

AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, April 15, 2025

6:00 PM

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

ADENA ISHII, MAYOR

Councilmembers:

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

DISTRICT 5 – SHOSHANA O'KEEFE
DISTRICT 6 – BRENT BLACKABY
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/1617330038>. 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: 161 733 0038**. 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 \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 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 Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

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

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

Public Comment on Non-Agenda Matters: *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

In-person attendees 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 the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.

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. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. 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. 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. Proposed Amendments to the Building Emissions Saving Ordinance (BESO); Amending Berkeley Municipal Code Chapter 19.81**
From: City Manager
Recommendation: Adopt a second reading of Ordinance No. 7,953-N.S. amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Consent Calendar

2. Establishment of M-RD Zoning District, Associated General Plan and West Berkeley Plan Amendments, and Environmental Impact Report

From: City Manager

Recommendation: Adopt a second reading of Ordinance No. 7,957–N.S. amending Title 23 of the Berkeley Municipal Code and the Zoning Map to establish the Manufacturing, Research & Development (M-RD) zoning district to encourage redevelopment of the former Pacific Steel Casting (PSC) site.

First Reading Vote: All Ayes.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

3. Police Accountability Board – Appointment of New Member

From: City Manager

Recommendation: Adopt a Resolution appointing a new member to the Police Accountability Board nominated by Vice-Mayor Bartlett.

Financial Implications: See report

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

4. Contract: University of California, San Francisco for Encampment Resolution Funding Research Evaluation

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and any necessary amendments with The Regents of the University of California, on behalf of its San Francisco campus, to evaluate the success of its Encampment Resolution Funding Round 3 (ERF-3), for a term of two years (January 1, 2025 – December 31, 2026) and in an amount not to exceed \$200,000.

Financial Implications: See report

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

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 15, 2025

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: See report

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

Consent Calendar

- 6. Contract No. 32200086 Amendment: Crisis Services of Alameda County for Mental Health Crisis Line**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32200086 with Crisis Services of Alameda County for Mental Health Crisis Line services for a total contract not to exceed amount of \$100,000 through June 30, 2028. This amendment will add \$50,001, as well as extend the contract term three years.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
- 7. Contract No. 32200191 Amendment: Options Recovery for Substance Use Disorder Services Co-Location**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32200191 with Options Recovery for Substance Use Disorder services for a total contract not to exceed amount of \$1,000,000 through June 30, 2027. This amendment will add \$500,000 and two years to the contract term.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
- 8. Contract No. 32000177 Amendment NextRequest PRA Software**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000177 with NextRequest for software hosting, implementation, maintenance and related services for a Public Records Act Respons Software System, for an additional amount not to exceed \$61,098, for a total not to exceed value of \$194,475, for the period commencing on July 1, 2019 through June 30, 2027.
Financial Implications: See report
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 9. Purchase Order with Multiquip Inc. for a Portable Emergency Power Generator for Berkeley Tuolumne Family Camp**
From: City Manager
Recommendation: Adopt a Resolution allowing the City to participate in Sourcewell contract bid procedures and authorize the City Manager to execute a purchase order for one Multiquip Portable Generator and associated options with Multiquip Inc. in an amount not to exceed \$116,766.
Financial Implications: General Fund - \$116,766
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

10. Proclamation of the City of Berkeley Designating April 17 as Police Accountability Day

From: Police Accountability Board

Recommendation: Adopt a proclamation declaring April 17 as Police Accountability Day to honor the establishment of civilian oversight of law enforcement in the City of Berkeley through the founding of the Police Review Commission and to reaffirm the City's commitment to police accountability and transparency. The proclamation encourages the Police Accountability Board and the Office of the Director of Police Accountability to collaborate with community organizations, educational institutions, and local leaders to organize events, initiatives, and activities that raise public awareness and promote engagement in police accountability. Additionally, the proclamation will reaffirm the City of Berkeley's dedication to being a national leader in police accountability, advancing policies and practices rooted in justice, equity, and community trust.

Financial Implications: None

Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

11a. Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board *(Reviewed by the Public Safety Policy Committee)* *(Item contains supplemental material)*

From: Police Accountability Board

Recommendation: The Police Accountability Board formally recommends to the City Council that it:

1. Pass an ordinance or otherwise affirm the Police Accountability Board's ability to access documents and records in furtherance of its central accountability function, consistent with Charter Amendment Section 125.
2. Adopt a robust resolution ensuring full and meaningful accountability for sworn officers—whether on-duty or off-duty—who engage in misconduct of any kind, but especially actions or expressions of racial or other types of bias.
3. Direct the City Manager to work with the Berkeley Police Department, Police Accountability Board, and the Office of the Director of Police Accountability to create a public repository to fulfill the vision of California Penal Code Section 832.7(b)(1), allowing for transparency in cases of sustained allegations of officer racism or other discriminatory conduct or expression.
4. Call on California state legislators to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600 – 41603).

Policy Committee Recommendation: To send item to City Council with a negative recommendation.

Financial Implications: See report

Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

Consent Calendar

- 11b. Resolution: Affirming Support for Berkeley Police Department, Police Accountability Board, and Office of the Director of Police Accountability in Response to Downtown Task Force Texting Offenses Investigation**
From: Councilmember Blackaby (Author)

Recommendation: Adopt a Resolution affirming our community's support for the Berkeley Police Department (BPD) and acknowledging the work of the Police Accountability Board (PAB) & the Office of the Director of Police Accountability (ODPA) in investigating BPD's Downtown Task Force texting offenses, ultimately making recommendations to increase trust, transparency, and accountability. Additionally, the Resolution condemns any and all racism and misconduct, affirms the City Council's opposition to arrest quotas, and asks the California Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code.

Financial Implications: None

Contact: Brent Blackaby, Councilmember, District 6, (510) 981-7160

Council Consent Items

- 12. Referral to City Attorney for Sanctuary City Ordinance**
From: Mayor Ishii (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor), Councilmember Taplin (Co-Sponsor)

Recommendation: Referral to the City Attorney to return to City Council in June with an analysis and recommendation regarding the codification of Berkeley's Sanctuary policies and protections through a city ordinance.

Financial Implications: None

Contact: Adena Ishii, Mayor, (510) 981-7100

- 13. Budget Referral: Ohlone Greenway Safety Improvements Project Unfunded Balance**

From: Councilmember Kesarwani (Author)

Recommendation: Refer to the fiscal year 2025-26 budget process \$150,000 to fund the outstanding balance for consultant costs to finalize the design concepts to complete the Ohlone Greenway Safety Improvements Project, which has already been awarded \$5.3 million in construction funds to complete the project.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Council Consent Items

14. Establish Rules and Limits When Community-Based Organizations Receive City Funding Without Procurement to Promote Transparency, Fairness, and Stewardship of Public Funds *(Reviewed by the Budget and Finance Policy Committee)*

From: Councilmember Kesarwani (Author), Mayor Ishii (Co-Sponsor)

Recommendation: Approve the Resolution and refer to the City Manager to establish an open and transparent process for community-based organizations seeking a grant of emergency funds outside of the City's existing request for proposal (RFP) or other procurement processes. The process to be established should include the following components:

- Annual Funding Limit. Establish a maximum amount of \$25,000 annually to be granted to a Berkeley-based non-profit or public organization, and a grand total of \$225,000 annually to up to nine community-based organizations operating in Berkeley.

- "Declaration of Need" Form Available on a City Webpage. A Declaration of Need application form should be made available on a dedicated City webpage to ensure all community-based organizations have an equal opportunity to learn about the availability of funds, including the deadline for submitting the completed form.

- Declaration of Need Form Should Require Documentation of Financial Need and Non-Profit Status (When Appropriate). The Declaration of Need form should be short to reduce the burden on community-based organizations but should include at a minimum a request to explain the purpose/need for the funds and document the organization's financial need. In addition, the City should verify that the organization is a registered non-profit organization (if applicable).

- Selection Process. The City Manager shall establish a process for selecting qualifying community-based organizations, including establishing a scoring criteria and submitting recommendations to Council as part of the annual budget development process. Pursuant to Budget and Finance Policy Committee discussion, to the extent practicable, consider awarding funds on a rolling basis to better support agencies who may be facing a fiscal emergency.

- Financial Reporting Requirement for Selected Community-Based Organizations. For organizations selected to receive emergency funding of up to \$25,000, the City shall enter into a contract that requests documentation at six months and 12 months to ensure that funds were used for the purpose for which they were requested. This financial reporting requirement should apply as soon as practicable to FY2024-25 budget allocations, and continue for future budget years.

Policy Committee Recommendation: To send the item to Council with a positive recommendation.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Council Consent Items

15. **Celebración Cultural Sylvia Mendez (Spring Cultural Celebration) by the Sylvia Mendez School PTA: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Bartlett (Author)
Recommendation: Adopt a Resolution approving the expenditure of funds, including \$1,500 from the discretionary council office budget of Councilmember Ben Bartlett, to the Sylvia Mendez Elementary School PTA to host a Spring Cultural Celebration event on April 27, 2025, on campus. The funds will be relinquished to the City's General Fund from the discretionary council office budget of Councilmember Ben Bartlett and the discretionary council office budgets of any other City Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
16. **Resolution Commemorating April 24, 2025, as Berkeley Holocaust Remembrance Day**
From: Councilmember Tregub (Author), Councilmember O'Keefe (Author), Councilmember Humbert (Author), Mayor Ishii (Co-Sponsor)
Recommendation: Adopt a Resolution proclaiming April 24, 2025, as Holocaust Remembrance Day in the City of Berkeley, in memory of those who were murdered and in honor of the survivors as well as the rescuers and liberators; and committing to never forgetting the events of the Holocaust, actively working to combat antisemitism, racism, bigotry, and hatred in all forms, and promote human rights and dignity for all.
Financial Implications: None
Contact: Igor Tregub, Councilmember, District 4
17. **Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to 2025 Virtual Holocaust Remembrance Day Program**
From: Councilmember Tregub (Co-Author), Councilmember O'Keefe (Co-Author), Councilmember Humbert (Co-Author), Mayor Ishii (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including \$500 from Councilmember O'Keefe, \$500 from Councilmember Tregub, \$500 from Councilmember Humbert, and \$500 from Mayor Ishii to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund.
The relinquishment of funds from Councilmembers O'Keefe, Tregub, Humbert and Mayor Ishii's respective discretionary Council Office Budgets as well as any other members of the Berkeley City Council who would like to contribute, allows the City of Berkeley to invite the community to its 22nd Annual Holocaust Remembrance Day virtual program, created by the community with City Council support.
This year's program will be held virtually on April 24, 2025.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Council Consent Items

- 18. Resolution in Support of California Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974.**
From: Councilmember Tregub (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Adopt a Resolution in support of California State Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974, which is moving through the legislature to appear on the California general election ballot on November 3rd, 2026; and distribute copies to the California Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, California Senate President pro Tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.
Financial Implications: Staff time
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140
- 19. Budget Referral for Thousand Oaks Park Playground Update**
From: Councilmember O'Keefe (Author), Councilmember Humbert (Co-Sponsor)
Recommendation: Refer \$80,000 to the June budget process (FY26 Mid-Biennial Update) for the completion of a new airplane themed play structure at Thousand Oaks Park, located at 1700-1780 Tacoma Avenue.
Financial Implications: See report
Contact: Shoshana O'Keefe, Councilmember, District 5, (510) 981-7150
- 20. Study: Sabbatical Leave for City of Berkeley Employees**
From: Councilmember Hahn (Author) (Reviewed by the Budget & Finance Policy Committee)
Recommendation: Refer to the City Manager study of a potential Sabbatical Leave policy for all City of Berkeley employees, modeled after the City's existing agreements with several bargaining units.
Consult with labor partners and City employees to explore a variety of terms and options, and the costs/benefits of unpaid, partially paid, and paid Sabbatical Leaves. Report findings to Council, outlining possible options and their financial impacts as well as potential benefits to recruitment, morale, longevity of tenure, and wellbeing.
Policy Committee Recommendation: Forward item to Council with a negative recommendation.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Council Consent Items

21. Music in the Elmwood Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmember Humbert (Author)

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Councilmember Humbert to the Elmwood Business Association for the Music in the Elmwood Festival on Sunday, May 4, 2025 with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Humbert and any other Councilmembers who would like to contribute.

Financial Implications: See report

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

Information Reports

22. Age-Friendly Berkeley Update

From: City Manager

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

23. Climate Action Plan and Resilience Update

From: City Manager

Contact: Jordan Klein, Planning and Development, (510) 981-7400

24. Notice of Decision: 21 Mosswood Road/#LMIN2024-0007

From: City Manager

Contact: Jordan Klein, Planning and Development, (510) 981-7400

25. Notice of Decision: 2138 Cedar Street/#LMSAP2024-0008

From: City Manager

Contact: Jordan Klein, Planning and Development, (510) 981-7400

26. Notice of Decision: 2231 McKinley Avenue/#LMIN2024-0005

From: City Manager

Contact: Jordan Klein, Planning and Development, (510) 981-7400

27. Notice of Decision: 2425 Durant Avenue/#LMIN2024-0008

From: City Manager

Contact: Jordan Klein, Planning and Development, (510) 981-7400

28. Environment and Climate Commission 2025 Work Plan

From: Environment and Climate Commission

Contact: Sarah Moore, Commission Secretary, (510) 981-7400

29. Police Accountability Board Recommendation: Former Board Member Recognition

From: Police Accountability Board

Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

Information Reports

30. City Auditor's Office 2024 Peer Review Results

From: Auditor

Contact: Jenny Wong, Auditor, (510) 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

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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, and through the City's online records portal: <https://records.cityofberkeley.info/>.

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

and may be accessed 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 ada@berkeleyca.gov, (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 April 3, 2025.*



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 #13: Budget Referral: Ohlone Greenway Safety Improvements Project Unfunded Balance**

1. Wahid Amiri
2. Clifford Fred
3. Carole Bennett-Simmons, Dave Drummond, and Mike Nettles on behalf of CHIA

### **Alternative Housing**

4. Eric Taylor
5. Claire Heinzelman
6. David Freeling
7. George Torgun
8. Leigh Stewart, Iris Juan and Baby Theo from West Berkeley
9. Cameron Woo
10. Allan Abshez
11. Heather Clague
12. Vincent Casalaina
13. Russ Greene
14. Mallorie Baron

15. Claudia Kawczynska
16. Kristine Dixon
17. Alexander Stec
18. Stephen Born
19. Jane Franch
20. Monika Mann
21. Tom Stifler
22. Jan Ruchlis
23. Linda Zagula
24. Camille Antinori
25. Frako Loden
26. Erik Schmitt
27. Stephen Most
28. Catherine Born
29. Rebecca Herman
30. Diana Bohn
31. Julie Feldman
32. Jim Rosenau
33. David Levinson
34. Orion Fulton
35. Amy Hill
36. Charlene Washington

#### **Encampments**

37. Lj Cranmer
38. John Craner
39. Daniel Korson
40. Noami Friedman

#### **Fire Concerns**

41. Dr. Richard A. Laden
42. Marek z Jeziorek
43. Janet Stromberg

#### **EMBER**

44. Maureen Burke
45. Ruth Ehrenkrantz
46. Gary Croner
47. Scott Sacherer
48. Bruce Brody
49. Michael Downs

#### **Resolution for Mahmoud Khalil**

50. Emily Katz
51. Allen Barth
52. Jean Tepperman

53. Leah
54. Florence Viray
55. Ann-Marie Hogan
56. Summer Brenner
57. Gael Alcock
58. Juli Dickey
59. Linda Worthman
60. Lori Berlin
61. Paula Aiello
62. Lexine Alpert
63. Annie Alcott
64. Sasha Stahl
65. Farida Ibegazen
66. Janice Schroeder (2)
67. Rafael Jesus Gonzalez
68. Libby Sayre
69. Haiganoush Preisler
70. David Bacon
71. Michael Lonergan
72. Anita Medal
73. Kathleen Weaver
74. Wade Skeels
75. Hali Hammer
76. Jonah Gottlieb
77. Jaleh Niazi
78. Esfandiar Imani
79. Christopher Kroll
80. Phoebe Thomas Sorgen
81. Elana Auerbach

**Proclamation to Honor**

82. Jen Gall

**SeeClickFix**

83. Stefan Lasiewski

**Oxford Elementary**

84. Aimee Baldwin (4)

**Proclamation Request**

85. Lindsay Reynolds

**The Tiger Trials**

86. Myles Nye

**Social Justice**

87. Phoebe Thomas Sorgen

**Work Concerns**

88. Pgcountymd63 (2)

89. Paul Buddenhagen

**Paratransit Concerns**

90. Daveed Mandell (13)

**Commercial Warehouse Space**

91. David Lerman

**Animal Control Officer Concern**

92. Erika Jordan

**Health Department**

93. David Lerman

**Shelter Concerns**

94. Nikki Brown

**Thank You**

95. Kat Schaaf

**Invitation**

96. Martha Larsen

**Household Hazardous Waste Disposal**

97. David Lerman

98. Elana Auerbach

**Berkeley Ferry Plan**

99. Katherine Calvert

100. Maxwell Davis on behalf of the Sierra Club

**Graffiti Concerns**

101. Dahlia Frydman

**Restaurant Week**

102. Jeffrey Church on behalf of Visit Berkeley

**Red Cross**

103. Tim O'Brien (2)

### **San Francisco Bay Ecosystem**

104. Charlene M. Woodcock

### **Legal Concern**

105. Chris Bogado (2)

### **Peace and Justice Commission**

106. Tom Luce

### **Berkeley Marina**

- 107. Bill
- 108. Jim McGrath
- 109. Domond Lee
- 110. Gordon Stout (4)
- 111. Alean Daniel
- 112. Jack Morel
- 113. Ken Poulton
- 114. Andrew Sullivan
- 115. Kris Urban
- 116. Eugenia McCauley
- 117. Dave Spragg
- 118. Darren Bass
- 119. David Breaux
- 120. Dave Bloch
- 121. Marilee Allan
- 122. Mike Geranio
- 123. Margo Rey
- 124. Jeffrey Finn
- 125. John Hadley
- 126. Brice Chung
- 127. Kevin Graehl
- 128. Dave Gertler
- 129. Beatriz Quinones
- 130. Cheong-Tseng Eng

### **Willard Park**

- 131. Mandie Caroll
- 132. Robert Abiad
- 133. Austin Abrams
- 134. Ellen Borjesson
- 135. Elizabeth Greene
- 136. Elizabeth Morris
- 137. Ashley Kayler

### **Infestation Concern**

138. Andrew Graham

**Traffic Concern**

- 139. Wahid Amiri
- 140. Erin Burfield
- 141. Barbara Gilbert

**Bike Plan**

- 142. Michael Frantz
- 143. Christopher Hamilton (2)

**Adeline Landscape Improvement**

- 144. Markus Feyh

**Government Concerns**

- 145. Kellie Stoddart (2)

**Paw Fund**

- 146. Paw Fund

**E-Scooter**

- 147. Robert Byler (3)
- 148. Videth Ok (2)
- 149. Robert Borghese (4)
- 150. Lucas Miller

**Daylighting Laws**

- 151. Sandra Sanchez (2)
- 152. Kait Kolacy
- 153. Shirley Kirsten (2)

**Public Restroom**

- 154. Hannah Karpilow
- 155. Alex S. Merenkov
- 156. Aimee Baldwin (2)

**Middle Housing**

- 157. John Minot-Schwartz on behalf of East Bay for Everyone and East Bay YIMBY
- 158. Maxwell Davis on behalf of the Sierra Club

**Police Action**

- 159. Inetjalopy (4)

**Surveillance System at CVS**

- 160. Curtis Walters

**DBA Annual Meeting**

161. John Craner (2)

**Ashby BART**

162. Friends of Adeline

**Dark Sky and Pollinators/Habitat**

163. Carol Hirth

**Hybrid Shelter**

164. Claudia Kawczynska

**Bicycle Count**

165. Kelly Hammargren

**Richmond Bridge**

166. Lucas Miller (2)

**Housing Concern**

167. Bingo Fantasy Football

168. Eid

**ICE Concerns**

169. Russbumper

**Middle East Conflict**

170. Miya Frick

171. Ibegazen Farida

172. Dorothea Dorenz (2)

173. Martha Staskawicz

174. Kyla Danysh

175. Barbara Erickson (2)

176. Russbumper

**Forwards**

177. Josh Atwood

178. Eid (2)

179. Margot Smith

**Screenshots**

180. Josh Atwood (5)

**URL's**

181. Russbumper (25)

182. Josh Atwood (2)

## **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.

## ORDINANCE NO. 7,953-N.S.

AMENDMENTS TO THE BUILDING EMISSIONS SAVING ORDINANCE; AMENDING  
BERKELEY MUNICIPAL CODE CHAPTER 19.81**CHAPTER 19.81  
BUILDING EMISSIONS SAVING**

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

Section 1. That Berkeley Municipal Code 19.81.010 is amended to read as follows:

**19.81.010 - Purpose.**

The purpose of this chapter is to reduce energy use, water consumption, and greenhouse gas emissions in existing buildings, to increase the resilience of these buildings, and to promote public health. These improvements will increase comfort, safety and health for building occupants, transition buildings away from the use of fossil fuels, and may lower energy and water costs. The provisions of the ordinance will inform decision makers about energy, emissions, and resilience performance and improvement opportunities.

Section 2. That Berkeley Municipal Code 19.81.030 is amended to read as follows:

**19.81.030 - Definitions.**

- A. "Administrator" means the Director of Planning and Development or their designee.
- B. "Building Owner" means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall also refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.
- C. "Building Energy Score" means a measurement of how efficiently a building uses energy and/or water based on modeled simulations or actual energy use of the building over time compared to similar buildings, which can be in the form of a performance score, asset score or other comparable metric that meets standards and formats established by the Administrator.
- D. "Credits" means a numerical value based on the improved resilience, emissions savings, cost, or other measured benefit associated with a Resilience Upgrade.
- E. "Dwelling Unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

F. "Electrification" means the transition of building systems and appliances away from natural gas to electricity as the source of energy.

G. "Energy Report" means a report submitted by a Registered Service Provider that identifies existing conditions, opportunities for water and energy efficiency in a building, opportunities to transition off fossil fuels, greenhouse gas emissions reductions, and available incentives and financing, as well as any applicable Building Energy Score, in accordance with the standards and formats established by the Administrator.

H. "ENERGY STAR Performance Report" means an ENERGY STAR Portfolio Manager Benchmark report generated by the online tool developed by the U.S. Environmental Protection Agency that determines energy use intensity and an Energy Star Performance Score for a building based on utility usage data.

I. "Resilience Upgrade" means the installation or completion of recommended measure(s) that improve the building's energy efficiency, increases the building's resilience, supports the transition off fossil fuels, and/or decreases the building's greenhouse gas emissions.

J. "Extensive Renovation" means any project that replaces all building space heating, cooling, and ventilation equipment and replaces at least half of the building envelope, in accordance to standards established by the Administrator.

K. "Green Building Rating" means an approved rating by a green building verification system consistent with standards identified by the Energy Efficiency Standardization Coordination Collaborative (EESCC) of the American National Standards Institute (ANSI), including, but not limited to the following: Build It Green (BIG) GreenPoint Rated Existing Building; US Green Building Council Leadership in Energy and Environmental Design Existing Building Operation and Maintenance (USGBC LEED-EBOM); Passive House Institute (PHI) Certified Passive House and EnerPHit; Passive House Institute US (PHIUS) PHIUS+ Certified Project; and the International Living Future Institute Zero Net Energy Building and Living Building Challenge Certification; or any other rating demonstrating approved levels of energy efficiency, as determined by the Administrator.

L. "Gross Floor Area" means the total size, as measured between the principal exterior surfaces of the enclosed fixed walls of the building(s). This includes all areas inside the building(s) such as: occupied tenant areas, common areas, meeting areas, break rooms, restrooms, elevator shafts, mechanical equipment areas, and storage rooms. Gross Floor Area should not include interstitial plenum space between floors, which may house pipes and ventilation.

M. "Large Building" means any building with 25,000 square feet or more of Gross Floor Area.

N. "Medium Building" means any building with between 15,000 and 24,999 square feet of Gross Floor Area, excluding 1 to 4 Unit Residential Buildings.

O. "Real Estate Listing" means any listing of a building for sale in the City of Berkeley. "Real Estate Listings" include listing a building for sale by a property owner or by a

licensed agent. "Real Estate Listings" include any printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services.

P. "Registered Service Provider" means an entity that has been registered by the Administrator to provide an Energy Report and/or Building Energy Score as required by this ordinance.

Q. "Resilience Upgrade Payment" means a monetary charge, as defined in Article XIII C, section 1(e)(5) of the California Constitution, that is imposed by the City on the seller as a result of the seller not complying with the seller's legal obligation to obtain a BESO Certificate of Compliance prior to transfer of title.

R. "1 to 4 Unit Residential Building" means any building comprised of solely 1 to 4 Dwelling Units, regardless of size. For the purpose of determining which buildings constitute a 1 to 4 Unit Residential Building subject to this Chapter, an Accessory Dwelling Unit (ADU) as defined in Chapter 23.502 of this Code is not a Dwelling Unit.

S. "Small Building" means any building with less than 15,000 square feet of Gross Floor Area, excluding 1 to 4 Unit Residential Buildings.

T. "Transfer" means the conveyance of title to real property, excluding condominiums as defined in California Civil Code Section [1351\(f\)](#), as a result of the execution of a real property sales contract as defined in Section 2985 of the California Civil Code as well as any change of ownership described in subdivision (c) of Section 61 and subdivision (c) of Section 64 of the California Revenue and Taxation Code. "Transfer" does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.

Section 3. That Berkeley Municipal Code 19.81.040 is amended to read as follows:

**19.81.040 – Large Buildings.**

A. *Annual ENERGY STAR Performance Report.* Owners of Large Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis in accordance with the phase-in schedule below and no later than July 1 each year thereafter.

B. *Energy Report.* Owners of Large Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report as specified in the phase-in schedule below and by July 1 every five years thereafter.

C. *Disclosure.* The most recent ENERGY STAR Performance Report and a summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and to prospective lessees and buyers prior to execution of a lease or contract for sale.

D. *Phase-in and Reporting Cycle Schedule.* Owners of Large Buildings shall be in compliance with the requirements of this section by the dates specified below.

1. July 1, 2018 for buildings with 50,000 or more square feet of Gross Floor Area, with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.
2. July 1, 2019 for buildings with 25,000 or more square feet of Gross Floor Area with an annual ENERGY STAR Performance Reporting cycle and a 5 year Energy Report reporting cycle thereafter.

E. *Evaluate and Recommend Resilience Upgrades Requirements.* The Administrator of this Chapter shall develop recommendations for Resilience Upgrade requirements for Large Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Resilience Upgrade requirements. The Administrator shall then report the proposed Resilience Upgrade requirements for Large Buildings to the City Council for consideration.

Section 4. That Berkeley Municipal Code 19.81.050 is amended to read as follows:

**19.81.050 – Medium and Small Buildings.**

A. *Annual ENERGY STAR Performance Report.* Owners of Medium Buildings shall submit to the Administrator an ENERGY STAR Performance Report on an annual basis as of July 1, 2021, and no later than July 1 each year thereafter.

B. *Energy Report.* Owners of Medium and Small Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report:

1. Prior to the Real Estate Listing of the building for sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section [19.81.090.B](#) of this Chapter.

C. *Disclosure.* All compliance documentation, including the most recent ENERGY STAR Performance Report, if applicable, a deferral or a summary version of the most recent Energy Report including a Building Energy Score, when available, shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed publicly for sale.

D. *Evaluate and Recommend Resilience Upgrades Requirements.* The Administrator of this Chapter shall develop recommendations for Resilience Upgrade requirements for

Small and Medium Buildings based on building performance that are consistent with State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Resilience Upgrade requirements. The Administrator shall then report the proposed Resilience Upgrade requirements for Small and Medium Buildings to the City Council for consideration. Section 5. That Berkeley Municipal Code 19.81.060 is amended to read as follows:

**19.81.060 – 1 to 4 Unit Residential Buildings.**

A. *Resilience Standard.* When a 1 to 4 Unit Residential Building is Transferred, the property being Transferred shall achieve a required number of Credits, as determined by the Administrator, by undergoing Resilience Upgrades.

B. *Energy Report.* Owners of 1 to 4 Unit Residential Buildings shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report:

1. Prior to the Real Estate Listing of the building for sale; or
2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

In the event the Building Owner fails to complete the Energy Report, an administrative fee, which is set forth in Section 19.81.120 of this code, shall be charged to cover staff time required to assist the buyer with compliance in the absence of the Energy Report.

C. *BESO Certificate of Compliance.* Upon submittal of documentation verifying that a Building Owner has achieved the required number of Resilience Upgrade credits, as determined by the Administrator, the Administrator shall issue a BESO Certificate of Compliance. A BESO Certificate of Compliance shall expire 5 years after issuance.

D. *Seller Obligation at Time of Transfer.* Prior to Transfer, seller shall obtain a BESO Certificate of Compliance for the subject property. If the seller fails to obtain a BESO Certificate of Compliance before Transfer, the seller must make a Resilience Upgrade Payment to the City of \$2,500.

E. *Buyer Obligation at Time of Transfer.* A buyer who purchases a property that has not obtained a BESO Certificate of Compliance by the date of Transfer shall obtain a BESO Certificate of Compliance within two years of Transfer (“Buyer Compliance Period”), which may be extended up to one year at the discretion of the Administrator. Buyer shall, within ten days of Transfer, deposit funds with the City in an amount of \$2,500 (“Buyer’s Deposit”) and must execute and deliver to the Administrator or their designee a binding agreement in a form acceptable to the City providing that any funds deposited with the City shall be forfeited and transferred to the City if a BESO Certificate of Compliance for the subject property has not been obtained upon the expiration of the Buyer Compliance Period.

1. If a BESO Certificate of Compliance for the subject property is obtained prior to the expiration of the Buyer Compliance Period, then the buyer shall recoup the

Buyer's Deposit in full, as well as the Resilience Upgrade Payment made by the seller.

2. If a BESO Certificate of Compliance for the subject property was not obtained prior to the expiration of the Buyer Compliance Period, then the Buyer's Deposit will be forfeited to the City unless the buyer (i) can show that one or more of the conditions in Section 19.81.090 has been met, or (ii) petitions for an additional extension of the Buyer Compliance Period pursuant to subparagraph 3.

3. The buyer may be granted an additional extension of the Buyer Compliance Period if they can show that special circumstances, such as delays due to utility capacity or equipment supply chains or delays required to minimize disruptions to tenants, warrant an additional extension of a reasonable amount of time.

4. If the BESO Certificate of Compliance was not obtained after the expiration of the Buyer's Compliance Period and any extensions, then the forfeited Buyer's Deposit and Resilience Upgrade Payment funds shall be used by the City for local low-income building upgrade programs, such as the Climate Equity Fund or Just Transition Residential Electrification Programs.

**F. Appeals.**

1. After the expiration of the Buyer Compliance Period, notice shall be mailed to the buyer of (i) the expiration of the Buyer Compliance Period and the forfeiture of the Buyer's Deposit under BMC 19.81.060(E)(2) and (ii) the opportunity to appeal. The cost of notice shall be deducted from the deposit made pursuant to BMC 19.81.060(E).

2. Within 14 calendar days of mailing of forfeiture notice, the buyer may appeal the forfeiture.

a. An appeal shall be submitted to the City Manager or the City Manager's designee in writing and must state all of the reasons for the appeal.

b. Appeal fees shall be paid by the person filing the appeal (the appellant).

3. Where a timely appeal has been filed, the City Manager or the City Manager's designee shall, within 14 calendar days, set the appeal for a hearing before a Hearing Officer to be designated by the City Manager.

4. At the appeal hearing, the Hearing Officer may: (i) continue the public hearing; or (ii) reverse, affirm, or modify the decision of the prior review authority.

5. The Hearing Officer shall serve a written decision upon the appellant within 14 calendar days of the hearing, and shall send a copy to the Administrator and the City Manager. The Hearing Officer's decision shall be final when mailed.

**G. Disclosure.** All compliance documentation, including a summary version of the most recent Energy Report including a Building Energy Score and the Resilience Standard

compliance status shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed for sale. The Building Energy Score shall be included in all Real Estate Listings and a URL link to the Energy Report included if links are supported by the listing service.

H. *Phase-in*. Owners of 1 to 4 Unit Residential Buildings shall comply with the requirements of this section starting on the dates specified below. These buildings shall be treated as Small Buildings until their phase-in date.

1. January 1, 2026 for 1 to 4 Unit Residential Buildings containing one or two residential units.
2. January 1, 2028 for 1 to 4 Unit Buildings containing three or four residential units.

I. *Responsibilities*. Except as otherwise provided or as allowed by the Administrator, the Building Owner is responsible for compliance with this Section. The seller of any real property shall be responsible for disclosing to prospective buyers the requirements of this Section and the compliance status of the real property in question. Upon transfer of ownership, the buyer will be responsible for the compliance with this Section, regardless of any disclosure or failure to disclose.

Section 6. That Berkeley Municipal Code 19.81.090 is amended to read as follows:

**19.81.090 – Exceptions, Deferrals and Extensions.**

A. *High Performance Exemption*. Exemptions from the Energy Report requirements for current reporting periods may be granted to buildings that demonstrate effective and reasonably achievable level of efficiency, electrification of building systems and appliances, and/or emissions reduction that support Berkeley's commitment to become a Fossil Fuel Free City and achieve carbon neutrality by 2045. Qualified exemptions shall include, but are not limited to:

1. Any Large Building that receives a Building Energy Score or Green Building Rating that demonstrates an effective and reasonable level of efficiency, as determined by the Administrator.
2. Any building, except for 1 to 4 Unit Residential Buildings, that completes a multi-measure energy improvement project with a verified minimum improvement, as determined by Administrator.
3. Any whole building that has been served by an income-qualified Weatherization Assistance program for low-income households.
4. Any new building or Extensive Renovation, except for 1 to 4 Unit Residential Buildings, with a construction completion date within ten years of the reporting deadline.

5. Any building that has electrified all building systems and appliances and capped all gas lines to the building.

B. *Deferral at Time of Real Estate Listing.* The requirements for compliance with the Energy Report requirement prior to the Real Estate Listing of a Small or Medium Building may be deferred from the seller to the buyer, and any subsequent buyers, for a period of 6 months after the original sale date. A request to defer responsibility to the buyer must be submitted to the administrator prior to the listing of the building. The deferral shall include information on the fuel source for each end use in the building and any current or future electrification requirements and incentives.

