly contribution. No cash payments will be paid directly to the retiree or the retiree's spouse/domestic partner. There shall be no cash in lieu payments made under this benefit.

The City will also amend the Retiree Premium Assistance Plans I and II to allow eligible retirees who retired prior to June 21, 2015 to enroll in a non-City sponsored health plan.

**13.10 Retiree Medical for Unrepresented Benefitted Employees**

Effective June 28, 1998, the City will provide the retiree medical coverage set forth below for all unrepresented benefitted employees, except employees in the classifications of Police Chief, Deputy Police Chief, Fire Chief, and Deputy Fire Chief (see separate plans below). An employee's entitlement to any and all benefits provided by the City under this retiree medical plan is subject to the funding limitations set forth in the plan document.

- 13.10.1 Eligibility and Percentage of City Contribution:** An employee is eligible for the retiree health insurance coverage as set forth in Sections 13.10.3 (Pre Age 65 Retiree Health Insurance) and 13.10.4 (Retiree

Benefits for Employees Age 65 or Over) below if he or she meets all the following criteria:

- a. retires from career service on or after June 28, 1998;
- b. is vested with CalPERS;
- c. has at least eight (8) years of CalPERS qualifying service with the City; and
- d. is at least age 55.

An “Eligible Retiree” also includes individuals who meet the definition as set forth in Section 2.11.1 of the Retiree Health Premium Assistance Plan I for Confidential and Executive Management Employees (Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials) Restated and Amended effective as of March 22, 2011 (Resolution No. 65,196-N.S.) for “Eligible Retiree.”

**Percentage of City Contribution:** The actual monthly amount of money the City will contribute on the employee’s behalf will be based on the employee’s total years of CalPERS service as provided in the following chart:

| Years of CalPERS Qualifying Service | Percentage of City Contribution |
|-------------------------------------|---------------------------------|
| 8                                   | 30%                             |
| 9                                   | 40%                             |
| 10                                  | 50%                             |
| 11                                  | 58%                             |
| 12                                  | 66%                             |
| 13                                  | 74%                             |
| 14                                  | 82%                             |
| 15                                  | 90%                             |
| 16                                  | 92%                             |
| 17                                  | 94%                             |
| 18                                  | 96%                             |
| 19                                  | 98%                             |
| 20                                  | 100%                            |

13.10.2 **Annual Increase:** Retirees will pay the difference between the City’s monthly contribution and the actual monthly medical insurance premium charged by the health plan he or she has elected for retiree medical coverage. If the premiums for such health insurance are increased, the amount the City contributes shall increase no more than 4.5% above the previous year’s contribution. No increases in the amount the City contributes shall occur before July 1, 1999. Thereafter, any increase in the amount contributed by the City will occur on July 1 each year thereafter.

- 13.10.3 **Pre Age 65 Retiree Health Insurance:** Beginning June 28, 1998, the City shall make available health insurance coverage to the employee and his or her spouse or domestic partner. The City will pay on the employee's behalf no more than \$166.26 per month for an employee electing single party health coverage and no more than \$332.52 per month for an employee electing two party coverage.
- 13.10.4 **Retiree Benefits for Employees Age 65 and over:** Once an employee or retiree reaches age 65, he or she is eligible for Medicare. As a result his or her eligibility for the retiree medical benefits set forth in Section 13.10.1 (Eligibility) ceases. On reaching age 65, the City will make available health insurance coverage in addition to Medicare. When an employee or retiree reaches age 65, the City will contribute no more than \$16.17 per month on the employee's behalf for single party health insurance coverage and no more than \$32.34 per month for two-party health coverage.
- 13.10.5 **Termination by City of Retiree Medical Benefit:** Failure of the retiree or surviving spouse to pay their monthly share of the health insurance premium will result in termination of the retiree medical benefit and relieve the City of any further obligation to provide any further benefits under Section 13.10 (Retiree Medical for Unrepresented Benefitted Employees).
- 13.10.6 **Retiree Medical Benefit for Employees Retiring between the Ages of 50 and 55:** An employee who is at least 50 years of age, but less than 55, has at least eight (8) years of CalPERS qualifying employment with the City will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in group health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide any benefits under this Section to the employee and/or his spouse or domestic partner.
- 13.10.7 **Employees Retiring with a CalPERS Approved Disability Retirement:** If an employee retires from the City before age 55 with a CalPERS approved disability retirement, the employee will retain eligibility for the retiree medical benefits provided in Section 13.10.1 (Eligibility) when the employee reaches age 55 if the employee is enrolled in a group health plan coverage from the date of his or her termination from City employment until the employee's 55th birthday. If for any reason the employee has a lapse in health care coverage the employee forfeits his or her eligibility for the retiree health plan benefits upon reaching age 55 and the City has no further obligation to provide

any benefits under this Section to the employee and/or his spouse or domestic partner.

- 13.10.8 **City Funding of Retiree Health Benefit:** City contributions to the retiree medical benefit began on July 1, 1998. Funding of this benefit has been set aside in a trust to be established by the City.

The retiree medical benefit will be funded by a charge of 0.25% of payroll in each year, so that contributions are at 1% of the payroll after four years. The City will fund the benefit at approximately 1% of the payroll for every year thereafter with the intent of achieving a funding level of 70% after 30 years. The funding will be ongoing to maintain a 70% funding level thereafter.

Effective July 4, 2004, an additional charge of 0.25% of payroll was charged each year in the subsequent four years so that contributions are at 2% by July 1, 2007. The purpose of this 1% increase in payroll contribution is to fund post age 65 Medicare supplement plans. As a result of this change, the amount the City contributes toward the post-65 Medicare Supplement coverage under the Retiree Health Premium Assistance Plan was \$102 effective July 7, 2002 for all post 65 retirees as well as future retirees.

- 13.10.9 **Retiree Medical Plan for Unrepresented Employees (Rep Units Z-2, Z-3, Z-6):** Eligible retirees who retired from positions in Representation Units Z-2, Z-3 and Z-6 on or after July 1, 2008.

**Not Medicare Eligible:** Effective July 1, 2008, between the ages of 55 and 65 who retire on or after June 29, 2008 the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by \$50 per month in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2009, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$75 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase). Effective July 1, 2011, the amount the City contributes toward payment of the health care premium cost for the Retiree Health Premium Assistance Plan will increase by an additional \$25 per month (i.e., an aggregate \$100 per month increase) in addition to the 4.5% that occurs on July 1 as provided in Section 13.10.2 (Annual Increase).

- 13.10.10 **Retiree Medical Plan for Confidential and Executive Management Employees (Rep Unit Z-1; Z-5; Z-7; Z-9; and Elected Officials):** Eligible retirees who retired from positions in Representation Unit Z-1 on or after July 1, 2008.

**Medicare and Not Medicare Eligible:** Effective June 29, 2008, an additional charge of 0.50% of payroll will be charged so that contributions are at 2.5%. The purpose of this 0.50% increase in payroll contribution is to fund both pre-65 retiree health care premium costs and post age 65 Medicare Supplement plans for eligible retiree who retired from positions in Representation Unit Z-1; Z-5; Z-7; Z-9 and Elected Officials on or after July 1, 2008. As a result of this change, the amount the City contributes toward pre age 65 health insurance premium costs shall increase from \$258.19 per month to \$309.39 per month for single coverage and from \$516.38 per month to \$618.78 per month for 2-party coverage. The City's contribution toward the post-65 Medicare Supplement coverage shall increase from \$132.83 per month to \$184.03 per month for single coverage and from \$265.67 per month to \$368.06 per month for 2-party coverage.

### 13.11 Reimbursement Plan

After Council approval of this Unrepresented Employee Manual, the City shall amend the Retiree Health Premium Assistance Plans I and II as soon as practicable to allow for the reimbursement of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both. If there is no spouse or domestic partner at the time of retirement, the City shall only reimburse the single party rate. The reimbursement shall be paid directly to the retiree or surviving spouse or domestic partner. The maximum amount the City will reimburse for the cost of Medical Insurance Premiums is based on the schedule described in Section 13.10.1 (Eligibility and Percentage of City Contribution) above.

#### 13.11.1 Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z-9; and Elected Officials) Who Retire on or After June 28, 1998 through June 30, 2008

13.11.1.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner until the death of both as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.1.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.2 **Retiree Medical Reimbursement Plan for Unrepresented Confidential and Executive Management Employees (Rep Units Z-1; Z-5; Z-7; Z9 and Elected Officials) Who Retire on or After July 1, 2008**

- 13.11.2.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$309.39 for single party coverage for the retiree or \$618.78 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$405.73 for single party coverage for the retiree or \$811.46 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- 13.11.2.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:
- a. **Reimbursement as of July 1, 2008:** Effective July 1, 2008, as provided in Section 13.10.10 (Retiree Medical Plan for Unrepresented Confidential and Executive Management Employees), each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$184.03 for single party coverage for the retiree or \$368.06 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
  - b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$239.65 for single party coverage for the retiree or \$479.31 for two party

coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; Z-6) Who Retire on or After June 28, 1998 through June 30, 2008**

13.11.3.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.2 (Annual Increase), each month after the employee retires, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$166.26 for single party coverage for the retiree or \$332.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Annual Increase), total \$338.60 for single party coverage for the retiree or \$677.19 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

13.11.3.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of June 28, 1998:** Effective June 28, 1998, as provided in Section 13.10.4 (Retiree Benefits for Employees Age 65 and Over) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$16.17 for single party coverage for the retiree or \$32.34 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 7, 2002:** Effective July 7, 2002, as provided in Section 13.10.8 (City Funding of

Health Benefits) each month after the retiree reaches age 65 and is eligible for Medicare, the City's maximum reimbursement for the cost of Medical Insurance Premiums total \$102.00 for single party coverage for the retiree or \$204.00 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- c. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$180.76 for single party coverage for the retiree or \$361.53 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.4 **Retiree Medical Reimbursement Plan for Unrepresented Employees (Rep Units Z-2; Z-3; and Z-6) Who Retire on or After June 29, 2008**

13.11.4.1 **Not Medicare Eligible:** For retirees who are not eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** On July 1, 2008, as provided in Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), the City will reimburse the cost of Medical Insurance Premiums in an amount totaling \$297.08 for single party coverage for the retiree or \$544.16 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of July 1, 2009:** As of July 1, 2009, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical Plan for Unrepresented Employees), total \$335.45 for single party coverage for the retiree or \$593.64 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- c. **Reimbursement as of July 1, 2011:** As of July 1, 2011, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.9 (Retiree Medical

Plan for Unrepresented Employees), total \$391.32 for single party coverage for the retiree or \$673.27 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

- d. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$469.92 for single party coverage for the retiree or \$808.52 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

3.11.4.2 **Medicare Eligible:** For retirees who reach age 65 and are eligible for Medicare, the City will reimburse the cost of Medical Insurance Premiums for the retiree and/or surviving spouse/domestic partner as follows:

- a. **Reimbursement as of July 1, 2008:** As of July 1, 2008, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$138.81 for single party coverage for the retiree or \$277.62 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.
- b. **Reimbursement as of January 1, 2017:** As of January 1, 2017, the City's maximum reimbursement for the cost of Medical Insurance Premiums, which were increased in accordance with Section 13.10.2 (Maximum Increase), total \$172.98 for single party coverage for the retiree or \$345.96 for two party coverage for the retiree and/or surviving spouse/domestic partner coverage.

#### 13.11.5 **Enrollment in City Group Plans**

Retiring employees may receive continuing health coverage in City sponsored group health plans subject to the limitations and co-pay amounts permitted by the health care providers.

### 13.12 **Fire Chief and Deputy Fire Chief Retiree Medical Plan**

Internal City of Berkeley candidates who promote and are appointed to the Fire Chief or Deputy Fire Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn fire employees in Representation Unit B.

- 13.12.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Fire Chief or Deputy Fire Chief classifications shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.13 Retiree Medical and Training/Certification Differentials for Police Chief and Deputy Police Chief Classifications

Internal City of Berkeley candidates who promote and are appointed to the Police Chief or Deputy Police Chief classification, without a break in service, shall be eligible for the same Retiree Medical Plan as provided to sworn police employees in Representation Units E and F.

The Police Chief and Deputy Police Chief classifications shall be eligible for the same training differentials for which members of the Berkeley Police Association qualify, including Crisis Intervention Training and the KIND (Constitutional, Humane, Impartial, Neighborhood-Oriented, and DEI-Centered) Policing Differential.

The Police Chief and Deputy Police Chief classifications shall be eligible for the POST (Police Officer Standards and Training) certification differential for which members of the Berkeley Police Association qualify (up to 7% in the 2023-2026 MOU); however, the POST certificates for the Police Chief and Deputy Police Chief must be at the Management level to qualify for the differential.

- 13.13.1 **Retiree Medical Benefits for External Appointments:** External City of Berkeley candidates appointed to the Police Chief or Deputy Police Chief classification shall be covered by the Retiree Health Premium Assistance Plan described herein at Section 13.10 (Retiree medical Plan) et seq., except that the employee shall not be required to meet the eligibility requirements of sub-Sections 13.10.1(b) and 13.10.1(c) and instead credited with 15 years of qualifying years of service for eligibility in the Plan and shall receive benefits as a Representation Unit Z-1 employee.

### 13.14 Partially Subsidized YMCA Membership

The City currently provides a partially subsidized membership in the Berkeley YMCA for those employees who agree to pay the required monthly fee. Use of a YMCA membership by a City of Berkeley employee, as provided by this provision, is not part of the employee's work related duties, is not required for continued employment and is not considered part of a City sponsored physical fitness program. The City of Berkeley nor its Claims Administrator shall not be liable for any injury that may arise out of a City of Berkeley employee's participation in and use of a YMCA membership. The amount the City contributes toward the

employee's monthly membership fee is subject to federal and state income tax withholding.

### **13.15 Part-Time Employees Eligible for Full Benefits**

Those part time employees who have been continuously employed by the City in benefitted part time career positions since prior to July 1, 1977 and who have not accepted a full time career position are eligible to participate in the City's health and dental insurance programs with the City's payment of premiums at the same level as for full time benefitted employees.

**13.16 Probationary Periods for Unrepresented Classifications**

The competitive appointment to a career classification will include a probationary period during which time the incumbent may be dismissed without right of appeal. The probationary period for unrepresented classifications varies from six (6) months of actual work hours (1040 hours for full time employees and 520 hours for half time) to one year of actual work hours (2080 hours for full time and 1040 hours for half time).

Presently, unrepresented classifications require a six (6) month probationary period except for the following unrepresented classifications which require a one year probationary period:

- (a) All classifications in Unit Z-1 in the career service; and
- (b) All classifications in Unit Z-2 in the career service.

**13.17 Public Safety Uniform Allowance**

- (a) Fire Uniform Allowance: Effective November 9, 2004, \$1,000 annual allowance. Effective December 1, 2015, \$1,100 annual allowance.
- (b) Police Uniform Allowance: Effective July 7, 2002, \$1,000 annual allowance.
- (c) To comply with CALPERS requirement, Union allowance payments shall be paid over twenty-six (26) equal biweekly installments instead of twice a year payment.

**13.18 Regular “At-Will” Classifications**

The following classifications are exempt from the career service and in accordance with the Personnel Ordinance (Berkeley Municipal Code Section 4.04.120), At-Will appointments are eligible to receive benefits:

- All department heads
- Assistant City Manager
- Assistant to the City Attorney
- Assistant to the City Manager
- Assistant to the Mayor
- Assistant, Associate and Senior Management Analyst in the City Manager's Department and in the Office of Budget and Fiscal Management
- Budget Manager
- Capital Improvement Programs Manager
- Deputy City Manager
- Economic Development Manager
- Employee Relations Manager
- Health Officer
- Legislative Assistant
- Police Review Commission Investigator
- Police Review Commission Officer
- Secretary to the Mayor, Administrative Secretary and Secretary in the Mayor's Office
- Supervising Psychiatrist

**13.19 City Manager Department Differential**

Assistant, Associate, Senior Management Analysts, and Office Specialists III in the City Manager's Department and in the Office of Budget and Fiscal Management shall receive a 5% salary differential.

**13.20 Shift Differential**

Employees whose regular schedules meet the definition, as specified by Unrepresented Employee Manual Section 1.12 (Shift Differential), for shift differential, for the hours of 5:00 p.m. to 12:00 a.m., shall be paid their regular salary plus seven and one-half percent (7.5%) of their monthly salary per month. Those whose regular schedule meets the definition for shift differential, for the hours of 12:00 a.m. to 7:00 a.m., shall be paid their regular monthly salary plus ten percent (10%) of their monthly salary per month.

**13.21 SRIP II Disability Insurance**

The City shall pay the premium for the current cost of long term disability insurance for SRIP covered employees who are enrolled in the SRIP II (Supplementary Retirement and Income Plan).

**13.22 Vacation Schedules**

Unrepresented employees, except those confidential executive, management and professional employees in Section 13.20.1 (Confidential Executive Management and Professional Employees) below, shall be entitled to earn annual vacation leave as follows:

| Authorized Annual Vacation (in work weeks) | Years of Actual Benefitted Service                        |
|--------------------------------------------|-----------------------------------------------------------|
| 2-workweeks (FTE 80 hours)                 | During the first 3-years                                  |
| 3-workweeks (FTE 120 hours)                | During the 4 <sup>th</sup> through 11 <sup>th</sup> year  |
| 4-workweeks (FTE 160 hours)                | During the 12 <sup>th</sup> through 17 <sup>th</sup> year |
| 5-workweeks (FTE 200 hours)                | During the 18 <sup>th</sup> through 24 <sup>th</sup> year |
| 6 workweeks (FTE 240 hours)                | During the 25 <sup>th</sup> and subsequent years          |

13.22.1 **Confidential Executive, Management and Professional Employees:** Confidential executive, management and professional employees who were eligible under the City's Administrative Leave Policy are entitled to earn annual vacation leave as follows:

| Authorized Annual Vacation (in work weeks) | Years of Actual Benefitted Service                        |
|--------------------------------------------|-----------------------------------------------------------|
| 2-workweeks (FTE 80 hours)                 | During the first 2-years                                  |
| 3-workweeks (FTE 120 hours)                | During the 3 <sup>rd</sup> through 5 <sup>th</sup> year   |
| 4-workweeks (FTE 160 hours)                | During the 6 <sup>th</sup> through 17 <sup>th</sup> year  |
| 5-workweeks (FTE 200 hours)                | During the 18 <sup>th</sup> through 24 <sup>th</sup> year |

|                             |                                                  |
|-----------------------------|--------------------------------------------------|
| 6 workweeks (FTE 240 hours) | During the 25 <sup>th</sup> and subsequent years |
|-----------------------------|--------------------------------------------------|

13.22.2 **Director of Library Services and Deputy Director of Library Services:** Employees in the classifications of Director of Library Services and Deputy Director of Library Services are entitled to earn annual vacation Leave as follows:

| Years of Actual Benefited Service                  | Authorized Annual Vacation Accrual |
|----------------------------------------------------|------------------------------------|
| Through the first 5 Years of Service               | 3 weeks (120 Hours)                |
| Beginning the 6th through 17th Years of Service    | 4 weeks (160 Hours)                |
| Beginning the 18th through 24th Years of Service   | 5 weeks (200 Hours)                |
| Beginning the 25th and subsequent Years of Service | 6 weeks (240 Hours)                |

**13.23 Special Pay for Camps Personnel**

When an employee, who has a valid Red Cross Senior Lifesaving Certificate and occupies a camps classification, is specifically assigned in writing by the Camps Manager or an authorized representative, with approval by the City Manager, to temporarily serve as a lifeguard for one day or more, said employee shall be paid a five percent (5%) differential, more than the employee's current salary.

**13.24 Hazard Premium Pay for Clerical Mental Health Personnel**

Clerical employees who are regularly assigned to work in Mental Health Programs, in direct contact with clinic patients, shall receive a five percent (5%) differential. This Hazard Premium Pay shall be reported to CalPERS as “Hazard Premium” under PERL Section 571 (Definition of Special Compensation), (4) Special Assignment Pay.

**13.25 Longevity Pay**

Effective the first full pay period after Council adoption, employees in Representation Units Z-2, Z-3 and Z-6 who complete fourteen (14) years of service shall receive a three percent (3%) differential beginning with the anniversary date of beginning the fifteenth (15th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as “Longevity Pay” under PERL Section 571.a.(1) Incentive Pay.

**13.26 Longevity Pay for Confidential and Executive Management Employees**

Effective the first full pay period after Council adoption, and except as noted below in Section 13.24.1 (Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief), employees in Representation Unit Z-1 who have completed fourteen (14) years of service shall receive a three percent (3%) differential beginning with the\_

anniversary date of beginning the fifteenth (15th) year of service and shall apply to all hours in a paid status. This Longevity Pay shall be reported to CalPERS as Longevity Pay Incentive Pay.

13.26.1 **Longevity Pay for Unit Z1 Fire Chief and Deputy Fire Chief:** The longevity pay for the Fire Chief and Deputy Fire Chief classifications is intended to provide the same benefits as the Longevity Pay for represented sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.

13.26.2 **Longevity Pay for Unit Z1 Police Chief and Deputy Police Chief:** The longevity pay for the Police Chief and Deputy Police Chief classifications will provide the same benefits as the Longevity Pay for represented sworn police employees under the Berkeley Police Association (Units E & F) Memorandum of Understanding.

### 13.27 Automobile Allowance for Police Chief

The City Manager may authorize an automobile allowance of \$400 per month in lieu of a City provided vehicle for an employee appointed after November 1, 2009 to the classification of Police Chief.

### 13.28 Video Display Terminal Screening/Glasses

The City offers VDT screening and glasses as medically required, every two years, to employees who in the course of their employment operate VDT equipment more than four hours in a work day.

### 13.29 Emergency Medical Technician

Unit Z-1 Fire Chief and Deputy Fire Chief who maintain current Emergency Medical Technician (EMT) certification shall receive the same EMT pay differential as sworn fire employees under the Berkeley Fire Fighters Association (Unit B) Memorandum of Understanding.

### 13.30 Shoe Allowance

An annual allowance of two hundred dollars (\$200) shall be paid to benefitted employees in the classification of Janitor, Groundskeeper, Laborer, and Solid Waste Worker.

### 13.31 Training Differential

**Trainer Differential:** Effective July 1, 2016, any employee, excluding those classifications that require training as part of the assignment (e.g. supervisors), designated by the department and approved by the Director of Human Resources as qualified trainers or instructors for specific specialized skills (identified by the departments in consultation with Human Resources) who is required to provide formalized training to a new employee or an employee who management has identified as needing formalized training, shall receive a five percent (5%) differential in salary for that time served in such capacity. Such assignment shall be in writing by the department and approved by the Director of Human Resources. This Training Differential will be reported to CalPERS as Training Premium

Special Assignment Pay. However, any hours worked on overtime are excluded from CalPERS reported "compensation earnable" in California Government Code Section 20635.

- 13.31.1 **Higher Class Training Differential:** For training purposes, employees not meeting all of the minimum qualifications of a higher classification may be temporarily assigned for a minimum of one (1) week, to perform the duties of the higher classification and will receive a five percent (5%) increase in their current base salary for the duration of the temporary assignment. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager (or the City Attorney, in the case of the City Attorney's Office), or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.
- 13.31.2 **Trainee Differential:** For training purposes and to enhance an employee skills and abilities, any employee designated in advance by the department director and approved by the Director of Human Resources to perform duties that are outside of the employee's classification, shall receive a three percent (3%) differential in salary for that time served in such capacity. Such assignments shall be in writing and shall indicate the reasons, length and duties of the assignment. Assignments shall be approved in advance by the City Manager (or the City Attorney, in the case of the City Attorney's Office), or his or her designee by an Employee Transaction Form, and forwarded to the Human Resources Department for inclusion in the employee's official Personnel file.

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### 13.32 Summary of May 2017 Changes to the Unrepresented Employee Manual

- Included reference to Unrepresented Unit Z-9 (Deputy Director Rent Stabilization Program).
- Former Section 1.14 (One-Time Allocation) - deleted obsolete provision.
- Section 5.2 (Floating Holidays) - corrected omission of one (1) day.
- Section 8.3 (Hourly Rated Employees in Lieu of Benefits) – codified existing benefit.
- Section 13.11 (Reimbursement Plan) – revise plan as reimbursement.
- Section 13.12 (Fire Chief and Deputy Fire Chief Retiree Medical Plan) – clarified benefit for internal and external appointments.
- Section 13.13 (Retiree medical for Police Chief Classification) – clarified benefit for internal and external appointments.
- Section 13.18 (Regular "At-Will" Classifications) – deleted duplicate classification.
- Section 13.31.3 (Trainee Differential) – included provision authorizing differential for employees assigned duties outside of classification.

**13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual**

- Section 8.4.5 Miscellaneous Employees Classic Employee Pension Contribution through a 20516 Contract Amendment – added subsection 8.4.5.3

**13.34 Summary of July 2018 Changes to the Unrepresented Employee Manual**

- Section 1.14 (One-Time Allocation) - \$2,000 paid August 17, 2018.
- Section 8.1.3 (Medical Contribution Executive Managers) – Cost-share of \$50.00 for medical contributions by all department heads, City Manager and Deputy City Manager effective July 1, 2019.
- Section 8.4.6.4 – Correct typographical error.
- Section 11.5 (Written Reprimand for Non-Safety Employees) – Include provision allowing written rebuttal.
- Section 12.3.1 (Compensation Complaints) – Include provision that specifies appeal time lines.
- 13.1 (Administrative Leave) – Clarify leave extended to career and benefitted at-will employees; benefit is prorated based on assignment; and codifies practice that unused administrative leave rolls into vacation.
- 13.24 (Hazard Premium Pay for Clerical Mental Health Personnel) – Clarify pay is reportable to CalPERS.
- 13.25 (Longevity Pay) – Include CalPERS reportable section.
- 13.30 (Shoe Allowance) – Clarify benefit extended to benefitted employees.
- Shoe Allowance
- 13.31 Training Differential
- 13.32 Summary of July 2018 Changes to the Unrepresented Employee Manual
- 13.33 Summary of October 2017 Changes to the Unrepresented Employee Manual

**13.35 Summary of July 2020 Changes to the Unrepresented Employee Manual**

| Section       | Change                                                                                                                                                                                                                                                                       |
|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Term Duration | Parties agree to a one-year term Agreement ending on June 30, 2021                                                                                                                                                                                                           |
| Living Wage – | NEW LANGUAGE: The City agrees to pay each of its direct employees an hourly wage of no less than \$18.33 effective the first full pay period in January 2021. The City agrees to pay each of its direct employees an hourly wage of no less than \$19.33 effective the first |

| Section                                                             | Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                     | <p>full pay period in June 2021. If the Living Wage increases beyond \$19.33, as outlined in the Berkeley Municipal Code effective July 2021, the City shall implement the increases the first full pay period in September 2021 and July 1st of each year thereafter.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>Additional City Emergency Paid Sick Leave Allocation</p>         | <p>NEW LANGUAGE: The City shall provide an additional 80 hours of emergency paid sick leave to be used for COVID-19 related reasons as listed in the Emergency Paid Sick Leave Act. Part-time employees receive a prorated number of hours. In order to use this additional City emergency paid sick leave, the employee must first exhaust all hours that they received under the Emergency Paid Sick Leave Act. The City will use a specific pay code for this additional emergency paid sick leave and these additional hours will be available until June 30, 2021. These additional 80 emergency paid sick leave hours shall have no cash value and may not be used towards any CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.</p>                                                                                                                                                                                               |
| <p>Additional Floating Holidays</p>                                 | <p>NEW LANGUAGE: For employees who were required to remain in the workplace from March 17, 2020 – June 1, 2020, the City will provide 8 hours of floating holidays for every 40 hours of regularly scheduled hours worked in the workplace up to a maximum of 32 hours of floating holiday. The City will credit these floating holiday hours in the first full pay period after adoption of the Agreement for classifications which, due to the nature of the assignment, require backfill, employees will be paid a stipend in the amount of the earned floating holiday hours up to a maximum of 32 hours the first full pay period in August 2020. The City will use a specific pay code for these additional floating holiday hours will be available until June 30, 2021. These additional 32 hours of floating holiday shall have no cash value and may not be used towards CalPERS retirement service credit as outlined 4.13 of the Unrepresented Employees Manual.</p> |
| <p>Additional language on Layoffs for the Term of the Agreement</p> | <p>NEW LANGUAGE: The City recognizes the important role that the employee workforce plays in delivering public services; therefore, during the period ending June 30, 2021 the City agrees to not layoff any Unrepresented career employees. However, should the City determine that its expenditures exceed its revenues during the period ending June 24, 2021, the City may</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

| Section              | Change                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | notice the Unrepresented group in writing and the Unrepresented group shall be provided an opportunity to meet and discuss one-time cost savings and alternatives such as furloughs, VTO, etc. Nothing in this section requires the City to retain positions (filled or vacant) where state, federal or grant funding has been reduced or eliminated and would require the City to backfill such positions. All other provisions on Layoffs remain unchanged. |
| Provisional Employee | No employees shall hold a provisional appointment in the same position for more than 12 months. The City Manager may extend the provisional appointment beyond this 12- month limitation with the mutual agreement of the parties.                                                                                                                                                                                                                            |
| Limited Reopener     | If during the fiscal year 2020 -2021 the City reaches agreement with SEIU or extends to other unrepresented employees an opportunity to confer on an across the board Cost of Living Adjustment (COLA) increase and/or an additional City contribution towards medical premiums, the City agrees to a limited reopener to meet and discuss with the Unrepresented group on these increases.                                                                   |

**13.36 Summary of July 2023 Changes to the Unrepresented Employee Manual**

- Add second sentence to section 1.6.
- Add sections 3.3.6, 3.3.7, 3.3.8, and 13.26.2.
- Add “group” to section 13.4.
- Add “Office Specialists III” to section 13.19.
- Revise section 13.29.