C. *Distressed Sale Extension.* A 6-month extension may be granted to a buyer of a building purchased from a lender following default or transfer by deed in lieu of foreclosure.

D. *Hardship Deferral.* The requirement for an ENERGY STAR Performance Report, an Energy Report, or the Resilience Standard may be deferred in cases of financial hardship where one of the following is provided by the Building Owner and approved by the Administrator:

1. Proof of participation in an income qualified energy assistance program, administered through the State of California or the local energy utility.
2. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by Administrator.
3. Proof that the property qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes, within two years prior to the due date of the Energy Report.
4. Proof that a court appointed receiver is in control of the asset due to financial distress.
5. Proof that the senior mortgage is subject to a notice of default.
6. Proof that the responsible party is otherwise not able to meet the obligations of this Chapter.

Deferrals under this Section are granted to the Building Owner and are not transferable with a building sale, at which time compliance with this Chapter shall be required.

E. *Data Unavailable.* An exemption from ENERGY STAR Performance Report requirement for any current reporting period may be granted if:

1. The Building Owner demonstrates to the Administrator that they have been unable to obtain tenant authorization to obtain tenant utility data, despite a good faith effort to obtain such consent, or

2. The building occupant demonstrates to the Administrator that such disclosure may result in the release of proprietary information which can be characterized as a trade secret, or

3. Any person subject to the requirements of this Chapter demonstrates to the Administrator that submission of an ENERGY STAR Performance Report would conflict with the requirements of State or Federal law.

F. *Deferral for Planned Demolition or Extensive Renovation.* The requirements of this Chapter may be deferred for 24 months if the owner or buyer has obtained a Building Permit, Demolition Permit, or Permit under the Zoning Ordinance that includes demolition or Extensive Renovation of the subject building.

Deferrals under this Section are granted to the Building Owner and are not transferable with a building sale, at which time compliance with this Chapter shall be required.

G. *Exemption for Sale of a Condominium.* The requirements to submit an Energy Report with an Energy Benchmark to the Administrator shall not apply to any sale of a residential or commercial condominium that is a unit within a building and not a detached structure.

H. *Low Energy Use Deferral.* Buildings with low energy use based on energy billing data comparing a building to similar efficient buildings or because of operations specific to their building use, such as institutions that operate less than three days a week, may be granted a Low Energy Use deferral for the current compliance cycle.

Deferrals under this Section are granted to the Building Owner and are not transferable with a building sale, at which time compliance with this Chapter shall be required.

I. *Exemption for Long-Term Tenancy under Rent Control.* The requirements of this Chapter for any building which is subject to rent control in which all of the units, excluding any owner-occupied units, have leases that date prior to January 1, 1999 may be deferred until the next reporting period.

J. *Unconditioned Floor Area Reclassification.* The size classification of a building may be reduced by the Administrator to exclude physically separated floor area that is not served by heating, ventilation or cooling equipment.

K. *Recent Resilience Upgrades.* Buildings that completed the requisite number of Resilience Upgrades, as determined by the Administrator, within the last 5 years may obtain a BESO Certificate of Compliance if the Building Owner submits sufficient proof to the Administrator.

L. *Heat Pump System Exemption.* 1 to 4 Unit Residential Buildings in which all units being transferred are completely served by at least one electric heat pump system or electric equivalent, as determined by the administrator, may obtain a BESO Certificate of Compliance. The Energy Report shall provide confirmation for this exemption.

M. *Early Refund Exception.* Owners of 1 to 4 Unit Residential Buildings may apply for early remittance of the Buyer's Deposit and Resilience Upgrade Payment prior to

completion of the Resilience Upgrades upon demonstration that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that the Resilience Upgrades will be completed, as determined by the Administrator. If the application for an early refund is approved, the City will refund the funds deposited pursuant to BMC 19.81.060(E) to the owner so that the owner may complete the Resilience Upgrades. Once the requisite Resilience Upgrades are complete, the Owner must obtain a BESO Certificate of Compliance. In the event the property owner fails to complete the requisite Resilience Upgrades within the Buyer Compliance period, an administrative citation shall be charged, which fee is set forth in Section 19.81.140 of this code.

N. *First-Time Homebuyer Exemption.* Buyers of 1 to 4 Unit Residential Buildings participating in an approved local, State, or Federal income-qualified first-time home buyer program or down payment assistance program are exempt from the Resilience Standard requirements of this chapter.

Section 7. These amendments to Berkeley Municipal Code Chapter 19.81 shall become effective on January 1, 2026.

Section 8.

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.

At a regular meeting of the Council of the City of Berkeley held on March 25, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

ORDINANCE NO. 7,957-N.S.

AMENDMENTS TO THE ZONING DISTRICTS AND MAP CHAPTER (BMC 23.108), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), SUPPLEMENTAL USE REGULATIONS (BMC 23.302), PARKING AND LOADING (BMC 23.322) AND ADDITION TO THE MANUFACTURING DISTRICT CHAPTER (BMC.23.206) TO ESTABLISH THE M-RD MANUFACTURING, RESEARCH AND DEVELOPMENT DISTRICT

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

Section 1. That Table 23.108-1 Zoning Districts within BMC Chapter 23.108.020 is amended to read as follows:

**Table 23.108-1: Zoning Districts**

| DISTRICT SYMBOL              | NAME OF DISTRICT                       |
|------------------------------|----------------------------------------|
| <b>Residential Districts</b> |                                        |
| R-1                          | Single-Family Residential              |
| R-1A                         | Limited Two-family Residential         |
| ES-R                         | Environmental Safety Residential       |
| R-2                          | Restricted Two-family Residential      |
| R-2A                         | Restricted Multiple-family Residential |
| R-3                          | Multiple-family Residential            |
| R-4                          | Multi-family Residential               |
| R-5                          | High Density Residential               |
| R-S                          | Residential Southside                  |
| R-SMU                        | Residential Southside Mixed Use        |
| R-BMU                        | Residential BART Mixed Use             |
| <b>Commercial Districts</b>  |                                        |

| <b>DISTRICT SYMBOL</b>         | <b>NAME OF DISTRICT</b>                 |
|--------------------------------|-----------------------------------------|
| C-C                            | Corridor Commercial                     |
| C-U                            | University Avenue Commercial            |
| C-N                            | Neighborhood Commercial                 |
| C-E                            | Elmwood Commercial                      |
| C-NS                           | North Shattuck Commercial               |
| C-SA                           | South Area Commercial                   |
| C-T                            | Telegraph Avenue Commercial             |
| C-SO                           | Solano Avenue Commercial                |
| C-DMU                          | Downtown Mixed-Use                      |
| C-W                            | West Berkeley Commercial                |
| C-AC                           | Adeline Corridor Commercial             |
| <b>Manufacturing Districts</b> |                                         |
| M                              | Manufacturing                           |
| MM                             | Mixed Manufacturing                     |
| MU-LI                          | Mixed Use-Light Industrial              |
| MU-R                           | Mixed Use-Residential                   |
| M-RD                           | Manufacturing, Research and Development |
| <b>Special Districts</b>       |                                         |
| S                              | Specific Plan                           |
| U                              | Unclassified                            |

Section 2. That Table 23.206-1 within BMC Section 23.206.020(A) be amended to read:

TABLE 23.206 1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see<br>23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | Manufacturing Districts |         |         |               |         | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit<br>requirement (e.g., ZC*) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|---------------|---------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI   | MU-R          | M-RD    |                                                                                                                   |
| <b>Residential Uses</b>                                                                                                                                                                                                              |                         |         |         |               |         |                                                                                                                   |
| Accessory Dwelling Unit                                                                                                                                                                                                              | NP                      | NP      | NP      | See<br>23.306 | NP      |                                                                                                                   |
| Dwellings                                                                                                                                                                                                                            |                         |         |         |               |         |                                                                                                                   |
| Single-Family                                                                                                                                                                                                                        | NP                      | NP      | NP      | AUP*          | NP      | 23.206.090(B)(8)                                                                                                  |
| Multi-Unit Residential                                                                                                                                                                                                               | NP                      | NP      | NP      | ZC*           | NP      | 23.206.090(B)(7)&(8)                                                                                              |
| Group Living<br>Accommodation                                                                                                                                                                                                        | NP                      | NP      | NP      | UP(PH)*       | NP      | 23.206.090(B)(8)                                                                                                  |
| Hotel, Residential                                                                                                                                                                                                                   | NP                      | NP      | NP      | NP            | NP      |                                                                                                                   |
| Mixed-Use Residential                                                                                                                                                                                                                | NP                      | NP      | NP      | UP(PH)*       | NP      | 23.206.090(B)(8)&(9)                                                                                              |
| Senior Congregate<br>Housing                                                                                                                                                                                                         | NP                      | NP      | NP      | See 23.310    | NP      |                                                                                                                   |
| <b>Public and Quasi-<br/>Public Uses</b>                                                                                                                                                                                             |                         |         |         |               |         |                                                                                                                   |
| Child Care Center                                                                                                                                                                                                                    | NP                      | NP      | AUP*    | UP(PH)*       | AUP*    | 23.206.040(C)&(D)                                                                                                 |
| Cemetery/Crematory/Ma<br>usoleum                                                                                                                                                                                                     | NP                      | NP      | NP      | NP            | NP      |                                                                                                                   |
| Club/Lodge                                                                                                                                                                                                                           | UP(PH)*                 | UP(PH)* | UP(PH)* | UP(PH)        | UP(PH)* | 23.206.040(F)                                                                                                     |
| Columbaria                                                                                                                                                                                                                           | NP                      | NP      | NP      | –             | NP      |                                                                                                                   |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--------|-------------|---------|---------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM     | MU-LI       | MU-R    | M-RD    |                                                                                                                   |
| Community Care Facility                                                                                                                                                                                                              | NP                      | NP     | NP          | ZC*     | NP      | 23.206.090(B)(3)                                                                                                  |
| Community Center                                                                                                                                                                                                                     | NP                      | NP     | NP          | UP(PH)  | NP      |                                                                                                                   |
| Emergency Shelter                                                                                                                                                                                                                    | NP                      | NP     | NP          | –       | NP      |                                                                                                                   |
| Hospital                                                                                                                                                                                                                             | NP                      | NP     | NP          | NP      | NP      |                                                                                                                   |
| Library                                                                                                                                                                                                                              | NP                      | NP     | NP          | UP(PH)  | NP      |                                                                                                                   |
| Low Barrier Navigation Center                                                                                                                                                                                                        | NP                      | NP     | NP          | ZC      | NP      |                                                                                                                   |
| Mortuaries and Crematories                                                                                                                                                                                                           | NP                      | NP     | NP          | UP(PH)* | NP      | 23.206.090(B)(6)                                                                                                  |
| Municipal Animal Shelter                                                                                                                                                                                                             | UP(PH)                  | UP(PH) | UP(PH)      | –       | UP(PH)  |                                                                                                                   |
| Nursing Home                                                                                                                                                                                                                         | NP                      | NP     | NP          | UP(PH)  | NP      |                                                                                                                   |
| Park/Playground                                                                                                                                                                                                                      | NP                      | NP     | NP          | UP(PH)* | NP      | 23.206.040(C)                                                                                                     |
| Public Safety and Emergency Service                                                                                                                                                                                                  | UP(PH)                  | UP(PH) | UP(PH)      | UP(PH)  | UP(PH)  |                                                                                                                   |
| Public Utility Substation/Tank                                                                                                                                                                                                       | UP(PH)                  | UP(PH) | UP(PH)      | UP(PH)  | UP(PH)  |                                                                                                                   |
| Religious Assembly                                                                                                                                                                                                                   | NP                      | NP     | NP          | UP(PH)  | NP      |                                                                                                                   |
| School                                                                                                                                                                                                                               | NP                      | NP     | NP          | UP(PH)* | NP      | 23.206.040(C)                                                                                                     |
| School, Vocational                                                                                                                                                                                                                   | NP                      | NP     | ZC* [1]     | UP(PH)  | ZC* [1] | 23.206.040(Q)                                                                                                     |
| Supportive Housing                                                                                                                                                                                                                   | NP                      | NP     | NP          | ZC*     | NP      | 23.302.070(I)- Supportive Housing                                                                                 |
| <b>Retail Uses</b>                                                                                                                                                                                                                   |                         |        |             |         |         |                                                                                                                   |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                       | NP                      | NP     | UP(PH)* [2] | NP *    | NP      | 23.206.080(B)(3); 23.206.090(B)(2); 23.310                                                                        |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|----------|---------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI   | MU-R     | M-RD    |                                                                                                                   |
| Firearm/Munitions Business                                                                                                                                                                                                           | NP                      | NP      | NP      | NP       | NP      |                                                                                                                   |
| Industrial and Mining Products                                                                                                                                                                                                       | AUP [2]                 | AUP [2] | AUP [4] | NP       | NP      |                                                                                                                   |
| Pawn Shop/Auction House                                                                                                                                                                                                              | NP                      | NP      | NP      | NP       | NP      |                                                                                                                   |
| Pet Store                                                                                                                                                                                                                            | NP                      | NP –    | NP      | NP       | NP      |                                                                                                                   |
| Retail, General                                                                                                                                                                                                                      | NP                      | NP      | AUP*    | AUP* [3] | AUP*    | 23.206.040(G); 23.206.090(B)(4)                                                                                   |
| Smoke Shop                                                                                                                                                                                                                           | NP                      | NP      | NP      | NP       | NP      |                                                                                                                   |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                           |                         |         |         |          |         |                                                                                                                   |
| Personal and Household Services, General                                                                                                                                                                                             | NP                      | NP      | NP      | AUP      | NP      |                                                                                                                   |
| Kennels and Pet Boarding                                                                                                                                                                                                             | NP                      | NP      | NP      | UP(PH)   | NP      |                                                                                                                   |
| Laundromats and Cleaners                                                                                                                                                                                                             | NP                      | NP      | NP      | AUP      | NP      |                                                                                                                   |
| Veterinary Clinic                                                                                                                                                                                                                    | NP                      | NP      | NP      | UP(PH)   | NP      |                                                                                                                   |
| Video Tape/Disk Rental                                                                                                                                                                                                               | NP                      | NP      | NP      | NP       | NP      |                                                                                                                   |
| <b>Office Uses</b>                                                                                                                                                                                                                   |                         |         |         |          |         |                                                                                                                   |
| Business Support Services                                                                                                                                                                                                            | NP                      | NP      | AUP [6] | AUP [3]  | AUP [6] |                                                                                                                   |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|------------|---------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI   | MU-R       | M-RD    |                                                                                                                   |
| Banks and Financial Services, Retail                                                                                                                                                                                                 | NP                      | NP      | –       | NP         | NP      |                                                                                                                   |
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents                                                                                                                                                                 | NP                      | NP      | –       | –          | NP      |                                                                                                                   |
| Medical Practitioners                                                                                                                                                                                                                | NP                      | NP      | NP      | AUP [3]    | NP      |                                                                                                                   |
| Non-Chartered Financial Institutions                                                                                                                                                                                                 | NP                      | NP      | –       | –          | NP      |                                                                                                                   |
| Office, Business and Professional                                                                                                                                                                                                    | NP                      | ZC* [4] | AUP [4] | AUP [3]    | AUP [4] | 23.206.070(B)(2)                                                                                                  |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                           |                         |         |         |            |         |                                                                                                                   |
| Adult-oriented Business                                                                                                                                                                                                              | -                       | -       | NP      | NP         | NP      |                                                                                                                   |
| Amusement Device Arcade                                                                                                                                                                                                              | NP                      | NP      | ZC      | ZC         | NP      | 23.302.070(B)                                                                                                     |
| Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting                                                                                                                                                                                     | NP                      | NP      | NP      | See 23.306 | NP      |                                                                                                                   |
| Commercial Recreation Center                                                                                                                                                                                                         | NP                      | NP      | –       | NP         | NP      |                                                                                                                   |
| Entertainment Establishment                                                                                                                                                                                                          | NP                      | NP      | –       | UP(PH)     | NP      |                                                                                                                   |
| Food Service Establishment under                                                                                                                                                                                                     | --                      | --      | AUP*    | AUP*       | AUP*    | 23.302.070(E)                                                                                                     |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|---------|---------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI   | MU-R    | M-RD    |                                                                                                                   |
| 5,000 sq. ft.                                                                                                                                                                                                                        |                         |         |         |         |         |                                                                                                                   |
| Food Service Establishment 5,000 sq. ft. or larger                                                                                                                                                                                   | --                      | --      | UP(PH)* | UP(PH)* | UP(PH)* | 23.302.070(E)                                                                                                     |
| Group Instruction                                                                                                                                                                                                                    | ZC                      | ZC      | –       | ZC      | ZC      |                                                                                                                   |
| Health and Fitness Facility                                                                                                                                                                                                          | NP                      | NP      | –       | NP      | NP      |                                                                                                                   |
| Hotel, Tourist                                                                                                                                                                                                                       | NP                      | NP      | NP      | NP      | NP      |                                                                                                                   |
| Motel, Tourist                                                                                                                                                                                                                       | NP                      | NP      | NP      | NP      | NP      |                                                                                                                   |
| Theater                                                                                                                                                                                                                              | NP                      | NP      | UP(PH)* | NP      | NP      | 23.206.080(B)(4)                                                                                                  |
| <b>Vehicle Service and Sale Uses</b>                                                                                                                                                                                                 |                         |         |         |         |         |                                                                                                                   |
| Alternative Fuel Station                                                                                                                                                                                                             | AUP [4]                 | AUP [4] | AUP [4] | AUP     | AUP [4] |                                                                                                                   |
| Gasoline/Vehicle Fuel Station                                                                                                                                                                                                        | NP                      | NP      | NP      | NP      | NP      |                                                                                                                   |
| Large Vehicle Sales and Rental                                                                                                                                                                                                       | –                       | NP      | AUP [4] | NP      | AUP [4] |                                                                                                                   |
| Small Vehicle Sales and Rental                                                                                                                                                                                                       | –                       | NP      | NP      | NP      | NP      |                                                                                                                   |
| Tire Sales and Service                                                                                                                                                                                                               | –                       | –       | –       | NP      | NP      |                                                                                                                   |
| Vehicle Parts Store                                                                                                                                                                                                                  | NP                      | NP      | NP      | UP(PH)  | NP      |                                                                                                                   |
| Vehicle Repair and Service                                                                                                                                                                                                           | UP(PH)                  | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)  |                                                                                                                   |
| Vehicle Rentals                                                                                                                                                                                                                      | NP                      | –       | –       | NP      | NP      |                                                                                                                   |
| Vehicle Sales, New                                                                                                                                                                                                                   | AUP* [7]                | NP      | NP      | NP      | NP      | 23.206.060(B)(3)                                                                                                  |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|----------|----------|----------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI    | MU-R     | M-RD     |                                                                                                                   |
| Vehicle Sales, Used                                                                                                                                                                                                                  | AUP* [7]                | NP      | NP       | NP       | NP       | 23.206.060(B)(3)                                                                                                  |
| Vehicle Wash                                                                                                                                                                                                                         | NP                      | NP      | NP       | NP       | NP       |                                                                                                                   |
| Vehicle Wrecking                                                                                                                                                                                                                     | AUP [7]                 | AUP [4] | AUP* [4] | NP       | NP       | 23.206.080(B)(5)                                                                                                  |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                          |                         |         |          |          |          |                                                                                                                   |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                                   | AUP [8]                 | AUP [8] | AUP* [4] | UP(PH)   | AUP* [4] | 23.206.040(B)                                                                                                     |
| Commercial Excavation                                                                                                                                                                                                                | UP(PH)                  | UP(PH)  | UP(PH)   | NP       | NP       |                                                                                                                   |
| Contractors Yard                                                                                                                                                                                                                     | AUP [7]                 | AUP [7] | AUP [4]  | UP(PH)   | AUP [4]  |                                                                                                                   |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                       | ZC* [9]                 | ZC [9]  | ZC [1]   | UP(PH)   | NP       | 23.206.060(B)(2)                                                                                                  |
| Laboratory                                                                                                                                                                                                                           |                         |         |          |          |          |                                                                                                                   |
| Commercial Physical or Biological                                                                                                                                                                                                    | NP                      | AUP [4] | UP(PH)*  | NP       | AUP [4]  | 23.206.040(S)                                                                                                     |
| Cannabis Testing                                                                                                                                                                                                                     | NP                      | AUP [4] | UP(PH)   | NP       | AUP [4]  |                                                                                                                   |
| <b>Manufacturing</b>                                                                                                                                                                                                                 |                         |         |          |          |          |                                                                                                                   |
| Construction Products                                                                                                                                                                                                                | ZC [9]                  | ZC [9]  | UP(PH)*  | NP       | UP(PH)   |                                                                                                                   |
| Light Manufacturing                                                                                                                                                                                                                  | ZC [7]                  | ZC [7]  | ZC [1]   | AUP* [3] | ZC [1]   | 23,206.040(H); 23.206.090(B)(5)                                                                                   |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                    | NP                      | NP      | NP       | –        | NP       |                                                                                                                   |
| Petroleum Refining and Products                                                                                                                                                                                                      | NP                      | NP      | NP       | –        | NP       |                                                                                                                   |
| Pharmaceuticals                                                                                                                                                                                                                      | AUP [4]                 | AUP [4] | AUP* [4] | –        | AUP* [4] | 23.206.040(J)                                                                                                     |
| Primary Production Manufacturing                                                                                                                                                                                                     | AUP [4]                 | AUP [4] | NP       | NP       | NP       |                                                                                                                   |

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|                                                                                                                                                                                                                                      | M                       | MM      | MU-LI            | MU-R     | M-RD    |                                                                                                                   |
| Semiconductors                                                                                                                                                                                                                       | UP(PH)                  | UP(PH)  | NP               | -        | UP(PH)  |                                                                                                                   |
| Material Recovery Enterprise                                                                                                                                                                                                         | -                       | -       | UP(PH)           | -        | UP(PH)  |                                                                                                                   |
| Media Production                                                                                                                                                                                                                     | ZC [10]                 | ZC [10] | ZC [10]          | AUP [11] | ZC [10] |                                                                                                                   |
| Mini-storage                                                                                                                                                                                                                         | NP                      | NP      | NP               | NP       | NP      |                                                                                                                   |
| Recycled Materials Processing                                                                                                                                                                                                        | ZC* [9]                 | ZC* [9] | UP(PH)*          | -        | UP(PH)* | 23.206.040(L); 23.206.040(M)                                                                                      |
| Recycling Redemption Center                                                                                                                                                                                                          | AUP [7]                 | ZC [9]  | UP(PH)*          | AUP      | UP(PH)* | 23.206.040(M)                                                                                                     |
| Repair Service, Non-Vehicle                                                                                                                                                                                                          | ZC* [9]                 | ZC* [9] | ZC* [1]          | AUP      | ZC* [1] | 23.206.040(I)                                                                                                     |
| Research and Development                                                                                                                                                                                                             | -                       | ZC [12] | ZC [12]          | -        | ZC [13] |                                                                                                                   |
| Services to Buildings and Dwellings                                                                                                                                                                                                  | AUP                     | AUP     | AUP              | AUP      | AUP     |                                                                                                                   |
| Warehouse                                                                                                                                                                                                                            | ZC [9]                  | ZC [9]  | ZC [1]           | UP(PH)   | ZC [1]  |                                                                                                                   |
| Warehouse-Based Non-Store Retailer                                                                                                                                                                                                   | ZC [9]                  | ZC [9]  | ZC [1]           | -        | ZC [1]  |                                                                                                                   |
| Wholesale Trade                                                                                                                                                                                                                      | ZC [9]                  | ZC [9]  | ZC* [1]          | AUP [3]  | ZC* [1] | 23.206.040(R)                                                                                                     |
| <b>Incidental Uses</b>                                                                                                                                                                                                               |                         |         |                  |          |         |                                                                                                                   |
| Amusement Devices                                                                                                                                                                                                                    | NP                      | NP      | AUP              | AUP      | AUP     |                                                                                                                   |
| Alcoholic Beverage Service                                                                                                                                                                                                           | See 23.310              |         |                  |          |         |                                                                                                                   |
| Cafeteria, On-Site                                                                                                                                                                                                                   | ZC [2]                  | AUP [2] | ZC [2]           | AUP      | ZC [2]  |                                                                                                                   |
| Child Care Center                                                                                                                                                                                                                    | NP                      | NP      | See 23.206.040.B |          |         |                                                                                                                   |

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|                                                                                                                                                                                                                                      | M                       | MM        | MU-LI     | MU-R                    | M-RD      |                                                                                                                   |
| Columbaria                                                                                                                                                                                                                           | –                       | –         | –         | –                       | –         |                                                                                                                   |
| Food Service Establishment under 20,000 sq. ft.                                                                                                                                                                                      | AUP*                    | AUP*      | AUP*      | AUP*                    | AUP*      | 23.302.070(E)                                                                                                     |
| Food Service Establishment 20,000 sq. ft. or larger                                                                                                                                                                                  | NP                      | AUP*      | NP        | AUP*                    | NP        | 23.302.070(E)                                                                                                     |
| Home Occupations                                                                                                                                                                                                                     | NP                      | NP        | NP        | See<br>23.206.040<br>.B | NP        |                                                                                                                   |
| Live Entertainment, Unamplified                                                                                                                                                                                                      | NP                      | NP        | ZC        | ZC                      | ZC        |                                                                                                                   |
| Live Entertainment, Amplified                                                                                                                                                                                                        | NP                      | NP        | AUP       | AUP                     | AUP       |                                                                                                                   |
| Retail Sales of Goods Manufactured On-Site                                                                                                                                                                                           | AUP* [14]               | AUP* [15] | AUP* [15] | AUP*                    | AUP* [15] | 23.206.040(N)                                                                                                     |
| Storage of Goods Manufactured On-Site (>25% gross floor area)                                                                                                                                                                        | ZC                      | ZC        | ZC        | AUP                     | ZC        |                                                                                                                   |
| Wholesale Activities                                                                                                                                                                                                                 | ZC                      | ZC        | ZC        | AUP                     | ZC        |                                                                                                                   |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                      |                         |           |           |                         |           |                                                                                                                   |
| Art/Craft Studio                                                                                                                                                                                                                     | ZC* [10]                | ZC [10]   | ZC* [10]  | AUP [11]                | ZC* [10]  | 23.206.040(A)                                                                                                     |
| ATM, Exterior and Attached to Bank                                                                                                                                                                                                   | AUP                     | AUP       | -         | AUP                     | NP        |                                                                                                                   |
| ATM, Interior or Exterior and Not With Bank                                                                                                                                                                                          | AUP                     | AUP       | AUP       | AUP                     | AUP       |                                                                                                                   |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----|-----------------|--------|-----------------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                      | M                       | MM  | MU-LI           | MU-R   | M-RD            |                                                                                                                   |
| Circus/Carnival                                                                                                                                                                                                                      | NP                      | NP  | UP(PH)*         | UP(PH) | UP(PH)*         | 23.206.040(E)                                                                                                     |
| Drive-in Uses                                                                                                                                                                                                                        | NP                      | NP  | NP              | NP     | NP              |                                                                                                                   |
| Live/Work                                                                                                                                                                                                                            | NP                      | NP  | See 23.312      |        | NP              | NP                                                                                                                |
| Parking Lot/Structure                                                                                                                                                                                                                | See 23.302.070.G        |     |                 |        |                 |                                                                                                                   |
| Public Market, Open Air                                                                                                                                                                                                              | -                       | -   | UP(PH)*<br>[16] | -      | UP(PH)*<br>[16] | 23.206.040(K)                                                                                                     |
| Public Market, Enclosed                                                                                                                                                                                                              | -                       | -   | AUP [5]         | -      | AUP [5]         |                                                                                                                   |
| Short-Term Rental                                                                                                                                                                                                                    | -                       | -   | -               | ZC*    | NP              | 23.314                                                                                                            |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                        | ZC                      | ZC  | ZC              | ZC     | ZC              |                                                                                                                   |
| Urban Agriculture, High-Impact                                                                                                                                                                                                       | AUP                     | AUP | AUP             | AUP    | AUP             |                                                                                                                   |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see<br>23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Manufacturing Districts</b> |           |              |             |             | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit<br>requirement (e.g., ZC*) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|-------------|-------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> | <b>M-RD</b> |                                                                                                                   |
| <p><b>Notes:</b></p> <p>[1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.</p> <p>[2] Not permitted 20,000 sq. ft. or more.</p> <p>[3] Requires a Use Permit if 5,000 sq. ft. or more</p> <p>[4] Requires a Use Permit for uses more than 20,000 sq. ft.</p> <p>[5] Requires a Use Permit for more than 5,000 sq. ft. of floor area.</p> <p>[6] Not permitted over 3,000 sq. ft.</p> <p>[7] Requires a Use Permit for uses more than 40,000 sq. ft.</p> <p>[8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 sq. ft.</p> <p>[9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.</p> <p>[10] Requires an AUP for uses 10,000 sq. ft. to 20,000 sq. ft. Requires a Use Permit for uses more than 20,000 sq. ft.</p> <p>[11] Allowed with Zoning Certificate if under 1,000 sq. ft. Requires Use Permit if over 20,000 sq. ft.</p> <p>[12] Requires an AUP for uses more than 20,000 sq. ft.</p> <p>[13] Requires an AUP for uses 60,000 sq. ft. to 100,000 sq. ft. Requires a Use Permit for uses 100,000 sq. ft. or more.</p> <p>[14] Not permitted 1,500 sq. ft. or more.</p> <p>[15] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.</p> <p>[16] Requires Use Permit for markets over 5,000 sq. ft.</p> |                                |           |              |             |             |                                                                                                                   |

Section 3. That Table 23.206-2 within BMC Section 23.206.030 be amended to read:

**TABLE 23.206-2. NEW FLOOR AREA PERMIT REQUIREMENTS**

| <b>DISTRICT/NEW GROSS FLOOR AREA</b>    | <b>PERMIT REQUIRED FOR NEW FLOOR AREA</b> |
|-----------------------------------------|-------------------------------------------|
| <b>M, MM</b>                            |                                           |
| Less than 20,000 sq. ft.                | ZC                                        |
| 20,000 to less than 40,000 sq. ft.      | AUP                                       |
| 40,000 sq. ft. or more                  | UP(PH)                                    |
| <b>M-RD</b>                             |                                           |
| Less than 60,000 square feet            | ZC                                        |
| 60,000 to less than 100,000 square feet | AUP                                       |
| 100,000 square feet or more             | UP(PH)                                    |
| <b>MU-LI</b>                            |                                           |
| Less than 10,000 sq. ft.                | ZC                                        |
| 10,000 to less than 20,000 sq. ft.      | AUP                                       |
| 20,000 sq. ft. or more                  | UP(PH)                                    |
| <b>MU-R</b>                             |                                           |
| Less than 5,000 sq. ft.                 | ZC                                        |
| 5,000 to less than 10,000 sq. ft.       | AUP                                       |
| 10,000 sq. ft. or more                  | UP(PH)                                    |

Section 4. That BMC Section 23.206.030(B) be amended to read:

**B. Tenant Space Reconfiguration.**

1. Reconfiguration of tenant space in an existing building in the M, MM, MU-LI, and M-RD districts requires a permit as listed in Table 23.206-3.
2. In the MU-R district, tenant space reconfiguration projects affecting 5,000 square or more require a Use Permit.
3. As used in this section, tenant reconfiguration means any physical change to an existing building’s walls separating leased spaces so as to change:

- (a) The number of lease spaces for commercial businesses; or
- (b) The square footage of leasable floor area of an existing commercial lease space.

**TABLE 23.206-3: TENANT SPACE RECONFIGURATION REQUIREMENTS IN THE M, MM, MU-LI, AND M-RD DISTRICTS**

| TENANT SPACE RECONFIGURATION PROJECT                     | PERMIT REQUIRED FOR TENANT SPACE RECONFIGURATION PROJECT |
|----------------------------------------------------------|----------------------------------------------------------|
| Previously separated spaces combined into a larger space | ZC                                                       |
| Creating 2 to 5 separate new tenant spaces               | ZC                                                       |
| Creating 6 to 9 separate new tenant spaces               | AUP                                                      |
| Creating 10 or more separate new tenant spaces           | UP(PH)                                                   |

- 4. **MM and M-RD District Findings.** To approve an AUP or Use Permit for a tenant reconfiguration project in the MM or M-RD district, the review authority must find that the conversion is necessary to implement the purpose of the district.
- 5. **MU-LI District Findings.** To approve a Use Permit for a tenant reconfiguration project in the MU-LI district, the review authority must find that the reconfiguration would not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted and either:
  - (a) The reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact; or
  - (b) The reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

Section 5. That BMC 23.206.040 be amended to read:

**23.206.040 Use-Specific Regulations**

- A. **Art/Craft Studios in the M, MM, and M-RD Districts.** Art/craft studios are allowed in the M, MM and M-RD districts only as workspaces. Live/work is not permitted.
- B. **Bus/Cab/Truck/Public Utility Depot in the MU-LI and M-RD Districts.** A Use Permit is required for a bus/cab/truck/public utility depot in the MU-LI or M-RD district if the lot is over 20,000 square feet, regardless of use floor area.

C. **Child Care Centers in the MU-LI, MU-R, and M-RD Districts.** Table 23.206-4 shows permit requirements for child care centers in the MU-LI, MU-R, and M-RD districts.

**TABLE 23.206-4: MU-LI, MU-R, AND M-RD CHILD-CARE CENTER PERMIT REQUIREMENTS**

| USE CHARACTERISTIC                     | PERMIT REQUIRED |
|----------------------------------------|-----------------|
| Incidental Use                         |                 |
| Providing childcare for employees only | ZC              |
| Providing childcare for non-employees  | AUP             |
| Principal Use                          | UP(PH)          |

D. **Child-Serving Uses in the MU-LI, MU-R and M-RD Districts.**

1. As used in this section, "child-serving use" means a school, child care center, family day care, or park/recreational facility used by children.
2. Before acting on an application to establish or expand a child-serving use in the MU-LI, MU-R, or M-RD districts, the applicant shall prepare and submit to the City an appropriate risk analysis or risk assessment, as determined by the City, that evaluates the risk to children in the use from other activities near the site.
3. All child-serving uses in the MU-LI, MU-R and M-RD districts must notify in writing, on a form approved by the City, all parents of children in the child-serving use that the use is in the MU-LI, MU-R or M-RD district, light manufacturing is a permitted activity in the district, and that primary production manufacturing or construction products manufacturing may be permitted uses in adjacent districts. The child-serving use must require each parent or guardian to confirm in writing that they have read and understood this information. Written confirmations shall be returned to the child-serving use and maintained at the use for City review.
4. To approve an AUP or Use Permit to establish or expand a child-serving use, the review authority must find that:
  - (a) The child-serving use is not incompatible with adjacent and nearby uses, including industrial uses;
  - (b) The risk analysis or risk assessment shows that there is not significant risk to children in the use from other activities near the site; and
  - (c) The applicant has made adequate provisions to comply with the parent/guardian notification requirement in Paragraph (3) above.