**13.37 Summary of March 2024 Changes to the Unrepresented Employee Manual**

- Add Section 1.16 – Employee Relations Manager Salary Differential.
- Add Deputy Police Chief to Sections 13.10 and 13.13 (Retiree Medical); modify Section 13.13 to include training and POST certification differentials for Police Chief and Deputy Police Chief.
- Add Assistant to the City Attorney and Employee Relations Manager to at-will classifications (Section 13.18).

**13.38 Summary of June 2024 Changes to the Unrepresented Employee Manual**

- Revise Section 1.15.1 – Salary Resolution.
- Revise Section 5.1 – Holiday to add Cesar Chavez Day.
- Revise Section 8.1 – Medical-Dental Insurance to add vision insurance.
- Revise Section 13.25 and 13.26 – Longevity to advance the effective year from the end of 19 years of service to the end of 14 years of service.

**13.39 Summary of October 2024 Changes to the Unrepresented Employee Manual**

- Revise Sections 1.6, 2.3, 6.1, 6.4, 7.1, 7.2, 10.8.1, 10.9.1, 10.13, 11.2, 12.2, 13.1, 13.31.2, 13.31.3, – to assign authority over City Attorney’s Office to City Attorney, pursuant to Measure KK.
- Revise Section 8.4.6 to reflect Council action in January 2024 eliminating cost-share
- Add Section 10.2.1 - Layoffs in City Attorney’s Office, pursuant to Measure KK.
- Revise Section 3.3.5 – to authorize City Attorney to make determinations on vacation accrual for City Attorney’s Office.
- Revise Section 12.5 to require that the City Attorney be notified of appeals by employees under Article 12.





Office of the City Manager

CONSENT CALENDAR  
October 1, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Grant Application: Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program for the Bay Trail Extension

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to submit a grant application to the Metropolitan Transportation Commission (MTC) Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (SR2TBT) for the fourth phase of the Berkeley Bay Trail Extension Project for up to \$4 Million; accept the grants if awarded, and execute any resulting agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

If the City wins this grant awards, MTC will provide a total of up to \$4 million to the City's State Transportation Grants Fund (Fund 344) from the SR2TBT grant program for the fourth phase of design, permitting and construction of the Bay Trail Extension. The program does not require local matching funds.

CURRENT SITUATION AND ITS EFFECTS

MTC has published a call for Projects for the Safe Routes to Transit and Bay Trail Program (SR2TBT). The Bay Trail Extension to the Berkeley Marina is a spur of the San Francisco Bay Trail that will provide bicycle and pedestrian access from the main spine of the Bay Trail at West Frontage Road into the Marina along the south side of University Avenue. The trail will be built in phases over time, as funding is obtained.

Since a significant portion of the Bay Trail Extension has already been designed, staff has determined that continuing to construct the Bay Trail Extension through Shorebird Park and along the South Cove waterfront is the most appropriate of the City's current parks projects to compete for this grant program. The total proposed project budget is estimated at \$4 million, and the project will consist of the design, permitting and construction of approximately 1,500 feet of Bay Trail Extension and ancillary pathway connections.

BACKGROUND

The Safe Routes to Transit & Bay Trail (SR2TBT) Program is a competitive grant program administered by MTC that funds bicycle and pedestrian access improvements on and in the vicinity of state-owned toll bridges connecting to rail transit stations and ferry terminals. This program is funded through Regional Measure 3 (RM3), passed by voters in 2018, which raised the toll for all vehicles on State-owned toll bridges in the San Francisco Bay Area in order to fund transportation projects that reduce congestion and improve access to toll bridge corridors. The RM3 identifies \$150 million in toll revenue for the grant over two programming cycles, with a base amount of \$50 million available for programming each cycle, and an optional \$25 million for a transformative active transportation project.

The Bay Trail Extension to the Berkeley Marina is a spur of the San Francisco Bay Trail that will provide bicycle and pedestrian access from the main spine of the Bay Trail at West Frontage Road into the Marina along the south side of University Avenue. When fully built, the project will continue to Hs. Lordship's Restaurant, and from there it will run along the water's edge at Seawall Drive and end at the Berkeley Yacht Club. The trail will be built in phases over time, as funding is obtained.

The first portion of the trail was completed in 2014 (Segments One and Two, from West Frontage Road to the South Cove East Parking Lot). In 2016, the City received a grant of \$500,000 in federal funds and \$200,000 in local Marina Funds to complete the third segment of the Bay Trail Extension, from the South Cove East Parking Lot to Adventure Playground, which was completed in 2019.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The projects in these grant applications are designed to promote sustainable transportation and climate resilience by improving traffic safety for pedestrians and bicyclists. This is consistent with the 2009 Climate Action Plan (Plan) Policy 5.A, which calls for expanding and improving the City's bicycle and pedestrian infrastructure. The Plan's target is to reduce transportation emissions 80% below year 2000 levels by 2050. The Plan further states that transportation modes, such as public transit, walking and bicycling, must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

#### RATIONALE FOR RECOMMENDATION

In 2019, the City completed segment 3 of the Bay Trail Extension at the Berkeley Marina. City staff has determined that the next segment of the Bay Trail Extension, continuing through Shorebird Park and the South Cove waterfront, would be the most appropriate of the City's current parks projects to compete for the Metropolitan Transportation Commission (MTC) Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (SR2TBT).

#### ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to apply for these funds. However, no alternative funding source has been identified to complete this project.

Grant Application: Regional Measure 3: 2025 Safe Routes to Transit  
and Bay Trail Program for the Bay Trail Extension

CONSENT CALENDAR  
October 1, 2024

**CONTACT PERSON**

Roger Miller, Senior Management Analyst (510) 981-6704

Attachments:

1: Resolution

**Resolution of Local Support**

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

AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING ASSURANCE TO COMPLETE THE PROJECT

WHEREAS, CITY OF BERKELEY (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$4 million in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Carbon Reduction Program (CRP) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Bay Trail Extension (herein referred to as PROJECT) for the Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149), the Carbon Reduction Program (CRP) (23 U.S.C. § 175), and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and

BE IT FURTHER RESOLVED that APPLICANT will provide any required matching funds; and

BE IT FURTHER RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and

BE IT FURTHER RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and

BE IT FURTHER RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and

BE IT FURTHER RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and

BE IT FURTHER RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and

BE IT FURTHER RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as

set forth in MTC Resolution No. 3866, revised; and

BE IT FURTHER RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and

BE IT FURTHER RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

BE IT FURTHER RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and

BE IT FURTHER RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

BE IT FURTHER RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and

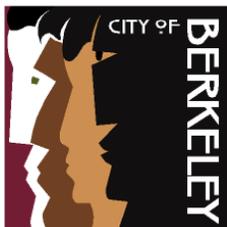
BE IT FURTHER RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

BE IT FURTHER RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and

BE IT FURTHER RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.





Office of the City Manager

CONSENT CALENDAR  
October 1, 2024

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Grant Contract: Housing and Urban Development (HUD) for the African American Holistic Resources Center Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or their designee to accept the U.S. Department of Housing and Urban Development (HUD) grant for the African American Holistic Resources Center Project in the amount of \$1,000,000, execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the pre-construction work and appropriation of funding for related expenses, subject to securing the grants.

FINANCIAL IMPLICATIONS

The City has assembled \$14.1M in funding from the following sources to complete the African American Holistic Resources Center Project: a) \$13.85M from Measure T1, and b) \$250,000 from General Fund. The \$1,000,000 from HUD is in addition to the \$14.1M in existing funding and will help the City cover the current project funding gap that was caused by increased inflation costs for materials and supplies.

CURRENT SITUATION AND ITS EFFECTS

In the Consolidated Appropriations Act, 2022 (Public Law 117-103) (the FY2022 Act), Congress made funding available for “grants for the Economic Development Initiative (EDI) for the purposes, and in amounts, specified for Community Project Funding/Congressionally Directed Spending”. These “Community Project Funding” or “CPF” awards are administered by the Department of Housing and Urban Development (HUD). HUD has assigned Grant Number B-22-CP-CA-0073 for the African American Holistic Resource Center Project in the amount of \$1,000,000. This is a cost-reimbursement grant with a performance period from the date of obligation through August 31, 2030. The grant contract must be signed by the City in order for grant funds to be accessed for the project.

BACKGROUND

The African American Holistic Resource Center (AAHRC) project aims to address critical needs within the Berkeley community, particularly among African American residents. Located at 1890 Alcatraz Avenue, this project involves the demolition of an

existing City-owned building, and construction of a new facility to establish a dedicated, culturally responsive space aimed at enhancing the social determinants of health and overall well-being for African Americans. The AAHRC will serve as a beacon of support and empowerment, offering a comprehensive range of activities and services tailored to foster community strength and resilience. It is designed to meet the specific needs of individuals who have faced disproportionate impacts from racism and gentrification, particularly those from Berkeley's historic South and West neighborhoods, as well as displaced residents. While welcoming all individuals, the AAHRC's primary focus is to validate and strengthen African American identity, cultural values, and traditions through culturally appropriate approaches. By addressing inequities across mental and physical health, among other facets of life, the AAHRC aims to reduce disparities and foster a thriving African American community in Berkeley. At this time, the City has completed the planning phase to identify community needs that the AAHRC can help address, involving a variety of stakeholders and public community meetings.

In November 2016, Berkeley voters approved Measure T1 – a \$100 million dollar general obligation bond to repair, renovate, replace or reconstruct the City's aging existing infrastructure, including facilities, streets, sidewalks, storm drains, and parks. Measure T1 passed with 86.5% of the vote.

In 2020, staff and Commissions engaged in a large public process, consisting of over 45 community meetings to determine the projects to be funded in Phase 2 of Measure T1 projects. This list of projects, including the AAHRC, was approved by the City Council on December 15, 2020, Resolution No. 69,657-N.S.

In 2022, the project had \$7.25M in total project funding (comprised of \$7M T1, \$225K GF). This funding would have been enough to complete the renovation of the 4,000 square foot city-owned building at 1890 Alcatraz Street. With increasing construction costs and the completion of an engineering assessment of the building and site (structural and geotechnical) which found significant structural problems, City staff recommended that this building be replaced. On January 31, 2023, City Council acted to eliminate the option of renovating the existing structure at 1890 Adeline, leaving only the size of building to be determined. On June 13, 2023, City Council authorized an additional funding to construct a new 6,000 square foot facility. With additional funding, and the additional \$1,000,000 from HUD to help cover the projected funding gap, the project budget would be increased to \$14.1M.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

All improvement construction projects are required to comply with the City of Berkeley Climate Action Plan, specifically in terms of reducing construction waste, as well as environmentally preferred purchasing guidelines to reduce waste and increase the use of renewable resources. This project helps the City meet Strategic Goal 1 – infrastructure.

The proposed action is to adopt a resolution authorizing the receipt of grant funds, which will be used for pre-construction costs such as design work, technical studies, and environmental review. Receipt of the funds does not involve any commitment to a

construction project and does not limit the choice of alternatives or mitigation measures. The proposed activity is therefore not a project pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(3) and 15378(b). Appropriate environmental review consistent with the requirements of CEQA will be completed prior to committing to construct the project.

RATIONALE FOR RECOMMENDATION

The allocation of this HUD grant will allow the City to cover the gap in funding caused by recent inflation in order to complete the African American Holistic Resource Center Project.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director of Parks, Recreation & Waterfront, 981-6703  
Evelyn Chan, Supervising Civil Engineer, 981-6700

Attachments

1: Resolution

RESOLUTION NO. -N.S

GRANT CONTRACT: HUD AWARD IN THE AMOUNT OF \$1,000,000 FOR THE  
AFRICAN AMERICAN HOLISTIC RESOURCE CENTER PROJECT

WHEREAS, The African American Holistic Resource Center (AAHRC) project aims to address critical needs within the Berkeley community, particularly among African American residents; and

WHEREAS, in the federal Consolidated Appropriations Act, 2022 (Public Law 117-103) (the FY2022 Act), Congress made funding available for “grants for the Economic Development Initiative (EDI) for the purposes, and in amounts, specified for Community Project Funding/Congressionally Directed Spending”. These “Community Project Funding” or “CPF” awards are administered by the Department of Housing and Urban Development (HUD); and

WHEREAS, HUD has assigned Grant Number B-22-CP-CA-0073 for the African American Holistic Resources Center project. The grant contract must be signed by the City in order for grant funds to be accessed for the project; and

WHEREAS, the City has assembled \$14.1M in funding from the following sources to complete the African American Holistic Resources Center Project: a) \$13.85M from Measure T1, and b) \$250,000 from General Fund. The \$1,000,000 from HUD is in addition to the \$14.1M in existing funding and will help the City cover the current project funding gap that was caused by increased inflation costs for materials and supplies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or their designee is authorized to accept the HUD grant for the African American Holistic Resource Center Project in the amount of \$1,000,000, execute any resulting grant agreements and any amendments; and that Council authorize the implementation of the projects and appropriation of funding for related expenses, subject to securing the grants. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR

October 1, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Amending the Berkeley Hazardous Materials and Waste Management Code

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 15.12, Berkeley Hazardous Materials and Waste Management.

FISCAL IMPACTS OF RECOMMENDATION

There will be limited fiscal impacts from the proposed changes. Most of the adjustments would codify existing operating procedures and align the local ordinance with updated state regulations; the overall impact on permit revenue and staff time will be minimal.

CURRENT SITUATION AND ITS EFFECTS

The purpose of the Berkeley Hazardous Materials and Waste Management Code is to safeguard the community from dangers associated with mishandled hazardous materials and wastes. It provides standards for emergency planning and requires the disclosure of hazardous materials handling to the City of Berkeley. This code also upholds the community's right and need for basic information on the use, handling, storage and disposal of hazardous materials and wastes.

The Toxics Management Division (TMD) of the Planning and Development Department enforces the provisions of the Hazardous Materials and Waste Management Code by identifying violations during routine inspections of regulated facilities, and when responding to resident complaints.

The Berkeley Hazardous Materials and Waste Management Code has not been updated in 20 years and contains a number of outdated references. The code has not yet incorporated the requirements of a recent Assembly Bill and certain other State exemptions or thresholds. Most notably, a subsection of this code references authority granted to Local Oversight Programs (LOPs), but Berkeley has not administered a Local Oversight Program since it was decertified in 2013. A regular audit of TMD by the California Environmental Protection Agency (CalEPA) identified the code's references to a paper form and to LOP authority as outdated. These inconsistencies are noted in the State audit and require correction.

The Berkeley Hazardous Materials and Waste Management Code supports the City's Strategic Plan goal to create a resilient, safe, connected, and prepared city.

### BACKGROUND

The Hazardous Materials and Waste Management Code was last enacted in 2004 through Ordinance 6,824-N.S., and lightly amended in 2006 through Ordinance 6,960-N.S.. Since then, changes in technology, legislation, priorities, and scope of work have made sections of this code either obsolete or incomplete. Importantly, in 2013, a new law (*Health and Safety Code Section 25297.01*) required changes to the State Water Board's LOP certification process in an effort to shift and refocus resources. Every LOP with fewer than 70 open cases was unable to recertify; this impacted six county and 15 local clean-up agencies, including Berkeley, which had only 42 cases open at that time. Existing language in the BMC references work under the purview of LOPs, though Berkeley no longer is one.