- E. **Circuses and Carnival in the MM, MU-LI, and M-RD Districts.** Circuses and carnivals are allowed in the MM, MU-LI, and M-RD districts only as a temporary use.
- F. **Club and Lodges in the M, MM, MU-LI, and M-RD Districts.** Clubs and lodges are allowed in the M, MM, MU-LI and M-RD districts only for persons working in the district.
- G. **General Retail in the MU-LI and M-RD Districts.** Allowed general retail uses in the MU-LI and M-RD districts are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supply stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.
- H. **Manufacturing Uses in the M, MM, MU-LI, and M-RD Districts.** For manufacturing uses in the M, MM, MU-LI, and M-RD districts otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- I. **Non-Vehicle Repair Service in the M, MM, MU-LI, and M-RD Districts.** Retail sales associated with a non-vehicle repair service are not permitted in the M, MM, MU-LI, and M-RD districts.
- J. **Pharmaceuticals Manufacturing in the MU-LI and M-RD Districts.** Pharmaceuticals manufacturing is allowed in the MU-LI or M-RD districts only in locations at least 500 feet from a Residential District or the MU-R district.
- K. **Public Market, Open Air in the MU-LI and M-RD Districts.** Open air markets in the MU-LI or M-RD districts with 5,000 square feet or less of lot area are allowed with an AUP.
- L. **Recycled Materials Processing in the M and MM Districts.** For recycled materials processing facilities under 10,000 square feet in the M and MM districts, an AUP is required if processing occurs outside of a building.
- M. **Recycling Facilities in the MU-LI and M-RD Districts.** Recycled materials processing and recycling redemption centers are allowed in the MU-LI and M-RD districts only on lots greater than 20,000 square feet.
- N. **Retail Sale of Goods Manufactured On-Site.** The following requirements apply to incidental retail sales in all Manufacturing Districts:
  - 1. The size and character of signs for the retail use shall clearly indicate that the retail use is not the primary use of the site.
  - 2. Maximum retail floor area: 10 percent of total gross floor area.
  - 3. Outdoor sales of food service is not permitted.

- O. **Storage, Wholesale, Manufacturing as Incidental Use.** If a storage, wholesale, or manufacturing use is allowed in the M, MM, MU-R, or M-RD district with a Zoning Certificate, the use is allowed incidental to another permitted use without the requirement for an AUP or Use Permit.
- P. **Microbes or biological agents** – See Section 23.302.020(E)
- Q. **Noise.** For purposes of the Noise Ordinance, Municipal Code Chapter 13.40, the Manufacturing Districts are considered Industry Districts.
- R. **Vocational Schools in the MU-LI and M-RD Districts.** A vocational school in the MU-LI or M-RD district must provide training for occupations and/or industries found in the West Berkeley Plan area.
- S. **Wholesale Trade in the MU-LI and M-RD Districts.** Proximity to Residential Use. For wholesale trade use in the MU-LI or M-RD districts otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.

Section 6. That BMC Section 23.206.080(B) be amended to read:

**B. Land Use Regulations**

- 1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
- 2. **Use Permit Not Required.** An existing use in the MU-LI district may be modified or intensified without a Use Permit if:
  - (a) A Use Permit is not required by this chapter; and
  - (b) The Zoning Officer determines that the modification or intensification of the use can reasonably be expected not to increase any impact regulated under environmental performance standards.
- 3. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-LI district only when incidental to food product stores.
- 4. **Theaters.** Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.
- 5. **Vehicle Wrecking.** Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.

Section 7. That BMC Section 23.206.100 be amended to read:

**23.206.100 M-RD Manufacturing, Research and Development District**

- A. **District Purpose.** The purpose of the Manufacturing, Research and Development (M-RD) district is to:

1. Support a mix of industrial and heavy commercial uses, such as light manufacturing and research and development, particularly those which can provide high quality employment at all educational levels and add significantly to the tax base;
2. Allow office and laboratory uses that support light industrial and research and development uses;
3. Provide flexibility to facilitate the development and reuse of large sites with an urban campus-like environment, demonstrating high-quality design and site planning that includes amenities for employees and customers; and
4. Support the development of industrial uses which satisfy performance standards that protect the environment.

**B. Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing District.

**C. Additional Permit Requirements.** See Section 23.206-1: Allowed Land Uses in Manufacturing Districts.

**D. Development Standards.** See Table 23.206-15 for development standards in the M-RD district.

**TABLE 23.206-15. M-RD DEVELOPMENT STANDARDS**

| Development Standards                                                         |                | Supplemental Standards         |
|-------------------------------------------------------------------------------|----------------|--------------------------------|
| Lot Area, Minimum                                                             | No minimum     | 23.304.020– Lot Requirements   |
| Floor Area Ratio, Maximum                                                     | 2.0            |                                |
| Lot Line Setbacks, Minimum                                                    |                |                                |
| Front                                                                         | No minimum     | 23.304.030– Setbacks           |
| Rear                                                                          | No minimum     |                                |
| Interior Side                                                                 | No minimum     |                                |
| Street Side                                                                   | No minimum     |                                |
| Building Separation, Minimum                                                  | No minimum     |                                |
| Lot Coverage, Maximum                                                         | 80%            | 23.304.120– Lot Coverage       |
| Minimum Usable Open Space, Minimum, per 1,000 square feet of gross floor area | 20 square feet | 23.304.090 – Usable Open Space |

|                               |                  |                                |
|-------------------------------|------------------|--------------------------------|
| Main Building Height, Maximum | 55 ft<br>105 [1] | 23.304.050–<br>Building Height |
|-------------------------------|------------------|--------------------------------|

[1] Maximum Main Building Height of 105 feet may be allowed pursuant to Section 23.206.100(D)(1) (Modification of Development Standards on Large Sites).

**1. Modifications to Development Standards on Large Sites.**

- (a) **Purpose.** The purpose of these provisions is to facilitate the development and reuse of large sites as an urban campus-like environment with high-quality design and site planning with amenities for employees and customers.
- (b) **Applicability.** This section applies to projects located on a site of at least 9 acres, which may comprise multiple parcels and blocks, excluding intervening streets/roads/right-of-way or similar.
- (c) **Allowed Modification.** The ZAB shall allow modifications to lot coverage, height and setback standards in Table 23.206-15, as follows, subject to the permit findings in Section 23.206.100(D)(1)(e):
  - i. Main building(s) may comply with the maximum FAR and coverage standards on a project-wide basis, rather than on a parcel-by-parcel basis, as follows:
    - a) The FAR and/or coverage for main buildings on an individual parcel shall not exceed the maximum allowed in Table 23.206-15 by more than 20 percent.
    - b) The project complies with the maximum allowed FAR and coverage in Table 23.206-15.
  - ii. Main building(s) shall not exceed a maximum building height of 105 feet.
- (d) **Development Plan.** The applicant shall submit a development plan that includes all of the following:
  - i. A detailed phasing plan that shows the general location and timing of all physical development, including on and off-site infrastructure, architectural plans, and locations of proposed uses; and
  - ii. A detailed development comparison demonstrating how the changes in development standards for the proposed project maximize amenities for both employees and customers.
- (e) **Findings for Approval.**
  - i. To approve any modification allowed in this section, the ZAB shall make all of the following findings:
    - a) That the modification(s) to the development standard(s) are warranted to support a project that demonstrates enhanced design and site planning. Enhanced design elements shall include but not

be limited to varied and unique architectural features and innovative site layouts that maximize amenities for both employees and customers. Such modification(s) shall result in a development that achieves the purposes of the M-RD district which could not be achieved by strict application of the development standards; and

- b) The applicant has demonstrated that each phase of development does not unduly burden future project implementation, ensures implementation of the project within a reasonable time period, and all required on and off-site infrastructure and amenities are provided.
- ii. To approve a Modification to Development Standards on Large Sites, the ZAB shall also make all required Use Permit findings and follow all procedures in Section 23.406.040 (Use Permits) and any additional Use Permit findings required by the Zoning Ordinance for the use or development in the applicable district.
- (f) **Conditions of Approval.** Additional project specific conditions may be imposed to support the findings for approval. Project specific requirements may include but are not limited to a reimbursement agreement, surety/bond/letter of credit, or private maintenance agreement. The approving body shall identify the project requirements within the Conditions of Approval.
- (g) **Deed Restriction.** A deed restriction shall be prepared requiring compliance with the Conditions of Approval (and as amended), in perpetuity. The property owner shall file and record the deed restriction with the Alameda County Recorder's Office.

E. **Permit Findings.** See Section 23.206.110 (Permit Findings).

Section 8. That BMC Section 23.206.110 be adopted to read:

### **23.206.110 Permit Findings**

- E. **All Manufacturing Districts.** To approve an AUP or a Use Permit in a Manufacturing District, the review authority must find that the project:
  - 1. Is consistent with the purposes of the district;
  - 2. Is compatible with the surrounding uses and buildings;
  - 3. Complies with the adopted West Berkeley Plan; and
  - 4. Meets any applicable performance standards for off-site impacts.
- F. **Additional Findings.** In addition to the findings in Section 23.206.110(A) (All Manufacturing Districts), the review authority must also make the following findings to approve an AUP or Use Permit in each of the Manufacturing Districts.
  - 1. M and MM Districts. The project:
    - (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
    - (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade

treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site.

2. MU-LI District. The project:
  - (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses;
  - (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site; and
  - (c) If the building and/or site is split between the MU-LI district and the C-W district, there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI district and the portions within the C-W district.
3. MU-R District. The project:
  - (a) Is unlikely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses; and
  - (b) Is designed to be supportive of the character and purposes of the district.
4. M-RD District. The project:
  - (a) Is unlikely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from industrial or heavy commercial uses; and
  - (b) Is designed to be supportive of the character and purposes of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site.

Section 9. That Table 23.302-2 within BMC Section 23.302.020(E) be amended to read:

**Table 23.302-2. Permit Requirements for Outdoor Uses**

| DISTRICT/USE CHARACTERISTICS [1]                                | PERMIT REQUIRED |
|-----------------------------------------------------------------|-----------------|
| All Commercial Districts Except for C-W                         |                 |
| Not abutting a residential district                             | AUP             |
| Abutting a residential district                                 | UP(PH)          |
| C-W                                                             |                 |
| Not abutting a residential district and less than 10,000 s. ft. | AUP             |
| Abutting a residential district                                 | UP(PH)          |

|                                                                                                                                                                                                                |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 10,000 sq. ft. or more                                                                                                                                                                                         | UP(PH) |
| M, MM, M-RD [2]                                                                                                                                                                                                |        |
| Less than 20,000 sq. ft.                                                                                                                                                                                       | ZC     |
| 20,000 sq. ft. or more                                                                                                                                                                                         | AUP    |
| MU-LI                                                                                                                                                                                                          |        |
| Less than 20,000 sq. ft.                                                                                                                                                                                       | ZC     |
| 20,000 to 30,000 sq. ft.                                                                                                                                                                                       | AUP    |
| More than 30,000 sq. ft.                                                                                                                                                                                       | UP(PH) |
| MU-R                                                                                                                                                                                                           |        |
| Not abutting a residential district                                                                                                                                                                            | AUP    |
| Abutting a residential district                                                                                                                                                                                | UP(PH) |
| Notes:<br>[1] Size is measured as the lot area of the outdoor activity or storage.<br>[2] In the M,MM, and M-RD districts, permits are required only for activity or storage not ancillary to a permitted use. |        |

Section 10. That BMC Section 23.302.070(E)(4) be amended to read:

**4. MU-LI, MU-R, and M-RD District – Findings.**

- (a) To approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI, MU-R, or M-RD district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.

Section 11. That Table 23.302-7 within BMC Section 23.302.070(G) be amended to read:

**TABLE 23.302-7: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES**

| DISTRICT                        | PERMIT REQUIRED                                                                                                                                                                                |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Districts</b>    |                                                                                                                                                                                                |
| R-3                             | Use Permit for all parking lots and structures. [1]                                                                                                                                            |
| R-S, R-SMU, R-BMU               | Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU. |
| All other residential districts | Use Permit for all parking lots and structures.                                                                                                                                                |

| <b>Commercial Districts</b>                                                                                |                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C-C, C-U                                                                                                   | Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.                                                                                                                                                                                                                    |
| C-SO                                                                                                       | AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.                                                                                                                                                                                                                                   |
| C-DMU                                                                                                      | AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.                                                                                                                                                                                                  |
| C-N, C-E, C-NS, C-SA                                                                                       | Use Permit for all parking lots and structures.                                                                                                                                                                                                                                                                                  |
| C-T                                                                                                        | Use Permit for all parking structures. All parking lots not permitted.                                                                                                                                                                                                                                                           |
| C-W                                                                                                        | AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.                                                                                                                                                                                                |
| <b>Manufacturing Districts</b>                                                                             |                                                                                                                                                                                                                                                                                                                                  |
| M, MM                                                                                                      | AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.                                                                                                                 |
| MU-LI, M-RD                                                                                                | Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district. |
| MU-R                                                                                                       | Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.                                                                                                                                                    |
| Notes:<br>Parking lots and structures in the R-3 district are not permitted within the Southside Plan area |                                                                                                                                                                                                                                                                                                                                  |

Section 12. That Table 23.322-4 within BMC Section 23.322.030(C) is hereby amended to read:

**TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

| <b>Land Use</b>         | <b>Required Parking Spaces</b> |
|-------------------------|--------------------------------|
| <b>Residential Uses</b> |                                |
| Accessory Dwelling Unit | None required                  |
| Dwellings               | None required                  |
| Group Living            | None required                  |

| Land Use                                          | Required Parking Spaces                                                                                                                                                                                                                         |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Accommodation                                     |                                                                                                                                                                                                                                                 |
| <b>Non-Residential Uses</b>                       |                                                                                                                                                                                                                                                 |
| All non-residential uses except uses listed below | M-RD District: None required<br>All Other Districts: 2 per 1,000 sq. ft.                                                                                                                                                                        |
| Art/Craft Studio                                  | M-RD District: None required<br>All Other Districts: 1 per 1,000 sq. ft.                                                                                                                                                                        |
| Community Care Facility                           | None required                                                                                                                                                                                                                                   |
| Food Service Establishment                        | M-RD District: None required<br>All Other Districts: 1 per 300 sq. ft.                                                                                                                                                                          |
| Library                                           | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                                                                                                             |
| Laboratories                                      | M-RD District: None required<br>All Other Districts: 1 per 650 sq. ft.                                                                                                                                                                          |
| Nursing Home                                      | 1 per 5 residents, plus 1 per 3 employees                                                                                                                                                                                                       |
| Medical Practitioners                             | One per 300 sq. ft.                                                                                                                                                                                                                             |
| Large Vehicle Sales and Rental                    | MU-LI District: 1.5 per 1,000 sq. ft.<br>M-RD District: None required<br>All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay                                           |
| Manufacturing                                     | MU-R District: 1.0 per 1,000 sq. ft.<br>M-RD District: None required<br>All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                     |
| Storage, warehousing, and wholesale trade         | M-RD District: None required<br>All Other Districts: 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                          |
| Live/Work                                         | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted<br>MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| Research and Development                          | M-RD District: None required<br>All Other Districts: 1 per 1,000 sq. ft.                                                                                                                                                                        |

| Land Use                                                                                                                                                                                                                                                                                                                         | Required Parking Spaces |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| <p><u>Notes:</u><br/>                     [1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.</p> |                         |

Section 13. That Table 23.322-12 within BMC Section 23.322.100(A) be amended to read:

**TABLE 23.322-12: LAND USES REQUIRING OFF-STREET LOADING SPACES**

| District                                                                                  | Land Use [1]                                                                                                              |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| R-1, R-1A, R-2                                                                            | Schools 10,000 sq. ft. or more                                                                                            |
| R-2A                                                                                      | Senior congregate housing, nursing homes and schools 10,000 sq. ft. or more                                               |
| R-3                                                                                       | Senior congregate housing, hospitals, nursing homes, schools 10,000 sq. ft. or more                                       |
| R-4, R-5                                                                                  | Senior congregate housing, hospitals, nursing homes, offices, schools 10,000 sq. ft. or more                              |
| R-S, R-SMU                                                                                | All non-residential uses 10,000 sq. ft. or more                                                                           |
| All C Districts except C-T                                                                | All commercial uses 10,000 sq. ft. or more                                                                                |
| C-T                                                                                       | No loading spaces required for all land uses                                                                              |
| All M Districts except M-RD                                                               | All commercial and manufacturing uses 10,000 sq. ft. or more                                                              |
| M-RD                                                                                      | Research and Development uses 25,000 sq. ft. or more; All other commercial and manufacturing uses 10,000 sq. ft. or more. |
| <p><u>Note:</u><br/>                     [1] Land use size is total gross floor area.</p> |                                                                                                                           |

Section 14. That Table 23.322-13 within BMC Section 23.322.100(B) be amended to read:

**TABLE 23.322-13: NUMBER OF REQUIRED OFF-STREET LOADING SPACES**

| District                             | Spaces Required [1]                                                                                                                                                     |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Residential and Commercial Districts | 1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 40,000 sq. ft.                                                                         |
| Manufacturing Districts              | Research and Development uses in M-RD: 25,000 to 100,000 sq. ft. – 1 space; more than 100,000 to 200,000 sq. ft. – 2 spaces; each additional 100,000 sq. ft. – 1 space. |

| District                                              | Spaces Required [1]                                                                                                                     |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
|                                                       | All other uses in all other M Districts: 1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 25,000 sq. ft |
| Note:<br>[1] Land use size is total gross floor area. |                                                                                                                                         |

Section 15. 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.

At a regular meeting of the Council of the City of Berkeley held on March 25, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.



Office of the City Manager

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Police Accountability Board – Appointment of New Member

RECOMMENDATION

Adopt a Resolution appointing a new member to the Police Accountability Board nominated by Vice-Mayor Bartlett.

FISCAL IMPACTS OF RECOMMENDATION

All PAB commissioners are eligible to receive a stipend of up to \$300 per month.

CURRENT SITUATION AND ITS EFFECTS

There are currently three vacant seats on the PAB, including one alternate position.

Vice-Mayor Bartlett has nominated Macharia Edmonds to serve on the Police Accountability Board. Macharia Edmonds meets the eligibility criteria as verified by city staff in accordance with the requirements of the City Charter and may be appointed by a majority vote of the Council.

| <b>Commissioner</b> | <b>Nominated By</b>     |
|---------------------|-------------------------|
| <i>Vacant</i>       | Mayor Ishii             |
| Alexander Mozes     | Councilmember Kesarwani |
| David Williams      | Councilmember Taplin    |
| <i>Vacant</i>       | Councilmember Bartlett  |
| Kitty Calavita      | Councilmember Tregub    |
| Leah Wilson         | Councilmember O’Keefe   |
| Juliet Leftwich     | Councilmember Blackaby  |
| Joshua Cayetano     | Councilmember Lunaparra |
| Randy Wells         | Councilmember Humbert   |
| <i>Vacant</i>       | Alternate               |

Article XVIII, Section 125, Part 6 of the City Charter states, “The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council and that each individual nominee must be approved by a majority vote of the City Council.”

Members of the Police Accountability Board must:

- Be a resident of the City
- Be at least 18 years of age
- Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers
- Be fair minded and objective with a demonstrated commitment to community service

The City Charter indicates that desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations and that the City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City.

#### BACKGROUND

Measure II was adopted on November 3, 2020, by the voters of Berkeley to establish an Office of the Director of Police Accountability and create a new Police Accountability Board (hereafter “Board”), both of which are independent of the City Manager. The members of the Board are approved by vote of the full Council.

In June of 2021 the Mayor and Members of the City Council nominated and appointed the initial nine members of the PAB and also appointed one alternate commissioner.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

The appointment is provided for by the City Charter and pursuant to the nomination submitted by Vice-Mayor Bartlett.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

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

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

APPOINTMENT OF MACHARIA EDMONDS TO THE POLICE ACCOUNTABILITY BOARD

WHEREAS, Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board; and

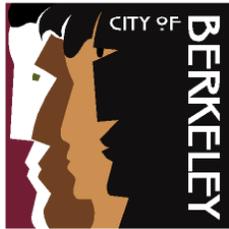
WHEREAS, Article XVIII, Section 125, Part 6 provides for the Council's appointment of board members; and

WHEREAS, the Vice-Mayor Bartlett submitted a nominee for appointment by the full council; and

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following applicant is hereby appointed to the Police Accountability Board:

| <b>Nominee</b>   | <b>Nominated By</b> |
|------------------|---------------------|
| Macharia Edmonds | Vice-Mayor Bartlett |





Office of the City Manager

CONSENT CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Peter Radu, Assistant to the City Manager

Subject: Contract: University of California, San Francisco for Encampment Resolution  
Funding Research EvaluationRECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into a contract and any necessary amendments with The Regents of the University of California, on behalf of its San Francisco campus, to evaluate the success of its Encampment Resolution Funding Round 3 (ERF-3), for a term of two years (January 1, 2025 – December 31, 2026) and in an amount not to exceed \$200,000.

FISCAL IMPACTS OF RECOMMENDATION

Adopting this resolution will result in an expenditure contract with The Regents of the University of California, on behalf of its San Francisco campus, for a total amount not to exceed \$200,000. Funding for this contract will be paid using the City's existing ERF-3 grant from the State of California, and will be appropriated as part of the Second Annual Appropriations Ordinance for Fiscal Year 2025.

CURRENT SITUATION AND ITS EFFECTS

On November 19, 2024, the City Council approved the Homeless Response Team's plans to master lease the Howard Johnson motel on University Avenue ("Capri motel") for use as a low-barrier, noncongregate shelter, and to target those 26 rooms to people living in the 2<sup>nd</sup>/Cedar Street encampments, which staff were directed by Council on September 10, 2024 to prioritize for closure. The funding source for this project is \$5.4M in ERF-3 funding from a grant from the State of California, the receipt of which was also approved by Council at the November 19, 2024 meeting. Staff in Neighborhood Services and HHCS partnered closely with Dorothy Day House to quickly open this shelter on January 15, 2025. At the time of submission of this report (March 13, 2025), 42 people had been moved indoors from the 2<sup>nd</sup> St/Cedar St encampments (including 35 into the Capri motel), essentially vacating the entire encampment; staff are slowly working to clean the unwanted belongings and debris left behind. A huge part of the success of this encampment resolution has been the use of \$150,000 in ERF-3 funding to pilot an RV Buy Back program, coupling a cash offer for RVs being used as shelter in exchange for the RV occupant moving into interim housing. So far, of the 21 vehicles offered this

opportunity, the occupants of all but one of them agreed to the funding and have moved into interim housing.

Prior to submission of the ERF-3 grant application to the State, staff secured a partnership with UCSF Benioff Homeless and Housing Initiative to perform a scientifically-rigorous research evaluation of the Homeless Response Team's use of the grant to resolve these encampments. Specifically, the evaluation seeks to address the following questions:

1. Do those offered non-congregate shelter accept the intervention? What are the characteristics of those who accept? What reasons do they provide for accepting the intervention? What strategies enhance acceptance? What are the characteristics of those who do not accept the intervention? What are the reasons they provide for why they turned down the intervention?
2. For oversized vehicle residents, what are the characteristics of those who accept the RV buy-back program? What reasons do they provide for accepting the buy-back? What strategies enhance acceptance? What are the characteristics of those who do not accept the buy-back? What are the reasons they provide for why they turned down the intervention?
3. For those who accepted non-congregate shelter, what are their opinions regarding their housing situation? What impact has the intervention had on other aspects of their lives? For those who did not accept non-congregate shelter, where have they stayed since leaving the encampment? How has leaving the encampment affected other aspects of their lives?

Given the short expenditure timelines for the grant imposed by the State, the City opened the Capri Motel (aka Howard Johnson) shelter program and began resolving the 2<sup>nd</sup> St encampment in January 2025. However, UCSF researchers agreed to begin working on the evaluation in early January 2025 when the funds were first put into use by the City, before a contract could be negotiated. Therefore, staff are requesting that the contract start date be back-dated out of necessity, to reimburse UCSF for time already committed to the project.

Since UCSF is the only organization of its kind performing this type of research, and given the Council Budget and Finance Policy Committee's vote in support of the plan to partner with them at their January 25, 2024 meeting, staff will be waiving competitive solicitation for the award of this contract.

Resolving encampments through the use of evidence-based interim housing and other services aligns with the City of Berkeley's strategic plan priorities.

## BACKGROUND

On November 27, 2023, the State of California's Interagency Council on Homelessness (Cal ICH) released a Notice of Funding Availability (NOFA) for the Encampment Resolution Funding Program, Round 3, Rolling Application (ERF-3-R), a \$400M statewide competitive grant opportunity to fund local demonstration projects that assist people living in encampments to safe, low-barrier, and stable housing pathways. The ERF program is intended to fund actionable, person-centered local proposals that resolve the experience of unsheltered homelessness for people residing in encampments, necessarily also addressing the safety and wellness of people within encampments, resolving critical encampment concerns, and transitioning individuals into interim shelter with clear pathways to permanent housing or directly into permanent housing, using data-informed, non-punitive, low-barrier, person-centered, Housing First, and coordinated approaches.

On January 25, 2024, City staff presented a plan, including the proposed priority encampment and a request for local Measure P match funding, to the Budget and Finance Policy Committee of the Council. This plan included a commitment to work with UCSF to research and evaluate the success of the City's use of ERF-3 dollars. The Committee voted to approve staff's application. Staff successfully completed and submitted the application on January 31, 2024. The City's application was initially declined by the State on April 22, 2024 but staff addressed the State's feedback, resubmitted the grant, and were awarded the full amount on September 27, 2024. Council approved the receipt of the grant on November 19, 2024.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Helping unhoused people currently living in West Berkeley transition into interim and permanent housing placement will minimize the detrimental environmental impacts associated with encampment homelessness over the long run, including vector and fire hazards, accumulation of trash and waste, and impacts on sensitive waterways. It will also reduce the impact of these environmental elements on the health and safety of people with no shelter.

## RATIONALE FOR RECOMMENDATION

With their vote of support at their January 25, 2024, meeting, the Budget and Finance Policy Committee approved the partnership with UCSF for this evaluation. The Homeless Response Team is committed to following evidence-based best practices in the provision of interim and permanent housing to resolve encampments, yet encampment resolution—as a local government activity increasingly becoming necessary across the United States—remains an essentially un-studied intervention from a research perspective. With the research findings emerging from this partnership, Berkeley will once again be on the leading edge of disseminating best practices for humanely resolving encampments.

## ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Josh Jacobs, Homeless Services Coordinator, 510 225-8035

Attachments:

1: Resolution

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

AUTHORIZING A CONTRACT WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ON BEHALF OF ITS SAN FRANCISCO CAMPUS, TO PERFORM ENCAMPMENT RESOLUTION EVALUATION RESEARCH FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$200,000 FOR THE PERIOD JANUARY 1, 2025 TO DECEMBER 31, 2026.

WHEREAS, on November 27, 2023, the State of California released a Notice of Funding Availability (NOFA) for the Encampment Resolution Funding Round 3 (ERF-3-R) Program, a Statewide, competitive \$400M funding opportunity to further the State's understanding of best practices to compassionately resolve encampments by assisting their residents into safe and stable pathways to housing; and

WHEREAS, on January 25, 2024, the Budget and Finance Policy Committee of the City Council unanimously voted to approve city staff's grant application including a proposed research partnership with UCSF for the purposes of evaluating this encampment resolution effort; and

WHEREAS, on November 19, 2024, the City Council approved the acceptance of \$5.4M in ERF-3-R funding from the State as well as a contract with Dorothy Day House to operate the Howard Johnson motel as noncongregate interim housing; and

WHEREAS, the City Council directed staff to prioritize the closure of the encampments on 2<sup>nd</sup> and Cedar Streets in Northwest Berkeley at their September 10, 2024 regular meeting; and

WHEREAS, on January 15, 2025, the City and Dorothy Day House opened the Howard Johnson motel as noncongregate interim housing for individuals currently residing in the 2<sup>nd</sup>/Cedar encampments, to effectuate Council's direction to resolve those encampments; and

WHEREAS, the University of California, San Francisco's Benioff Homelessness and Housing Initiative will partner with the City to perform evaluative research on this program, to better advance knowledge and best practices on effectively and compassionately ending encampment homelessness.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a contract and all necessary amendments for the period January 1, 2025 TO December 31, 2026, with The Regents of the University of California, on behalf of its San Francisco campus, to perform encampment resolution evaluation research; and

BE IT FURTHER RESOLVED that the contract amount will not exceed \$200,000 with funding to be paid from the Encampment Resolution Fund Round 3 (ERF-3) grant already received by the City. A recorded signature copy of said contract and any amendments will be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 15, 2025

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$15,794,774**

| <u>PROJECT</u>                                                                                 | <u>Fund</u>                                   | <u>Source</u>                                                                                                                             | <u>Amount</u> |
|------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| FY26 and FY27 Healthy Berkeley Community Funding                                               | 011                                           | Discretionary                                                                                                                             | \$2,294,774   |
| On-Call Electrical Services for City Facilities                                                | 511<br>501                                    | T1 Infstr and Fac<br>CIP                                                                                                                  | \$700,000     |
| On-Call Structural Services for City Facilities                                                | 511<br>501                                    | T1 Infstr and Fac<br>CIP                                                                                                                  | \$500,000     |
| FY2025 Sanitary Sewer & Storm Drain Rehabilitation Project:<br>Union Pacific Railroad Corridor | 611<br>616                                    | Sanitary S<br>Clean Storm Water                                                                                                           | \$8,800,000   |
| Elevator Maintenance Services                                                                  | 011<br>627<br>636<br>672<br>673<br>138<br>101 | Discretionary<br>Off Street Parking<br>Bldg Purchases & MGMT<br>Equipment Maintenance<br>Building Maintenance<br>Parks Tax<br>Library Tax | \$350,000     |
| On-Call HVAC Services                                                                          | 636<br>673                                    | Bldg Purchases & MGMT<br>Building Maintenance                                                                                             | \$300,000     |
| Indoor/Outdoor Painting                                                                        | 673                                           | Building Maintenance                                                                                                                      | \$100,000     |
| Public Works Supervisor Training                                                               | 673<br>601<br>672<br>611                      | Building Maintenance<br>Zero Waste<br>Equipment Maintenance<br>Sanitary Sewer Operation                                                   | \$150,000     |

|                                                         |                                 |                                                                                          |                     |
|---------------------------------------------------------|---------------------------------|------------------------------------------------------------------------------------------|---------------------|
| Fire/Life Safety Equipment Monitoring                   | 636<br>672<br>601<br>011<br>627 | Off Street<br>Equipment Maintenance<br>Zero Waste<br>Discretionary<br>Off Street Parking | \$350,000           |
| On-Call Electrical Services                             | 127<br>134<br>142               | State Transportation Tax<br>One Time Funding<br>Street Lighting                          | \$1,100,000         |
| On-Call Equitable Community Engagement Services         | N/A                             | N/A                                                                                      | \$1,000,000         |
| Public Art for the Santa Fe Trackbed to Park Conversion | 148                             | Cultural Trust                                                                           | \$150,000           |
| <b>Total:</b>                                           |                                 |                                                                                          | <b>\$15,794,774</b> |

**CURRENT SITUATION AND ITS EFFECTS**

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager’s purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

**BACKGROUND**

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager’s purchasing authority for services

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City’s environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

**RATIONALE FOR RECOMMENDATION**

Need for the goods and/or services.

**ALTERNATIVE ACTIONS CONSIDERED**

None.

**CONTACT PERSON**

Roopreet Walia-Soorma, Senior Buyer, Finance, 510-981-7311

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on April 15, 2025

CONSENT CALENDAR  
April 15, 2025

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 15, 2025
  - a. FY26 and FY27 Healthy Berkeley Community Funding
  - b. On-Call Electrical Services for City Facilities
  - c. On-Call Structural Services for City Facilities
  - d. FY2025 Sanitary Sewer & Storm Drain Rehabilitation Project:  
Union Pacific Railroad Corridor
  - e. Elevator Maintenance Services
  - f. On-Call HVAC Services
  - g. Indoor/Outdoor Painting
  - h. Public Works Supervisor Training
  - i. Fire/Life Safety Equipment Monitoring
  - j. On-Call Electrical Services
  - k. On-Call Equitable Community Engagement Services
  - l. Public Art for the Santa Fe Trackbed to Park Conversion

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                                             | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                | ESTIMATED COST                                                                                                                            | BUDGET CODE TO BE CHARGED                                                                                                                                   | DEPT. / DIVISION           | CONTACT NAME & PHONE                                          |
|-------------------|---------------------------------------------------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|---------------------------------------------------------------|
| 25-11718-C        | FY26 and FY27 Healthy Berkeley Community Funding                                            | 3/10/2025            | 4/10/2025                | Community based services to promote reduction of the consumption of sugar-sweetened beverages and to address the effects of sugar-sweetened beverage consumption on health. | NTE \$2,294,774                                                                                                                           | HHHSSB2301 (Project Code)<br><br>GL: 011-51-507-507-0000-000-459-636110                                                                                     | HHCS/ Public Health        | Roberto Terrones<br>981-5324                                  |
| <b>Dept Total</b> |                                                                                             |                      |                          |                                                                                                                                                                             | <b>\$2,294,774</b>                                                                                                                        |                                                                                                                                                             |                            |                                                               |
| 25-11719-C        | On-Call Electrical Services for City Facilities                                             | 4/16/2025            | 5/15/2025                | Electrical services for upcoming City projects including T1                                                                                                                 | \$700,000                                                                                                                                 | 30% PW<br>511-54-623-6770000-000-444-612310<br><br>70% PW<br>501-54-623-677-0000-000-444-612310<br><br>TBD (on-call contract) funds are built into projects | PW/Eng                     | Priya Chopra<br>292-0064                                      |
| 25-11720-C        | On-Call Structural Services for City Facilities                                             | 4/16/2025            | 5/15/2025                | Structural Engineering services for upcoming City projects including T1.                                                                                                    | \$500,000                                                                                                                                 | 30% PW<br>511-54-623-6770000-000-444-612310<br><br>70% PW<br>501-54-623-677-0000-000-444-612310<br><br>TBD (on-call contract) funds are built into projects | PW/Eng                     | Priya Chopra<br>292-0064                                      |
| 25-11722-C        | FY2025 Sanitary Sewer & Storm Drain Rehabilitation Project: Union Pacific Railroad Corridor | 4/16/2025            | 5/1/2025                 | Fulfill Sewer Consent Decree requirement. and storm drain rehabilitation and replacement project.                                                                           | Sewer (611) Construction with Contingency \$8,250,000<br><br>Storm (616) Construction with Contingency \$550,000<br><br>Total \$8,800,000 | 611-54-623-676-0000-000-473-665130-PWENSR2404<br><br>616-54-623-675-0000-000-473-665120-PWENSR2404                                                          | Public Works - Engineering | Jonathan Caudillo<br>981-6427<br><br>Daniel Akagi<br>981-6394 |

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | ESTIMATED COST                                                        | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                                                                                                   | DEPT. / DIVISION                          | CONTACT NAME & PHONE                                      |
|-------------------|-------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|-----------------------------------------------------------|
| 25-11723-C        | Elevator Maintenance Services                   | 4/16/2025            | 5/1/2025                 | Maintenance, inspection and repair of city's elevators                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$350,000 over three years with two 1-year optional extensions        | 011-54-624-692-0000-000-412-624110-<br>627-54-622-665-3001-000-474-624110-<br>627-54-622-665-3002-000-474-624110-<br>636-54-624-692-0000-000-474-624110-<br>672-54-626-722-0000-000-474-624110-<br>673-54-624-692-0000-000-474-624110-<br>138-52-542-568-0000-000-461-612990-<br>101-22-242-272-0000-000-463-612990-<br>011-21-203-000-0000-000-424-624110- | Public Works, PRW, Library                | Tucker Brofft<br>981-5375<br><br>Erika Barros<br>981-6462 |
| 25-11724-C        | On-Call HVAC Services                           | 4/16/2025            | 5/1/2025                 | On-Call HVAC Services for City facilities, included 1947 Center St., and rental of HVAC equipment as needed.                                                                                                                                                                                                                                                                                                                                                                                                                             | \$300,000 over three years, with two optional extension years         | 636-54-624-697-0000-000-472-612990-<br>673-54-624-692-0000-000-474-624110-                                                                                                                                                                                                                                                                                  | Public Works/<br>Facilities<br>Electrical | Tucker Brofft<br>981-5375<br><br>Erika Barros<br>981-6264 |
| 25-11725-C        | Indoor/Outdoor Painting                         | 4/16/2025            | 5/1/2025                 | Painting for exterior and interior of City-owned and maintained facilities                                                                                                                                                                                                                                                                                                                                                                                                                                                               | NTE of \$100,000 over three years with two 1-year optional extensions | 673-54-624-692-0000-000-472-624110-                                                                                                                                                                                                                                                                                                                         | Public Works/Facilities                   | Tucker Brofft<br>981-5375<br><br>Erika Barros<br>981-6264 |
| 25-11726-C        | Public Works Supervisor Training                | 5/1/2025             | 6/1/2025                 | Supervisory Training will be provided to cohorts of 15 – 20 staff. It is anticipated that this supervisor training will take 40 hours during the year including but not limited to:<br>Conversations – Regular and Difficult<br>Coaching<br>Building & Leading a high performing Team / Measuring Staff Success / Accountability<br>Progressive Discipline<br>Purchasing / Division Budget Planning / Scheduling / Overtime Management<br>Succession Planning / Documentation<br>Giving and Receiving Feedback / Performance Evaluations | \$150,000 over two years                                              | 673-54-624-692-0000-000-472-612990-<br>601-54-625-714-0000-000-472-612990-<br>601-54-621-654-0000-000-472-612990-<br>672-54-621-654-0000-000-472-612990-<br>611-54-623-676-0000-000-472-612990-                                                                                                                                                             | Public Works                              | Tucker Brofft<br>981-5375<br><br>Erika Barros<br>981-6264 |

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | ESTIMATED COST                                                                                           | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                                         | DEPT. / DIVISION                                      | CONTACT NAME & PHONE                                      |
|-------------------|-------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-----------------------------------------------------------|
| 25-11727-C        | Fire/Life Safety Equipment Monitoring           | 4/16/2025            | 5/1/2025                 | Monitoring and inspection of City Fire/Life safety systems                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$350,000 over three years with two 1-year optional extensions                                           | 636-54-624-692-0000-000-474-624110-<br>672-54-626-722-0000-000-474-624110-<br>673-54-624-692-0000-000-474-624110-<br>601-54-627-734-3023-000-474-624110-<br>011-54-624-692-0000-000-412-624110-<br>627-54-622-665-3001-000-474-624110-                                                            | Public Works/Facilities                               | Tucker Brofft<br>981-5375<br><br>Erika Barros<br>981-6264 |
| 25-11728-C        | On-Call Electrical Services                     | 4/16/2025            | 5/1/2025                 | On-Call Electrical Services with multiple vendors (up to three) to support City of Berkeley's Electrical Division. Vendors will provide support on critical electrical projects and task, including:<br>-Traffic & Pedestrian Signal Maintenance and Repair<br>-Video and Loop Detection<br>-ADA Pedestrian Upgrades<br>-Conduit repairs and support of Electric Vehicle Charges in City-owned Garages<br>-Parking, Parks, Pathway and Sports lighting installation, maintenance and repair.<br>-Indoor electrical services and repairs<br>-Ad Hoc Electrical Work such as pumps, UPS.<br>-If available directly or subcontracted – electrical | \$1,100,000 million over three years, with two 1-year optional extensions<br><br>Estimated \$300k per FY | 127-54-622-668-0000-000-431-612990-<br><br>127 Funds to be entered in CBE mid-biennial update - FY26, FY27 & FY28.<br><br>134-54-624-695-0000-000-431-612990-<br><br>142-54-624-694-3018-000-426-612990-<br><br>142 Funds to be entered via mid-biennial update FY 2026 Line Item Changes.        | Public Works/<br>Electrical                           | Tucker Brofft<br>981-5375                                 |
| <b>Dept Total</b> |                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>\$12,350,000</b>                                                                                      |                                                                                                                                                                                                                                                                                                   |                                                       |                                                           |
| 25-11721-C        | On-Call Equitable Community Engagement Services | 4/16/2025            | 6/24/2025                | On-call services to provide various equitable community engagement services, including but not limited to: building community relationships, education, research, conducting training for employees, facilitating meetings and public forums, distributing compensation to community, conducting surveys, conducting targeted meetings, and supporting services for in-person/virtual events.                                                                                                                                                                                                                                                  | \$1,000,000                                                                                              | We don't have a specific project or a specific funding source at this time, however we do want to have an on-call contract in place for any future budget referrals we receive. PRW, PW, and HHCS have also expressed interest and would like to be able to use this contract once it's in place. | Planning/Office of Energy and Sustainable Development | Katie Van Dyke<br>981-7401                                |

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED         | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                      | ESTIMATED COST      | BUDGET CODE TO BE CHARGED           | DEPT. / DIVISION   | CONTACT NAME & PHONE     |
|-------------------|---------------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------|-------------------------------------|--------------------|--------------------------|
| <b>Dept Total</b> |                                                         |                      |                          |                                                                                                                                   | <b>\$1,000,000</b>  |                                     |                    |                          |
| 25-11729-C        | Public Art for the Santa Fe Trackbed to Park Conversion | 4/16/2025            | 5/1/2025                 | Contract an Artist to design, fabricate, and install two pieces of outdoor public art at the Santa Fe Trackbed to Park Conversion | \$150,000           | 148-21-208-252-0000-000-446-612990- | CMO/OED/CIVIC ARTS | Mark Salinas<br>981.7538 |
| <b>Dept Total</b> |                                                         |                      |                          |                                                                                                                                   |                     |                                     |                    |                          |
| <b>TOTAL</b>      |                                                         |                      |                          |                                                                                                                                   | <b>\$15,794,774</b> |                                     |                    |                          |





Office of the City Manager

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing, and Community Services Department

Subject: Contract No. 32200086 Amendment: Crisis Services of Alameda County for Mental Health Crisis Line

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32200086 with Crisis Services of Alameda County for Mental Health Crisis Line services for a total contract not to exceed amount of \$100,000 through June 30, 2028. This amendment will add \$50,001, as well as extend the contract term three years.

FISCAL IMPACTS OF RECOMMENDATION

This amendment will add \$50,001 to the contract. Resources for the contract have been included in the FY 2025 Budget and will be provided from the Community Services and Supports Development fund 315.

CURRENT SITUATION AND ITS EFFECTS

Crisis Services of Alameda County has performed well under Contract No. 32200086, and provided a consistently high quality of service. Using their crisis line as a resource for Mental Health Division clients allows us to offer 24-hour support to those in need, as well as providing an additional option clients can rely upon when experiencing an unexpected crisis. This is a Strategic Plan Priority Project, advancing our goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

Clients served by the Mental Health Division have consistently indicated that having the ability to obtain crisis support outside of business hours would be a tremendous support. Clinicians and Program Supervisors explored a number of potential options to meet this need, and it was determined that Crisis Services of Alameda County fulfilled all requirements in the most comprehensive way. Continuing work with a local provider who works well with our clients would benefit the Division and the City as a whole.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Given their significant experience in providing crisis line services, Crisis Services of Alameda County is uniquely qualified to perform the services required.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to approve the attached Resolution and the City could issue a Request for Proposals to find a different service provider. However, City staff does not recommend this option because we have received positive feedback from consumers on the availability of the service provided by Crisis Services of Alameda County. Also, due to the lengthy process to start a new Request for Proposals, it could jeopardize the continuity of the service. Lastly, this is a very specialized service for our mental health clientele and the likelihood that the same vendor would be selected is very high as they are a high-quality local provider.

CONTACT PERSON

Conor Murphy, Associate Management Analyst, HHCS, (510) 981-7611  
Jeffrey Buell, Mental Health Manager, HHCS, (510) 981-7682

Attachments:  
1: Resolution

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

AMENDING CONTRACT NO. 32200086 WITH CRISIS SERVICES OF ALAMEDA  
COUNTY FOR MENTAL HEALTH CRISIS LINE

WHEREAS, the City's Mental Health Division has had a consistent need for after-hours crisis support for clients served over many years; and

WHEREAS, the services in this contract have enabled the Mental Health Division to work with a local crisis line provider, increasing the provision of after-hours crisis line services for our clients; and

WHEREAS, on October 6, 2021 the City Manager authorized execution of Contract No. 32200086 with Crisis Services of Alameda County for Mental Health Crisis Line services, amending which contract is the focus of this report; and

WHEREAS, funding for this contract has been included in the FY 2025 Budget and will be provided from the Community Services and Supports Development fund 315.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is hereby authorized to execute an amendment to Contract No. 32200086 with Crisis Services of Alameda County for Mental Health Crisis Line services for a total contract not to exceed amount of \$100,000 for the period beginning September 1, 2021 and ending June 30, 2028. A record signature copy of the contract and any amendments shall be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing, and Community Services Department

Subject: Contract No. 32200191 Amendment: Options Recovery for Substance Use Disorder Services co-location

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32200191 with Options Recovery for Substance Use Disorder services for a total contract not to exceed amount of \$1,000,000 through June 30, 2027. This amendment will add \$500,000 and two years to the contract term.

FISCAL IMPACTS OF RECOMMENDATION

This amendment will add \$500,000 to the contract. Resources for the contract have been included in the FY 2025 Budget and will be provided from the Community Services and Supports Development Fund 315, subject to approval of Annual Appropriations Ordinance Number Two.

CURRENT SITUATION AND ITS EFFECTS

The Fiscal Year 2021/2022 Mental Health Services Act (MHSA) Annual Update included new funding for Substance Use Disorder (SUD) services. The additional funding and flexibility in the use of previously allocated MHSA funds allowed Berkeley Mental Health (BMH) to work with a local SUD provider to co-locate SUD services at the Mental Health Adult clinic. This change increased the provision of SUD services for BMH clients, providing an opportunity for staff to obtain consultations on SUD services, and making referrals into SUD services outside of the Mental Health Adult clinic easier for consumers. This is a Strategic Plan Priority Project, advancing our goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

A large portion of individuals who currently receive services at BMH are also suffering from co-occurring disorders, having both mental health issues and substance use disorders. In an effort to increase the capacity to serve individuals with substance use disorders, BMH sought out the services of a local SUD provider. On January 18, 2022

City Council approved Resolution No. 70,182-N.S., authorizing Contract No. 32200191 with Options Recovery for SUD co-location services, amending which contract is the focus of this report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

As part of the current contract, Options Recovery has been collecting bi-weekly and monthly data to track client progress in goal setting, identifying barriers to success, and assessing key factors such as substance use, mood fluctuations, and pain levels. Results have been overwhelmingly positive thus far. This data-driven approach not only enhances client engagement but also informs best practices for integrating goal attainment into co-occurring disorder treatment.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to approve the attached Resolution and the City could issue a Request for Proposals to find a different service provider. However, City staff does not recommend this option because we have received positive feedback from consumers on the quality and availability of the service provided by Options Recovery. Also, due to the lengthy process to start a new Request for Proposals, it could jeopardize the continuity of the service.

CONTACT PERSON

Conor Murphy, Associate Management Analyst, HHCS, (510) 981-7611  
Jeffrey Buell, Mental Health Manager, HHCS, (510) 981-7682

Attachments:  
1: Resolution

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

AMENDING CONTRACT NO. 32200191 WITH OPTIONS RECOVERY FOR  
SUBSTANCE USE DISORDER SERVICES CO-LOCATION

WHEREAS, on September 14, 2021 by Resolution No. 70,012-N.S. City Council approved the Mental Health Services Act (MHSA) Fiscal Year 2021-2022 Annual Update, which included funding for Substance Use Disorder (SUD) services; and

WHEREAS, the services in this contract have enabled the Mental Health Division to work with a local SUD provider to co-locate SUD services at the Mental Health Adult clinic, increasing the provision of SUD services for our clients; and

WHEREAS, on January 18, 2022 City Council approved Resolution No. 70,182-N.S., authorizing Contract No. 32200191 with Options Recovery for SUD co-location services, amending which contract is the focus of this report; and

WHEREAS, funding for this contract have been included in the FY 2025 Budget and will be provided from the CSS Development Fund 315, subject to approval of Annual Appropriations Ordinance Number Two.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is hereby authorized to execute an amendment to Contract No. 32200191 with Options Recovery for Substance Use Disorder services for a total contract not to exceed amount of \$1,000,000 for the period beginning January 1, 2022 and ending June 30, 2027. A record signature copy of the contract and any amendments shall be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Kevin Fong, Director, Information Technology  
Subject: Contract No. 32000177 Amendment: NextRequest for Public Records Act (PRA) Response Software

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000177 with NextRequest for software hosting, implementation, maintenance and related services for a Public Records Act Response Software System, for an additional amount not to exceed \$61,098, for a total not to exceed value of \$194,475.07, for the period commencing on July 1, 2019 through June 30, 2027.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional software license term in the amount of \$61,098 is available in the Department of Information Technology’s Fiscal Year (FY) 2026 and 2027 IT Cost Allocation Fund as itemized below. Spending for this contract and related amendments in future fiscal years is subject to Council’s approval of the proposed citywide budget and annual appropriation ordinances.

FY 2026: Software Maintenance  
\$29,094 Budget Code: 680-35-364-000-0000-000-472-613130  
(IT Cost Allocation, 311 Customer Service, Software Maintenance)

FY 2027: Software Maintenance  
\$32,004 Budget Code: 680-35-364-000-0000-000-472-613130  
(IT Cost Allocation, 311 Customer Service, Software Maintenance)

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**\$61,098 Total FY 2026-2027: Software Maintenance and Professional Services**

CURRENT SITUATION AND ITS EFFECTS

City staff currently use the NextRequest PRA platform to receive public records requests, manage internal communication and data collection for these requests, and respond to the community. Community members, who issue public records requests, receive automatic email confirmations from NextRequest and can track the status of their request through the NextRequest portal.

In 2024, City staff received and processed 2189 new public records requests for the City via the NextRequest system. The average time to respond to these requests was eight days, and the average time to fulfillment was twenty-five days.

The NextRequest Public Records Act Response software system is a Strategic Plan Priority Project, advancing the city's goal to be a customer-focused organization that provides excellent, timely, easily accessible service and information to the community.

### BACKGROUND

Prior to installing NextRequest software, Community members would submit requests by email, US Mail, in person through the City Clerk's office, or directly to City departments. PRA requests were completed using an on-line form by City Clerk staff and allocated to the responsive department to take action.

In 2011, in an effort to streamline the process, the City adapted the case forms in the Lagan CRM system, a case management system used by 311 Customer Service Call Center, to capture requests for public records. Lagan CRM captured case information but lacked the capability to capture the requirements needed to fulfill PRA requests. In addition, the Lagan CRM was not easily searchable by "key words", and staff responding to a PRA could not access report information on notes, attachments or case description. This limitation made searching for past responsive documents challenging. As a result, departments such as Planning and Public Works who routinely receive multiple requests for the same information were forced to duplicate work that had already been performed to fulfill a PRA request.

Furthermore, the Open Data Commission required the City of Berkeley to report annually on the number of PRA's handled. The report was processed by the City Attorney's office and required information including the quantity of PRA's responded to on time, the number of PRA's where primary fulfillment date is beyond the required ten days, and the total number of days to fulfill a PRA. To produce this report, the City Attorney's office worked extensively with the 311 Customer Service manager and took weeks to prepare. The system did not produce the level of detail needed to respond to the Open Data Commission.

Given the challenges of the system, on November 14, 2018, the City issued a Request for Proposals (RFP) #19-11255-C for an improved Public Records Act Response System, including a redaction module to enable better management of redacting the sensitive information.

The City received two (2) responses to the Public Records Act Response System RFP by the December 13, 2018 deadline. A committee of 7+ staff from the City Clerk, City Attorney, Planning, Fire, Police, and Information Technology departments conducted a comprehensive evaluation process that included proposal reviews, vendor demonstrations, and reference checks. NextRequest was selected because they offered the most comprehensive and user-friendly solution to meet the City's needs.

The City completed the implementation of the NextRequest platform in November 2020.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

NextRequest provides an improved system with a secure customer-facing portal to allow individuals to conduct self-service searches for public record requests. Additionally, requestors receive City generated documents systematically, reducing paper, use of copy equipment, and trips to City Clerk’s office to view and retrieve documents. This supports the reduction of our carbon footprint and goals of the City’s Climate Action Plan. Further the public can search, find, and retrieve document records stored in the PRA portal, reducing the need to enter a new public records request.

RATIONALE FOR RECOMMENDATION

Staff recommends continuing the use of the NextRequest PRA processing software as it best meets City needs and they scored the highest in the evaluation performed by City staff. NextRequest excels at meeting the City’s requirements for a secure public facing portal to provide customers with self-service (24/7/365) technology to make requests and to check the status of PRA requests. Publishing common documents to the portal streamlines service delivery for customers and eliminates publishing duplicate requests. Both City staff and the community greatly benefit from the functionality offered by NextRequest.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered as staff finds this software extremely helpful both for City staff and to the community. Additionally, ongoing software licensing and support is required for usage.

CONTACT PERSON

Kevin Fong, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 32000177 AMENDMENT: NEXTREQUEST FOR PUBLIC RECORDS  
ACT RESPONSE SOFTWARE SYSTEM

WHEREAS, the City of Berkeley has identified the need to improve the efficiency of its management of Public Records Act requests; and

WHEREAS, on November 14, 2018, the City of Berkeley issued a Request for Proposal No.19-11255-C for an improved Public Records Request Response Software System and received two responding bidders; and

WHEREAS, in response to the City's Request for Proposal, NextRequest responded with a proposal that received the highest rating among those submitted by competing vendors; and

WHEREAS, the City receives approximately 2000 requests per year and maintaining software support is critical to the proper functioning of the system; and

WHEREAS, funding for the additional software license term in the amount of \$61,098 is available in the Department of Information Technology's Fiscal Year (FY) 2026 and 2027 IT Cost Allocation Fund, and spending for this contract and related amendments in future fiscal years is subject to Council's approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to amend Contract No. 32000177 with NextRequest for software hosting, implementation, maintenance and related services for a Public Records Act Response Software System, for an additional amount not to exceed \$61,098, for a total not to exceed value of \$194,474.07, for the period commencing on July 1, 2019 through June 30, 2027.



Office of the City Manager

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront  
Subject: Purchase Order with Multiquip Inc. for a Portable Emergency Power Generator for Berkeley Tuolumne Family Camp

RECOMMENDATION

Adopt a Resolution allowing the City to participate in Sourcewell contract bid procedures and authorize the City Manager to execute a purchase order for one Multiquip Portable Generator and associated options with Multiquip Inc. in an amount not to exceed \$116,766.

FISCAL IMPACTS OF RECOMMENDATION

The cost of the Multiquip portable generator is \$116,766 and includes purchasing, shipping, installation, and sales tax. Funding for this purchase is available in the FY 2025 General Fund (Fund 011) budget.

|                       |                                                                     |           |
|-----------------------|---------------------------------------------------------------------|-----------|
| General Fund<br>(011) | 011-52-545-000-0000-000-461-664120-<br>PRWCP25004-011-GEN-CONSTRUCT | \$116,766 |
|-----------------------|---------------------------------------------------------------------|-----------|

CURRENT SITUATION AND ITS EFFECTS

Due to the increasing frequency of Public Safety Power Shutoffs (PSPS) and intermittent power losses at Berkeley Tuolumne Family Camp during the summer season, the Camp needs a portable power generator. The generator will provide emergency power to the dining hall facility refrigeration units to prevent the emergency spoilage of food for the 300 plus visitors at Camp each day that has already occurred several times. Council authorization of a Purchase Order with Multiquip, Inc. for a new portable generator is required to make this purchase.

BACKGROUND

Berkeley Tuolumne Camp reopened in 2022 following a complete rebuild after the Camp was destroyed by the Rim Fire in 2013. With the exception of \$2.7M paid by the City, insurance funding paid for the \$56M rebuild project. This insurance funding covered “as-was replacement” and current code upgrades only. Therefore, the rebuild only paid for a back-up generator for the Water Treatment and Distribution system, the

septic system, and emergency lighting as required by current State Building Code. Since reopening, intermittent and prolonged power outages have become more common as Pacific Gas and Electric works to alleviate wildfire ignition caused by electrical facilities during peak fire risk periods. These power outages have been substantial and several times have caused the emergency spoilage of refrigerated and frozen food that is needed for the 300 plus guests who stay at Camp per day during the Summer. The installation of a new generator and electrical connection will ensure that these emergency situations will be prevented.

The City is presently a member of Sourcewell, a municipal contracting agency operating under the legislative authority of Minnesota Statute 123A.21 that conducts a competitive bidding procurement system for public agencies. After competing in a Sourcewell bidding process for portable construction equipment in 2022, the prices for Multiquip equipment were approved by Sourcewell Contract No. 020923-MTQ, which the City can now use to purchase the new generator.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The new Multiquip portable emergency power generator at Berkeley Tuolumne Camp will be powered by renewable diesel fuel that reduces greenhouse gas emissions when compared to other fuels, and will meet all current air quality emissions standards. This project helps the City with Strategic Plan Goal 7 to be “a global leader in addressing climate change, advancing environmental justice, and protecting the environment.”

#### RATIONALE FOR RECOMMENDATION

The new generator will allow the City’s Berkeley Tuolumne Family Camp to maintain electrical service during intermittent power outages and prevent the emergency spoilage of the Camp’s food supply. This purchase will support the City’s Strategic Plan Goal 1 of “providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.”

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Steph Chu, Recreation and Youth Services Manager, 510-981-6707  
Justin Pitcher, Recreation Program Supervisor, 510-981-5123

Attachments:  
1: Resolution

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

PURCHASE ORDER WITH MULTIQUIP INC. FOR A PORTABLE EMERGENCY  
POWER GENERATOR FOR BERKELEY TUOLUMNE FAMILY CAMP

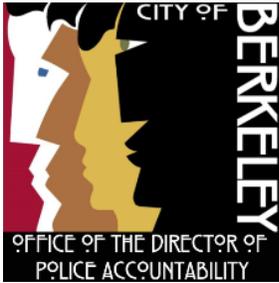
WHEREAS, the increasing frequency of Public Safety Power Shutoffs (PSPS) and intermittent power losses at Berkeley Tuolumne Family Camp during the summer season has resulted in the emergency spoilage of food needed for the 300 plus visitors at Camp each day several times; and

WHEREAS, the City is presently a member of Sourcewell, a municipal contracting agency operating under the legislative authority of Minnesota Statue 123A.21 that conducts a competitive bidding procurement system for public agencies. After competing in a Sourcewell bidding process for portable construction equipment in 2022, the prices for Multiquip equipment were approved by Sourcewell Contract No. 020923-MTQ, which the City can now use to purchase the new generator; and

WHEREAS, funds are available in the amount of \$116,766 in the FY 2025 General Fund (011) for this purchase.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order with Multiquip, Inc. for one portable emergency power generator for Berkeley Tuolumne Family Camp in an amount not to exceed \$116,766 through the Sourcewell contract bid process.





CONSENT CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board (PAB)

Submitted by: Hansel A. Aguilar, Director of Police Accountability (DPA) & Secretary of the Police Accountability Board (PAB)

Subject: Proclamation of the City of Berkeley Designating April 17 as Police Accountability Day

**RECOMMENDATION**

Adopt a proclamation declaring April 17 as Police Accountability Day to honor the establishment of civilian oversight of law enforcement in the City of Berkeley through the founding of the Police Review Commission and to reaffirm the City’s commitment to police accountability and transparency. The proclamation encourages the Police Accountability Board and the Office of the Director of Police Accountability to collaborate with community organizations, educational institutions, and local leaders to organize events, initiatives, and activities that raise public awareness and promote engagement in police accountability. Additionally, the proclamation will reaffirm the City of Berkeley’s dedication to being a national leader in police accountability, advancing policies and practices rooted in justice, equity, and community trust.

**SUMMARY**

This report provides formal reasons why April 17 should be designated as Police Accountability Day.

Recommendations include, but are not limited to:

- To provide an annual opportunity to reflect on Berkeley’s leadership in police oversight.
- To honor the contributions of the Police Review Commission, Police Accountability Board, and the Office of the Director of Police Accountability.
- To engage the community in discussions and actions that strengthen trust and accountability in policing.

- To underscore the importance of ongoing efforts to advance equitable and just policing practices.
- To foster stronger relationships between law enforcement and the communities they serve.
- To commemorate the founding of the Police Review Commission.
- To celebrate the City's continued commitment to police accountability and transparency.

### **FISCAL IMPACTS OF RECOMMENDATION**

There are no identifiable fiscal impacts associated with these recommendations.

### **CURRENT SITUATION AND ITS EFFECTS**

Currently, there is no day that commemorates the founding of the Police Review Commission.

### **BACKGROUND**

The City of Berkeley has a longstanding tradition of leadership in civilian oversight of law enforcement, exemplified by the establishment of the Police Review Commission (PRC) on April 17, 1973, through Ordinance No. 4644-N.S. The founding of the PRC was a groundbreaking step towards transparency, accountability, and community trust in policing practices, setting a national example for civilian oversight.

In November 2020, Berkeley voters approved Measure II, which replaced the PRC with the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) to strengthen oversight powers, modernize practices, and reaffirm the City's commitment to equitable law enforcement oversight. Measure II represents a significant evolution in the City's approach to police accountability, ensuring that the principles of justice, transparency, and fairness remain at the forefront of law enforcement practices. Civilian oversight of law enforcement plays a critical role in promoting procedural justice, protecting civil rights, and enhancing public safety, both locally and across the nation.

At its March 5, 2025, regular meeting, the PAB unanimously approved a resolution recommending that the City Council designate April 17 as "Police Accountability Day".<sup>1</sup> Designating this day would provide an annual opportunity to reflect on Berkeley's leadership in police oversight, honor the contributions of the PRC, PAB, and ODPA, and engage the community in discussions and actions that strengthen trust and accountability in policing. Recognizing Police Accountability Day underscores the ongoing commitment to advancing equitable and just policing practices while fostering stronger relationships between law enforcement and the communities they serve.

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<sup>1</sup> March 5, 2025 PAB Regular Meeting Recording (relevant discussion at [54:30:00-58:39:00]) : <https://youtu.be/X-c0A5Uc--0?si=S91NDBIo4NIgTL3v>

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**RATIONALE FOR RECOMMENDATION**

The PAB presents these recommendations for City Council, aimed honoring the contributions of the PRC, PAB, and ODP.

**CONTACT PERSON**

Hansel A. Aguilar, Director,  
Office of the Director of Police Accountability (510) 981-4950

Attachments:

1. PAB Resolution No. 2025-0010
2. Proclamation of the City Of Berkeley Designating April 17 As Police Accountability Day



**RESOLUTION NO. 2025-0010**

**RESOLUTION CALLING FOR THE DESIGNATION OF APRIL 17 AS POLICE ACCOUNTABILITY DAY**

**WHEREAS**, on April 17, 1973, the City of Berkeley established the Police Review Commission (PRC) through Ordinance No. 4644-N.S., becoming a pioneer in civilian oversight of law enforcement; and

**WHEREAS**, the founding of the PRC marked a historic commitment by the City of Berkeley to ensure transparency, accountability, and community trust in policing practices; and

**WHEREAS**, in November 2020, Berkeley voters overwhelmingly approved Measure II, which replaced the PRC with the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) to enhance oversight powers, increase transparency, and strengthen the City's commitment to police accountability; and

**WHEREAS**, Measure II established the PAB and ODPA as integral components of a modern and robust civilian oversight framework, ensuring continued dedication to the principles of fairness, equity, and justice in law enforcement oversight; and

**WHEREAS**, civilian oversight of law enforcement continues to play an essential role in promoting procedural justice, protecting civil rights, and enhancing public safety; and

**WHEREAS**, recognizing April 17 as Police Accountability Day would serve as an opportunity for the community to reflect on the progress made in police accountability, honor the work of civilian oversight bodies, and reaffirm the City's commitment to equitable and just law enforcement practices; and

**WHEREAS**, the designation of Police Accountability Day would also underscore the importance of police accountability as a cornerstone of democracy, community trust, and public safety both locally and nationwide.

**NOW, THEREFORE, BE IT RESOLVED**, that the Police Accountability Board and the Office of the Director of Police Accountability urge the Berkeley City Council to designate April 17 as Police Accountability Day; and

**BE IT FURTHER RESOLVED**, that this day shall be commemorated annually to highlight the importance of civilian oversight, community engagement, and the continuous pursuit of fairness and justice in law enforcement; and

**BE IT FURTHER RESOLVED**, that the PAB and ODPA will collaborate with community organizations, educational institutions, and local leaders to host events, discussions, and activities to educate and engage the public on police accountability and the legacy of the Police Review Commission; and

**BE IT FINALLY RESOLVED**, that the City of Berkeley reaffirms its commitment to being a national leader in police accountability and to advancing policies and practices that uphold the principles of justice, transparency, and community trust.

**Adopted on:** March 5, 2025

**RESOLUTION VOTING RESULTS**

| <b>Board Member</b> | <b>Aye</b> | <b>No</b> | <b>Abstain</b> |
|---------------------|------------|-----------|----------------|
| Calavita            | X          |           |                |
| Cayetano            | X          |           |                |
| Leftwich            | X          |           |                |
| Williams            | X          |           |                |
| Wilson              | X          |           |                |

**Total:** 5 Ayes, 0 No

**CERTIFICATION**

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

---

**Joshua Cayetano,**  
Chair of the Police Accountability Board

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

---

**Hansel A. Aguilar,**  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

Date

**PROCLAMATION OF THE CITY OF BERKELEY DESIGNATING APRIL 17 AS POLICE ACCOUNTABILITY DAY**

**WHEREAS**, the City of Berkeley has a longstanding tradition of leadership in civilian oversight of law enforcement, exemplified by the establishment of the Police Review Commission (PRC) on April 17, 1973, through Ordinance No. 4644-N.S.; and

**WHEREAS**, the founding of the PRC was a groundbreaking step toward transparency, accountability, and community trust in policing practices, setting a national example for civilian oversight; and

**WHEREAS**, in November 2020, Berkeley voters approved Measure II, which replaced the PRC with the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) to strengthen oversight powers, modernize practices, and reaffirm the City's commitment to equitable law enforcement oversight; and

**WHEREAS**, Measure II represents a significant evolution in the City's approach to police accountability, ensuring that the principles of justice, transparency, and fairness remain at the forefront of law enforcement practices; and

**WHEREAS**, civilian oversight of law enforcement plays a critical role in promoting procedural justice, protecting civil rights, and enhancing public safety, both locally and across the nation; and

**WHEREAS**, designating April 17 as Police Accountability Day provides an annual opportunity to reflect on Berkeley's leadership in police oversight, honor the contributions of the PRC, PAB, and ODPA, and engage the community in discussions and actions that strengthen trust and accountability in policing; and

**WHEREAS**, the recognition of Police Accountability Day underscores the importance of ongoing efforts to advance equitable and just policing practices, fostering stronger relationships between law enforcement and the communities they serve;

**NOW, THEREFORE, BE IT PROCLAIMED**, that the City of Berkeley hereby designates April 17 as Police Accountability Day to commemorate the founding of the Police Review Commission and to celebrate the City's continued commitment to police accountability and transparency; and

**BE IT FURTHER PROCLAIMED**, that the City of Berkeley encourages the Police Accountability Board and the Office of the Director of Police Accountability to collaborate with community organizations, educational institutions, and local leaders to host events, educational programs, and activities that promote public awareness and engagement on issues of police accountability; and

**BE IT FINALLY PROCLAIMED**, that the City of Berkeley reaffirms its dedication to being a national leader in police accountability, advancing policies and practices that reflect the values of justice, equity, and community trust.