As part of a regular triennial state audit administered by CalEPA, a section of the BMC referencing LOP requirements and authority was found to be obsolete, requiring amendment. Other sections of the proposed Ordinance have also been revised for accuracy, clarity, consistency, and improvement. Key changes include:

- Removing references to the Unified Program Consolidated Form (UPCF), because information is now required to be submitted electronically online to the California Environmental Reporting System (CERS) website per State code.
- Incorporating Assembly Bill 2059, which passed after an incident in southern California severely injured responding firefighters. Previously, all retail products sold directly to consumers were exempt from reporting. The proposed ordinance includes a new section of the Berkeley Municipal Code which would require facilities that store more than 165 gallons of liquid, 600 cubic feet of gas, or 1,500 pounds of solid hazardous retail products at or above a National Fire Protection Association (NFPA) or Hazardous Materials Identification System (HMIS) rating of 3 to report these previously exempt hazardous materials. The goal is to enhance public safety by ensuring that emergency responders are aware of hazardous materials stored at retail facilities. This information is crucial for planning and responding to potential incidents, such as fires, spills, or other emergencies involving hazardous substances.
- Incorporating a State exemption for less than 1,320 gallons of fluid in an oil-filled electrical system from reporting requirements. This exemption recognizes that oil-filled electrical equipment with less than 1,320 gallons of fluid presents a lower risk and, therefore, does not necessitate the same level of reporting as larger systems. This exemption is consistent with regulations in surrounding jurisdictions.

- Changing permit requirements for subsurface drillings from three to five feet for consistency with surrounding jurisdictions, and adding a penalty clause for unpermitted work.
- Adding specific language to require closure applications for underground oil-filled equipment, such as heating oil tanks and oil/water separators, which is consistent with surrounding jurisdictions.
- Removing language referencing Local Oversight Program (LOP) work and remediation pursuant to the corrective Action required by the CalEPA during a State audit. This section maintains the authority to abate unlawful hazardous materials releases and also adds a new clause stating that building permit applicants may be required to receive LOP approval from outside agencies prior to permit issuance.
- Updating code references and adding clarifying language as needed.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Underground oil-filled equipment presents a significant hazard to groundwater because leaks are often undetected. Groundwater pollution is particularly difficult to address because it is hard to reach and can disperse over a wide area. The Berkeley Hazardous Materials and Waste Management Code provides clarity on closure requirements for such equipment and bolsters TMD's authority to ensure the equipment is removed and that any leaks have been adequately addressed. This code helps TMD to protect groundwater quality and enhances human and environmental protection.

#### RATIONALE FOR RECOMMENDATION

CalEPA required corrective action to address deficiencies found during the course of a State audit, and revisions to the Berkeley Hazardous Materials and Waste Management Code satisfy this requirement. Other obsolete, unclear, or insufficient sections were identified and updated.

#### ALTERNATIVE ACTIONS CONSIDERED

The Berkeley Hazardous Materials and Waste Management Code could be revised with fewer, or additional, amendments. TMD considered not recommending adoption of the State exemption for oil-filled electrical equipment, which could have greatly increased the number of regulated facilities in Berkeley. TMD also considered not recommending adoption of the state-recommended reporting requirements for certain hazardous retail products that were previously exempt; however, that could indirectly result in increased safety hazards for emergency responders and therefore staff do recommend that Berkeley institute these requirements.

#### CONTACT PERSON

Lam Inthavong, Hazardous Materials Manager, Planning and Development Department,  
510-981-7466

Attachments:  
1: Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 15.12, HAZARDOUS MATERIALS AND WASTE MANAGEMENT

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

Section 1. That Berkeley Municipal Code Chapter 15.12 is amended to read as follows:

**HAZARDOUS MATERIALS AND WASTE MANAGEMENT**

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**Sections:**

- 15.12.010– Findings and Purpose
- 15.12.020– Laws and Regulations Incorporated by Reference
- 15.12.030– Administration
- 15.12.040– Filing of Disclosure Information
- 15.12.050– Quantities Requiring Disclosure
- 15.12.060– Applicability of California Accidental Release Program (CalARP)
- 15.12.070– Permits and Registration
- 15.12.080– Reporting Unauthorized Releases
- 15.12.090– Closure
- 15.12.100– ~~Unauthorized Release Abatement~~ Remediation
- 15.12.110– Community Right to Know; Public Records
- 15.12.120– Fees and Penalties
- 15.12.130– Inspections
- 15.12.140– Enforcement
- 15.12.150– Administrative Enforcement
- 15.12.160– Relation to Existing Laws; Effective Dates
- 15.12.170– Relation to Other Laws

**15.12.010 – Findings and Purpose**

The City Council finds and declares:

- A. Hazardous materials and wastes present in the community may pose acute and chronic health hazards to individuals who live, visit and work in the City of Berkeley and who are exposed to such substances as a result of fire, spills, industrial accidents, or other releases or emissions.
- B. It is the intent of the Council to recognize the community’s right and need for basic information on the use, handling, storage and disposal of hazardous materials and wastes in Berkeley and to establish an orderly system for the provision of such information.
- C. It is further the intent of the Council that the system of disclosure set forth herein shall provide information essential to firefighters, health officials, planners, elected officials, workers and their representatives, businesses and residents in meeting their

responsibilities for the health and welfare of the community in such a way that the statutory privileges against disclosure of non-public records are not abridged.

D. Businesses that safely handle hazardous materials and wastes are beneficial to the economic life of the City and community. It is the intent of the Council to provide program provisions that facilitate the continued and growing presence of safe businesses.

E. This chapter shall apply within the City of Berkeley, and also in contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has regulatory and enforcement authority by agreement or otherwise.

F. It is further the intent of the Council to conform the provisions of this chapter to California laws regulating the storage and handling of hazardous materials and wastes, including: California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapters 6.7 ~~and 6.75~~ (underground storage tanks), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and California Water Code Division 7, Chapter 10, Article 4 (water, cathodic protection and groundwater monitoring wells). The City of Berkeley hereby assumes responsibility and exclusive jurisdiction for these laws, to the extent authorized by law, including designation as a Certified Unified Program Agency (CUPA). These state laws, and state regulations adopted in furtherance of these laws, are incorporated into this chapter by reference, except as modified within this chapter.

G. It is further the intent of the Council to conform the provisions of this chapter to California laws regulating the remediation of contamination resulting from releases of hazardous materials and wastes, including those provided by California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and California Water Code Division 7, Chapter 10, Article 4 (water, cathodic protection and groundwater monitoring wells), ~~the laws identified in subsection F of this Section 15.12.010, as well as Chapter 6.8 of Division 20 of the California Health and Safety Code, and Division 7 of the California Water Code. In addition to the provisions set forth in Chapter 1.24 of the Berkeley Municipal Code, the City of Berkeley hereby assumes responsibility, to the extent authorized by law, for the abatement of nuisances and remediation of contamination resulting from releases of hazardous materials and waste.~~

### **15.12.020 – Laws and Regulations Incorporated by Reference**

The following provisions of state law, with their implementing regulations and agency resolutions, are hereby incorporated into this chapter by reference: California Health and Safety Code Division 20, Chapter 6.5 (hazardous waste), Chapter 6.67 (aboveground storage of petroleum), Chapters 6.7 ~~and 6.75~~ (underground storage tanks), Chapter 6.8 (Carpenter-Presley Tanner Hazardous Substances Account Act), Chapter 6.11 (unified program), Chapter 6.95 Article 1 (hazardous materials) and Article 2 (accidental release prevention); and Division 7 of the California Water Code (water quality), and Department of Water Resources Bulletins No. 74-81 and 74-90 (water, cathodic protection and groundwater monitoring wells). This chapter contains additional

stricter local requirements in accordance with Sections 25299.2 and 25500 of the California Health and Safety Code. This chapter also incorporates by reference provisions of the Uniform Fire and Building Codes which pertain to management, containment, security and separation of hazardous materials and wastes, as they may be adopted from time to time by the City of Berkeley. The provisions of this chapter shall conform to these incorporated provisions as they may be amended, unless explicitly modified within this chapter.

### 15.12.030 – Administration

This chapter shall be administered and enforced by the hazardous materials manager. The hazardous materials manager may, for purposes related to this chapter, undertake actions, including but not limited to, the maintenance and verification of files relating to this chapter, the acquisition of additional information on hazardous materials and wastes and their handling, public education regarding hazardous materials and wastes, and promotion of pollution prevention, recycling of wastes, and compliance with this chapter.

### 15.12.040 – Filing of Disclosure Information

A. Each handler, or facility under the jurisdiction of the City of Berkeley, that handles hazardous material or waste in a quantity subject to disclosure under the provisions of Section 15.12.050 at any time must submit the following information at the time it begins operations, or at the time it first begins to handle a hazardous material or waste that must be disclosed:

~~1. Unified Program Consolidated Form (UPCF), including additional information required under this chapter; and~~

~~2. All information required to be submitted under the authority of Health and Safety Code Sections 25505, 25508(a)(1), 25508.1, 25508.2, and 25508.3; and any additional information required under this chapter. 25503, 25503.3, 25503.5, 25504, 25504.1, 25509 and 25509.3.~~

B. In addition, each handler shall submit annually either a completed certification, signed under penalty of perjury, that previously filed information remains accurate, or revised information.

~~C. This information must be submitted electronically to the California Environmental Reporting System (CERS) pursuant to California Health and Safety Code Sections 25505 and 25508(a)(1).~~

~~GD. A handler shall complete a revised submittal to CERSfile a revised UPCF, including additional information required under this chapter, at least once every three~~

years or as specified by the hazardous materials manager. In addition, a handler shall complete a revised submittal to CERS~~file a revised UPCF~~ within 30 days after any of the following:

1. Introduction of a new hazardous material or waste, or an increase in the total quantity handled of any previously disclosed hazardous material or waste by 100% or more above the quantity previously disclosed, unless the material or waste is exempted from disclosure by any of the exemptions set forth in Section 15.12.050;
2. Change of business address;
3. Change of business ownership; or
4. Change of business name.

DE. The hazardous materials manager shall review each UPCF-CERS submittal and shall accept the form it if it conforms to the requirements of subsection A of this section, and provides complete and adequate information needed for the protection of safety and health and of the environment, or shall require the handler to submit additional information to be included in the form before it may be accepted.

EE. A handler shall supply upon request to the hazardous materials manager additional information determined by the hazardous materials manager to be necessary to protect health and safety or the environment.

FG. All filings shall be made on the City's most current version of the applicable form. If a state form is used, a handler must comply with all additional stricter local requirements in this chapter.

GH. A short form hazardous materials management plan may be required at the discretion of the hazardous materials manager or Fire Chief if the quantity of each hazardous material stored in one or more storage facilities in an aggregate quantity for the facility is 500 pounds or less for solids, 55 gallons or less for liquids, or 200 cubic feet or less at standard temperature and pressure for compressed gases. Such a plan shall include the following components:

1. General facility information;

2. A simple line drawing of the facility showing the location of the storage facilities and indicating the hazard class or classes and physical state of the hazardous materials and wastes being stored and whether any of the material is a waste;
3. Information describing that the hazardous materials and wastes will be stored and handled in a safe manner and will be appropriately contained, separated and monitored;
4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and wastes and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained, and the disposal of hazardous materials and wastes will be in an appropriate manner.

**H.** Each handler, or facility under the jurisdiction of the City of Berkeley, that is subject to the disclosure requirements under the provisions of Section 15.12.050(C)(5) shall file a hazardous waste generator reporting packet in lieu of the requirements of Section 15.12.040(A). The hazardous waste generator reporting packet will include forms to identify the generator, the waste streams, an Emergency Response Plan/Contingency Plan per Health and Safety Code Section 25504(b), and any additional information as required by the hazardous materials manager.

**I.** All facilities that manufacture or use manufactured nanoparticles shall submit a separate written disclosure of the current toxicology of the materials reported, to the extent known, and how the facility will safely handle, monitor, contain, dispose, track inventory, prevent releases and mitigate such materials.

### **15.12.050 – Quantities Requiring Disclosure**

A. Except as provided in the following subsections of this section, each handler who handles the following aggregate quantities of all hazardous materials and wastes at any time during a year shall disclose all such handling: 500 pounds or more of all solid hazardous materials and wastes; 55 gallons or more of all liquid hazardous materials and wastes; or 200 cubic feet or more at standard temperature and pressure of all gaseous hazardous materials.

B. Hazardous materials contained solely in consumer products packaged for distribution to, and use by, the general public shall be exempt from disclosure under this chapter ~~unless the hazardous materials manager has notified the handler in writing that the handling of certain quantities of specified consumer products requires disclosure under this chapter in response to health and safety concerns.~~except as follows:

1. When facilities are handling quantities of consumer product sold at a retail establishment that have a National Fire Protection Association or "NFPA" or Hazardous Materials Identification System or "HMIS" rating of 3 or 4 and is stored, at any time, in quantities equal to, or greater than, 165 gallons for a liquid, 600 cubic feet for a gas, and 1,500 pounds for a solid.

2. When the hazardous materials manager has notified the handler in writing that the handling of certain quantities of specified consumer products requires disclosure under this chapter in response to health and safety concerns.

C. If the aggregate storage capacity of oil at the facility is less than 1,320 gallons and a spill prevention control and countermeasure plan is not required pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, fluid in an oil-filled electrical system that is not contiguous to an electric facility shall be exempt from disclosure under this chapter unless the hazardous materials manager has notified the handler in writing that this handling requires disclosure under this chapter in response to health and safety concerns.

CD. The following disclosure requirements shall apply in addition to those in subsections ~~A, and B, and C~~ of this section:

1. The handler shall disclose handling of any extremely hazardous substance in quantities that require disclosure under the provisions of Section 25532(j) of Division 20 of Chapter 6.95 of the California Health and Safety Code.

2. The handler shall disclose the handling of any quantity of a material or waste that is or contains a material subject to regulation by the Nuclear Regulatory Commission in Title 10 of the Code of Federal Regulations, including any by-product, licensed, source, or special material. Disclosure is not required for manufactured products, such as tritium exit signs, smoke detectors, china, and similar products that are in use by the consumer, as well as naturally occurring radioactive materials, provided that these items are properly disposed of at the end

of consumer use. Facilities may petition the hazardous materials manager for exemption of low risk or short-lived radiological materials, wastes, or products.

3. The handler shall disclose the handling of any quantity of an etiologic agent, as defined in subsection D of Section 15.08.060 of this title. Vaccines are exempt from disclosure requirements.