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Mayor Adena Ishii

---

Councilmember Rashi Kesarwani

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Councilmember Terry Taplin

---

Councilmember Ben Bartlett

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Councilmember Igor Tregub

---

Councilmember Shoshana O'Keefe

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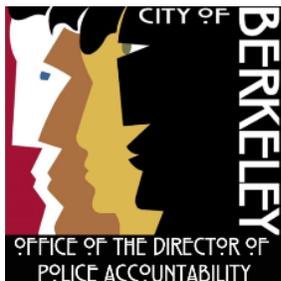
Councilmember Brent Blackaby

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Councilmember Cecilia Lunaparra

---

Councilmember Mark Humbert



CONSENT CALENDAR

April 15, 2025

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

**From:** Police Accountability Board (PAB)

**Submitted by:** John “Chip” Moore, Chair of the Police Accountability Board  
Hansel A. Aguilar, Director of Police Accountability

**Subject:** Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board

**RECOMMENDATION**

The Police Accountability Board formally recommends to the City Council that it:

1. Pass an ordinance or otherwise affirm the Police Accountability Board’s ability to access documents and records in furtherance of its central accountability function, consistent with Charter Amendment Section 125.
2. Adopt a robust resolution ensuring full and meaningful accountability for sworn officers—whether on-duty or off-duty—who engage in misconduct of any kind, but especially actions or expressions of racial or other types of bias.
3. Direct the City Manager to work with the Berkeley Police Department, Police Accountability Board, and the Office of the Director of Police Accountability to create a public repository to fulfill the vision of California Penal Code Section 832.7(b)(1), allowing for transparency in cases of sustained allegations of officer racism or other discriminatory conduct or expression.
4. Call on California state legislators to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600 – 41603).

**POLICY COMMITTEE RECOMMENDATION**

On February 25, 2025, the Public Safety Policy Committee adopted the following action: M/S/C (Kesarwani/O’Keefe) to send item to City Council with a negative recommendation.  
Vote: All Ayes.

**SUMMARY**

In accordance with City Charter Section 125(17)(a), the City of Berkeley Police Accountability Board's Subcommittee on Policy and Practices conducted an examination of policies, practices, and procedures within the Berkeley Police Department (BPD) concerning the Downtown Task Force (DTF) and Bike Unit allegations.

A Special Meeting of the PAB was convened on November 15, 2022, where the Board voted to establish a subcommittee to review all policies and practices related to the allegations made by former BPD Officer Corey Shedoudy, which were made public on November 10, 2022. The subcommittee, initially chaired by former Board Member Cheryl Owens and later by Board Member Kitty Calavita following Owens' resignation, also included PAB Chair John (Chip) Moore. The allegations involved racist text messages, bias against the unhoused, and pressure to meet arrest quotas, with the Sergeant of the DTF implicated.

Despite the PAB's authority under Section 125(3)(a) of the City Charter to access departmental records without redaction or limitation, the subcommittee encountered numerous obstacles in obtaining the necessary materials. This review revealed several areas where BPD policies and practices did not meet best practices, policy, or legal standards. Specifically, the findings included:

- Expectations to achieve certain arrest numbers.
- Exchange of racially charged and discriminatory text messages among DTF officers.
- Use of personal cellphones for discussing work-related matters.
- Essentially unlimited overtime for DTF officers.
- Vague or absent policies in critical areas that could lead to legal violations or undermine fair policing.
- Insufficient knowledge of BPD policies and State law among some DTF members.

The Board's preliminary recommendations for improving BPD policies and practices include:

- Establishing a new policy prohibiting formal or informal arrest quotas.
- Ensuring fair enforcement of stay-away orders in accordance with State law.
- Increasing training on BPD policies and State law.
- Revising policies related to Fair and Impartial Policing, Standards of Conduct, Early Warning System, Employee Speech, Expression and Social Networking, Personal Communication Devices, and Overtime Compensation Requests.

Additionally, the PAB recommends that the City Council:

- Pass an ordinance in line with Charter Amendment Section 125(3)(a)(7) to enable the PAB to self-initiate investigations of potential misconduct and access internal records for such investigations.
- Adopt a resolution to ensure comprehensive accountability for officers who engage in misconduct, consistent with the City's 2024 State and Federal Legislative Agenda.
- Direct the City Manager to collaborate with the BPD, PAB, and Office of the Director of Police Accountability to establish a public repository, as envisioned by California Penal Code Section 832.7(b)(1), to ensure transparency regarding sustained findings of discriminatory conduct.
- Advocate for state legislators to extend the prohibition on arrest quotas, currently limited to the California Vehicle Code (Section 41600–41603), to encompass all California law enforcement activities.

This report aims to not only highlight deficiencies in BPD policies and practices but also to offer concrete recommendations for addressing these issues. Achieving these goals will require the collective efforts of the PAB, BPD leadership, the City Manager, and the City Council. Through this report, the PAB reaffirms its commitment to collaboration, justice, fairness, trust, and community safety.

In support of these objectives, the ODPa submits a complementary report to provide additional information related to the PAB's findings, in accordance with Chapter VI, Section C.1. of the City of Berkeley's Commissioner's Manual.

The PAB initially submitted this report to the City Council for presentation at the October 1, 2024 Regular Meeting but was deferred to the Public Safety Committee<sup>1</sup>. During the PAB meeting on September 25, 2024, the PAB voted to request the withdrawal of the item<sup>2</sup>, a request that was granted by the Public Safety Committee.

### **FISCAL IMPACTS OF RECOMMENDATION**

Implementing the PAB's recommendations will incur costs related to staff time, technology requirements, and maintenance of such technology.

### **CURRENT SITUATION AND ITS EFFECTS**

On November 10, 2022, Corey Shedoudy, a former member of the Berkeley Police Department's (BPD) Downtown Task Force and Bike Unit (DTF), alleged that the DTF had arrest quotas and used questionable legal tactics, such as "stop and frisk," probationary searches without reasonable suspicion, and a broad interpretation of stay-

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<sup>1</sup> September 26, 2024 Agenda & Rules Committee Special Meeting Minutes: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/09-16%20Minutes%20-%20Agenda%20Committee.pdf>

<sup>2</sup> The motion carried with 6 ayes in favor, 0 noes, and 2 PAB members absent. Police Accountability Board Regular Meeting Minutes for September 25, 2024: [link]

away orders from UC Berkeley. To support his claims, Officer Shedoudy provided a series of text messages from the DTF that contained derogatory comments about homeless individuals and people of color.

In response to these allegations, the PAB began a policy review on November 15, 2022, exercising its authority under Section 125(17)(a) of the Berkeley City Charter. A subcommittee was formed to examine the policies and practices related to the allegations. In December 2022, the City of Berkeley retained the law firm Swanson & McNamara to investigate the claims. During this investigation, the text messages provided by Mr. Shedoudy were authenticated.

### **BACKGROUND**

The purpose of the PAB is to promote public trust through independent, objective civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and offer a means for prompt, impartial, and fair investigations of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

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

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

### **RATIONALE FOR RECOMMENDATION**

Accepting the recommendations from the Police Accountability Board will improve public trust by enhancing transparency and accountability within the Berkeley Police Department. Implementing these recommendations will strengthen oversight in the city, allowing the Board to fulfill its intended purpose effectively.

### **CONTACT PERSON**

Hansel A. Aguilar, Director of Police Accountability  
Office of the Director of Police Accountability, (510) 981-4950

#### Attachments:

- 1: PAB Report “Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board”
- 2: ODPa Companion Report “Companion Report to Berkeley Police Department Texting Allegations An Independent Investigation by the Police Accountability Board”



# Berkeley Police Department Memorandum



From: Chief Jennifer Louis

Date: 2/18/2025

To: Berkeley City Council Public Safety Policy Committee

Subject: Berkeley Police Department Response Regarding the Police Accountability Board and Office of the Director of Police Accountability 2024 Texting Offenses Reports

The Berkeley Police Department (BPD) has reviewed the recent reports and their accompanying recommendations from the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) responding to the independent investigation completed by Swanson & McNamara into text exchanges among BPD officers on the bike team. It is important to note that neither the PAB nor ODPA reports dispute the findings of the independent investigation; rather, they offer recommendations based on their review of the report.

The Department remains committed to robust oversight and accountability in the performance of our core services. BPD must therefore carefully assess all recommendations to ensure they are warranted and appropriate and their benefits justify any cost and potential disruption to the provision of public safety services. We appreciate the opportunity to clarify our positions and explain how current practices address many of the concerns raised.

## **PAB Recommendations to the Department**

The PAB report calls for revisions to several key policies as well as increased training on laws and policies. The ODPA companion report does not make recommendations directly to the police department.

### *Policy Updates*

#### **PAB Recommendation:**

- Revise key policies including:
  - a. Fair and Impartial Policing (Policy 401)
  - b. Personal Communication Devices (Policy 701)
  - c. Employee Speech, Expression, and Social Networking (Policy 1029)
  - d. Early Warning System (Policy 1041)
  - e. Standards of Conduct (Policy 321)
  - f. Overtime Compensation (Policy 1019)
  - g. Adopt a standalone policy prohibiting formal or informal arrest quotas.

#### **BPD Response:**

BPD is actively collaborating with the PAB on a number of policy reviews initiated by the PAB. Additionally, the department is preparing to implement a next-generation Early Intervention System (EIS) platform to strengthen our existing EIS process and further enhance oversight. Over the course of the last several years, a number of the above policies have been updated, as BPD worked to complete Council recommendations related to fair and impartial policing, City Auditor recommendations regarding overtime, and our process to convert departmental General Orders to Lexipol Policies.

The Charter empowers the PAB to initiate reviews and propose specific policy amendments, and we welcome any detailed proposals. We remain committed to continuous improvement, and making thoughtful, intentional,



## Berkeley Police Department Memorandum



and productive policy updates is a critical responsibility for the BPD that requires significant staff time and is undertaken only when it aligns with our departmental mission as well as our core commitment to public safety and operational efficiency. We currently have no additional substantive policy changes planned from the list provided.

### *Training and Oversight*

#### **PAB Recommendation:**

- Increase training on state laws, stay-away orders, and internal policies. Implement clearer accountability mechanisms for policy enforcement.

#### **BPD Response:**

The department's Policy and Training Unit ensures that all officers understand state laws and internal policies through comprehensive and ongoing training programs. Our training needs are continuously driven by legal mandates, timely legal updates, data analysis, audits, and early intervention efforts. These mechanisms ensure that we are providing training exactly where it is needed. Currently, review of the independent investigation as well as our internal assessments show that our existing training adequately addresses these standards and no additional training measures regarding stay-away orders are warranted at this time.

### **Additional Considerations**

A range of additional recommendations from the PAB and ODPa are directed to the City Council, City Manager and the community to further manage our law enforcement practices. The Department would like to provide the Public Safety Policy Committee additional background to assist as helpful with a deeper understanding of the key issues and needs.

Key themes emerging from these proposals include:

- **Expanded Access and Transparency:**
  - The reports articulate proposals to expand the PAB's authority to access unredacted internal records (under Charter Section 125) and to create a public database for sustained misconduct findings. It is important to note that there is an ongoing dialogue between the City and the Berkeley Police Officer's Association regarding the scope of PAB access as part of the process to establish PAB's Permanent Regulations for handling Investigations and Complaints. Currently, we continue to rely on Charter Provisions, existing PAB's Temporary Regulations as well as public record procedures, all which balance transparency with considerations for community member and officer privacy rights.
- **Accountability and Legislative Adjustments:**
  - A number of recommendations address accountability for officer misconduct—including both on- and off-duty behavior—and call for resolutions or legislative changes (such as extending the prohibition of arrest quotas to all law enforcement activities). Our current policies are designed to meet these accountability goals, and any proposed amendments would need to be weighed against broader policy priorities and fiscal implications.
- **Operational Enhancements and Oversight Mechanisms:**
  - Several proposals suggest operational improvements such as real-time audits of body-worn camera footage, revised protocols for handling complaints against the police chief, and the



## Berkeley Police Department Memorandum



development of a comprehensive communications policy during investigations. Our established oversight processes already provide multiple layers of review and safeguard public communications. These suggestions would require serious trade-offs regarding funding, administrative processes, and the balance of oversight responsibilities between existing bodies (such as the City Manager's Office and the Chief of Police).

- **External Assessment and Accreditation:**
  - The reports express interest in evaluating the potential benefits of external assessment tools—including law enforcement accreditation and standardized performance metrics—to supplement our robust internal oversight systems. While external evaluations may offer additional insights, they also involve significant administrative requirements and must be considered in the context of Berkeley's unique operational, administrative and oversight environment.
- **Additional Proposals and Considerations:**
  - Other recommendations touch on topics such as randomized audits of city-issued devices, the formulation of an alcohol rehabilitation leave policy, and Charter amendments to expand investigative authority or secure independent legal counsel for oversight agencies. Each of these proposals carries distinct operational and fiscal trade-offs that should be properly weighed.

Our department remains committed to effective oversight, accountability, and continuous improvement. We believe these efforts must be rooted in our core departmental priorities and established practices to enhance public safety and operational efficiency. To that end, many of the proposals in these reports will require further stakeholder engagement, clear funding sources, and alignment with existing practices to ensure they don't interrupt our ability to deliver our core services at the high standard set by Council, the community, and ourselves.

### Conclusion

We remain committed to working collaboratively with the PAB, ODP, and all stakeholders to ensure that our policies and practices continue to support public safety and fair, effective law enforcement. Our department will continue to engage in dialogue as these issues evolve.

Thank you for your attention to this response.

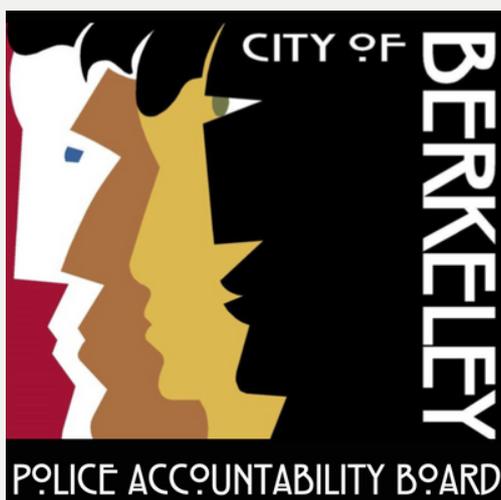
Cc:

Paul Buddenhagen, City Manager

Hansel Aguilar, Director of Police Accountability

Josh Cayetano, Police Accountability Board Chair

Mark Numainville, City Clerk



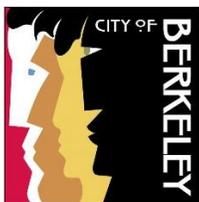
# BERKELEY POLICE DEPARTMENT TEXTING OFFENCES

An Independent Investigation by the  
Police Accountability Board

**Prepared by:**

Police Accountability Board  
City of Berkeley, CA

Approved by the PAB on  
July 10, 2024



**MAYOR**

Jesse Arreguín

**CITY COUNCIL**

Rashi Kesarwani, District 1  
Terry Taplin, District 2  
Ben Bartlett, District 3  
Igor Tregub, District 4

Sophie Hahn, District 5  
Susan Wengraf, District 6  
Cecilia Lunaparra, District 7  
Mark Humbert, District 8

**City Manager**

LaTanya Bellow, Interim City Manager

**Berkeley Police Department**

Jennifer Louis, Chief of Police

**POLICE ACCOUNTABILITY BOARD (PAB) MEMBERS**

John "Chip" Moore, Chair  
Leah Wilson, Vice-Chair  
Brent Blackaby  
Kitty Calavita  
Joshua Cayetano  
Juliet Leftwich  
Alexander Mozes  
David Williams

**OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY (ODPA) STAFF**

Hansel Alejandro Aguilar, Director of Police Accountability  
Jose De Jesus Murillo, Policy Analyst  
Jayson Wechter, Investigator  
Keegan Horton, Investigator  
Melanie E. Beasley, Administrative Analyst  
Lucky, Therapy Animal

## Table of Contents

|                                                                                                                             |    |
|-----------------------------------------------------------------------------------------------------------------------------|----|
| <b>PREFACE</b> .....                                                                                                        | 3  |
| <b>EXECUTIVE SUMMARY</b> .....                                                                                              | 4  |
| <b>BACKGROUND</b> .....                                                                                                     | 7  |
| <b>DATA SOURCES</b> .....                                                                                                   | 11 |
| <b>LIMITATIONS OF THE DATA</b> .....                                                                                        | 11 |
| <b>FINDINGS</b> .....                                                                                                       | 13 |
| <b>Authenticated Text Messages</b> .....                                                                                    | 13 |
| <b>Statistical Analyses</b> .....                                                                                           | 13 |
| <b>Policy and Practices Deficiencies and Recommendations</b> .....                                                          | 17 |
| <b>Fair and Impartial Policing, Policy 401</b> .....                                                                        | 18 |
| <b>Personal Communication Devices, Policy 701</b> .....                                                                     | 19 |
| <b>Employee Speech, Expression, and Social Networking, Policy 1029</b> .....                                                | 20 |
| <b>Early Warning System, Policy 1041</b> .....                                                                              | 20 |
| <b>Standards of Conduct, Policy 321</b> .....                                                                               | 22 |
| <b>Overtime Compensation Requests, Policy 1019</b> .....                                                                    | 22 |
| <b>Prohibition on Arrest Quotas</b> .....                                                                                   | 24 |
| <b>Stay-away Orders</b> .....                                                                                               | 25 |
| <b>RECOMMENDATIONS FOR CITY COUNCIL ACTION</b> .....                                                                        | 26 |
| <b>SUMMARY</b> .....                                                                                                        | 29 |
| <b>ATTACHMENTS</b> .....                                                                                                    | 31 |
| <b>ATTACHMENT 1. Fair and Impartial Policing: POLICY 401 (with recommended changes in red)</b> .....                        | 32 |
| <b>ATTACHMENT 2. Personal Communication Devices: POLICY 701 (with recommended changes in red)</b> .....                     | 36 |
| <b>ATTACHMENT 3. Employee Speech, Expression and Social Networking: POLICY 1029 (with recommended changes in red)</b> ..... | 41 |
| <b>ATTACHMENT 4. EARLY WARNING SYSTEM: POLICY 1041 (recommended changes in red)</b> .....                                   | 46 |
| <b>ATTACHMENT 5. STANDARDS OF CONDUCT: Policy 321 (with recommended changes in red)</b> .....                               | 50 |
| <b>ATTACHMENT 6. Overtime Compensation Requests: Policy 1019</b> .....                                                      | 60 |
| <b>APPENDIX</b> .....                                                                                                       | 67 |
| <b>Appendix 1. City of Berkeley Contract for services with Swanson &amp; McNamara LLP, Vendor Contract #32300109</b> .....  | 68 |
| <b>Appendix 2. Text Messages Sent by the Downtown Task Force and Bike Unit Members</b> .....                                | 78 |
| <b>Appendix 3. Sample Quota Ban Policy</b> .....                                                                            | 95 |

**Table of Figures**

Figure 1. Number of Arrest by Officer of the Downtown Task Force and Bike Unit ..... 13  
Figure 2. Downtown Task Force Arrest Numbers by Month ..... 14  
Figure 3. Race of Individuals Arrested by the Downtown Task Force/Bike Unit (Oct.2019 to Nov.2020)..... 15  
Figure 4. Downtown Task Force Arrest sent to Alameda County District Attorney's Office (Oct. 1, 2019 – Nov. 22, 2020)..... 16  
Figure 5. Arrest made by the BPD (Jan. 2021 - Dec. 2022)..... 17

## PREFACE

On November 10, 2022, Officer Corey Shedoudy, a former member of the Berkeley Police Department's (BPD) Downtown Task Force and Bike Unit (DTF)<sup>1</sup>, claimed the DTF maintained arrest quotas and employed questionable legal tactics including "stop and frisk, probation searches without reasonable suspicion of a crime, and a broad interpretation of stay-away orders from UC Berkeley."<sup>2</sup>

The allegations and the explicitness of those texts jolted the Berkeley community and its political leaders. Subsequently, the City hired an outside law firm to investigate the authenticity of the texts and their implications. The texts were ultimately authenticated.

The community shock produced by these egregious sentiments and conduct by sworn BPD officers was compounded by the realization that this behavior was only publicly known because a terminated member of the Department exposed it more than two years after the fact. The Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA) recognize and respect the hurt and suffering these expressions of apparent racism and disdain for the unhoused elicited in the community, particularly among those who are directly affected by such discriminatory attitudes and behaviors.

We are deeply troubled by these events. The PAB is designed to be a bridge between the community, the BPD, and the City leadership. Most importantly, however, it was established to ensure accountability, trust, and transparency. According to Section 125(1) of the Berkeley City Charter, the purpose of the PAB "is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department..."<sup>3</sup>

The goal of this report is to fulfill that obligation to the Berkeley community. The PAB lacks the authority to independently initiate investigations into alleged misconduct by individual DTF members or to recommend discipline without a complaint being filed with the ODPA within 180 days of the incident.<sup>4</sup> Instead, this report is mostly forward-looking in the hopes that policy and practices reforms, coupled with rigorous oversight, can restore trust and help prevent future misconduct.

Restoring trust and helping prevent misconduct through robust oversight is not only the morally right thing to do; it is the fiscally responsible thing as well. According to

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<sup>1</sup> The Downtown Task Force began operations in October 2019. In July 2020, it transitioned into a Bike Unit. The term "Downtown Task Force" or "DTF" will be used in this report to designate the unit from its beginning in October 2019.

<sup>2</sup> Email send by Former Officer Shedoudy to the Berkeley City Council:

<https://static1.squarespace.com/static/5edeeebc3032af28b09b6644/t/63725d28d35f087529c42dda/1668439336808/Shedoudy+email+11-10-22.png>

<sup>3</sup> Berkeley City Charter Section 125(1): [https://berkeley.municipal.codes/Charter/125\(1\)](https://berkeley.municipal.codes/Charter/125(1))

<sup>4</sup> Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department, Section II.3.: [https://berkeleyca.gov/sites/default/files/2022-02/PAB-ODPA.Interim.Regis\\_.Approved.2021-10-05.pdf](https://berkeleyca.gov/sites/default/files/2022-02/PAB-ODPA.Interim.Regis_.Approved.2021-10-05.pdf)

documents provided by the City Attorney's office, over the last decade the City of Berkeley has had to respond to 471 legal claims related to BPD activities, costing the City \$1,978,953, with more than \$1,300,000 of this incurred in the last five years. The two most costly categories of liability were "excessive force" (\$558,151) and "false arrest" (\$338,551).

Reforms will involve not only changes in BPD policy and practice, but City Council action, robust accountability demanded from the BPD leadership, and ongoing efforts by the PAB to ensure full-bodied enforcement of all policies. Changes in law-on-the-books in the form of policy reforms will amount to nothing in the absence of changes in law-in-action, as policing ultimately takes place on the ground. Deterring the kind of behavior that was alleged by former Officer Shedoudy, and that uniformly offended the Berkeley community and eroded public trust, is a daunting challenge. It is achievable only if all hands are on deck.

### **EXECUTIVE SUMMARY**

In accordance with City Charter Section 125(17)(a)<sup>5</sup>, the City of Berkeley Police Accountability Board's Subcommittee on Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations conducted an examination of policies, practices, and procedures within the Berkeley Police Department concerning matters related to that unit.

A Special Meeting of the PAB was called on November 15, 2022, at which the Board voted to form a subcommittee to do a policy review of all policies and practices relating to Mr. Shedoudy's allegations<sup>6</sup>. The subcommittee was comprised of former Board Member Cheryl Owens, PAB Chair John (Chip) Moore, and Board Member Kitty Calavita, and was initially chaired by Board Member Owens. When Board Member Owens resigned from the Board, the subcommittee was Chaired by Board Member Calavita.<sup>7</sup> The impetus for the review was the set of allegations brought forth by former Berkeley Police Department (BPD) Officer Corey Shedoudy and made public on November 10, 2022. Mr. Shedoudy alleged that text messages expressing racist attitudes, bias against the unhoused, and pressure to meet arrest quotas, had been sent among members of the DTF, with the Sergeant of the DTF playing a central role.

<sup>5</sup>Berkeley City Charter Section 125(17)(a): [https://berkeley.municipal.codes/Charter/125\(17\)\(a\)](https://berkeley.municipal.codes/Charter/125(17)(a))

<sup>6</sup> Meeting Minutes for the PAB's Regular meeting on November 15, 2022: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/cc.2022-11-15%20SpecMtg.approved.minutes%20%281%29.pdf>

<sup>7</sup> On July 7, 2023, the ODPa received a policy complaint from a member of the public (DPA Case #2023-PR-0004) regarding the allegations of the DTF's arrest quotas and bias against people of color and the unhoused. At their regular meeting on September 27, 2023, the PAB voted to refer that policy complaint to this subcommittee since its work was well underway and responds (to the extent possible) to the issues raised in the complaint.

The PAB faced multiple challenges in accessing the materials necessary for its review, notwithstanding Section 125(3)(a) of the City Charter, which gives the PAB the "powers and duties...to access records of City Departments"<sup>8</sup>, including "without redaction or limitation" records relating to policies and practices, disciplinary records, and internal investigative records<sup>9</sup>. The PAB Subcommittee spent many months of critical investigative time seeking—in some cases successfully, in other cases unsuccessfully—to overcome barriers to access that had ostensibly been removed by these sections of the Charter Amendment.

This review identifies key areas where the BPD fell short of best practices, existing policy and/or legal requirements. Specifically, the Board found:

- There were expectations to reach certain arrest numbers;
- BPD officers assigned to the DTF exchanged racially charged and discriminatory text messages;
- These BPD officers routinely used personal cellphones to discuss work-related matters;
- Overtime for DTF officers was essentially unlimited;
- Some BPD policies were vague or non-existent in subject areas that could prevent violations of law or compromise fair and impartial policing;
- There was insufficient knowledge of specific BPD policies and State law among some DTF members;

The Board's preliminary recommendations regarding BPD policies and practices include:

- Establishing a new freestanding policy prohibiting formal or informal arrest quotas;
- Ensuring that stay-away orders are enforced fairly and consistent with State law;
- Increasing training on BPD policies and State law; and
- Making changes to BPD policies regarding Fair and Impartial Policing (#401)<sup>10</sup>; Standards of Conduct (#321)<sup>11</sup>; the Early Warning System (#1041)<sup>12</sup>; Employee

<sup>8</sup> Berkeley City Charter Section 125(3)(a): [https://berkeley.municipal.codes/Charter/125\(3\)\(a\)\(5\)](https://berkeley.municipal.codes/Charter/125(3)(a)(5))

<sup>9</sup> Berkeley City Charter Section 125(20)(a): [https://berkeley.municipal.codes/Charter/125\(20\)\(a\)](https://berkeley.municipal.codes/Charter/125(20)(a))

<sup>10</sup> BPD Policy 401 "Fair and Impartial Policing": [https://berkeleyca.gov/sites/default/files/2022-02/PAB-ODPA.Interim.Reggs\\_.Approved.2021-10-05.pdf#page=321](https://berkeleyca.gov/sites/default/files/2022-02/PAB-ODPA.Interim.Reggs_.Approved.2021-10-05.pdf#page=321)

<sup>11</sup> BPD Policy 321 "Standard of Conduct":

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#page=189](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=189)

<sup>12</sup> BPD Policy 1041 "Early Warning System":

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#page=903](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=903)

Speech, Expression and Social Networking (#1029)<sup>13</sup>; Personal Communication Devices (#701)<sup>14</sup>; and Overtime Compensation Requests (#1019).<sup>15</sup>

The PAB further recommends that City Council:

- Pass an ordinance, consistent with Charter Amendment Section 125 (3)(a)(7)<sup>16</sup>, to allow the PAB to self-initiate investigations of potential misconduct and to access internal records in furtherance of those investigations. While policy reviews are important, it is at least as important to provide oversight of their implementation and practices on the ground.
- Adopt a robust resolution to ensure a full and meaningful accountability of sworn officers who engage in misconduct, whether on-duty or off-duty, consistent with the City's 2024 State and Federal Legislative Agenda to "support efforts to increase peace officer accountability..."<sup>17</sup>
- Direct the City Manager to work with the BPD, PAB and ODPa to create a public repository to fulfill the vision of California Penal Code Section 832.7(b)(1)<sup>18</sup>, including but not limited to 832.7(b)(1)(D) which states that an exception to peace officer confidentiality is required for "any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status."
- Encourage state legislators to extend the prohibition on arrest quotas, both formal and informal, in the Penal Code, which is currently limited to the California Vehicle Code (Section 41600-41603)<sup>19</sup>, to include all California law enforcement activity.

<sup>13</sup> BPD Policy 1029 "Employee Speech, Expression and Social Networking":

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#page=860](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=860)

<sup>14</sup> BPD Policy 701 "Personal Communication Devices":

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#page=584](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=584)

<sup>15</sup> BPD Policy 1019 "Overtime Compensation Request":

[https://berkeleyca.gov/sites/default/files/documents/RELEASE\\_20240301\\_T161429\\_Berkeley%20PD%20Policy%20Manual.pdf#page=827](https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#page=827)

<sup>16</sup> Berkeley City Charter 125(3)(a)(7): [https://berkeley.municipal.codes/Charter/125\(3\)\(a\)\(7\)](https://berkeley.municipal.codes/Charter/125(3)(a)(7))

<sup>17</sup> City of Berkeley's 2024 State and Federal Legislative Platform. February 13, 2024

<sup>18</sup> California Penal Code Section 832.7:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN)

<sup>19</sup> California Vehicle Code Section 41600 – 41603:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=7.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=7.&article=)

Our intent is not only to identify specific shortcomings in BPD policies and practices but to provide concrete steps toward rectifying them. This will require collective efforts by the PAB, the BPD and its leadership, the City Manager, and City Council. Through this report, the PAB reaffirms its commitment to the principles of collaboration, justice, fairness, trust, and community safety.

## BACKGROUND

On November 10, 2022, former BPD Officer Corey Shedoudy who had been a member of the DTF but was terminated for misconduct, wrote to the Berkeley City Council alleging that text messages expressing racist attitudes, bias against the unhoused, and pressure to meet arrest quotas, had been sent among members of the DTF, with Sergeant Darren Kacalek playing a central role. The allegations included screenshots of the alleged texts.

On November 14, 2022, Secure Justice Executive Director Brian Hofer urged the California Attorney General to investigate the BPD arrest quota allegation.<sup>20</sup> Shedoudy's claims continued to attract extensive media and public attention. The Los Angeles Times, San Francisco Chronicle, Berkeleyside, East Bay Times, and other media outlets all devoted space to the allegations.<sup>21</sup>

On November 17, 2022, the Center for Policing Equity, which had been hired by the City in 2015 to study potential racial disparities in BPD stops (a report presented to the City in 2018), issued a blunt 3-page statement in response to Shedoudy's allegations. It began, "The Center for Policing Equity is appalled by the views, actions, and frank disregard for public safety revealed in a series of leaked group chats among officers

<sup>20</sup> Article: "Secure Justice Calls for Attorney General Investigation into BPD Arrest Quota Policy": <https://secure-justice.org/blog/secure-justice-calls-for-attorney-general-investigation-into-bpd-arrest-quota-policy>

<sup>21</sup> Article: Berkeley Police Department in turmoil over leaked texts about arrest quotas - Los Angeles Times (latimes.com): <https://www.latimes.com/california/story/2022-11-17/berkeley-police-department-in-turmoil-over-leaked-texts-about-arrest-quotas> ; Article: Head of Berkeley police union on leave following text message scandal, claims of arrest quotas (sfchronicle.com): <https://www.sfchronicle.com/eastbay/article/Report-Head-of-Berkeley-police-union-on-leave-17590377.php> ; Article: Leaked texts from Berkeley police union leader show 'disturbing' comments (berkeleyside.org): <https://www.berkeleyside.org/2022/11/14/berkeley-police-text-messages-darren-kacalek-bpa> ; Article: Berkeley Police Department, Interim Chief will be investigated after ex-police officer leaked texts alleging racist, illegal behavior (eastbaytimes.com): <https://www.eastbaytimes.com/2022/11/16/berkeley-police-department-interim-chief-will-be-investigated-after-ex-police-officer-leaked-texts-alleging-racist-illegal-behavior/>; Article: Berkeley police officers' 'anti-homeless' text messages probed | KRON4 <https://www.kron4.com/news/bay-area/berkeley-police-officers-anti-homeless-text-messages-probed/>; Article: Leaked Text Messages Prompt Push to Delay New Police Chief in Berkeley – NBC Bay Area: <https://www.nbcbayarea.com/news/local/east-bay/berkeley-police-text-messages-jennifer-louis/3078376/>; Article: Fired Berkeley cop leaks texts alleging bias, quotas (berkeleyscanner.com): <https://www.berkeleyscanner.com/2022/11/15/policing/fired-berkeley-cop-leaked-texts-corey-shedoudy/>

servicing with the Berkeley, California Police Department (BPD).<sup>22</sup> The statement went on to characterize the texts as including “vile dehumanization” of the unhoused and “openly racist” views. It concluded, “The burden is now on the City of Berkeley and BPD to act with appropriate urgency in addressing these revelations, the institutional culture informing them, and their dire implications for Berkeley’s residents.”<sup>23</sup>

The City Council was poised to vote on appointing Interim BPD Chief Jen Louis as permanent Chief on November 15, 2022, but the vote was postponed in the context of the allegations, including a claim that then Captain Louis knew of, and ignored, the alleged misconduct. The Mayor and Council Members noted that the appointment should be put on hold pending an investigation into the allegations, and the City Manager withdrew the item.<sup>24</sup>

In December 2022, the law firm of Swanson & McNamara was hired by the City of Berkeley<sup>25</sup> to investigate. That investigation took the place of an investigation by the Internal Affairs Bureau of the BPD to dispel the perception of a conflict of interest in the context of the possibly wide-ranging nature of the inquiry.

The allegations that Swanson & McNamara was tasked with investigating included the following claims made by Mr. Shedoudy:

1. Allegations of an "unethical and illegal practice of arrest quotas of downtown unhoused ordered by [name] to DTF/Bike Force," which purportedly commenced when Chief Louis held the position of BPD Police Captain and persisted after her appointment as Interim Chief.
2. Assertions that the DTF/Bike Force was instructed to make 100 arrests per month.
3. Claims of meeting the alleged quota through questionable legal tactics, including stop and frisk, probation searches without reasonable suspicion, and “a very loose interpretation of stay-away orders from UC Berkeley”.
4. Criticisms of Captain Louis's perceived inaction.

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<sup>22</sup> Statement on Leaked Text Messages out of Berkeley Police Department:

<https://policingequity.org/newsroom/official-statements/statement-on-leaked-text-messages-out-of-berkeley-police-department>

<sup>23</sup> Center for Policing Equity, 2022. <https://policingequity.org/newsroom/official-statements/statement-on-leaked-text-messages-out-of-berkeley-police-department>.

<sup>24</sup> On May 9, 2023, prior to conclusion of the investigations into the DTF texting allegations, City Manager Dee Williams-Ridley once again forwarded to City Council her selection of Interim Chief Louis as permanent Chief, and Council voted to appoint her.

<sup>25</sup> See Appendix 1: City of Berkeley Contract for services with Swanson & McNamara LLP, Vendor Contract #32300109

<https://records.cityofberkeley.info/PublicAccess/api/Document/AU3fuygXQXXZ%C3%81TG8am4tuCPyplZzCFLJZsbxFqBxmJ3aQZTBcxS%C3%89E7ECp9r6A30gZuhAlmseUFcNLLtKRrEId7g%3D/>

5. Allegations of "illegal arrest quotas, racism, evidence suppression, lying, and quid pro quos" supported by various forms of evidence, such as text messages, emails, sworn testimony transcripts, public arrest records, and photographs.

To investigate these claims, the Swanson team submitted Mr. Shedoudy's phone to a third-party vendor for data extraction, including text communications among DTF and/or Bike Unit members from October 1, 2019, to approximately March 1, 2023. The authenticity of each message was confirmed, except for one located on page 3 of Shedoudy's allegations letter, which could not be found on the phone.

The Swanson team also reviewed data on arrests made by DTF and Bike Unit officers from October 1, 2019 through November 22, 2020. This timeframe corresponded with Shedoudy's tenure in the DTF and Bike Unit, and involved review of 481 randomly selected arrest reports, accounting for over 50% of the total.

Additionally, internal Department message board posts concerning DTF activities were gathered and reviewed by Swanson's team, covering the period from November 6, 2019, to March 24, 2020. The investigation also included interviews with former Officer Shedoudy and members of the DTF, as well as with Chief Louis.

The Swanson & McNamara investigative report was completed in June 2023. Those findings have not been made public. A summary of the findings, however, revealed that the text messages expressing racist attitudes, animosity towards the unhoused, and pressure to achieve a certain number of arrests, were authenticated by forensic analysis of former Officer Shedoudy's phone.

While the Swanson & McNamara report was deemed confidential consistent with California Penal Code Section 832.7, the Berkeley Scanner<sup>26</sup> quoted City spokesperson Matthai Chakko that "the investigation found that the department does not have a practice of racial bias," that "the department does not have any arrest quotas," and that the department follows all state laws and the constitution. Berkeleyside also published an article summarizing the City spokesperson's report: "According to city spokesperson Matthai Chakko," the article read, "Swanson and McNamara's investigation found that: the department does not have a practice of racial bias; the department does not have any arrest quotas; the department follows state law and constitutional law...; and the department has existing policies that prohibit discrimination and harassment of protected classes."<sup>27</sup>

This summary of the Swanson findings drew conclusions about the department as a whole and its official policies that went beyond any findings of the investigator whose

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<sup>26</sup> Article: Berkeley police bike team cleared of claims made by fired cop (berkeleyscanner.com): <https://www.berkeleyscanner.com/2023/07/20/policing/berkeley-police-bike-team-cleared-systemic-problems/>

<sup>27</sup> Article: Berkeley police texts probe found no quotas or racial bias, city says (berkeleyside.org): <https://www.berkeleyside.org/2023/07/20/berkeley-police-text-scandal-investigation>

task and method were to focus on specific practices of the Downtown Task Force and Bike Unit in a limited period of time. The findings of the Swanson team eroded public trust because they were not made public—other than the authenticity of the text messages—and because these overly general statements by the City spokesperson were made in piecemeal fashion to the press.

A Berkeleyside article about this City messaging quoted Mayor Jesse Arreguin’s public statement: “Regardless of the underlying findings and outcomes, the investigator verified the accuracy of the text messages. What is clear from a plain reading of the texts is that the behavior was unprofessional and does not meet the standards to which we should hold our City employees.... This episode further demonstrates the need to implement reforms.”<sup>28</sup>

Concurrent with, but independent of, the Swanson & McNamara investigation, the PAB launched a policy and practices review. According to the City Attorney’s interpretation of the Charter Amendment relating to PAB powers and duties, we were required to limit our investigation to an inquiry into relevant policies and practices and to recommend reforms as appropriate. The Swanson team’s authentication of the text messages and the allegations themselves have, among other issues, directed the PAB’s attention to the need for an additional policy prohibiting arrest quotas--implicit or explicit--and the strengthening of many existing policies and practices. These recommendations are guided by a commitment to public safety and fair and impartial policing, and the need for a set of policies and Department culture that reflect those values.

While our investigation was necessarily limited to policy and practice recommendations, the PAB recognizes that policy is effective only to the extent that it is understood and enforced. A recent study published in *Nature Human Behavior* found that when officers in police organizations are not held accountable for policy violations and misconduct, the lack of serious accountability results in the propagation of misconduct in officers around them.<sup>29</sup> The study reported that even when shuffling the officer to a different unit, their peers are more likely to engage in misconduct themselves. The takeaway from that study is not only that policy reforms must be stringently enforced to be effective, but that unenforced policies breed infectious misconduct.

The PAB thus offers these policy reforms and at the same time commits itself to oversight of their enforcement. The PAB further makes recommendations for action by

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<sup>28</sup> Article: Berkeley officials slam 'drips of information' in BPD text investigation (berkeleyside.org): <https://www.berkeleyside.org/2023/07/21/berkeley-bike-squad-investigation-criticized>

<sup>29</sup> “Causal Peer Effects in Police Misconduct,” Quispe-Torreblanca, Edika and Neil Stewart. *Nature Human Behavior* 3(8): 797-807; “Police Misconduct May Spread like a Contagion, New Study Finds,” Catherine Maticic, *Science*, May 27, 2019. <https://www.science.org/content/article/police-misconduct-may-spread-contagion-new-study-suggests>.

City Council in furtherance of accountability, transparency, and the PAB's ability to monitor implementation which is where policies are materially "enacted".

## **DATA SOURCES**

This review is based on both quantitative and qualitative data and records. The primary data sources were:

- the authenticated text messages submitted by former Officer Shedoudy;
- the Swanson Report, including the audiotaped interviews with BPD members;
- stop and arrest data of the DTF, by race and across time;
- a comparison of DTF stop and arrest data to that of the BPD as a whole;
- the rate of DTF arrests for violations of court orders, such as "stay-away orders";
- the disposition patterns of the DTF and for the BPD as a whole;
- BPD policies relating to arrest quotas, stay-away orders, fair and impartial policing, standards of conduct, off-duty conduct, employee speech, personal communication devices, overtime compensation, and the Early Warning System.

These data<sup>30</sup> provide an important window into the practices and culture of the DTF and guide our recommendations for reforms. While the BPD Transparency Hub allows the public—which in this case includes the PAB—to access raw data on stops and arrests, it is labor-intensive to analyze systematically these data in a way that is useful to full oversight. The ODPA staff and PAB Subcommittee Members spent many hours scrutinizing these data, and processing and organizing them into a form that was usable for our purposes.

## **LIMITATIONS OF THE DATA**

While the PAB utilized a substantial amount of data in its review, some of these data were already in the public domain. The PAB and the ODPA made concerted efforts to access other records that we believed fell within the purview of the policy and practices review provisions outlined in the City Charter. We were not initially allowed access to the Swanson Report, nor to the taped interviews with DTF officers. The ODPA spent many hours and valuable time attempting to access them. The ODPA also sought access to all records in possession of BPD's Internal Affairs Bureau regarding any disciplinary matters relating to former officer Shedoudy, Sergeant Kacelek and other members of the BPD Downtown Task Force and Bike Unit, and any complaints by members of the public filed with the BPD involving the Downtown Task Force. Despite concerted and repeated efforts, and despite the confidentiality oath taken by ODPA staff and PAB Members, these

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<sup>30</sup> After much discussion with the BPD, in September 2023 the PAB obtained access to body-worn camera footage for the period under review. The videos contain thousands of hours of footage and given the time and staffing constraints the PAB was unable to analyze all this footage in time for this report. For future inquiries and investigations, the ODPA recommends acquisition of a program such as TRULEO which does computerized analyses of vast video footage.

records were initially withheld from the ODPa and the PAB. Many months later, the ODPa and Subcommittee Members Moore and Calavita were allowed to read the Swanson Report but without the ability to take notes or make copies.

Ultimately, the PAB decided to use its subpoena power and issued a subpoena for the outstanding records. The PAB delegated the issuance of the subpoena to the ODPa, who served it to the department on March 12, 2024. This included a request for “Text messages (beyond those publicly available) and or certification/affidavit from officers that no additional records exist” as well as records “between members of the task force and City Manager Dee Williams-Ridley.” Subsequently, Chief Louis informed the ODPa that the BPD did not hold any records beyond those that were publicly produced.

The ODPa and the PAB Chair continued to seek full PAB access to the Swanson Report and audiotaped interviews. Almost a year after the Swanson Report was completed, the ODPa finally received the Report and audiotaped interviews, and PAB Members were given access. We independently spent many hours over several weeks reviewing the Report and interviews.

California Penal Code Section 832.7(a)<sup>31</sup> preclude us from quoting directly from these interviews or attaching officers’ identities to individual responses. Instead, these interviews will be used more generally as background information and collectively as collaborating evidence.

Given the already substantial delay in receiving the records we requested, the PAB has decided to issue this report now, with a potential addendum if additional relevant records are secured.

This lack of full access means that key questions could not be answered in this PAB analysis and accompanying recommendations. These unanswered questions include, but are not limited to, the following:

- Were these racially inappropriate sentiments and other biased expressions previously exhibited by these or other officers?
- Did the BPD have knowledge of such expressions or conduct, and if so, what actions were, or were not, taken to intervene?
- How have possible allegations of a similar nature been handled in the past?

The obstacles encountered in accessing internal records underscore the importance of transparency and cooperation between the City and the PAB. The PAB’s review of the Swanson team’s audiotaped recordings with DTF officers has deepened our conviction that for the PAB to fulfill its Charter-mandated function of providing police accountability, it must routinely have access to documents and records describing actual BPD practices.

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<sup>31</sup> California Penal Code Section 832.7:  
[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN)

BPD cooperation with the City’s oversight body is critical to ensuring public safety and socially just policing. It is also the fiscally responsible management approach.

## FINDINGS

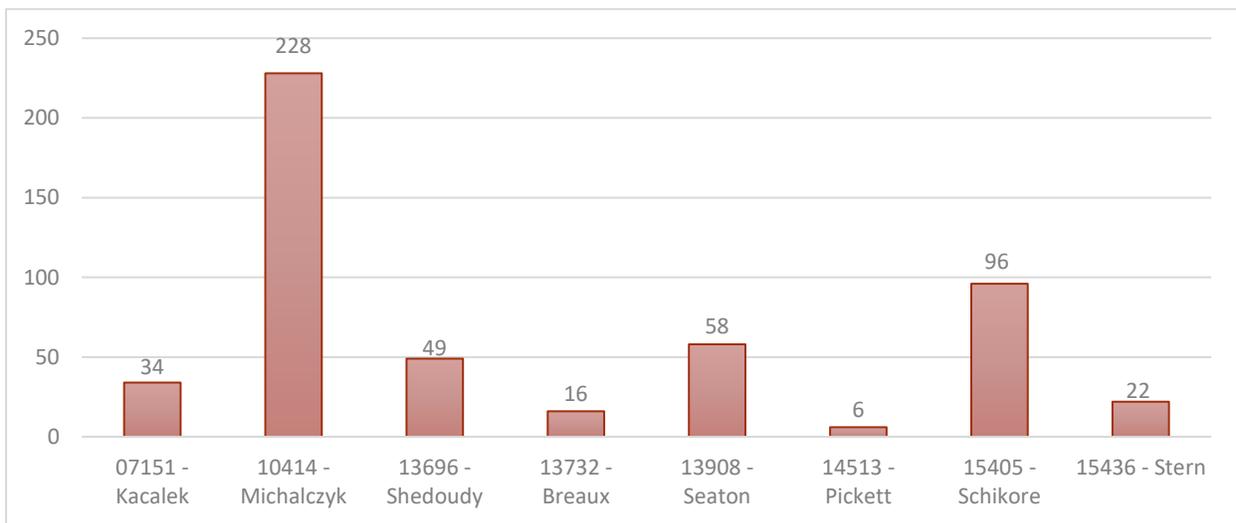
### Authenticated Text Messages

Through the Swanson & McNamara investigation, Mr. Shedoudy's provided text messages were authenticated and are appended as Appendix 2. Mr. Shedoudy submitted his phone to a third-party vendor for extraction of pertinent communications, encompassing text exchanges among DTF members from October 1, 2019, to approximately March 1, 2023.

### Statistical Analyses

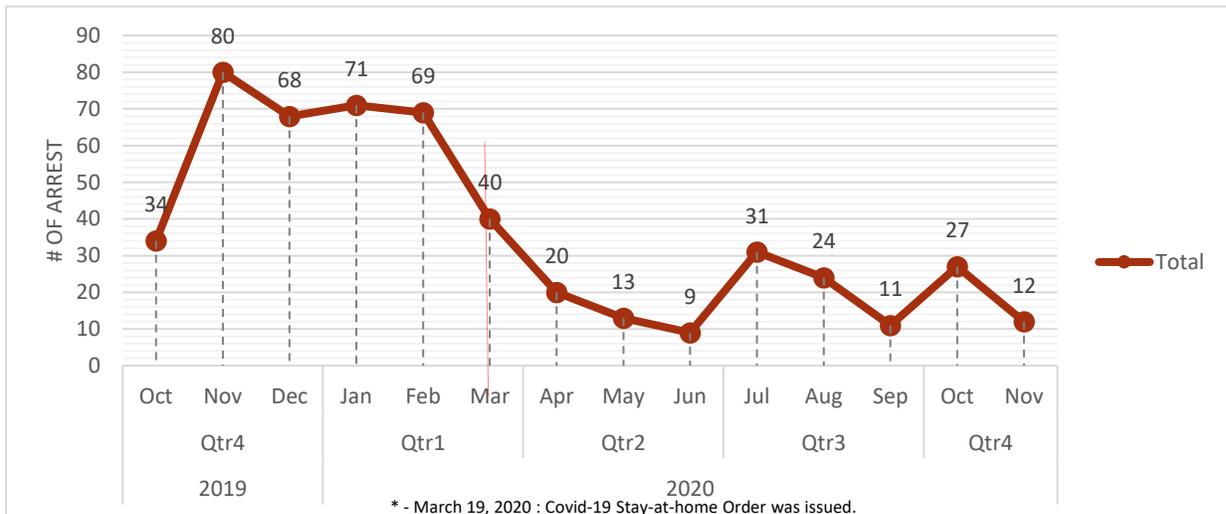
The average number of arrests per DTF officer in the period from October 1, 2019 to November 22, 2020—the period during which these text messages were sent—far exceeded that of the average number of arrests for other BPD officers. The eight officers in the DTF averaged 64 arrests that year, compared to the overall BPD average of 17. In addition, the number of arrests per DTF officer varied greatly from 6 arrests by one member to 228 by another.

FIGURE 1. NUMBER OF ARREST BY OFFICER OF THE DOWNTOWN TASK FORCE AND BIKE UNIT



Similarly, the number of DTF arrests varied substantially by month, peaking in November 2019 as DTF members were being pressured to reach 100 (“81 arrests! We can do 19 by Friday for sure!” “I was thinking whoever gets the least arrests today does the waxing.”).

FIGURE 2. DOWNTOWN TASK FORCE ARREST NUMBERS BY MONTH

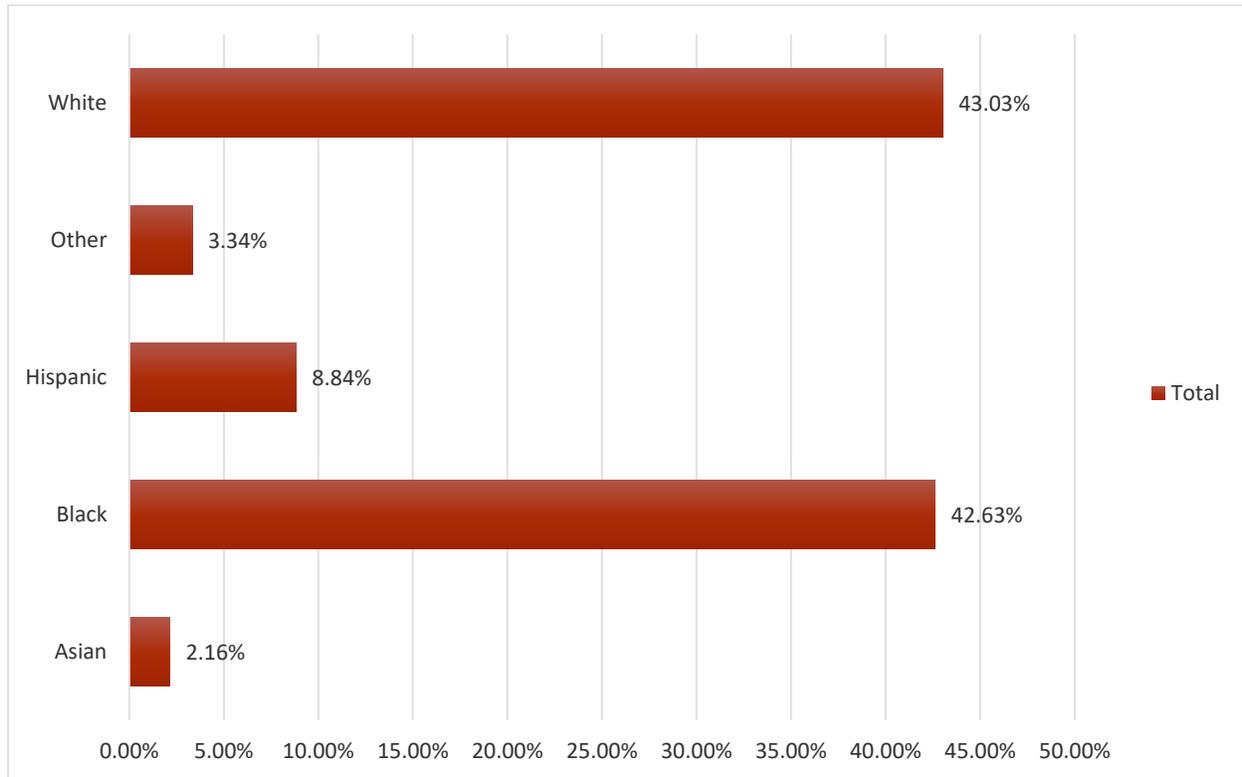


These arrest numbers, together with the text messages, leave little doubt that pressure—more or less explicit, perhaps informal, seemingly jocular--was exerted to maximize arrest figures, sometimes the specific number of 100. The spike in arrests was so dramatic during some periods that, according to the Swanson team and some of the interviewed officers, jail staff complained they couldn't keep up with their booking and detention.

Approximately an equal proportion of these arrests involved Black individuals (42.63%) and White individuals (43.03%), while Latino/a individuals accounted for 8.84% of the total. According to the 2020 census<sup>32</sup>, the number of White individuals residing in Council District 4 which encompasses the downtown is approximately four times the number of Black residents in the area, suggesting that the arrest rate for Black people was almost four times as high as for White people. However, it is difficult to be precise about the racial disparity since the census may undercount the unhoused who were often the focus of DTF activity.

<sup>32</sup> United States Census Bureau 2020 Census Data for Berkeley, California:  
<https://www.census.gov/quickfacts/fact/table/berkeleycitycalifornia/SBO030217>

**FIGURE 3. RACE OF INDIVIDUALS ARRESTED BY THE DOWNTOWN TASK FORCE/BIKE UNIT (OCT.2019 TO NOV.2020)**

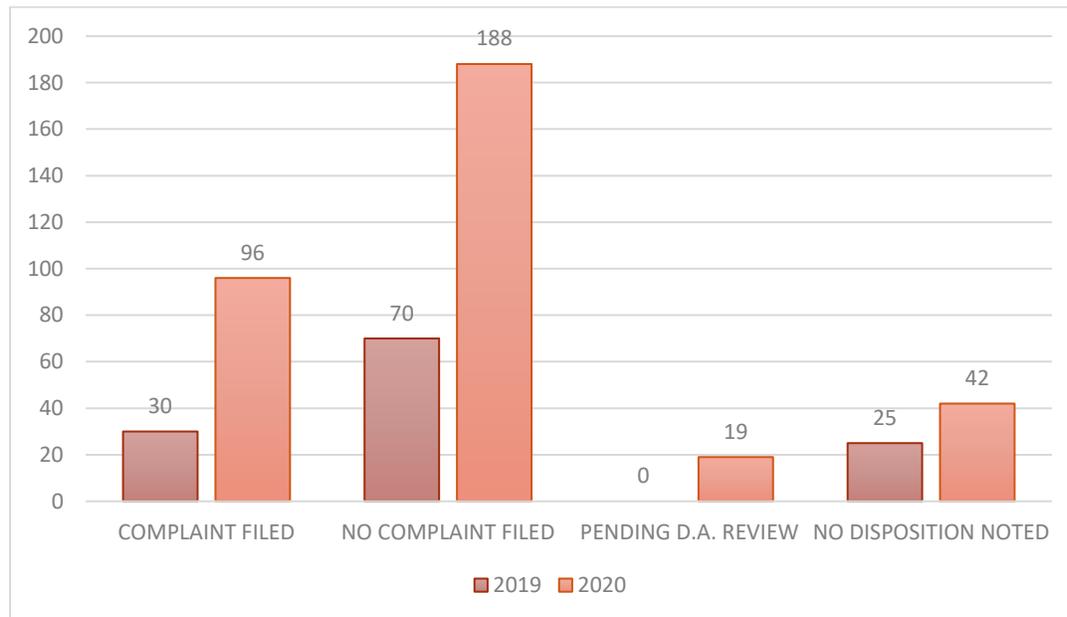


Additionally, 20.63% of the 509 arrests made by the DTF during this period were for contempt of court (California Penal Code 166<sup>33</sup>), typically considered a misdemeanor. Of these, 96 out of 105 contempt of court arrests also included a probation violation. Given the relatively large size of the unhoused population and its proximity to the UC campus and downtown businesses, it is likely that a significant portion of these arrests were at least in part for violations of stay-away orders. This is supported by audiotaped interviews with DTF officers, which indicate that stay-away orders are central to their enforcement actions. In some cases, officers even requested that judges impose stay-away orders, facilitating subsequent arrests. Without closely reviewing individual incident reports and probationary conditions imposed on arrested individuals, it is difficult to determine how many of these violations were specifically for stay-away orders as distinct from other probation violations.

A considerable number of DTF arrests were dismissed outright with no complaint filed by the Alameda County District Attorney, with dismissed cases rising from 70 in 2019 to 188 in 2020.

<sup>33</sup> California Penal Code Section 166:  
[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=166](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=166).

**FIGURE 4. DOWNTOWN TASK FORCE ARREST SENT TO ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE (OCT. 1, 2019 – NOV. 22, 2020)**



Finally, it is notable that as documented in the City Auditor's 2022 report on BPD overtime, in 2020 the BPD outspent its overtime budget by more than \$5 million<sup>34</sup>. While much of this was due to contracts with outside entities, some was also the result of the "chain reaction" of compensatory time. As the Auditor explained, when an officer does overtime, they may receive either overtime pay or compensatory time off. When they choose the latter, another officer fills in with overtime, who then may choose compensatory time, and so on, eventually magnifying many times over the effect of the original overtime.

The text messages revealed by Shedoudy suggest that overtime work was liberally authorized. Sgt. Kacalek enthused that if his officers "kick ass" and "arrest people" they "will never [be] jam[med] up about overtime." The DTF interviews corroborate the essentially open-ended, unlimited access to overtime.

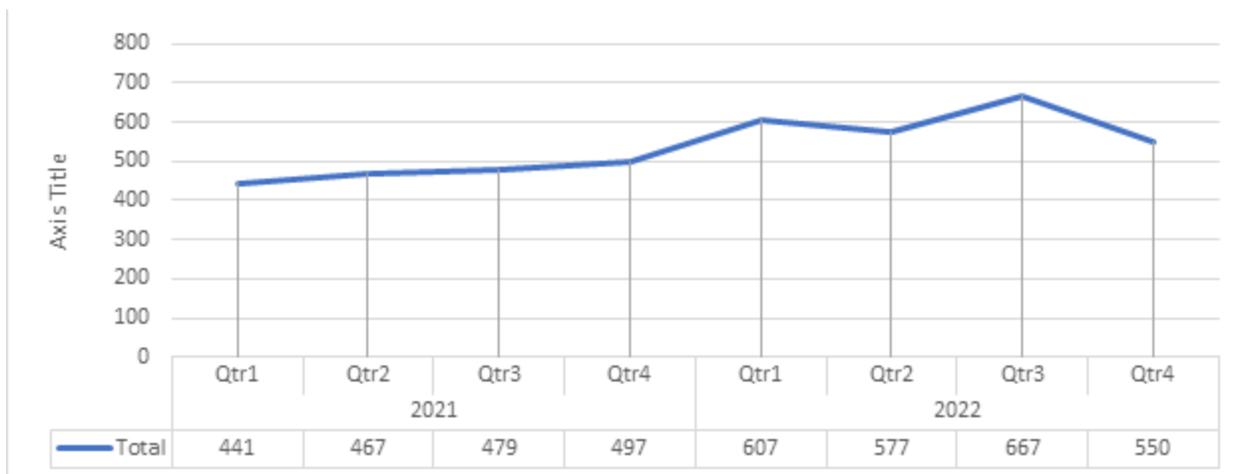
The data presented above represent a moment in time. Because this report is forward-looking and is focused on policy and practices, it is important to examine the subsequent state of DTF operations. Seven of the original officers<sup>35</sup> were on the Downtown Task Force/Bike Unit for all eight quarters from January 2021 to December 2022; Sgt. Kacalek was on DTF duty for five of those quarters.

<sup>34</sup> City Auditor Report "Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities" [https://berkeleyca.gov/sites/default/files/2022-04/Berkeley Police - Improvements Needed to Manage Overtime and Security Work for Outside Entities.pdf](https://berkeleyca.gov/sites/default/files/2022-04/Berkeley_Police_-_Improvements_Needed_to_Manage_Overtime_and_Security_Work_for_Outside_Entities.pdf)

<sup>35</sup> These were officers Breaux, Michalczyk, Pickett, Schikore, Seaton, and Stern, all of whom were also on the earlier DTF.

Once again, the number of arrests by these seven officers ranges substantially from sixteen for one officer to 265 for another. Further, the 585 arrests by these eight officers constitute a significant portion of the 4,285 arrests made by the BPD during this period.

**FIGURE 5. ARREST MADE BY THE BPD (JAN. 2021 - DEC. 2022)**



Racial disparities in arrests by the DTF increased substantially in this period, with Black individuals constituting 46.9% of arrests, while White individuals made up 29.2% of arrests, and Latino/a people were 15.3% of those arrested.

**Policy and Practices Deficiencies and Recommendations**

These qualitative and quantitative findings strongly suggest that policy changes are necessary. Among the policies the PAB recommends strengthening are policies on:

- fair and impartial policing (Policy 401);
- the use of personal communication devices such as cellphones (Policy 701);
- employee speech, expression and social networking (Policy 1029);
- the early warning system (Policy 1041);
- standards of conduct (Policy 321); and
- overtime compensation requests (Policy 1019).

In addition, the PAB recommends:

- adding a stand-alone policy prohibiting implicit or explicit arrest quotas that go beyond the California Vehicle Code (Section 41600-41603) on vehicle stops<sup>36</sup> and
- consideration of an official standard for the enforcement of stay-away orders.

<sup>36</sup> California Vehicle Code. Section 41600-41603. Chapter 7. Arrest Quotas:  
[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=7.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=7.&article=)

Before proceeding to these policy reviews, it is important to emphasize that policy changes are meaningless if they are not enforced or if BPD officers are not sufficiently informed on policy matters. In our review of the evidence and audiotaped interviews, it was clear that DTF officers in some cases engaged in practices that were not consistent with policy and in other cases expressed confusion as to what those policies were.

We turn now to specific concerns and preliminary recommendations for reform of existing policies. Following that, we offer recommendations for a new policy prohibiting all arrest quotas; consideration of a standard for enforcement of stay-away orders; and additional training. The PAB presents these preliminary policy recommendations with the intention of collaborating with the BPD to refine and enhance the necessary reforms, ensuring they effectively address the needs of the Berkeley community.

### **Fair and Impartial Policing, Policy 401**

BPD data have consistently shown that Black and Latino/a motorists, cyclists and pedestrians are far more likely to be stopped, arrested and searched than are White people. The 2018 Center for Policing Equity (CPE)<sup>37</sup> report commissioned by the City found that Black motorists were 6.5 times more likely to be stopped by Berkeley police than White motorists and that Black pedestrians were 4.5 times more likely to be stopped.

Subsequent to this CPE report, Mayor Arreguin convened a Working Group on Fair and Impartial Policing. It met for almost two years and submitted a package of recommendations to City Council on February 23, 2021. The recommendations, which were passed largely intact, were wide-ranging and significant and included, among many other proposals, recommendations for a requirement that intensive training focused on implicit bias be administered annually, and for reforms of the Early Warning System.

Data in the BPD Transparency Hub reveal that the disparities reported by the CPE remain entrenched. According to the 2024 PAB report on the Implementation of Fair and Impartial Policing directives<sup>38</sup>, for the period from April 2021 to October 2023, Black motorists were 5.8 times more likely to be stopped by the BPD than White motorists; 10 times more likely to be searched; and 10 times more likely to be arrested. Black pedestrians were 8 times more likely to be stopped than their White counterparts. Overall, Black residents of Berkeley were 6.55 times more likely to be stopped by BPD than White Berkeley residents.

As noted earlier, it is challenging to calculate with precision the racial disparities in arrests in the downtown area. What we do know, however, is that the racial disparity in

<sup>37</sup> Report, “The Science of Justice: Berkeley Police Department National Justice Database City Report May 2018”: <https://rentboard.berkeleyca.gov/sites/default/files/documents/Berkeley-CPE-Report-May-2018.pdf>

<sup>38</sup> Police Accountability Board Report “Fair and Impartial Policing Implementation”: [https://berkeleyca.gov/sites/default/files/documents/2024%20PAB%20Report\\_FIP%20Implementation\\_Final.pdf](https://berkeleyca.gov/sites/default/files/documents/2024%20PAB%20Report_FIP%20Implementation_Final.pdf)

arrests has increased substantially from 2019-2020 when approximately equal numbers of Black people and Whites were arrested by the DTF, to 2021-2022 when the percentage of arrestees who were White had fallen to 29.2% and Blacks and Latinos made up more than 62%.

We know too that the text messages from 2019-2020 reveal open racial animus among at least some officers. As Sgt. Kacalek joked derisively when watching a blurry video of a distillery, “Shedoudy’s Obama phone fucked up the video” (presumably ridiculing a program that provided free cell phones to eligible low-income households).

In a subsequent text, Sgt. Kacalek wrote about a media report of a particular incident and the alleged perpetrator: “Interesting how he listed him as ‘Dennis Daniels, male, 51 years old, no address’. I guess he isn’t black or no one could decipher his race and he isn’t homeless or even unhoused, just no address. #Iwantthecoldhardtruth.”

The disdain extended to the unhoused people Sgt. Kacalek patrolled: “Stern [DTF patrol officer] is gonna come back with a new strain that wipes out the homeless pop. We will just ride by the bodies!”

Despite these inappropriate expressions of racial animus and disdain for the unhoused it appears that no DTF officers reported the inappropriate conduct and expressions until the terminated officer Shedoudy disclosed the text messages to City Council. DTF members interviewed by the Swanson team pushed back against the notion that such messages were inappropriate, viewing them instead as intended as humor and not to be taken seriously—suggesting a jarring disconnect between the public reaction to the racist undertone of these texts and their matter-of-fact reception by DTF members.

In light of these quantitative and qualitative findings, the PAB recommends the following additions to the Fair and Impartial Policing Policy (#401):

- A provision explicitly clarifying that the policy refers to both conduct and speech or expression and
- A provision that mandates annual intensive implicit bias training as called for in the Council directive in the Fair and Impartial Policing reforms of 2021<sup>39</sup>

See Attachment 1 for the current Fair and Impartial Policing Policy, with recommended changes highlighted in red.

### **Personal Communication Devices, Policy 701**

The cellphones used by the DTF to send these text messages were officers’ personal devices. While the department issues personal communication devices (in this case, cellphones) to all sworn members and encourages their use for work-related issues

<sup>39</sup> Report and Recommendations from Mayor’s Fair and Impartial Policing Working Group: <https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations.pdf>

when radio communication is not feasible, the policy allows wide discretion. As was the case in the Swanson & McNamara investigation, the fact that the messages in question were sent on officers' own personal devices—not those issued by the Department—complicated considerably investigators' access. Furthermore, some of the interviewed DTF members were not aware of *any* policy on this issue. The PAB therefore recommends:

- strengthening Policy 701 to stipulate that PCDs are to be used *only* when radio communication is not feasible;
- that members using a PCD be required to use department-issued PCDs, absent exigent circumstances;
- adding a provision making it clear that the prohibition on inappropriate use of a PCD, whether on duty or off-duty on work-related issues, includes any expression that damages the mission, function, reputation or professionalism of the BPD; and
- providing additional training on the use of PCD's.

See Attachment 2 for the current Personal Communication Devices with recommended changes highlighted in red.

### **Employee Speech, Expression, and Social Networking, Policy 1029**

The text messages that were exchanged among members of the DTF expressed racial animus and disdain for the unhoused. In this, they appear to have violated the BPD policy on employee speech and expression. Specifically, the policy prohibits any speech “pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees.” The meaning of this policy appears to be clear; however, in the context of DTF members' interpretation of the messages in question as jesting, the PAB recommends not only the implicit bias training referred to above, but also:

- adding further specificity to leave no doubt about its meaning, explicitly including reference to its application whether the speech is transmitted through a personal or department-issued electronic device and whether the member is on or off-duty.

See Attachment 3 with the current Employee Speech, Expression, and Social Networking Policy, with recommended changes highlighted in red.

### **Early Warning System, Policy 1041**

An Early Warning System (EWS), sometimes referred to as an Early Intervention and Risk Management System, was a central component of the directives of the City Council, following the recommendation of the Mayor's Working Group on Fair and Impartial Policing. As the Working Group stated in its recommendation to Council in February 2021, an effective system involves “identifying officer outliers in stops, searches, and use of force...and examining the reasons for racial disparities.” “Outliers” is a term of art that refers to those whose performance on certain indicators is outside the Department

average. The system does not focus on discipline but rather on identifying behavior that may be problematic as early as possible. Such programs include monitoring, mentoring, training and, where appropriate, counseling.