4. The handler shall disclose the handling or generation of any hazardous waste as defined in this title.

5. As required by the Fire Chief or hazardous materials manager, the handler shall disclose the handling of any hazardous material, as defined by the Uniform Fire Code, in a quantity at least equal to the permit quantity threshold established in the Uniform Fire Code, if that quantity is less than the applicable quantity set forth in subsection A. Permits under Section 105 of the Uniform Fire Code are under the jurisdiction of the Berkeley Fire Department. Submission of the inventory does not constitute meeting the requirements of UFC Section 105.

6. Each laboratory shall identify separately in its disclosure each hazardous material or waste handled at any time during a year in the following quantity: 500 pounds or more of any solid hazardous material or waste; 55 gallons or more of any liquid hazardous material or waste; or 200 cubic feet or more at standard temperature and pressure of any gaseous hazardous material or waste. In addition, each laboratory shall report all other hazardous materials and wastes handled during a year, but may do so by using fire code hazard classes.

7. All manufactured nanoparticles, defined as a particle with one axis less than 100 nanometers in length, shall be reported in the disclosure plan.

#### **15.12.060 – Applicability of California Accidental Release Program (CalARP)**

If the hazardous materials manager determines there to be a greater risk due to the nature of the material stored, the method of storage, location, operations, history of a facility, or other concern, the hazardous materials manager may require a facility to prepare a Risk Management Plan (RMP) and to be subject to Article 2 of Division 20 of the California Health and Safety Code even if quantities of regulated substances are less than state threshold quantities as defined in Section 25532(j) of Chapter 6.95 of Division 20 of the California Health and Safety Code.

### 15.12.070 – Permits and Registration

A. No person shall handle any quantity of hazardous material or waste subject to disclosure under Section 15.12.050, without obtaining all necessary permits and registrations from the hazardous materials manager. All applications for permits or registrations required by this title shall be upon forms furnished by the hazardous materials manager. Each application shall provide the owner's and/or operator's name and address, the designated place, purpose or object to which the permit or registration shall apply, and such additional information as the hazardous materials manager may consider necessary to determine compliance with this title. All applications for registrations and permits shall contain at least the disclosure information required by Section 15.12.040, and shall be accompanied by all plans or specifications required by this title. Applicants for additional registrations or permits shall provide the following additional information:

1. If underground storage tanks are on the place of business, the Unified Program Consolidated Forms applicable CERS sections concerning underground storage tanks shall be completed and submitted;
2. If hazardous wastes generated on-site are being treated on-site and the treatment is subject to the permit-by-rule, conditionally authorized or conditionally exempt tier, the Unified Program Consolidated Forms applicable CERS sections concerning on-site hazardous waste treatment shall be completed and submitted; and
3. Other information as required by the hazardous materials manager.

B. No person shall construct or destroy a well subject to this title, or a borehole more than three-five feet deep, including dewatering wells, without obtaining a permit from the hazardous materials manager.

C. Upon receipt of a completed application for a permit or a registration, the hazardous materials manager shall make the necessary review, investigation or inspection of the application, applicant, plans, specifications, existing or proposed place, operation or object to determine whether they will meet the requirements of this title. The hazardous materials manager may refer the application to such other governmental agencies as

the hazardous materials manager determines may be necessary to determine whether there will be compliance with other applicable laws.

D. If the hazardous materials manager finds that the applicant, place, operation, purpose or object will comply with the requirements of this title, and the place, operation, or object will be conducted in such a manner as to accomplish the objectives and purposes of all applicable laws, and all fees are paid in full, then the hazardous materials manager shall issue a permit or registration, subject to such reasonable conditions and limitations as are required under the circumstances.

E. Permits and registrations are not transferable. Any permit or registration issued to a particular person or for a designated place, operation, purpose or object shall not be valid for use by or for any other person, place, operation, purpose or object.

F. The issuance or granting of a permit or registration, or the approval of plans and specifications, by the hazardous materials manager shall not be construed to be a permit or registration for, or an approval of, any violation of this title or other applicable laws, nor to relieve the applicant from any liability for any other permit, registration or other approval required by other applicable laws.

G. The approval of plans and specifications shall not prevent the hazardous materials manager from thereafter requiring the correction of errors in such plans and specifications, or from preventing installation and construction operations being carried out thereunder when in violation of this title.

H. Every permit or registration issued under this title shall expire as indicated on the permit, or as otherwise provided by the hazardous materials manager, unless sooner suspended or revoked by the hazardous materials manager.

I. Whenever the work authorized by any approval of submitted plans and specifications is not commenced within 90-120 days after the date of such approval or date of issuance of any required building permit, or whenever the work authorized by such approval is suspended for a period of more than 90-120 days, such approval shall expire by limitation. Before the work authorized by such prior approval shall be commenced or continued, a new approval shall be obtained as provided in this title.

J. Every installation, alteration, construction or reconstruction shall be in accordance with the approved plans and specifications, and shall not be changed, modified or altered without written approval of the hazardous materials manager.

K. Every person required to obtain a permit or registration under this title must present a copy of such permit or registration, signed by the hazardous materials manager, when applying for any other business registration, license or permit that may be issued by the City. No building or other construction permit shall be issued by the City to any person covering any work related to this title for which prior approval by the hazardous materials manager of plans and specifications is required herein unless such approval has been granted.

L. The permittee or registrant shall retain each permit or registration issued under this title at its facility, immediately available upon request by an inspector or the hazardous materials manager.

M. Any permit or registration granted under this title may be revoked or suspended by the hazardous materials manager, after written notice, for failure to comply with the requirements of this chapter, or with the conditions of such permit or registration.

1. The permittee or registrant may appeal the revocation or suspension to the City pursuant to the procedures set forth in Chapter 1.24, beginning at Section 1.24.070 of the Berkeley Municipal Code.

2. In the event the handler appeals, the City shall schedule an administrative hearing before a hearing officer designated by the City. Notice of the hearing shall be served personally, or by first class mail, postage prepaid. The notice shall specify the time and place of the hearing, and shall be served not less than ten days prior to the time set for the hearing.

3. The hearing officer shall hear and rule on the permittee's or registrant's appeal. The handler may appear at the hearing by counsel. The formal rules of evidence shall not apply. All witnesses shall be sworn and each party shall have the right to cross-examine adverse witnesses. The hearing officer shall rule on the appeal, and may either affirm or overrule the revocation or suspension, or make such other determinations as are consistent with this chapter.

4. The hearing officer shall notify the handler of their determination in writing, by personal service or by first class mail, postage prepaid.

5. Review of the hearing decision shall be subject to judicial review pursuant Chapter 2.96 of the Berkeley Municipal Code and California Code of Civil Procedure Sections 1094.5 and 1094.6.

### 15.12.080 – Reporting Unauthorized Releases

The handler or any employee, authorized representative, agent or designee shall, upon discovery, immediately report to the hazardous materials manager any actual or threatened unauthorized release of a hazardous material or waste. Releases required to be reported under this section shall include, but need not be limited to, all unauthorized releases that the handler is required to report to any agency under any other law governing the handling of hazardous materials or wastes. The requirement of this section is in addition to any other requirements to report releases, and compliance with this section does not constitute compliance with any other requirements to report releases to any other agency.

### 15.12.090 – Closure

A. It shall be unlawful for any person to abandon or close a hazardous materials or waste storage unit, hazardous waste treatment unit or facility, until a closure application has been submitted to the hazardous materials manager and found by the hazardous materials manager to be complete.

B. It shall be unlawful for any person to abandon or close underground oil-filled equipment such as heating oil tanks, hydraulic lifts, and oil/water separators, until a closure application has been submitted to the hazardous materials manager and found by the hazardous materials manager to be complete.

BC. Closure requires the following steps:

1. A handler shall submit a closure application to the hazardous materials manager at least 45 days prior to abandonment or closure of the regulated unit or facility as described in 15.12.090.A. and at least 10 days prior to the closure of underground oil-filled equipment as described in 15.12.090.B. The closure application shall demonstrate to the satisfaction of the hazardous materials manager that all hazardous materials and wastes which are or have been handled or released in the regulated area will be transported, disposed of or reused in a manner protective of public health and safety and the environment, and that any residual contamination will be removed before closure is complete.
2. The hazardous materials manager shall notify the applicant that the closure application is complete and has been accepted, notify the applicant of any

deficiencies in the closure application that must be corrected prior to closure, or, depending on the complexity of the closure, require a more detailed closure plan.

3. Each regulated area being closed shall be subject to inspection by the hazardous materials manager to confirm that closure has been undertaken in conformity with the closure application and/or plan and that all contamination has been removed.

4. If contamination associated with the regulated area cannot be removed prior to closure, then the closure plan shall include a definite plan for assessing, monitoring, and removing any such contamination. The hazardous materials manager may accept a plan under this subsection only upon a finding that the plan provides adequate protection to public health and safety and the environment.

#### **15.12.100 – Remediation Unauthorized Release Abatement**

A. The handler and any person responsible for handling a hazardous material or waste subject to this chapter, including quantities exempt from disclosure under Section 15.12.050, shall institute and complete all actions necessary to remedy the effects of any unauthorized release. This shall include contaminated buildings, equipment, soil or other media as appropriate to eliminate threats to human health or the environment. This subsection shall not affect any rights of the responsible party or third parties to recover appropriate costs and expenditures from any party.

B. A responsible party can meet the above conditions through an appropriate state or federal agency.

C. All or any part of any real property, or any building or structure located thereon, at which contamination from hazardous materials or wastes is found, which contamination is not being managed in compliance with the provisions of this section, are hereby declared a public nuisance and imminent health threat. The hazardous materials manager may require abatement of this condition by rehabilitation, removal, demolition or repair under procedures and standards provided in this chapter (including provisions incorporated by reference in Section 15.12.020), consistent with the provisions of Chapter 1.24 of the Berkeley Municipal Code.

D. In addition to the requirements set forth in Chapter 1.24, the following shall apply:

1. The notice to abate may require the handler to cease and desist any manufacturing or hazardous material handling activities that cause or contribute to the nuisance or imminent health threat.
2. The notice may specify the corrective action required or require the owner or handler to prepare a Plan of Corrective Action. When the exact nature and extent of contamination cannot be determined based on information available at the time the notice is served, the notice may require the owner and the handler to propose measures in a Plan of Corrective Action to more fully characterize the contamination, present the results of such characterization, and plan for corrective action within the time specified in the notice.

E. In the event that any person undertakes, either voluntarily or under order of the hazardous materials manager, to clean up or abate the effects of any unauthorized hazardous material or waste release, discharge or deposit upon or into any property or facility within the City, the hazardous materials manager may take such action as is necessary to supervise or verify the adequacy of the cleanup or abatement.

F. The City of Berkeley is authorized to clean up or abate the effects of any hazardous material or waste unlawfully released, discharged or deposited upon or into property or facilities within the City. The following persons are considered responsible parties and shall be jointly and severally liable to the City for the payment of all costs incurred by the City as a result of such cleanup or abatement activity:

1. The owner or past owners of the property;
2. The person or persons whose negligent or willful act or omission proximately caused such release, discharge or deposit;
3. The person or persons who owned or had custody or control of the hazardous substance or material at the time of such release, discharge, or deposit, without regard to fault or proximate cause; and
4. The person or persons who owned or had custody or control of the container which held such hazardous material or substance at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

G. As a condition of building permit approval, an applicant may be required to provide environmental screening clearance from either the San Francisco Bay Regional Water

Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property.

GH. See Section 15.12.070 for all permitting requirements.

### **15.12.110 – Community Right to Know; Public Records**

A. Subject to the qualifications and exemptions provided in this section, all forms, permits and registrations are public records and will be publicly available during normal business hours in the offices of the hazardous materials management program in accordance with the following procedures:

1. Written application for disclosure of information shall be submitted to the hazardous materials manager, on a form provided by the City. The written application shall identify the address of the business or City facility for which information is sought. The written application shall also include the applicant's name, address, telephone number, and verification of the applicant's identity.
2. ~~The information requested~~ Information requests shall ~~be provided~~ receive response within ten ~~working~~ calendar days after the submission of a complete application. ~~The information requested shall be provided~~ except ~~that requests~~ for information that is exempt from disclosure under provisions of the Public Records Act (commencing with Section 6250 of the Government Code) or other law or regulation, or has been designated as trade secret or confidential business information by the handler, which shall be subject to the subsections of this section regarding such records. As used in this chapter, trade secret shall have the meaning given by Sections 25290 and 25511 of the Health and Safety Code, Section 6254.7 of the Government Code, and Section 1060 of the Evidence Code.

B. If a handler believes that information required to be disclosed on the disclosure form, a permit or registration application, or under the terms of subsection E of Section 15.12.040 should be exempt from disclosure under this section, the handler shall notify the hazardous materials manager in writing identifying the information the handler believes should be exempt from disclosure, and the basis for such belief. The hazardous materials manager has the right to accept or reject the request.

C. Upon receipt of a request for the release of information to the public, which includes information identified by the handler as exempt from disclosure, the hazardous materials manager shall notify the handler in writing of the request by certified mail, return receipt requested. The hazardous materials manager shall release the information 45 days after the mailing of such notice, unless prior to the expiration of this time period, the handler institutes an action in an appropriate court for a declaratory judgment that such information is subject to protection from disclosure and/or obtains an injunction prohibiting disclosure. The member(s) of the public applying for disclosure shall be considered the real party(ies) in interest in any such action.

D. Any information reported to or otherwise obtained by the hazardous materials manager, or a designee or representative, which has been determined as exempt from disclosure by the hazardous materials manager, shall not be disclosed to anyone except:

1. Any officer or employee of the City of Berkeley, County of Alameda, State of California, or United States of America, in connection with the official duties of such officer or employee under any law for the protection of health. For the purposes of this section, fire and emergency response personnel and health personnel operating within the jurisdiction of the City, and any contractor who is furnished information that is protected from disclosure by this section, shall be considered employees of the City; or
2. To any physician or registered nurse who has determined that such information is necessary to the medical treatment of their patient.
3. Any person who received information protected from disclosure by this section because they qualify<sup>ed</sup> under subdivisions 1 or 2 of this subsection and who, knowing that disclosure of this information is prohibited, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor.

E. Information certified by appropriate officials of the United States as necessarily kept secret for national defense purposes shall be accorded the full protection against disclosure as specified by such officials in accordance with the laws of the United States.

F. The provisions of this section shall not permit a handler of hazardous materials to refuse to disclose to the hazardous materials manager information required by this chapter.

#### **15.12.120 – Fees and Penalties**

A. The City Council shall establish, by resolution, from time to time, hourly billable rates and a schedule of fees for each class of permit and registration issued under this chapter, for additional late fees, charges including penalties and interest for delinquent payments, and for additional services provided by the City to administer and enforce this chapter. These fees shall be sufficient to allow the City to recover its costs of administering this chapter.

B. The amount of any fee or penalty imposed by the provisions of this chapter shall be deemed a debt to the City.

1. If such fee or penalty is not paid when due, such fee or penalty shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which may be imposed and enforced as set forth in Chapter 1.24 of the Berkeley Municipal Code.

C. In addition, the City may collect fees in any other manner permitted by law.

#### **15.12.130 – Inspections**

A. In order to carry out the purposes of this chapter, the hazardous materials manager or their designee has the authority to inspect any place where hazardous materials or wastes are handled, or any place where the hazardous materials manager has reason to believe that an unauthorized release of a hazardous material or waste has occurred, is occurring, or may occur. This authority extends to any property within 2,000 feet of property on which hazardous materials or wastes are handled. The authority conferred by this section includes the authority to conduct any monitoring or testing of any aboveground or underground storage tank system. The right of entry shall be exercised only at reasonable hours unless otherwise required by an emergency, and entry shall be made to any establishment or property only with the consent of the owner or tenant thereof, or with proper inspection warrant or other remedy provided by law to secure entry.

B. All inspections under this chapter shall be at the discretion of the City and nothing in this chapter shall be construed as requiring the City to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be construed to hold the City or any officer, employee or representative of the City responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection.

#### **15.12.140 – Enforcement**

A. Any party that violates any provision of this title shall be liable for civil or criminal penalties, as appropriate, to the full extent provided by state law and this title. This liability may include, but is not limited to, liability for administrative civil penalties, as provided in Section 15.12.150. The remedies provided for under this section are in addition to any the City or any person might have under any other applicable law.

B. Except as otherwise provided, violations of this title are misdemeanors, but may be charged as infractions as provided in Chapter 1.20, in the discretion of the citing officer.

C. Any condition of property which is a violation of this title is hereby declared to be a public nuisance, which shall be subject to the provisions of Chapter 1.24.

D. The hazardous materials manager may cooperate with the City Attorney or the District Attorney as appropriate, in bringing judicial action to enforce any provision of this title. These actions may seek the penalties and relief to the full extent provided under the law, including recovery of the reasonable costs of the City of Berkeley and the District Attorney in prosecuting the enforcement action.

E. Remedies under this chapter are cumulative.

F. The City may recover the costs set forth in subsection G of this section in any administrative proceeding conducted under the authority of this title or Health and Safety Code Section 25404 et seq., any nuisance abatement action under Chapter 1.24, or any civil action filed pursuant to this title, to the extent the City is successful in such proceeding or action.

G. The following costs shall be recoverable:

1. Inspection and reinspection costs;

2. Costs of remediation, if any;
3. Other enforcement costs;
4. Hearing officer costs if a state hearing officer is used;
5. Incidental hearing costs, such as transcripts, transportation, duplication, filing and service costs; and
6. Other personnel costs to the extent reasonably necessary to enforce the law or remediate a violation of law.

H. In any civil action filed pursuant to this chapter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

#### **15.12.150 – Administrative Enforcement**

A. The hazardous materials manager shall be responsible for the issuance of administrative enforcement orders and assessment of administrative penalties for violations of this title. These procedures shall, at a minimum, comply with applicable requirements of Sections 25187, 25404 et seq., 25514.5, and 25514.6 of the Health and Safety Code, and their implementing regulations.

B. The City Council finds and declares:

1. Administrative hearings pursuant to this title will often involve existing or potential threats to public health, safety and welfare, as well as to the environment, thus implicating matters of great public interest. The public at large has a significant stake in being able to observe and participate in such hearings, without undue procedural constraints.
2. The public, the City and the parties to proceedings under this title have a significant interest in their speedy and economical resolution; and the City and public have an additional vital interest in prompt compliance and remediation, when appropriate.

3. Material issues in administrative hearings under Health and Safety Code Sections 25404 et seq. will seldom, if ever, revolve around questions of the personal credibility of witnesses, or testimony of percipient witnesses. Rather, material factual issues will almost always involve technical issues, which will be fully explained in written reports, which will be available to all parties. Accordingly, there is little, if any, benefit to be gained by formal discovery, depositions, cross-examination, and similar formal evidentiary processes.

4. Administrative hearings under Health and Safety Code Sections 25404 et seq. will allow more effective and efficient resolution of issues than formal hearings under Government Code Sections 11500 et seq.

C. Pursuant to Government Code Section 11445.20, administrative hearings held pursuant to Health and Safety Code Sections 25404 et seq. shall be informal hearings as defined in Government Code Sections 11445.10 et seq.

D. Notwithstanding anything to the contrary, nothing herein is intended to, or shall, prevent the hearing officer from converting an informal hearing to a formal hearing under Government Code Section 11445.50, allowing cross-examination in an informal hearing, or taking any other action authorized by law.

E. For purposes of Government Code Section 11440.10, the agency head as defined in Government Code Section 11405.40 shall be the City Manager or their designee; provided that the City Manager may not designate a person subject to the authority, direction, or discretion of the hazardous materials manager.

#### **15.12.160 – Relation to Existing Law; Effective Dates**

A. The requirements set forth in this chapter are declarative of existing law and the responsibilities of handlers of hazardous materials and wastes within the City of Berkeley, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, as of the effective date of the ordinance set forth in this chapter. Handlers filing disclosure forms or permit or registration applications under this chapter shall use revised forms at the time of their first update of the relevant document(s) after the effective date of this revised chapter.

B. The City of Berkeley, under the terms of Section 25502 of the Health and Safety Code, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the

City, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, for implementation of Chapter 6.95 of Division 20 of the Health and Safety Code (commencing with Section 25500), regulating the inventory and preparation of hazardous materials business plans, and regulating risk management planning to prevent accidental releases of regulated substances. This section is declarative of the assumption and responsibilities formerly codified in Chapter 11.52 of the Berkeley Municipal Code.

C. The City of Berkeley, under the terms of Section 25582 of the Health and Safety Code, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the City, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, for implementation of Health and Safety Code Sections 25280 et seq., regulating the underground storage of hazardous substances. This section is declarative of the assumption and responsibilities formerly codified in Chapters 11.52 and 11.54 of the Berkeley Municipal Code (underground storage of hazardous substances).

D. The City of Berkeley, under the terms of Health and Safety Code Section 25404.3 and the certification of the City by the California Environmental Protection Agency on March 1, 1997, hereby assumes and reaffirms responsibility and exclusive jurisdiction within the City, including contiguous areas within ~~the City of Oakland~~ surrounding cities for which Berkeley has received regulatory and enforcement authority by agreement or otherwise, for implementation of Health and Safety Code Sections 25404 et seq., providing for unified programs to regulate hazardous materials and wastes.

#### **15.12.170 – Relation to Other Laws**

A. When conflicts arise between the contents of this chapter and any other provisions of the Berkeley Municipal Code, the most stringent provisions shall prevail, provided said provisions are not in conflict with the laws set forth in Section 15.12.020.

B. The disclosure of hazardous materials information following the provisions of this chapter shall not in any way affect any other liability or responsibility of a handler with regard to safeguarding the health and safety of any employee or any other person or the environment.

C. The degree of protection required by this chapter is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this chapter does not imply that compliance will ensure that there will be no improper release of hazardous materials or wastes. This chapter shall not create liability on the part of the City, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. All persons handling hazardous materials or wastes within the City are advised to determine to their own satisfaction the level of additional protection necessary or desirable to ensure that there is no improper release of hazardous materials or wastes.

D. Subject to the limitations of due process, and notwithstanding any other provisions of this code, whenever the words "shall" are used in establishing a responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the intent of the City Council that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR  
October 1, 2024

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Terrance Davis, Director, Public Works  
Subject: Grant Applications: Regional Measure 3: Safe Routes to Transit and Bay Trail Program

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to submit grant applications to the Metropolitan Transportation Commission (MTC) Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (SR2TBT) for the following projects: Southwest Berkeley Bike Boulevards for up to \$4 million; Adeline Street Quick-Build for up to \$1.05 million; accept the grants if awarded, and execute any resulting agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

If the City wins these grant awards, MTC will provide a total of up to \$4,916,100 to the City's State Transportation Grants Fund (Fund 344) for improvements to several major corridors and local streets. The SR2TBT funding request for the Southwest Berkeley Bike Boulevards project is \$3,875,100. The SR2TBT funding request for the Adeline Street Quick-Build improvements is \$1,041,000. The program requires that applicants provide at least 11.47% of the total funding amount in matching funds. Required matching funds in the amount of \$563,900 are available starting in fiscal year 2028 from Measure BB Fund 135 (Bicycle and Pedestrian) and Fund 134 (Local Streets and Roads). The total estimated SR2TBT funding request for both projects is \$4,916,000.

SR2TBT Grant Funding Requests and Matching Funds

|                                           |                    |
|-------------------------------------------|--------------------|
| Southwest Berkeley Bike Boulevards        | \$3,875,100        |
| Adeline Street Quick-Build                | \$1,041,000        |
| <b>Total SR2TBT Grant Funding Request</b> | <b>\$4,916,100</b> |
| City Matching Funds Available             | \$563,900          |
| <b>TOTAL SR2TBT Grant and City Match</b>  | <b>\$5,480,000</b> |

CURRENT SITUATION AND ITS EFFECTS

The safety countermeasures and traffic calming improvements in these projects were identified in the following Council approved plans:

- 2017 Berkeley Bike Plan
- 2020 Vision Zero Plan

- 2020 Berkeley Pedestrian Plan
- 2020 Adeline Corridor Specific Plan

These specific projects were prioritized because of transportation equity, traffic safety, and grant funding competitiveness. The Equity Priority Area and the High Injury Streets established in the Vision Zero Action Plan are used to prioritize grant applications - both projects are in the Equity Priority Area and are located on or provide alternatives to travelling on High Injury Streets. Both projects provide direct access improvements to transit such as Ashby BART station. These prioritization criteria align with MTC's Equity Priority Communities as well as the regional Vision Zero High Injury Network and the transit access goals of RM3 funding.

These projects will connect people to key destinations in Southwest Berkeley, including the Ed Roberts Campus, Malcolm X Elementary School and businesses in the Lorin District. Both projects will close gaps between existing and planned low-stress bike infrastructure in South and Southwest Berkeley.

### **Southwest Berkeley Bike Boulevards**

The Southwest Berkeley Bike Boulevards project will install bicycle boulevard treatments along the following routes:

- Mabel Street from Russell Street to 66<sup>th</sup> Avenue
- 66<sup>th</sup> Avenue from Mabel Street to Idaho Street
- Idaho Street from 66<sup>th</sup> Street to Harmon Street
- Harmon Street from Idaho Street to King Street
- King Street from Prince Street to Alcatraz Avenue
- Prince Street from King Street to MLK Jr Way, and
- Alcatraz Avenue from Sacramento Street to Adeline Street.

Bicycle Boulevard treatments on Mabel Street, 66th Avenue, Idaho Street, Harmon Street and Prince Street will include traffic circles, new signage, roadway stencils, a hybrid-beacon crossing at Sacramento Street and additional traffic calming safety measures. Bike lanes will be added on Alcatraz Avenue from Adeline Street to King Street with additional traffic calming safety measures along the existing Bicycle Boulevard on King Street. Pedestrian safety will be improved throughout the project area by implementing ADA-compliant curb ramps, median refuges, hardened centerlines, curb extensions and raised and high visibility crosswalks where feasible.

This project connect to, builds on, and leverages the Bicycle Boulevard improvements being constructed by the Alameda County Transportation Commission San Pablo Avenue Corridor Parallel Bike Boulevards project, by establishing a seamless bikeway connection in Southwest Berkeley that offers an alternative to cycling on busy state highways such as San Pablo Avenue and Ashby Avenue.

### **Adeline Quick-Build Project**

This project runs on Adeline Street from Ashby Avenue to the City limit at approximately 61<sup>st</sup> Street. There are currently six lanes of traffic on Adeline Street (three lanes in each direction). This project would reduce the number of through lanes from six to four lanes (two in each direction) and accommodate construction of a one-way protected bike lane (“cycle track”) on each side of Adeline Street. This will make an important connection in the regional bike network, bridging the gap from where the Adeline Street cycle track ends at Ashby Avenue in the City to where it resumes on Adeline at the Oakland border. It will also connect to the cycle track that Oakland is planning for Martin Luther King Jr Way. The low cost of project materials will create a cost-effective means of constructing safe infrastructure while offering the Public Works design flexibility to respond to community input. If awarded, Public Works will coordinate with Oakland’s Department of Transportation to align our project delivery schedules and design as much as possible to provide a safe connection between jurisdictions. Transit operation impacts will be considered, and this project will include bus boarding islands at several stops along Adeline Street to minimize conflicts between bicyclists, buses and pedestrians. The Southwest Berkeley Bike Boulevards and Adeline Quick-Build Projects further the Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities; and creating a resilient, safe, connected, and prepared city.

### **BACKGROUND**

The Safe Routes to Transit & Bay Trail (SR2TBT) Program is a competitive program administered by MTC that funds bicycle and pedestrian access improvements on and in the vicinity of state-owned toll bridges connecting to rail transit stations and ferry terminals. This program is funded through Regional Measure 3 (RM3), passed by voters in 2018, which raised the toll for all vehicles on State-owned toll bridges in the San Francisco Bay Area in order to fund transportation projects that reduce congestion and improve access to toll bridge corridors. The RM3 identifies \$150 million in toll revenue for the grant over two programming cycles, with a base amount of \$50 million available for programming each cycle, and an optional \$25 million for a transformative active transportation project. Of the \$50 million available this cycle, MTC has established a target of \$3 million or greater for quick-build style projects.

### **ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The projects in these grant applications are designed to promote sustainable transportation and climate resilience by improving traffic safety for pedestrians and bicyclists. This is consistent with the 2009 Climate Action Plan (Plan) Policy 5.A, which calls for expanding and improving the City’s bicycle and pedestrian infrastructure. The Plan’s target is to reduce transportation emissions 80% below year 2000 levels by 2050. The Plan further states that transportation modes, such as public transit, walking and bicycling, must become the primary means of fulfilling the City’s mobility needs in order to meet these targets.

RATIONALE FOR RECOMMENDATION

The SR2TBT funding allows the City to address traffic safety issues along major transportation corridors and promote environmentally-friendly mobility. The need for the projects in these applications has been identified in the following Council-approved Plans:

- 2017 Bicycle Plan (Resolution No. 67,945-N.S.),
- 2019 Vision Zero Action Plan (Resolution No. 69,324-N.S.) and
- 2020 Pedestrian Plan (Resolution No. 69,711–N.S).

These documents were the result of robust public engagement processes involving members of the public, Transportation Commissioners and numerous stakeholders throughout the City. Not applying would mean foregoing up to \$4,916,000 in potential grant funding and leaving traffic safety issues on these streets unaddressed.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to apply for these funds. However, no alternative funding source has been identified to complete these key traffic safety and sustainability projects.