In addition to enhancing public safety and officer welfare and safeguarding against bias, effective systems are a financially responsible approach. According to a report by the *Washington Post*, twenty-five cities paid out more than \$3.2 billion in settlements for police misconduct between 2010 and 2020, with claims for officers charged in more than one misconduct case accounting for \$1.5 billion.<sup>40</sup> Over the past decade, the City of Berkeley has paid \$1,242,860.97 across 471 claims in such settlements, with a total incurred cost of almost \$2 million, including the cost of processing these claims.

The current EWS in Berkeley does not have an effective way of systematically identifying outliers on indicators such as numbers of stops, arrests and searches. While random audits of a few officers on a quarterly basis have been instituted, the small number randomly singled out is unlikely to have an effective impact or to identify significant outliers, nor is it consistent with the directive from Council based on the Mayor's Working Group on Fair and Impartial Policing.

As criminologist Carol Archbold, who specializes in police accountability, said in the context of the *Nature Human Behavior* report on the contagiousness of misconduct, early intervention systems can be effective: "The spread [of misconduct] can be stopped if it's tracked, and if something is done about it."<sup>41</sup>

If an effective Early Warning System had been in effect, it is probable that, based on the statistics cited above—particularly the spike in arrests during certain periods—some members of the DTF would have been audited as outliers and the scrutiny could have minimized the damage.

In April 2023, City Council referred \$100,000 to the June 2023 budget to hire a consultant for the design and help with implementing a new Early Intervention and Risk Management System. It will take some time before that project is complete and a new system put in place. In the interim, the PAB recommends:

- quarterly audits of officers with unusually high numbers of stops, arrests, and/or searches, for people of color and the unhoused, instead of the current random audits of several officers

See attachment 4 for the current Early Warning System Policy 1041, with recommended changes outlined in red.

<sup>40</sup> "The Hidden Billion Dollar Cost of Repeated Police Misconduct," *The Washington Post*, March 9, 2022.

<sup>41</sup> "Study Finds Misconduct Spreads among Police Officers Like Contagion," Nova KQED, May 27, 2019. <https://www.pbs.org/wgbh/nova/article/police-misconduct-peer-effects>.

## Standards of Conduct, Policy 321

As Mayor Arreguin stated in his press release following the statements of City Spokesperson Chakko, “What is clear from a plain reading of the texts is that the behavior was unprofessional and does not meet the standards to which we should hold our City employees.... This episode further demonstrates the need to implement reforms.”

These authenticated texts reveal conduct that was clearly at odds with the official policy and underscore the need for explicit statements regarding the duty of all officers to report inappropriate conduct or violations of policy. It is of great concern that some DTF officers were not even aware of any mechanism for reporting observed misconduct.

The PAB is pleased that the Chief has adopted the Active Bystander for Law Enforcement (ABLE) program for which training will soon commence. That program will train officers to intervene when they witness their peers engaging in inappropriate conduct.

In addition to this important ABLE program, the reforms we recommend to this Standards of Conduct policy will:

- make it clear that any behavior or expressions that bring disrepute to the Department—whether an officer is on or off-duty—will not be tolerated, and
- Members have an obligation to report any such behavior or expressions by any other member, consistent with Policy 1010.9 concerning 'Employee Responsibility' to file a personnel complaint if misconduct by a BPD colleague is observed.

See Attachment 5 for the current Standards of Conduct Policy with recommendations highlighted in red.

## Overtime Compensation Requests, Policy 1019

The police overtime issue is a longstanding concern. A 1998 report by the National Institute of Justice declared, “There is a sense both inside and outside the law enforcement community that overtime is overused, misused, and only halfheartedly controlled.”<sup>42</sup>

On March 23, 2022, the Berkeley City Auditor submitted a report entitled “Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities.”<sup>43</sup> The report found that “BPD does not adhere to their overtime policies and controls.” In fiscal year 2020, 21% of officers worked more than their weekly overtime limit

<sup>42</sup> Bayley, David and Robert Worden. 1998. “Police Overtime: An Examination of Key Issues.” National Institute of Justice, U.S. Department of Justice. Washington DC.

<sup>43</sup> Berkeley City Auditor, “Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities,” March 3, 2022. The report won an excellence award from the Association of Local Government Auditors.

of 44 hours at least once, risking their own health and safety and the safety of others. One officer exceeded the limit in eleven weeks during 2020. Further, the Auditor's report stated that the BPD did not "have an effective system to enforce their policy and manage overtime."

The Auditor's report further noted that "overtime was the biggest reason" why the BPD consistently spent more than their budget allocation. In order to align the overtime budget with actual outlays, in 2021 the City's overtime budget allocation was raised to \$5.3 million and another \$1 million was put in reserve.

The Auditor noted that there are many legitimate reasons for the police use of overtime—for example, a call that comes in at the end of a shift or the need to cover for absences or vacancies. However, excessive overtime imposes significant physical, mental, and fiscal risks. She also noted that compensatory time for overtime worked sets off a "chain reaction" of overtime expenses, and that while such comp time is limited by policy it was unclear "whether this policy is being enforced" (p. 16). On June 25, 2024, Chief Louis gave Council an update on implementation of the Auditor's twelve recommendations. She reported that five had been implemented and that the others were in process. However, we note that none of these recommendations deal squarely with the issue of the broad discretion related to overtime.

The Auditor advanced twelve recommendations—importantly, including improved security contracts with the outside entities that make up a large percentage of overtime hours. The Auditor's final report included responses from the Department indicating that many of the recommendations are in the process of being implemented. Among these BPD responses was a "proposed implementation plan" to "review existing policy and ensure that any policy updates or clarification are completed."

BPD policy on overtime requests and the verification of overtime worked relies on broad discretion and appears open to misuse. This wide discretion and potential for misuse are apparent in this text from Sgt. Kacalek: "I was at Kevin Reece's birthday party just now and Dave was there and we briefly talked about DTF. He said just kick ass, arrest people, have fun, and get results and I will never jam you about overtime." Indeed, the audiotaped interviews of DTF members suggest that DTF officers worked overtime at will.

While some supervisory discretion is inevitable and necessary, the current policy leaves wide gaps through which such misuse can proliferate. For example, Section 1019.1.1 of the Overtime Compensation Requests policy states, "All requests to work overtime shall be approved in advance by a supervisor." However, this clear mandate is followed by the broad exemption that "if circumstances do not permit prior approval," approval can be sought after the fact when the overtime is completed.

The PAB does not offer specific policy reforms here. Instead, we recommend that the review of existing policies referred to in the BPD response to the Auditor be robust

and foreground the need to narrow this broad discretion. Importantly, for example, among other provisions it might:

- stipulate what circumstances, or types of circumstances, would comprise the need to bypass the otherwise straightforward directive that “all requests shall be approved in advance...” and
- consider excessive overtime as a factor triggering an Early Warning System audit.

While discretion and flexibility are inevitable, the conditions under which discretion is applied need to be described. The current policy perhaps unintentionally sends a message of virtually unlimited flexibility--a flexibility that some DTF officers interpreted as open-ended. See Attachment 6 for the current Overtime Compensation Policy.

### **Prohibition on Arrest Quotas**

The legislative issue of police arrest quotas, though often obscured and scattered across many states, has its origins in Berkeley—a city renowned for its progressive and forward-thinking stance in shaping societal norms and legal frameworks (Ossei-Owusu, 2021).

Significant legislative activity on arrest quotas emerged in the 1970s, with Black Democratic Assemblyman John Miller introducing California's bill in 1975. Miller, often described as a "progressive independent in local politics," demonstrated a keen political acumen, underpinning his support for quota bans with inclusive rhetoric (Id.). His district, which encompassed the diverse cities of Oakland and Berkeley, provided a unique perspective, one that resonated with concerns for both police officers and the public.

Miller articulated the inherent injustice in quotas, deeming them "unfair, undemocratic, and unjust."<sup>44</sup> He was troubled by the notion that an officer's failure to meet quotas could lead to demotion, while simultaneously expressing concerns for "the average California driver," who might find themselves disbelieved by a "rubber stamp traffic court system."<sup>45</sup>

California's statute, based on a convergence of bipartisan concerns, remains relevant today, specifically in the City of Berkeley. It serves as a historical testament to the enduring pursuit of justice and fair play, core tenets that guide our efforts to maintain police accountability, foster public trust, and safeguard civil rights.

While most people assume that a ban on police arrest quotas is already enshrined in the California Penal Code, it is limited to the California Vehicle Code. This is an oversight that needs to be corrected, both locally and at the State level.

The brief summary of the Swanson report provided to the public by the City of Berkeley appears to absolve the DTF of establishing formal arrest quotas. However, the

<sup>44</sup> See Ossei-Owusu, 2021 citing *Measure to Outlaw CHP's Ticket Quotas*, *supra* note 69, at 1.

<sup>45</sup> *Id.*

Swanson report stipulates that while no formal arrest quotas were established, there was an expectation that a certain number of arrests was to be aimed for. The text messages quoted above are replete with explicit and implicit references to “Operation 100” in which DTF patrol officers were encouraged by Sgt. Kacalek to achieve at least 100 arrests per month. “How’s Operation 100 going?”, he asks. And, “81 arrests! We can do 19 by Friday for sure!” And, by way of a (presumably) teasing reminder, “I was thinking whoever gets the least arrests today does the waxing.” DTF members who were interviewed consistently eschewed the term “quota”, but they acknowledged an expectation of high arrest numbers as an indication that they were being proactive and doing their job.

A spike in arrests attests to the seriousness of the Operation 100 expectation and its implicit quota.

Given the legislative history of arrest quotas, their (incorrectly) assumed ban in California, and their potential impact on our most marginalized community members, the PAB recommends that the BPD, in collaboration with the PAB develop a new, freestanding policy prohibiting all arrest quotas whether they refer to vehicles, cyclists, or pedestrians, whether formal, informal, or implicit, and whether they are enforced with formal disciplinary measures or solely incentives/disincentives. A sample arrest quota prohibition is attached in Appendix 3.

### **Stay-away Orders**

Violation of a stay-away order is considered a contempt of court misdemeanor under California Penal Code 166(c)(1). While the DTF text messages do not explicitly reference stay-away orders, BPD data indicate that over 20% of DTF arrests during this period were for violations of court orders. Among these cases, 91.4% were linked in part to violations of probation. Without a detailed review of individual incident reports, it is difficult to ascertain how many arrests stemmed primarily from a violation of a stay-away order.

Currently, BPD lacks a specific policy regarding stay-away orders. Some interviewed officers assert that enforcement allows no discretion, while others maintain that some discretion exists. Given the significant impact of stay-away orders on UC Berkeley property and downtown businesses, and officers' ability to request these orders post-arrest from a judge, the PAB strongly recommends that BPD establish a comprehensive stay-away order policy and provide training consistent with state law.

The current resources of the PAB do not allow for a detailed examination of the circumstances surrounding stay-away arrest. However, we recommend that BPD investigate the frequency and context of these arrests, and assess whether the district attorney's high dismissal rate (as noted earlier for DTF cases) is disproportionately related to stay-away orders.

## RECOMMENDATIONS FOR CITY COUNCIL ACTION

1. Pass an ordinance or otherwise affirm the Police Accountability Board’s ability to access documents and records in furtherance of its central “accountability” function, consistent with Charter Amendment Section 125.

The policy reforms recommended above are an important first step in ensuring that the kind of inappropriate conduct and expression revealed in the DTF text messages do not recur. However, policy reforms are only a first step. No policy is effective if it is not fully implemented and enforced. Real law—real policy—takes place on the ground where it is literally “enacted” every day through practice.

The PAB “policy and practices review” of the texting incidents of concern here are a case in point. The content of the audiotaped interviews of DTF Members which were accessed by the PAB only after persistent and lengthy efforts have underscored how critical such authority is if the PAB is to fulfill its function of Police Department accountability and transparency. Without such access, our oversight would be largely limited to formal policies, with no meaningful “practices” oversight.

The Charter Amendment creating the PAB established as one of its primary purposes the promotion of “public trust through independent, objective, civilian oversight of the Berkeley Police Department,” including “setting and reviewing Police Department, policies, **practices**, and procedures...” (Section 125 (1); emphasis added)<sup>46</sup>.

If the Police Accountability Board is to fulfill its Charter-mandated function of police oversight and accountability, it must have the ability to access the internal records of the BPD that track its actual practices. This would include, but not be limited to, Internal Affairs Bureau records of internal and external complaints and their processing, Early Warning System records, body-worn camera footage, and police reports.

It should be noted further that the inability of this oversight body to provide oversight of daily BPD practices limits its ability to prevent or forestall the kinds of misconduct that went undisclosed for more than two years before being exposed by an individual who was no longer part of the police force.

This restriction on the PAB oversight function plays out in other incidents of interest as well, including serious allegations of significant misconduct—incidents that we as the police oversight body sometimes only learn about from press reports months or years after the fact. We fully understand that the PAB is not authorized to recommend discipline outside of individual complaints. What is important is *patterns of practice* that may be revealed in a PAB investigation and that are integral to the PAB exercising its Charter-mandated oversight of not only BPD policy, but practices.

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<sup>46</sup> Berkeley City Charter Section 125(1): [https://berkeley.municipal.codes/Charter/125\(1\)](https://berkeley.municipal.codes/Charter/125(1))

To this end, the PAB recommends that City Council pass an ordinance or otherwise ensure that the PAB has the authority to access BPD records that attest to how formal policies are being implemented and enforced, both through BPD procedures and in daily practice on the ground. This recommendation addresses the core of our Charter-mandated function of oversight, accountability, and the promotion of trust.

In 2023, City Council passed its priority list for legislative activity at the state and federal levels, a list which authorizes its lobbyists to act on its behalf to champion legislation consistent with Berkeley's values and interests. That list included a directive to "support efforts to increase peace officer accountability...". "Peace officer accountability" was once again a lobbying priority for Berkeley in 2024.

An ordinance to ensure that the PAB may self-initiate investigations of alleged incidents of serious misconduct will allow it to fulfill its Charter-mandated function of oversight. This would be consistent with the City's lobbying efforts to "support efforts to increase peace officer accountability."

**2. Adopt a robust resolution ensuring full and meaningful accountability for sworn officers—whether on-duty or off-duty—who engage in misconduct of any kind but especially actions or expressions of racial or other types of bias.**

Disciplinary actions imposed on sworn officers who engage in policy violations are not revealed to the public, consistent with California Penal Code 832.7. This lack of disclosure, combined with the inevitable rumor mill that works to fill the gap, has threatened to erode public trust. The erosion of trust has been furthered by revelations in the press that one recent incident resulted in a seeming exoneration by the BPD Internal Affairs Bureau, despite what Mayor Arreguin called his "shock and outrage" at the alleged incident.<sup>47</sup> Council could help ensure accountability by adopting a resolution underscoring its support for robust and meaningful accountability for officers, whether on or off-duty, who engage in misconduct of any kind, but with a special emphasis on racial or other types of bias.

**3. Direct the City Manager to work with the BPD, PAB and ODPa to create a public repository to fulfill the vision of California Penal Code Section 832.7<sup>48</sup> (b)(1) to allow for transparency in cases of sustained allegations of officer racism or other discriminatory conduct or expressions.**

<sup>47</sup> See "'Don't give me that Black crap': Video from 2017 shows embattled Berkeley sergeant" (berkeleyscanner.com. September 13, 2023): <https://www.berkeleyscanner.com/2023/09/14/policing/berkeley-police-sergeant-dave-marble-lawsuit-video/>

<sup>48</sup> California Penal Code Section 832.7: [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN)

The Penal Code that protects peace officers' personnel records from public disclosure (Section 832.7) has been amended several times. These amendments now exempt the following records from protection:

1. Discharge of a Firearm: Any incident where a peace officer discharges a firearm at a person (Section 832.7(b)(A)(i)).
2. Use of Force: Any use of force resulting in death or great bodily injury (Section 832.7(b)(A)(ii)).
3. Sexual Assault: Any sustained finding that a peace officer engaged in sexual assault (Section 832.7(b)(B)(i)).
4. Dishonesty: Any sustained finding of dishonesty by a peace officer made by any law enforcement or oversight agency (Section 832.7(b)(C)).

The most recent amendment further allows the disclosure of records related to “any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status” (Section 832.7(b)(D)).

The Berkeley City Council should direct the City Manager to collaborate with the Berkeley Police Department (BPD), the Police Accountability Board (PAB), and the Office of the Director of Police Accountability (ODPA) to implement these amendments. Specifically, they should:

1. Create a public repository that proactively publishes relevant findings within 30 days of their conclusion, regardless of Public Records Act (PRA) requests; and
2. Ensure full transparency in cases of sustained allegations and other incidents eligible for public disclosure.

This action will fulfill the vision of the amendments to California Penal Code Section 832.7 as outlined in Senate Bill 16 (SB 16)<sup>49</sup>, Senate Bill 1421 (SB 1421)<sup>50</sup>, and Assembly Bill 748 (AB 748)<sup>51</sup>.

<sup>49</sup> Senate Bill 16, Skinner. Peace officers: release of records:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB16](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB16)

<sup>50</sup> Senate Bill 1421, Skinner. Peace officers: release of records:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1421](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421)

<sup>51</sup> Assembly Bill 748, Ting. Peace officers: video and audio recordings: disclosure:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB748](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748)

**4. Call on California state legislators to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600-41603).**

Most people assume that a ban on police arrest quotas is already enshrined in California law, but it is limited to vehicle stops. This is an oversight that needs to be corrected, both locally and at the State level. Given the legislative history of arrest quotas, their (incorrectly) assumed ban in California's Penal Code, and their potential impact on our most marginalized community members, the PAB recommends that Council call on the legislature to correct that oversight by extending the prohibition on arrest quotas, whether they be implicit or explicit, in the Penal Code.

Whatever the findings of the Swanson & McNamara team, the DTF text messages as well as the spikes in arrests during that month, drew the PAB's attention to arrest quotas and, eventually, to the absence of their general prohibition in the Penal Code. Once again, Berkeley could take the lead on spearheading a remedy for this apparent oversight.

**SUMMARY**

The Police Accountability Board is charged by the City Charter with oversight of the Berkeley Police Department's policies, practices, and procedures, in the interest of promoting accountability, transparency and public trust.

This report was triggered by a series of text messages sent among sworn officers of the BPD's Downtown Task Force and Bike Unit, and its goal is to fulfill—to the extent possible under current restrictions--its Charter-mandated oversight functions. The report is forward-looking, providing recommendations for policy and practice changes that may help prevent such harmful incidents in the future.

We draw our recommended policy reforms from implications of the text messages themselves, publicly available statistical data, the Swanson & McNamara Report, and DTF officers' audiotaped interviews.

The policies focused on in this report are Fair and Impartial Policing (#401); Personal Communication Devices (#701); Employee Speech, Expression, and Networking (#1029); Standards of Conduct (#321); the Early Warning System (#1041); and Overtime Compensation Requests (#1019). In addition, the PAB recommends a freestanding prohibition on all arrest quotas, implicit or explicit, and a clear policy on the enforcement of stay-away orders.

These policy reforms are one important step. However, policy reforms are only meaningful to the extent that they are fully understood, implemented, and robustly enforced. The PAB thus recommends, as a key priority, that City Council enact an ordinance or other mechanism to ensure that this oversight body—which has sworn an

oath of confidentiality--has the authority to access internal BPD records in the interest of preventing such damaging practices in the future.

Less significant perhaps, but of great symbolic value, the PAB recommends that Council pass a resolution affirming its strong support for full and meaningful accountability for officers who have engaged in misconduct whether they are on or off-duty.

The PAB also recommends that the Council call on the State Legislature to 1) add an exemption in cases of sustained racism or other bias, to 832.7 which protects police records from public disclosure; and 2) rectify an oversight with regard a prohibition on arrest quotas--which is currently limited to the California Vehicle Code—by extending that prohibition in the California Penal Code. By doing so, the City of Berkeley can exhibit its leadership on these important social justice issues.

The text messages that were sent among officers of the Downtown Task Force were harmful to the community and arguably demoralizing to the many BPD officers who find such sentiments repugnant. This report is necessarily forward-looking and aims to provide an environment in which transparency, accountability, and justice can flourish. This cannot be accomplished through policy changes alone. It requires collective efforts by the PAB, BPD and its leadership, the City Manager, and City Council. The PAB looks forward to this collaboration.

**ATTACHMENTS**

**ATTACHMENT 1. Fair and Impartial Policing: POLICY 401 (with recommended changes in red).**

**401.1 PURPOSE AND SCOPE**

This policy is intended to reaffirm the commitment of the Berkeley Police Department to fair and impartial policing; to clarify the circumstances in which dispatchers and officers can consider race, ethnicity and other demographics; and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable way, including identifying, intercepting, and documenting profiling by proxy.

California Penal Code Section 13519.4(e) prohibits racial profiling by law enforcement officers. This policy explicitly prohibits racial profiling and other biased policing. This policy describes the limited circumstances in which members can consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in making law enforcement decisions.

**401.1.1 DEFINITIONS**

Definitions related to this policy include:

**Bias-based policing** - Any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being engaged in criminal activity.

**401.2 POLICY**

Investigative detentions, traffic stops, arrests, searches and property seizures by officers will be based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause.

Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/ identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities except when officers are:

1. Seeking specific person(s) who have been described in part by any of the above listed characteristics, or
2. The person(s) are being sought for a specific law enforcement purpose.

Discrimination or harassment based on a trait or class described above is considered a “serious allegation” of misconduct.

#### **401.3 RESPONSIBILITY TO REPORT AND TAKE CORRECTIVE ACTION**

Employees who become aware of another employee engaging in biased policing—**including both conduct and speech or expression—shall** report it and shall adhere to reporting procedures set forth in the Personnel Complaints Policy.

A supervisor or command officer who becomes aware of biased policing shall adhere to notification and administrative procedures set forth in the Personnel Complaints Policy.

All reports of biased policing shall be investigated in accordance with the Personnel Complaints Policy.

#### **401.4 PROFILING BY PROXY**

Bias, racism or profiling by proxy occurs in a call for service when an individual call the police and makes false or ill-informed claims about persons they dislike or are biased against. Dispatchers and Officers have a role in mitigating bias-based calls for service (CFS), and proper handling of these calls is important to maintain and build trust between the police and the community.

Call takers have a responsibility to do an initial screen and triage of all calls to ensure they are accurately entered as the correct CFS with the appropriate priority attached. Call takers should ask questions and explore whether there are concrete, observable behaviors that form the basis of the suspicious activity or crime the RP is reporting. Calls for service (CFS) should focus on behaviors of involved parties, not appearance. Reports of suspicious activity require the reporting party (RP) to articulate something criminal or reasonably suspicious about a person's behavior.

If a Call Taker believes an RP is making a bias-based call for service, they should:

1. Create a call for service,
2. Enter the details provided by the RP in the call narrative
3. In the Nature of Call field enter: "Supervisor review required" which will ensure that the call is not ready for dispatch, and
4. Notify the on-duty supervisor. Supervisor will review the merits of the call for service and either approve for dispatching or notify a Watch Commander (or designee)
5. Watch Commander will determine if a response will be provided and/or follow-up up with the RP for more information.

## **401.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Chief of Police or the authorized designee shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and reported annually to the DOJ (Penal Code § 13012; Penal Code § 13020).

### **401.5.1 DEMOGRAPHIC DATA PROCEDURES**

All sworn officers shall provide demographic statistical data once for each individual as listed below:

1. All vehicle and bicycle detentions.
2. All pedestrian detentions
3. Anytime anyone is detained, regardless of the cause
4. Anytime anyone is searched regardless of the cause.

Officers shall provide demographic statistical data pursuant to the requirements of the RIPA statute, AB 953.

## **401.6 ADMINISTRATION**

Each year, the Operations Division Captain shall review the efforts of the Department to prevent racial or biased based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

The annual report should not contain any identifying information about any specific complaint, member of the public or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors should review the annual report and discuss the results with those they are assigned to supervise.

## **401.7 TRAINING**

Training on racial or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training Bureau.

All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial or bias-based profiling.

Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.

Each sworn member of this department who received initial racial or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity and cultural trends (Penal Code § 13519.4(i)).

All sworn members of the Department will be required to receive annual intensive implicit bias training.

## **ATTACHMENT 2. Personal Communication Devices: POLICY 701 (with recommended changes in red)**

### **701.1 PURPOSE AND SCOPE**

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

### **701.2 POLICY**

The Berkeley Police Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. **PCDs shall only be used in the workplace on work-related matters when radio communication is not feasible. Further, personally owned PCDs shall only be used on non-work-related issues, absent exigent circumstances.** Any department-issued PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

**The inappropriate use of a PCD while on-duty may impair officer safety.** Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws. **Inappropriate use of a PCD, whether on duty or off-duty on work-related issues, includes but is not limited to any expression or speech that compromises or damages the mission, function, reputation or professionalism of the BPD.**

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory personnel.

### **701.3 PRIVACY EXPECTATION**

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received, or reviewed on any PCD issued or funded by the Department and

shall have no expectation of privacy in their location should the device be equipped with location-detection capabilities. This includes records of all keystrokes or web-browsing history made on the PCD. The fact that access to a database, service, or website requires a username or password will not create an expectation of privacy if it is accessed through department PCDs or networks (see the Information Technology Use Policy for additional guidance).

Members have no expectation of privacy regarding any communications while using a personally owned PCD for department-related business or when the use reasonably implicates work-related misconduct.

### **701.3.1 CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT (CALECPA)**

No member is authorized to be the sole possessor of a department-issued PCD. Department-issued PCDs can be retrieved, reassigned, accessed or used by any member as directed by a supervisor without notice. Member use of a department-issued PCD and use of a personal PCD at work or for work-related business constitutes specific consent for access for department purposes. Prior to conducting an administrative search of a PCD, supervisors should consult legal counsel to ensure access is consistent with CalECPA (Penal Code § 1546; Penal Code § 1546.1).

### **701.4 DEPARTMENT-ISSUED PCD**

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD. Department-issued or funded PCDs are provided as a convenience to facilitate on-duty performance only. Such devices and the associated telephone number shall remain the sole property of the Department and may be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

#### **701.4.1 CITY OF BERKELEY AR 2.15 - CITY ISSUED COMMUNICATION EQUIPMENT POLICY**

Pursuant to City of Berkeley Administrative Regulation 2.15, text messages held on Department-issued or funded PCDs are to be maintained on the communication device for no less than 30 days from the date sent or received. PCDs that have text features enabled will be set to retain text message history for 30 days. Employees are not permitted to alter the text message history setting or to manually delete saved text messages.

### **701.5 PERSONALLY OWNED PCD**

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

- a. Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
- b. The Department accepts no responsibility for loss of or damage to a personally owned PCD.
- c. The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.
- d. The device shall not be utilized to record or disclose any business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment with the Department, without the express authorization of the Chief of Police or the authorized designee.
- e. All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Berkeley Police Department and deleted from the member's PCD as soon as reasonably practicable but no later than the end of the member's shift.

Except with prior express authorization from their supervisor, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing memorandum of understanding or collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

### **701.6 USE OF PCD**

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- a. Members may use a PCD to communicate with other personnel **only** in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.
- b. Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, requires the express authorization of the Chief of Police or the authorized designee.
- c. Members will not access social networking sites for any purpose that is not official department business. This restriction does not apply to a personally owned PCD used during authorized break times.
- d. Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

#### **701.7 SUPERVISOR RESPONSIBILITIES**

The responsibilities of supervisors include, but are not limited to:

- a. Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- b. Monitoring, to the extent practicable, department-issued PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a department-issued PCD.
  1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
  2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Chief of Police or the authorized designee.

#### **701.8 USE WHILE DRIVING**

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD.

Members who are operating department vehicles that are not authorized emergency vehicles shall not use a PCD while driving unless the device is specifically designed and

configured to allow hands-free use. In an emergency, a wireless phone may be used to place an emergency call to the Department or other emergency services agency (Vehicle Code § 23123; Vehicle Code § 23123.5). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

### **701.9 OFFICIAL USE**

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitt

## **ATTACHMENT 3. Employee Speech, Expression and Social Networking: POLICY 1029 (with recommended changes in red)**

### **1029.1 PURPOSE AND SCOPE**

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

#### **1029.1.1 APPLICABILITY**

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### **1029.2 POLICY**

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Berkeley Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

### **1029.3 SAFETY**

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect

the safety of the Berkeley Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- **Otherwise disclosing where another officer can be located off-duty.**

#### **1029.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern). **These prohibitions pertain whether the device is department-issued or personal and whether the member is on or off duty:**

- a. Speech or expression **related to** an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees.
- b. Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Berkeley Police Department or its employees. Examples may include:
  1. Statements that indicate disregard for **Berkeley policies**, the law or the state or U.S. Constitution.
  2. Expression that demonstrates support for criminal activity.
  3. Participating in sexually explicit photographs or videos for compensation or distribution.
  4. **Expressions or speech that may reasonably be interpreted as exhibiting animus toward any racial group, gender identity, nationality, religion, disability, or housing status.**
- c. Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- d. Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example,

a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.

- e. Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Berkeley Police Department.
- f. Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.
- g. Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Berkeley Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.
- h. Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
  1. When brief personal communication may be warranted by the circumstances (e.g., to inform family of extended hours).
  2. During authorized breaks, in which case such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees should take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

#### **1029.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS**

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Berkeley Police Department or identify themselves in any way that could be reasonably perceived as representing the Berkeley Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- a. Endorse, support, oppose or contradict any political campaign or initiative.
- b. Endorse, support, oppose or contradict any social issue, cause or religion.
- c. Endorse, support or oppose any product, service, company or other commercial entity.

- d. Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Berkeley Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or officer associations, on political subjects and candidates at all times while off duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

#### **1029.5 PRIVACY EXPECTATION**

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department. This includes the department e-mail system, computer network or any information placed into storage on any department system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a department computer or network. However, the Department may not require an employee to disclose a personal user name or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work related misconduct (Labor Code § 980).

## **1029.6 CONSIDERATIONS**

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- a. Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- b. Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- c. Whether the speech or conduct would reflect unfavorably upon the Department.
- d. Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- e. Whether similar speech or conduct has been previously authorized.
- f. Whether the speech or conduct may be protected and outweighs any interest of the Department.

## **1029.7 TRAINING**

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.

## **ATTACHMENT 4. EARLY WARNING SYSTEM: POLICY 1041 (recommended changes in red)**

### **1041.1 PURPOSE**

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the “Early Warning System” (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

### **1041.2 POLICY**

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor **is it** a formal disciplinary process.

- a. Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

### **1041.3 PROCEDURES**

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- a. **Racial, housing status, or other demographic disparities on stop, arrest, and/or search data that are higher than the department average;**
- b. Poor attendance and/or abusive use of leave;
- c. Multiple formal sustained or not sustained complaints;
- d. Multiple informal complaint inquiries;
- e. Multiple use of force incidents;
- f. Multiple obstructing/resisting arrest incidents;
- g. Multiple vehicle collisions; and,
- h. Substandard conduct/performance concerns observed by a superior officer.

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with

the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.

Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

- a. Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

Quarterly audits will be conducted of employees whose behavior or performance includes any of the factors included in (a) through (h) above.

#### **1041.4 MANAGEMENT OF PROGRAM RECORDS**

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

- a. The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

- a. An individual employee may be granted access to EWS records that pertain to him/her.

#### **1041.5 ADMINISTRATIVE REVIEW BOARD**

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

#### **1041.6 INITIATION OF EWS PROGRAM**

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

- a. The subject employee;
- b. The employee's supervisor;
- c. An Internal Affairs Bureau sergeant;
- d. The employee's Lieutenant; and,
- e. The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

- a. If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

The subject employee may have one fellow employee accompany him/her to the counseling meeting.

- a. The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

## **ATTACHMENT 5. STANDARDS OF CONDUCT: Policy 321 (with recommended changes in red)**

### **321.1 PURPOSE AND SCOPE**

This policy establishes standards of conduct that are consistent with the values and mission of the Berkeley Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### **321.2 POLICY**

The continued employment or appointment of every member of the Berkeley Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### **321.3 DIRECTIVES AND ORDERS**

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

#### **321.3.1 UNLAWFUL OR CONFLICTING ORDERS**

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law, local ordinance, or policy. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

### **321.3.2 SUPERVISOR RESPONSIBILITIES**

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- a. Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- b. Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- c. Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- d. The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

### **321.4 GENERAL STANDARDS**

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances, policies, and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees shall at all times be courteous and civil to the public and to one another. They shall be quiet, orderly, attentive and respectful and shall exercise patience and discretion in the performance of their duties.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

### **321.5 CAUSES FOR DISCIPLINE**

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service.

#### **321.5.1 LAWS, RULES AND ORDERS**

- a. Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.
- b. Disobedience of any legal directive or order issued by any department member of a higher rank.
- c. Violation of federal, state, local or administrative laws, rules, **policies**, or regulations.

#### **321.5.2 ETHICS**

- a. Using or disclosing one's status as a member of the Berkeley Police Department, **whether on duty or off-duty**, in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- b. The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- c. The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- d. Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- e. Offer or acceptance of a bribe or gratuity.
- f. Misappropriation or misuse of public funds, property, personnel or services.

#### **321.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM**

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex,

sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, housing status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, is unlawful.

#### **321.5.4 RELATIONSHIPS**

- a. Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity, **whether on duty of off-duty**.
- b. Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- c. Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- d. Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- e. Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.
- f. Participation in a law enforcement gang as defined by Penal Code § 13670. Participation is grounds for termination (Penal Code § 13670).

#### **321.5.5 ATTENDANCE**

- a. Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- b. Unexcused or unauthorized absence or tardiness.
- c. Excessive absenteeism or abuse of leave privileges.
- d. Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
- e. Failure to sign in/out for duty on the timesheet, unless specifically authorized by a supervisor.

### **321.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE**

- a. Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
  - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293). (b)
- b. Disclosing to any unauthorized person any active investigation information.
- c. The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- d. Loaning, selling, allowing unauthorized use, giving away or appropriating any Berkeley Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- e. Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

### **321.5.7 EFFICIENCY**

- a. Neglect of duty.
- b. Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- c. Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- d. Unauthorized sleeping during on-duty time or assignments.
- e. Failure to notify the Department within 72 hours of any change in name, residence address or contact telephone number(s).

### **321.5.8 PERFORMANCE**

- a. Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- b. The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal,

alteration, destruction and/or mutilation of any department record, public record, book, paper or document.

- c. Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.
- d. Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- e. Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- f. Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
  - 1. While on department premises.
  - 2. At any work site, while
  - 3. on-duty or while in uniform, or while using any department equipment or system.
  - 4. Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- g. Entering any place of amusement while on duty, except when necessary in the performance of duty or periodic inspection.
- h. Improper political activity including:
  - 1. Unauthorized attendance while on-duty at official legislative or political sessions.
  - 2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- i. Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.
- j. Joining or participating in any employee organization except an employee organization which is composed solely of peace officers which concerns itself solely and exclusively with the wages, hours, working conditions, welfare and advancement of academic and vocational training in furtherance of the police profession and which is not subordinate to any other organization.