CONTACT PERSON

Hamid Mostowfi, Transportation Manager, Public Works 510-981-6403

Eric Anderson, Principal Planner, Public Works, 510-981-7062

Attachments:

1: Resolutions

**Resolution of Local Support**

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

AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING ASSURANCE TO COMPLETE THE PROJECT

WHEREAS, CITY OF BERKELEY (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$3,875,045 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Carbon Reduction Program (CRP) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Southwest Berkeley Bike Boulevards (herein referred to as PROJECT) for the Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149), the Carbon Reduction Program (CRP) (23 U.S.C. § 175), and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and

BE IT FURTHER RESOLVED that APPLICANT will provide any required matching funds; and

BE IT FURTHER RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and

BE IT FURTHER RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and

BE IT FURTHER RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and

BE IT FURTHER RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and

BE IT FURTHER RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the

PROGRAM; and

BE IT FURTHER RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and

BE IT FURTHER RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and

BE IT FURTHER RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

BE IT FURTHER RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and

BE IT FURTHER RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

BE IT FURTHER RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

BE IT FURTHER RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and

BE IT FURTHER RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

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

AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO  
MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING  
ASSURANCE TO COMPLETE THE PROJECT

WHEREAS, CITY OF BERKELEY (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for \$1,041,000 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Carbon Reduction Program (CRP) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Adeline Street Quick-Build (herein referred to as PROJECT) for Regional Measure 3: 2025 Safe Routes to Transit and Bay Trail Program (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149), the Carbon Reduction Program (CRP) (23 U.S.C. § 175), and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

October 1, 2024

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

October 1, 2024

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and

BE IT FURTHER RESOLVED that APPLICANT will provide any required matching funds; and

BE IT FURTHER RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and

BE IT FURTHER RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and

BE IT FURTHER RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if

October 1, 2024

approved, for the amount approved by MTC and programmed in the federal TIP; and

BE IT FURTHER RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and

BE IT FURTHER RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and

BE IT FURTHER RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and

BE IT FURTHER RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and

BE IT FURTHER RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

BE IT FURTHER RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and

BE IT FURTHER RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

BE IT FURTHER RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

BE IT FURTHER RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and

October 1, 2024

BE IT FURTHER RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project RESOLUTION NO. ##,###-N.S.





Sophie Hahn  
 Councilmember, District 5  
 City of Berkeley  
 2180 Milvia Street  
 Berkeley, CA, 94704  
 (510) 981-7150 | [shahn@berkeleyca.gov](mailto:shahn@berkeleyca.gov)

CONSENT CALENDAR

October 1, 2024

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Sophie Hahn, Mark Humbert and Ben Bartlett (Authors)  
 Subject: Budget Referral and Technical Support for La Peña Cultural Center

### RECOMMENDATION

1. Direct the City Manager to work with La Peña Cultural Center to offer support during a post-pandemic time of temporary financial crisis, with all technical and financial assistance and any and all other resources at the City's disposal. Further request the City Manager connect La Peña Cultural Center with any potential outside resources and funding.
2. Refer to the November Budget Process a one-time emergency grant of \$150,000 to La Peña Cultural Center, pending an evaluation of the organization's current financial situation and plans for long term recovery by the City's Economic Development and Civic Arts team.

### SUMMARY STATEMENT

La Peña Cultural Center, a beloved and valued Berkeley institution, is facing a financial crisis that threatens the organization's survival due to multiple factors: the COVID-19 pandemic, the end of COVID relief funds and multi-year grants, shifts in funding portfolios of longtime supporters, and unanticipated staff transitions in key fundraising roles at a critical time. These challenges reflect a broader trend impacting Bay Area cultural and performing arts spaces, such as the Bay Area Children's Theatre, Aurora Theater, the Crucible, and Brava Theater.

This referral requests the City Manager's Office to provide technical assistance to the La Peña Cultural Center. La Peña has previously accessed City resources that helped the organization grow and serve the community. An emergency grant of \$150,000 would further enable La Peña to close part of the gap necessary to survive, thrive, and continue contributing to the cultural life of Berkeley and the Bay Area, and the economic life of South Berkeley.

### BACKGROUND

Since its founding in 1975, La Peña Cultural Center has been a vital space for the Bay Area's Latinx, Caribbean, and Indigenous diasporic communities to preserve and celebrate cultural traditions, present new interdisciplinary creative works, and nurture grassroots social justice movements. Inspired by the original concept of a "peña"—a space of food, music, and political support for resistance movements in South America—La Peña has championed marginalized

communities and challenged dominant narratives for nearly five decades. Today, on the eve of its fiftieth anniversary, it remains the last such peña in existence.

Since its founding, La Peña has used art and music to advance social justice movements at local and global scales, organizing alongside the Third World Liberation Front, the American Indian Movement, the Black Panther Party, and more. La Peña's stage has played host to world-renowned artists and local luminaries including Pete Seeger, Ana Tijoux, Angela Davis, Holly Near, Mercedes Sosa, Lila Downs, and many others.

Today, all of La Peña's public programs—spanning concerts, classes, performances, film screenings, open mics, lectures, and community organizing events—are dedicated to uplifting BIPOC communities by providing the platform, tools, and infrastructure for them to shape and share their own cultural narratives and creating spaces for connection, understanding, and collective action. By fostering creative expression, mentoring and training BIPOC mediamakers, and holding space for community organizers, La Peña cultivates an ecosystem of high-impact arts and social justice organizations both in the Bay Area and beyond.

With a current core staff of just five people, La Peña also employs around 40 teaching artists, sound engineers, light technicians and other event staff, administrative staff, interns, and contractors. Each year, La Peña collaborates with over 400 artists, contributing more than \$70,000 in artist fees to the local creative community. La Peña also supports job pipelines for underserved Berkeley residents, including youth and people of color, through paid production and audiovisual training opportunities. Additionally, for the past 10 years, La Peña has leased its restaurant space to Los Cilantros, a family-owned restaurant spearheaded by Chef/Owner and West Berkeley resident Dilsa Lugo.

La Peña was closed to the public for nearly two years during the pandemic. Since reopening, La Peña's team has worked hard to rebuild its programs and revitalize La Peña's longstanding relationships with community members, attendees, stakeholders, and collaborators. The center has responded to the new post-pandemic array of community needs, experiences, and priorities by improving the building's safety and accessibility, creating digital programming for long-distance engagement; streamlining IT, financial, and production systems; and growing classes and events offerings to pre-pandemic levels.

While many performing arts organizations are struggling to bring people in the door, La Peña has managed to maintain its historic audiences while bringing new generations of artists, organizers and arts lovers into the space for a wide range of cultural programming and intergenerational community-building activities that include monthly series, roots arts classes, community jams, free organizing space for social justice movements and community fundraisers, film screenings, and more. Through this work, La Peña is currently bringing over 10,000 audience members into the space per year and —within the last fiscal year— it has doubled its earned income through increased programming offerings, ticket sales, new collaborations, space rentals, and community memberships.

In 2022, La Peña received funds from the City of Berkeley to complete a long overdue building renovation project that brought the center's restaurant kitchen up to code and allowed tenant and partner restaurant Los Cilantros back into the space. The costs of these necessary facilities updates more than doubled compared to the pre-pandemic estimate, and the organization was forced to move a significant portion of the operations budget and savings into the building project to supplement funds received from the City of Berkeley. Despite the costs, these investments have yielded exciting new opportunities for the organization. In September of last year La Peña's family-owned and operated partner restaurant, Los Cilantros, reopened its doors. This phase was critical to ensuring consistent earned revenue, yielding approximately 8% of total annual support.

However, the increase in earned income through program growth and the restaurant reopening hasn't been enough to offset a series of institutional challenges. La Peña has faced a significant decrease in contributed income, due to the sunsetting of Covid-relief funds and other large multi-year grants, plus transitions and changes in philanthropic portfolios and priorities. Several of La Peña's longtime major funders have seen changes to their leadership and grants portfolios over the past year, with grant cycles on pause. However, based on conversations with consultants and program officers, La Peña expects to see some of this funding restored within the next two fiscal years.

In addition to the philanthropic challenges, La Peña has gone through multiple internal transitions within the last year that have created gaps in the fundraising and development department during a critical period. In this context, Consuelo Tupper Hernández, who stepped into the Executive Director role this spring, has worked diligently to improve the structural foundation of the organization with new systems to increase efficiency despite the reduced team and to develop, with the support of the board, consultants and community allies, a plan to set the organization on course for programmatic sustainability and financial viability. Unfortunately, the current financial situation prevents La Peña from making the necessary investments in personnel and institutional resources in order to execute this plan.

The situation is unsustainable, but temporary. Within the last year La Peña has put a number of emergency initiatives in motion that reflect the deep support La Peña has from the community, including fundraising campaigns and community-led fundraising events resulting in \$46,000 of contributed income that allowed the center to avoid furloughs. The center is also developing new individual giving strategies, including the formation of an "Old Guard" funders group, a fast-growing new membership program, and a planned 50th-anniversary fundraising campaign in 2025. La Peña is also recruiting new board members with fundraising expertise and working with consultants to develop a multi-year strategic plan focused on mission, sustainability, and staff retention. The center's Fall Season is now about to start with highly anticipated community events such as Fist Up Film Festival, the Empowering People of Color Open Mic series, Día de Muertos, Thangs Taken: Rethinking Thanksgiving, and much more.

La Peña has a proven track record of responsible partnership with the City of Berkeley. This request for technical and financial assistance would continue this spirit of collaboration and support. La Peña has a clear plan to pull through the current crisis it is facing. In early 2022, La

Peña received \$23,000 from the Berkeley Arts Recovery Grant program. In fall of 2022, La Peña received a \$150,000 allocation to support necessary repairs to the building's restaurant space. The project was successfully completed last summer, and their restaurant partner reopened last fall. The organization has also received allocations from the Civic Arts Grants Programs, including \$9,000 in general operating support and \$7,000 from the Community Festivals Grant allocated to be used in 2025.

#### RATIONALE FOR THE REQUEST

La Peña has been a cornerstone of artistic creation, community building, and cultural resistance in Berkeley for almost five decades. The demand for its programs far exceeds its current capacity, but without the ability to fill staff and revenue gaps, the center cannot sustain programs or operations. An emergency grant of up to \$150,000 from the City would allow La Peña to rebuild its staffing structure, stabilize operations, and continue its essential role in Berkeley's cultural and economic life.

With technical and financial assistance, La Peña can overcome its current challenges, implement its strategic plan, and achieve long-term sustainability, ensuring its continued contributions to the community for years to come. While the need for assistance from the City is temporary, losing a vibrant cultural center on the eve of its fiftieth anniversary would be a permanent blow to the cultural and economic life of the City, which is unlikely to be remediated in the near future. With intensive counseling and support for the City's Arts and Economic Development staff, and an emergency grant of \$150,000, the City can meaningfully help La Peña move forward with its 2024-2025 program, continue to reach new audiences, and achieve long term viability.

#### ENVIRONMENTAL SUSTAINABILITY

N/A

#### FISCAL IMPACTS

Staff time for intensive counseling and assistance and a one time emergency grant of up to \$150,000.

#### CONTACT

Councilmember Sophie Hahn: (510) 981-7150

#### **Attachments:**

1. [At La Peña's 50th reunion party, Chilean president makes a surprise video appearance](#)



ARTS

# At La Peña's 50th reunion party, Chilean president makes a surprise video appearance

Half a century after its founding, and now facing a perilous financial crisis, the South Berkeley cultural center held a lunchtime party where early members celebrated old times.

By Iris Kwok

Sept. 13, 2024, 4:11 p.m.



Attendees pack the theater at La Peña Cultural Center in South Berkeley during a lunchtime reunion celebration Wednesday. Credit: Kelly Sullivan

Privacy - Terms

La Peña Cultural Center, which has taught generations of Berkeley residents to sing and dance and helped exiled Chileans feel at home, is celebrating an uneasy 50th birthday this year, with the organization in “emergency mode” **amid a financial crisis** that’s led to lower staffing levels and has leaders questioning if the center can hold on.

But the mood was generally festive at a lunchtime reunion party held Wednesday at the center, which was founded exactly a year after the 1973 military coup in Chile. About 90 people — La Peña’s earliest members, many now in their 60s and 70s — reminisced over chicken and cheese enchiladas about the center’s history as a space for music, art and activism.

“This place has been an amazing story — unique in the world — and I’ve been around Europe, Latin America and North America,” said Berkeley filmmaker and musician Hector Salgado.

“Connected with the theme of Chile and solidarity with Chile, there is nothing like this, there’s no other place.”

During a formal program following the luncheon, Salgado introduced a surprise speaker: Chilean President Gabriel Boric, talking to the small Berkeley crowd in a pre-recorded video message. A series of “wows” echoed from the audience when he appeared on a projector.

**RELATED**



**La Peña Cultural Center is facing a financial crisis**

The South Berkeley hub for music, art, and activism has been in “emergency mode” since COVID-era grant funds ran out. It’s hoping to raise \$50,000 by September

August 2, 2024



Chilean president Gabriel Boric speaks to the crowd via video message. Credit: Kelly Sullivan

“I have had the opportunity to meet some of you on occasion during visits to the United States or some of you here in Chile, and I know you are celebrating your anniversary,” Boric told the group in Spanish. “After so much time, so much exile, you have managed to keep this flame alive, this difficult Chilean identity, with so much history, often painful, but also filled with love and hope.”

## From failed French restaurant to a hotbed for political activism



A banner outside La Peña reads “U.S. Hands Off Nicaragua” in this undated archival photo. Credit: La Peña Cultural Center

On Sept. 11, 1974, a small group of young activists filed the paperwork to legally incorporate La Peña.

Most of the group had met the year prior, in April 1973, at a leftist Chilean solidarity event in San Francisco, shortly after Chile’s first socialist president, Salvador Allende, was democratically elected. Two of the seven founding members (Patricia and Hugo Brenni) were Chilean expats. The remaining five (Leenson, Norman Bucklin, Craig McCaleb, Janis Teruggi Page and Leslie Thomas) were non-Chilean Americans.

Then came the **1973 coup in Chile**, in which Allende was overthrown and replaced by the authoritarian right-wing dictator Augusto Pinochet, who detained, tortured and killed political opponents. The activists, previously optimistic about the direction Chile was moving in, were devastated.

La Peña was their response, and the founding date, Sept. 11, was chosen to commemorate the one-year anniversary of the coup. The goal was to create a community center in Berkeley modeled after Chilean

peñas — places that offered food and drink, fueled activism and encouraged conversations about politics, social justice and intercultural understanding.

“We wanted to say we’re here and we’re going to be an act of resistance,” co-founder Eric Leenson said during his onstage remarks to the crowd at the reunion. Behind him, a projector displayed a slideshow of black-and-white archival photographs from La Peña’s early days.

For La Peña’s founders, it wasn’t easy at first to find a suitable location.



The Oakland Tribune reported on the opening of La Peña Cultural Center in 1975. Credit: Oakland Tribune/Newspapers.com

The breakthrough moment came after a long night of drinks. As the group headed home after a fundraising event at then-new Irish pub The Starry Plough, they noticed a “for rent” sign on the shuttered French restaurant next door. They signed a month-to-month lease at 3105 Shattuck Ave. La Peña hasn’t moved since.

La Peña’s doors officially opened on June 7, 1975, with a buffet dinner and program of poetry and music by Bay Area artists, according to a report that ran in the Oakland Tribune.

In South Berkeley, La Peña fit right in.

Its neighbor, The Starry Plough, was **founded in 1973** by volunteers as a safe space for political prisoners from Ireland, Chile and Honduras. Across the street, at 3106 Shattuck, was one of the Black Panther Party’s early headquarters.

La Peña’s space was large enough to hold concerts, came with kitchen equipment — including a walk-in fridge filled with moldy food — and more importantly, rent was cheap. (In 1978,

La Peña’s leaders decided to purchase the building for \$185,000.)

In the early days of La Peña, Leenson said, there were few Chileans at the center. The founding activists were supporters of internationalism, believing all people’s struggles for peace and freedom were intertwined.

“We saw Chile as a prime example of the aspirations that people had and how it was thwarted by imperialism,” Leenson said. La Peña, for example, was a meeting space for the Iranian Students Association, which was fighting to overthrow the Shah.

La Peña's Chilean identity solidified in the late '70s and early '80s, when Chilean refugees fleeing Pinochet's dictatorship began to move to the U.S. "As refugees began coming, La Peña became a natural place for them to congregate," Leenson said. There, they could find both employment opportunities and a cultural home.

The center continues to regularly host film screenings, dance classes, Spanish conversation groups, book talks, fundraisers and concerts. Upcoming events in September include one of its popular "Baila!" dance parties, a concert featuring the Argentine composer and guitarist Lautaro Tissera Favalaro and weekly rehearsals of the long-running La Peña community chorus, founded in 1979 by Chilean refugees.

### **A space not to be taken for granted**



Anniversary celebration attendees sit down to lunch. Credit: Kelly Sullivan

At Wednesday's reunion, as cheery Latin music played over the speakers, La Peña's early members shared hugs and conversation over a hearty meal from Los Cilantros, the Mexican restaurant inside the center. After lunch, the group migrated into the main theater to share personal memories of La Peña.

Tom Miller, the lawyer who in 1977 helped them convert the flailing business into a nonprofit organization, received a long round of applause. As did Paul Chin, a Third World Liberation Front student activist who spent 35 years working on the staff of La Peña.

One co-founder, Janis Teruggi Page, flew in from Chicago, where she lives now.



Co-founders Eric Leenson and Janis Teruggi Page at the reunion. Credit: Kelly Sullivan

Page told Berkeleyside the reunion was a “wonderful” opportunity to spend more time with her longtime friends, including La Peña co-founder Eric Leenson, who she first met as she sought justice for and grieved the loss of her elder brother **Frank Teruggi**. Teruggi, an anti-Vietnam war activist and U.S. citizen was taken to the National Stadium in Santiago and killed by the Junta in September 1973.

“[La Peña] was created the same time I had that loss,” Page said. “It was ... an engagement for me to focus all of my emotions and energy into something positive.” The distance has made it difficult to remain as involved in the community as she once was.

As the **center faces financial challenges**, Page, a public relations expert, said she hopes to become more

involved with its fundraising efforts, which include a request to the city for \$150,000 in emergency grant funding.



Chilean refugee and long-time La Peña member Hector Salgado speaks onstage.

Credit: Kelly Sullivan

Salgado, like many other members Berkeleyside spoke with, met his romantic partner at La Peña.

Salgado was arrested in Chile at 16 for joining a protest and was imprisoned for three years. After international pressure pushed Pinochet to release political prisoners, Salgado, then 19, was exiled and moved to New York before settling in Berkeley to join the Grupo Raiz, a musical ensemble at La Peña that toured internationally and spread awareness of the political situation in Chile.

The music career didn't last — the band went on hiatus so its members could attend college and never got back together — but the relationships did. Salgado majored in international relations at San Francisco State and fell in love with filmmaking, while working as an interpreter for the California Public Defender's Office, working on death penalty cases at San Quentin. (As we spoke, passersby patted Salgado's shoulder to congratulate him on his film being in consideration for the Sundance Film Festival.)



The mural “Songs of Unity” in the La Peña facade depicts prominent Latin American leftist figures, from Chilean Folk singer Victor Jara and Salvadorian Archbishop Oscar Romero to American Labor leader Cesar Chavez. Credit: Ximena Natera, Berkeleyside/CatchLight

In a 2005 essay published in the Berkeley Daily Planet, Chilean exile Fernando A. Torres, a poet and musician who also played in the Grupo Raiz, recalled his experience moving from the East Coast to California in 1979 to play charango at La Peña, a job he had heard about from a fellow exiled Chilean who volunteered there.

He described La Peña as a “welcoming place run by angry-gringos in a crazy city called Berkeley.” “The music, the colorful mural, the paintings, the poetry, the politics, and the wine (not Chilean wine because we had the — Nothing for/Nothing from Pinochet — boycott those years),” he wrote. “I felt at home immediately at La Peña.”

Younger generations of Chilean expats found community at La Peña, too. La Peña recently appointed as executive director Consuelo Tupper Hernández, who was born and raised in Chile before coming to the Bay Area in 2019 to pursue a Masters of Fine Art at the California College of the Arts. She said she

credits the center for helping her feel less isolated from her home country during the 2019 Chilean protests related to economic inequality.

She had tried, to no avail, to find other Chileans in the Bay Area to commiserate with. She looked for groups on Facebook, only to be rejected when she began to bring up Chilean politics. “We don’t talk politics here, we just sell empanadas,” she recalled being told.

“The fact that a space like this exists today ... it’s not something we should take for granted for a second,” Tupper Hernández told the crowd.



Executive Director Consuelo Tupper. Credit: Kelly Sullivan

2 comments



Peace and Justice Commission

ACTION CALENDAR  
October 1, 2024

To: Honorable Mayor and Members of the City Council  
From: Peace and Justice Commission  
Submitted by: Grace Morizawa, Chair, Peace and Justice Commission  
Subject: Resolution Name a City of Berkeley Major Street in Honor of Daniel Ellsberg

RECOMMENDATION

Adopt a resolution that the City of Berkeley Council name a Berkeley major street in honor Daniel Ellsberg to serve as an ongoing reminder of Berkeley’s commitment to peace.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

June 23, 2024, U.S. Conference of Mayors (USCM) unanimously adopted a resolution, co-sponsored by Berkeley Mayor Jesse Arreguin, “The Imperative of Dialogue in a Time of Acute Nuclear Dangers,” calling on “member cities to take action at the municipal level to raise public awareness of the growing dangers of wars among nuclear-armed states, the humanitarian and financial impacts of nuclear weapons, and the urgent need for good faith U.S. leadership in negotiating the global elimination of nuclear weapons.

At its regular meeting February 6, 2023, the Peace and Justice Commission adopted the following recommendation proposing City Council name a major street in honor of Daniel Ellsberg.

M/S/C: McNeil, Taylor  
Ayes: Bohn, Jacquilin, Lippman, McNeil, Mencher, Morizawa, Taylor  
Noes: Elias  
Abstain: N/A  
Absent: Guarino

Name a City of Berkeley Major Street in Honor of Daniel Ellsberg

ACTION CALENDAR  
October 1, 2024

BACKGROUND

Daniel Ellsberg over many years advocated disarmament and spoke against nuclear weapons. He was an outstanding educator and activist on some of the most important issues facing the Earth for decades and supported, encouraged and inspired whistleblowers, journalists and activists all over the world. And in recognition of his contribution and significant leadership the City of Berkeley declared the week of April 24-30, 2023 Daniel Ellsberg Week.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental effects.

RATIONALE FOR RECOMMENDATION

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

Berkeley has long been a national leader in speaking out for peace and justice, both locally and globally. Berkeley has repeatedly set a precedent for taking principled stances and recognizing those working for peace.

Naming a street in honor Daniel Ellsberg, who has been recognized by the City of Berkeley and known to the world as a leader of peace and spokesperson for nuclear nonproliferation will serve as an ongoing reminder to Berkeley's youth and all residents of the great moral value of whistleblowers, standing up for one's beliefs, and working for a permanent end to nuclear weapons and nuclear war.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report. If the City Council wishes to pursue this renaming, the item must be referred to the Transportation and Infrastructure Commission for a recommendation pursuant to the Naming Policy in the City Council Rules of Procedure.

CONTACT PERSON

Okeya Vance-Dozier, Peace and Justice Commission Secretary, City Manager's Office  
510-529-5376

Attachments:

1: Resolution

Name a City of Berkeley Major Street in Honor of Daniel Ellsberg

ACTION CALENDAR  
October 1, 2024

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

RESOLUTION TO NAME A CITY OF BERKELEY MAJOR STREET  
IN HONOR OF DANIEL ELLSBERG

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

WHEREAS, the City of Berkeley has long been a national leader in speaking out for peace and justice, both locally and globally. Berkeley has repeatedly set a precedent for taking principled stances and recognizing those working for peace; and

WHEREAS, on June 23, 2024, U.S. Conference of Mayors (USCM) unanimously adopted a resolution, co-sponsored by Berkeley Mayor Jesse Arreguin, "The Imperative of Dialogue in a Time of Acute Nuclear Dangers," calling on "member cities to take action at the municipal level to raise public awareness of the growing dangers of wars among nuclear-armed states, the humanitarian and financial impacts of nuclear weapons, and the urgent need for good faith U.S. leadership in negotiating the global elimination of nuclear weapons;"<sup>i</sup> and

WHEREAS, the USCM "calls on the Administration and Congress to reconsider further investments in nuclear weapons and find ways that our finite federal resources can better meet human needs, support safe and resilient cities, and increase investment in international diplomacy, humanitarian assistance and development, and international cooperation to address the climate crisis;"<sup>ii</sup> and

WHEREAS, the City of Berkeley has long been a member of Mayors for Peace, the original sponsor of the above resolution;<sup>iii</sup> and

WHEREAS, Daniel Ellsberg risked life in prison to reveal the Pentagon Papers including 7,000 government pages of deceptions by successive presidents who exceeded their authority, bypassed Congress, and misled the American people and the rest of the world; and

WHEREAS, Mr. Ellsberg's actions contributed to ending the war in Vietnam, and to discouraging further war-making, including by informing the public of the inner workings of the U.S. government;<sup>iv</sup> and

WHEREAS, Daniel Ellsberg was an outstanding educator and activist on some of the most important issues facing the Earth for decades and supported, encouraged and inspired whistleblowers, journalists and activists all over the world;<sup>v</sup> and

Name a City of Berkeley Major Street in Honor of Daniel Ellsberg

ACTION CALENDAR  
October 1, 2024

WHEREAS, the City of Berkeley declared the week of April 24-30, 2023 Daniel Ellsberg Week; and

WHEREAS, naming a major Berkeley street in honor of Daniel Ellsberg will serve as an ongoing reminder to Berkeley's youth and all residents of the great moral value of whistleblowers, standing up for one's beliefs, and working for a permanent end to nuclear weapons and nuclear war.

NOW THEREFORE, BE IT RESOLVED by the City of Berkeley that Berkeley shall name a major city street in honor and recognition of Daniel Ellsberg, his moral courage and as a legacy for peace.

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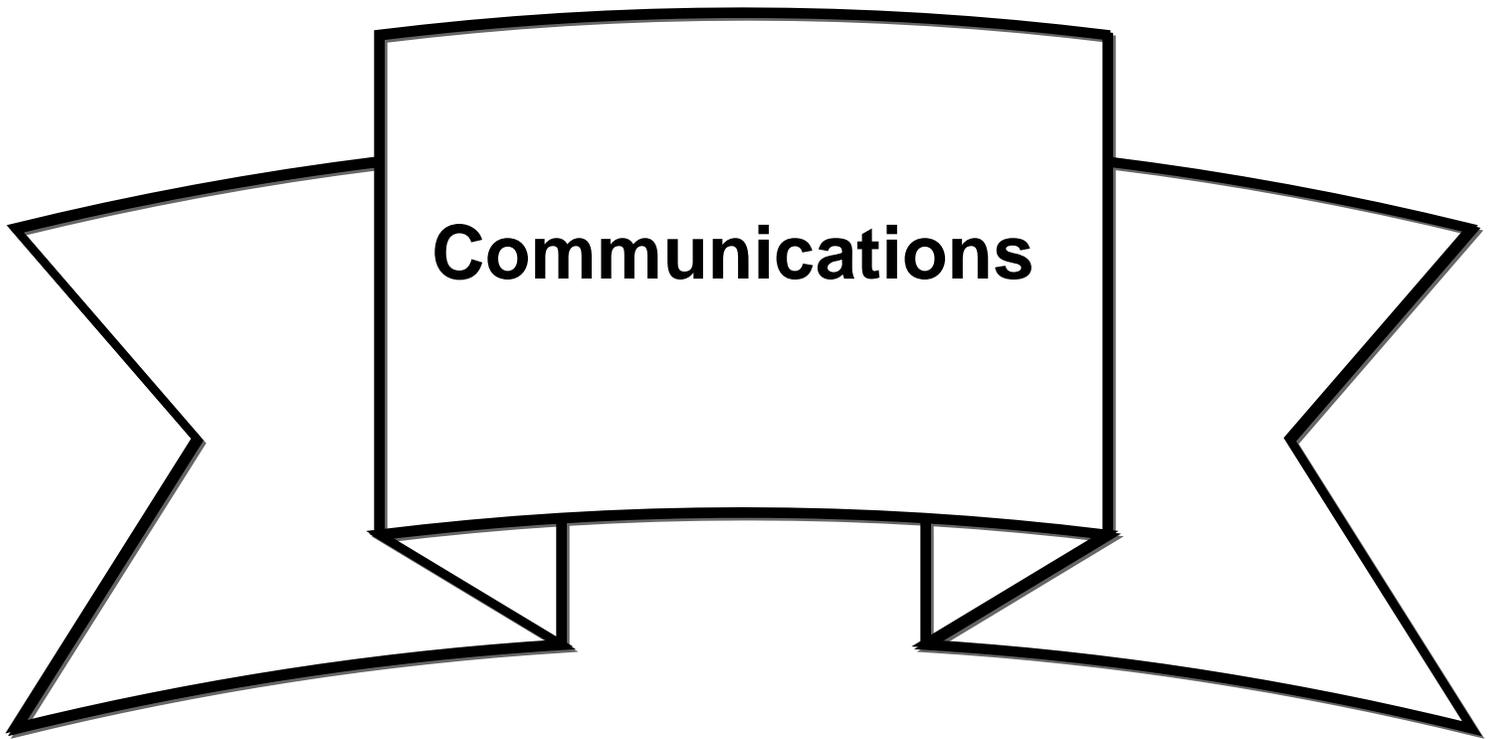
<sup>i</sup> "The Imperative of Dialogue in a Time of Acute Nuclear Dangers," June 2024, U.S. Conference of Mayors, [https://legacy.usmayors.org/resolutions/92nd\\_Conference/proposed-review-list-full-print-committee-individual.php?resid=a0FKY000000sZ8x2AE](https://legacy.usmayors.org/resolutions/92nd_Conference/proposed-review-list-full-print-committee-individual.php?resid=a0FKY000000sZ8x2AE)

<sup>ii</sup> USCM

<sup>iii</sup> USCM

<sup>iv</sup> City of Berkeley Proclamation in Honor of Daniel Ellsberg, April, 24, 2023.

<sup>v</sup> City of Berkeley



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**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**Records Online**

<https://records.cityofberkeley.info/>

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