- k. Failure to secure the permission of a Commanding Officer before placing any material on a Departmental bulletin board.
- l. Using departmental business cards for anything other than official business.
- m. Any act on- or off-duty that brings discredit to this department.

### 321.5.9 CONDUCT

- a. Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency that may result in criminal prosecution or discipline under this policy.
- b. Failure of any member to report conduct or expressions of any other member that are in violation of Department policy, state law, or the Constitution.
- c. Unreasonable and unwarranted force to a person encountered or a person under arrest.
- d. Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- e. Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- f. Engaging in horseplay that reasonably could result in injury or property damage.
- g. Engaging in discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- h. Use of obscene, indecent, profane or derogatory language while on-duty or in uniform, or while off-duty in a way that brings discredit on the Department.
- i. Engaging in criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- j. Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- k. Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- l. Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- m. Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

- n. Incurring unauthorized expense - Employees shall not knowingly and intentionally incur any unauthorized Departmental expense or liability without approval of a superior officer or supervisor when necessary under emergency conditions.
- o. Failure to provide information to citizens - Employees shall comply whenever possible with requests by citizens for public information. If necessary, they shall direct such persons to the nearest location where information may be obtained.
- p. Failure to Identify - Employees on official business shall identify themselves as Berkeley Police employees or officers. When requested, employees shall promptly state their name, rank and badge number, except when disclosure of identity could compromise safety and/or an investigation (i.e., riot situations, undercover operations, etc.).
- q. Failure to maintain communication, when on duty or officially on call - Employees who are on duty or officially on call shall be directly available by normal communication or shall keep their office, supervisor, or commanding officer informed of the means by which they may be reached when not immediately available.
- r. Any other on-- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

### **321.5.10 SAFETY**

- a. Failure to observe or violating department safety standards or safe working practices.
- b. Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- c. Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- d. Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- e. Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- f. Unsafe or improper driving habits or actions in the course of employment or appointment.
- g. Any personal action contributing to a preventable traffic collision in the course of employment or appointment.
- h. Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

**321.5.11 INTOXICANTS**

- a. Reporting for work:
  1. Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.
- b. Possession:
  1. Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
  2. Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.
- c. Intoxicants on-duty:
  1. Use of Intoxicants. Except as necessary in the performance of an official assignment, having the odor of an alcoholic beverage on the person, clothing, or breath, being under the influence of alcohol or other intoxicants, or the consumption of alcohol or other intoxicants while on duty is strictly prohibited.
  2. A Command Officer must give prior approval for any use of alcohol in the performance of an official assignment.
- d. Prescription medication:
  1. Employees may use prescription medications, except medical marijuana, while on duty pursuant to the specific instructions of a physician who has advised the employee that the prescribed medication in the amount actually ingested does not adversely affect the employee's ability to safely perform their duties, including tasks that require physical coordination, mental alertness and sound judgment, such as, operating office equipment and driving a vehicle, or, in the case of sworn officers, making detentions/arrests and handling weapons.
- e. Use of marijuana:
  1. Possession of marijuana, including medical marijuana, or being under the influence of marijuana on or off-duty is prohibited and may lead to disciplinary action.
- f. Intoxicants in uniform:
  1. No employee off duty and in uniform, or in any part of uniform dress, shall:
    - i. Consume any alcoholic beverage or other intoxicant in public view or in any place accessible to the public;
    - ii. Be in public with the odor of an alcoholic beverage on the person, clothing, or breath; or
    - iii. Be under the influence of alcohol or other intoxicants.

g. Intoxicants off-duty:

1. No off-duty employee shall consume any alcoholic beverage or other intoxicant to an extent which renders one unfit to report for one's next regular tour of duty (including having the odor of an alcoholic beverage on the person), which results in the of violation of any law, or which results in the commission of an obnoxious or offensive act which might tend to discredit the Department.

## **ATTACHMENT 6. Overtime Compensation Requests: Policy 1019**

The PAB does not recommend specific changes here; however, the policy should stipulate the circumstances, or types of circumstances, that would necessitate bypassing the otherwise straightforward directive in Section 1019.1.1 of this policy that “all requests to work overtime should be approved in advance.” Additionally, excessive overtime should be included as a factor that triggers an early system audit.

### **1019.1 PURPOSE AND SCOPE**

It is the policy of the Department to compensate non-exempt salaried employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off. In order to qualify for either, the employee must complete and submit an Extraordinary Duty Report as soon as practical after overtime is worked.

#### **1019.1.1 DEPARTMENT POLICY**

Because of the nature of police work, and the specific needs of the Department, a degree of flexibility concerning overtime policies must be maintained.

Non-exempt employees are not authorized to volunteer work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

Short periods of work at the end of the normal duty day (e.g., less than one hour in duration) may be handled unofficially between the supervisor and the employee by flexing a subsequent shift schedule to compensate for the time worked rather than by submitting requests for overtime payments. If the supervisor authorizes or directs the employee to complete a form for such a period, the employee shall comply.

The individual employee may request compensatory time (aka "comp time") in lieu of receiving overtime payment.

### **1019.2 TYPES OF OVERTIME AND COMPENSATION**

Time spent in a pay status but not actually worked (e.g., sick leave, vacation leave, comp time, holiday leave, etc.) shall be considered "time worked" in computing the basic forty-hour week. However, employees shall be eligible to work in an overtime capacity while

actually on such absence, but only in accordance with the provisions of the current MOU between the City of Berkeley and the employee's working group.

When a City recognized holiday falls within the workweek, the employee's basic workweek is reduced by eight hours for each holiday.

If an employee commences or terminates employment with the City within the workweek or is on suspension or leave of absence without pay during the workweek, the employee is not eligible for overtime benefits until hours worked exceed forty hours during that week.

With the exception of court overtime situations, an employee's name and overtime worked shall be reflected on a time sheet.

Unless specifically stated otherwise, all overtime is awarded at time and a half.

- a. Non-sworn personnel receive double time after 12 hours in any 24-hour period.
- b. Sworn personnel receive holiday overtime at the straight time rate;
- c. Non-sworn personnel receive double time for Christmas and Thanksgiving.
- d. An explosives technician shall receive double time for time spent (from call to completion) in dealing with explosives, whether on or off duty.
- e. Special Response Team members shall receive an additional 5% pay when involved in an active SRT incident, either on or off duty.
- f. Field Training Officers shall receive an additional 10% differential when actually working as a Field Training Officer.
- g. The Field Training Program Sergeant shall receive a 5% salary differential while occupying that position.
- h. The Homicide Sergeant shall receive a 4% salary differential. Homicide detectives shall receive a 3% salary differential.

Those holding the classification of Captain are excluded from overtime benefits.

### **1019.3 REQUEST FOR OVERTIME COMPENSATION**

#### **1019.3.1 EMPLOYEES RESPONSIBILITY**

Employees shall complete the Extraordinary Duty Reports immediately after working the overtime and turn them in to their immediate supervisor or the Watch Commander. Employees submitting Extraordinary Duty Reports for on-call pay when off duty shall submit the forms to their supervisor the first day after returning for work.

#### **1019.3.2 SUPERVISORS RESPONSIBILITY**

The supervisor who verifies the overtime earned shall verify that the overtime was worked before approving the request.

After approval, the Extraordinary Duty Report shall be forwarded to the employee's Division Captain for final approval.

**1019.3.3 DIVISION CAPTAIN RESPONSIBILITY**

The Division Captain, after approving payment, shall then forward the report to the Payroll Clerk for review.

**1019.4 ACCOUNTING FOR OVERTIME WORKED**

Employees are to record the actual time worked in an overtime status. In some cases, the Memorandum of Understanding provides that a minimum number of hours will be paid, (e.g., four hours for Court). The supervisor will enter the actual time worked.

**1019.4.1 ACCOUNTING FOR PORTIONS OF AN HOUR**

When accounting for less than a full hour, time worked shall be rounded up to the nearest quarter of an hour as indicated by the following chart:

| <u>TIME WORKED</u> | <u>INDICATE ON CARD</u> |
|--------------------|-------------------------|
| 1 to 15 minutes    | .25                     |
| 16 to 30 minutes   | .50                     |
| 31 to 45 minutes   | .75                     |
| 46 to 60 minutes   | 1 hour                  |

**1019.4.2 VARIATION IN TIME REPORTED**

Where two or more employees are assigned to the same activity, case, or court trial and the amount of time for which payment is requested varies from that reported by the other officer, the Watch Commander or other approving supervisor may require each employee to include the reason for the variation on the Extraordinary Duty Report.

**1019.5 RECOVERY / COMPENSATORY OVERTIME (COMP TIME)**

Recovery / Compensatory overtime (comp time) is overtime credited with time rather than pay.

To obtain comp time credit the employee shall promptly submit a completed Extraordinary Duty Report for approval by both the employee's supervisor and commanding officer.

It is City and Police Department policy that employees not be permitted to accumulate excessive comp time.

- a. Sworn employees are allowed to accrue up to 120 hours of comp time.
- b. Non-sworn employees are allowed to accrue up to 90 hours of comp time.

Employees may be allowed comp time off only when that amount of time has been previously accumulated.

An employee who wishes to use accumulated comp time shall make such request on an Absence Report submitted to his/her supervisor, who shall determine if the absence would hinder the unit's operation and either approve or deny the request. Within the Operations Division, the final decision rests with the Patrol Staffing Lieutenant.

#### **1019.6 OVERTIME / SHIFT EXTENSION**

Overtime shall be defined as time worked by an employee in excess of 40 hours per week. For paid overtime to be credited, an employee is required to submit an Extraordinary Duty Report immediately following the overtime assignment.

An Extraordinary Duty Report requires approval from the employee's supervisor and commanding officer, both of whom must check the report for accuracy, ensuring that the "reason" and the paid overtime budget designations are properly stated.

- a. Completed Extraordinary Duty Reports must be routed to the Division Captain for final approval.
- b. Completed reports must be routed to the Payroll Clerk no later than 1400 hours on the Monday before the payday in order to be included in that pay period.

#### **1019.7 HOLIDAY OVERTIME**

Holiday overtime is earned in lieu of taking the time off during the same week of a holiday or when an employee works any part of a recognized City of Berkeley holiday or has that day as a regularly scheduled day off.

Holiday overtime is awarded at time for time for sworn employees; for non-sworn employees it is awarded at time and a half, however on Thanksgiving and Christmas it is awarded at double time.

Holiday overtime may be received as either paid overtime or compensatory overtime (if the maximum accrual of compensatory overtime has not been reached).

- a. Sworn employees have the option of either pay or compensatory overtime.

- b. Non-sworn employees require Division Captain approval for compensatory overtime.

In lieu of pay or comp time, an employee may be allowed an alternative day off during the same calendar week as the holiday with supervisor approval.

When a holiday occurs during an employee's vacation leave, the holiday shall not be charged as vacation leave and the employee's leave may be extended accordingly, with supervisor approval.

The choice of comp time or holiday pay shall be computed by the Payroll Clerk from information provided on the timesheets.

### **1019.8 COURT OVERTIME**

Court overtime is defined as that overtime worked in connection with an assigned appearance before any criminal or civil court, Police Review Commission meeting or Board of Inquiry, BPD Board of Review, and any other specially approved appearance on behalf of another City department or commission.

Unless otherwise approved by a Commanding Officer, all court overtime shall be paid.

A sworn employee who makes an off-duty court appearance shall receive a minimum of four hours overtime unless his or her scheduled duty reporting time, regular shift or overtime shift is less than four hours after the scheduled court appearance in which case the employee will receive overtime in the lesser amount.

Non-sworn employees shall receive a minimum of three hours overtime unless their scheduled duty reporting time is less than three hours after the scheduled court appearance in which case the non-sworn employee will receive overtime in the lesser amount.

Overtime spent conferring with the prosecuting attorney will be considered as court overtime and part of the court session only if the employee's presence is required in court shortly after the conference.

For off duty, out of town court appearances, travel constitutes court overtime and is determined by the round-trip time from the Public Safety Building.

An employee required to attend two or more court sessions on the same day is eligible for overtime compensation during the period between the sessions if subpoenaed on his/her day off (limited to a maximum of two hours between each session) but is not eligible for session break compensation if court appearance falls on a regular duty day.

To receive court overtime credit an employee shall submit an Extraordinary Duty Report.

- a. The subpoena should be attached and case number indicated if either or both are available.
- b. The overtime report is to be completed by the employee and should specify the amount of time required for "testifying/conferring" or "time waiting" or indicate that they were "not needed".
- c. The employee's supervisor shall review the report for accuracy and complete the lower boxed area, indicating the court paid overtime budget code, the activity code and the proper project designation.

#### **1019.9 COURT OVERTIME - TELEPHONE STANDBY**

- a. Sworn employees who are placed on telephone standby for court will be given comp time (in accordance with the current MOU between the City of Berkeley and the Berkeley Police Association) as follows:
  1. Duty Day: One-hour minimum comp time and hour for hour thereafter.
  2. Day Off: Two-hour minimum comp time and hour for hour thereafter.
- b. To receive compensatory overtime credit for telephone standby an officer shall submit an Extraordinary Duty Report.
  1. The subpoena should be attached and case number indicated if either or both are available.
  2. The report is to be completed by the officer and shall specify the case number and the name of the Deputy District Attorney placing him/her on telephone standby.

#### **1019.10 TRAINING OVERTIME**

Training overtime is earned when an employee is assigned to attend a class, conference or seminar during off duty hours. Training overtime shall be reported on an Extraordinary Duty Report. To receive credit for the time spent training, a Training Time Credit Record shall be completed and routed to Personnel and Training.

Employees attending schools or classes away from the PSB will normally be credited with an eight-hour day even though the number of hours may vary due to the nature of the instruction, see also the Attendance at Conferences and Meetings Policy.

#### **1019.11 EMERGENCY / EMERGENCY ON-CALL OVERTIME**

An employee shall be paid or given comp time off for being placed on emergency on-call status as follows:

- a. An employee who is placed on emergency on-call status on his or her regularly scheduled work day shall be paid for a minimum of one hour and at a one quarter ( $\frac{1}{4}$ ) time rate.
- b. An employee who is placed on emergency on-call status on his or her regularly scheduled day off shall be paid for a minimum of two hours and at a one quarter ( $\frac{1}{4}$ ) time rate.
- c. Emergency Overtime - An employee is guaranteed at least three hours overtime when called to emergency overtime duty from his or her residence. If the employee's regular reporting time is less distant than the guaranteed overtime the employee will receive overtime in that lesser amount.

APPENDIX

**Appendix 1. City of Berkeley Contract for services with Swanson & McNamara LLP,  
Vendor Contract #32300109**

**Contract Number:** 32300109

**Contractor Name:** Swanson & McNamara

**Contract Link:**

<https://records.cityofberkeley.info/PublicAccess/api/Document/AU3fuyqXQXXZ%C3%81TG8am4tuCPypIzZCFLJZsbxFqBxmJ3aQZTBcxS%C3%89E7ECp9r6A30gZuhAlmseUFcNLLtKRrEId7g%3D/>

**CONTRACT**

**THIS CONTRACT** is entered into on November 28, 2022, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and Swanson & McNamara LLP ("Attorneys"), who agree as follows:

**WHEREAS**, the City of Berkeley requires the services for legal advice and consultation with the City Attorney's office concerning issues arising out of text messages allegedly sent by Sgt. Darren Kacalek, including but not limited to whether such messages were sent, who was aware of the messages and what action they took in response, whether there existed an "arrest quota" as described in the purported text messages, if so who was aware of the arrest quota and involved in its implementation, and to recommend to the appropriate authority whether and what discipline should be imposed as a result of our findings, and

**WHEREAS**, Attorneys are willing to be retained by the City in connection with said legal issues; and

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, City and Attorneys agree as follows:

1. **SCOPE OF SERVICES**

Attorneys designated herein will consult and provide legal advice and shall use the best professional skill and ability therein to the end that the most favorable results may be attained on behalf of City. The advice will be provided by Edward Swanson as lead counsel with the assistance of other associates.

2. **PAYMENT**

a. The City agrees to pay the designated attorneys at the following rates:

|                   |                   |
|-------------------|-------------------|
| Edward W. Swanson | \$750.00 per hour |
| Mary McNamara     | \$750.00 per hour |
| August Gugelmann  | \$650.00 per hour |
| Britt Evangelist  | \$600.00 per hour |
| Audrey Barron     | \$575.00 per hour |
| Carly Bittman     | \$550.00 per hour |
| Paralegal         | \$120.00 per hour |

b. Attorneys shall furnish monthly statements to the City Attorney of City showing the number of hours devoted to said matter/s and all expenses paid during said period. Said statements shall conform as closely as practicable to the format attached hereto as Exhibit A. City shall pay Attorneys the amounts shown thereon upon approval thereof by the City Attorney of the City as soon as possible after receipt of such statements. Payment for services by non-designated attorneys will be denied, unless approved in advance by the City Attorney or his delegate.

c. The entire fees and expenses pursuant to this Contract shall not exceed the amount of \$50,000 without amendment hereto. Attorneys shall not earn fees for services or incur expenses in excess of the aforesaid amount prior to executing with the City a written amendment to this contract increasing the amount payable hereunder. Attorneys shall notify the City as soon as practicable that a contract amendment increasing the amount payable may be necessary.

3. **TERM**

a. This Contract shall begin on the date it is executed by all parties and continue until Attorneys' services are no longer required by the City.

b. The City may terminate this Contract at any time upon five (5) days written notice to the other party. In the event of such termination, Attorneys will be paid a fee for services performed prior to the time of termination as specified in Paragraph 2 of this Contract, except that in no event will the amount paid exceed the full amount in Paragraph 2, as amended from time to time.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Attorney  
City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> Fl.  
Berkeley, CA 94704

For purposes of this Contract, all notices to Attorneys shall be addressed as follows:

Edward W. Swanson  
Swanson & McNamara LLP  
300 Montgomery Street, Suite 1100  
San Francisco, CA 94104

4. **INDEMNIFICATION**

Attorneys, for itself and its heirs, successors and assigns, agree to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions arising out of the negligent acts or willful misconduct in the performance of this Contract by Attorneys or its officers, employees, partners, directors, subcontractors or agents.

5. **CONFORMITY WITH LAW AND SAFETY**

a. Attorneys shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Attorneys must be in accordance with these laws, ordinances, codes and regulations. Attorneys shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Attorneys shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Attorneys shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased

person(s); 2) name and address of Attorney's subcontractor, if any; 3) name and address of Attorney's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

6. **NON-DISCRIMINATION**

Attorneys hereby agree to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Ch. 13.26 as amended from time to time. In the performance of this Contract, Attorneys agree as follows:

a. Attorneys shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Attorneys shall permit the City access to employment advertisements, blank application forms, EEO-1 forms, affirmative action plans and any other documents, which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Attorneys shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

7. **INDEPENDENT CONTRACTOR**

For purposes of this Contract and for the duration of this Contract, Attorneys shall be an independent contractor and not an employee of the City. The City shall not have the right to control when, where or how the service is rendered, but shall have the right to specify the results of the service rendered pursuant to this Contract.

8. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Ch. 3.64, neither Attorneys nor any employee, officer, director, partner or member of Attorneys, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Attorneys, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Attorneys.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Ch. 3.64.

d. Immediately upon discovering a breach of this paragraph City may terminate this Contract. Additionally, City may deem Attorneys a non-responsible bidder for five (5) years from the date the Contract is terminated.

9. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

Unless a written exemption has been approved by the City Manager, the following provisions will apply for this agreement:

a. In accordance with Resolution No. 59,853-N.S., Attorneys certify that they have no contractual relations with, and agree during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this Contract: Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang.

c. Attorneys' failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Attorneys due to a default under this provision, City may deem Attorneys a non-responsible bidder for five (5) years from the date this Contract is terminated.

10. **SETOFF AGAINST DEBTS**

Attorneys agree that City may deduct from any payments due to Attorneys under this Contract any monies that Attorneys owe City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

11. **NUCLEAR FREE BERKELEY**

Attorneys agree to comply with B.M.C. Ch. 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

12. **GOVERNING LAW**

The laws of the State of California shall govern this Contract.

13. **AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Attorneys.

14. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST**

The City's Conflict of Interest Code, Resolution No. 51,425-N.S., as amended, requires every consultant to disclose conflicts of interest by filing a Statement of Economic Interest (Form 730). Attorneys serving as consultants to the City under this Contract agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contract.

15. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Attorneys have obtained a City business license as required by B.M.C. Ch. 9.04, and its license number is written below; or, Attorneys are exempt from the provisions of B.M.C. Ch. 9.04 and have written below the specific B.M.C. section under which it is exempt. Attorneys shall pay all state and federal income taxes and any other taxes due. **Attorneys certify under penalty of perjury that the taxpayer identification number written below is correct.**

Business License No. [application submitted]  
Taxpayer Identification No. 94-3309866

16. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Attorneys are required by this Contract to prepare a written report or study, Attorneys shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin papers, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Attorneys shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

17. **INSURANCE**

a. Attorneys shall maintain at all times during the performance of this Contract a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of Attorneys' performance of services under this Contract. Attorneys shall provide an original Certificate of Insurance evidencing the required coverage.

b. If Attorneys employ any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City Attorney; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Risk Manager.

c. Attorneys shall forward all insurance documents to:

City Attorney  
City of Berkeley  
2180 Milvia St., 4<sup>th</sup> Floor  
Berkeley, CA 94704

18. **BERKELEY LIVING WAGE ORDINANCE**

a. Attorneys hereby agree to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Attorneys will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Attorneys expressly acknowledge that, even if Attorneys are not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Attorneys to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, Attorneys shall be required to maintain monthly records of those employees providing service

under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Attorneys for health benefits, if any, for each of its employees providing services under the Contract. Attorneys agree to supply City with any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 20.

c. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, Attorneys shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Attorneys engages to execute its responsibilities under this Contract. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Attorneys fail to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Attorneys' failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Attorneys due to a default under this provision, City may deem Attorneys a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Attorneys may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an under-payment to an employee. It is mutually understood and agreed that Attorneys failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Attorneys' breach. City may deduct any assessed liquidated damages from any payments otherwise due Attorneys.

19. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Attorneys hereby agree to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Attorneys are currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Attorneys will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

b. If Attorneys are currently or becomes subject to the Berkeley Equal Benefits Ordinance, Attorneys agree to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 20.

c. If Attorneys fail to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Attorneys' failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Attorneys under this provision, the City may deem Attorneys a non-responsible bidder for not more than five (5) years from the date this

Contract is terminated.

In addition, at City's sole discretion, Attorneys may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Attorneys' failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Attorneys' breach. City may deduct any assessed liquidated damages from any payments otherwise due Attorneys.

20. **SANCTUARY CITY CONTRACTING**

Contractor hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Contractor agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. "Data Broker" means either of the following:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
  - i. The City's computer-network health and performance tools;
  - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

21. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Attorneys' financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Attorneys agree to provide the City Auditor with reasonable access to Attorneys' employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Attorneys an opportunity to discuss and respond to any findings before a final audit report is filed.

22. **ENTIRE CONTRACT**

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract.

b. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Attorneys. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

c. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

**IN WITNESS WHEREOF**, City and Attorneys have executed this Contract as of the date written on the first paragraph of this Contract.

CITY OF BERKELEY

By:   
City Attorney

Registered by:

\_\_\_\_\_  
City Auditor

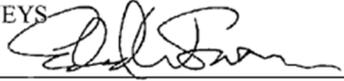
Attest:

  
ASST. City Clerk

Registered on behalf of the City Auditor:

  
Finance Department

ATTORNEYS



---

By Edward W. Swanson  
Swanson & McNamara LLP

Taxpayer Identification No.

Incorporated: Yes (X) No ( )

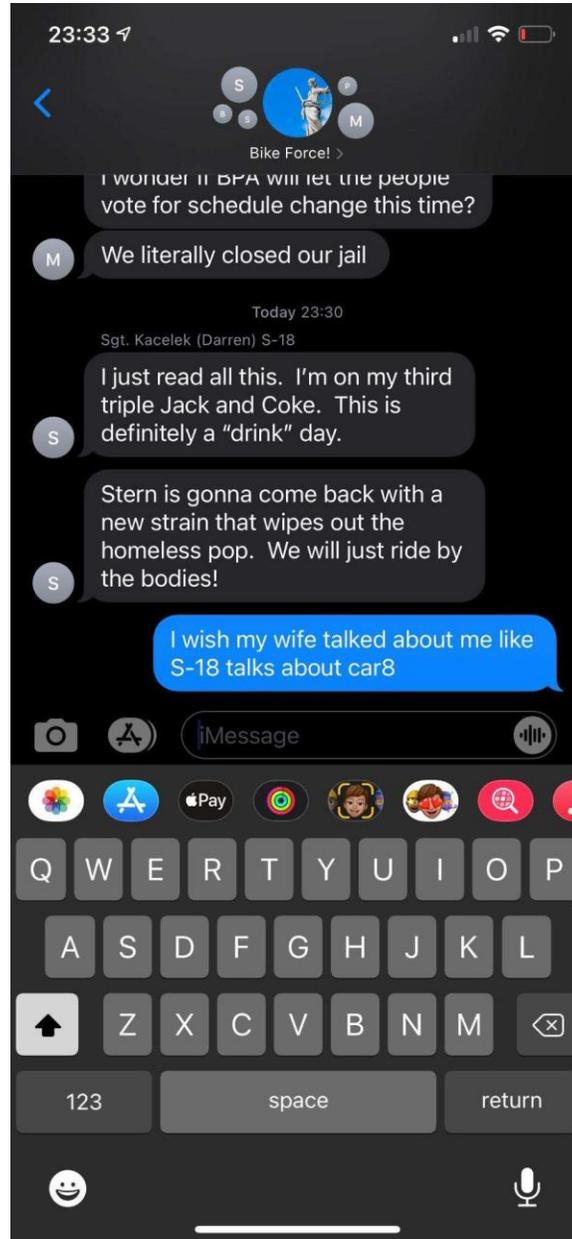
Certified Woman Business Enterprise: Yes ( ) No (X)

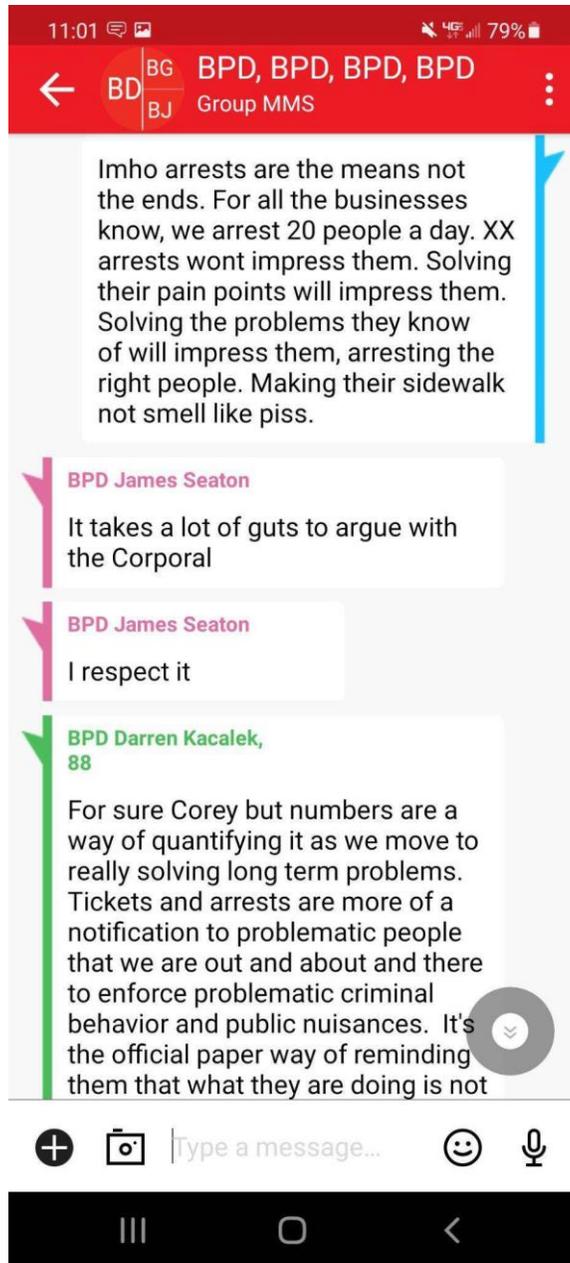
Certified Minority Business Enterprise: Yes ( ) No(X)

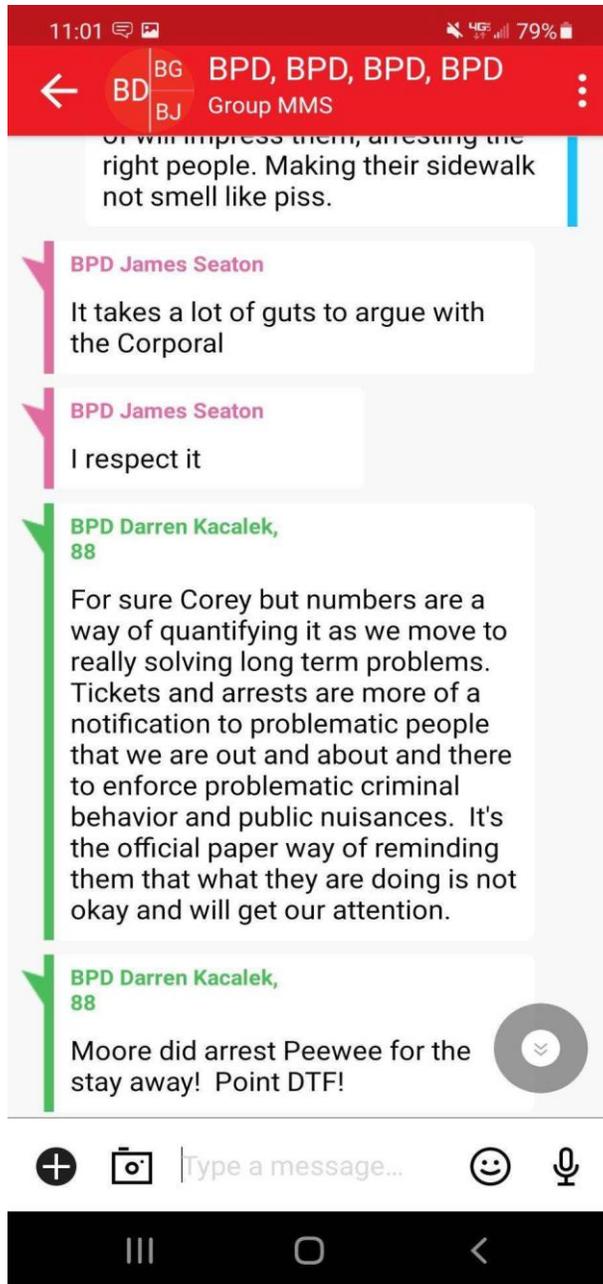
If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes ( ) No (X)

## Appendix 2. Text Messages Sent by the Downtown Task Force and Bike Unit Members

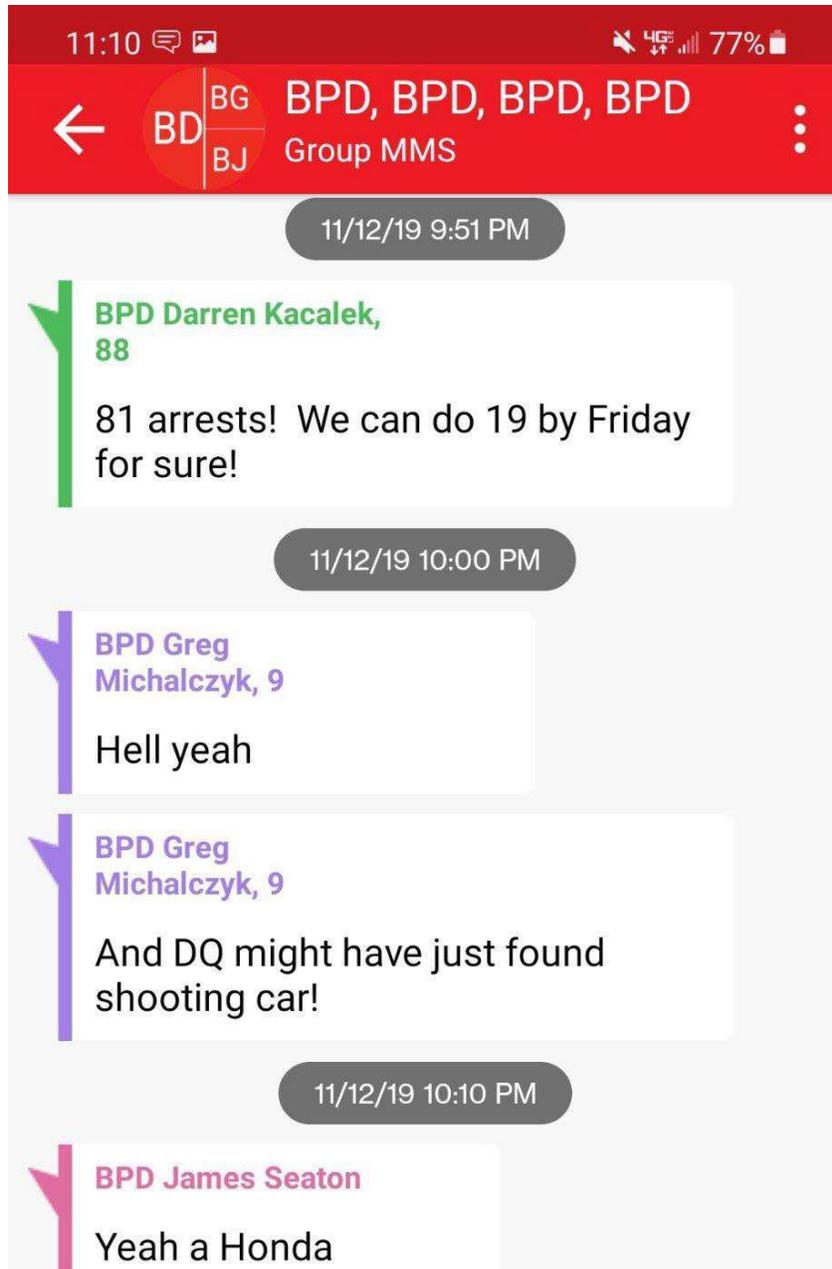


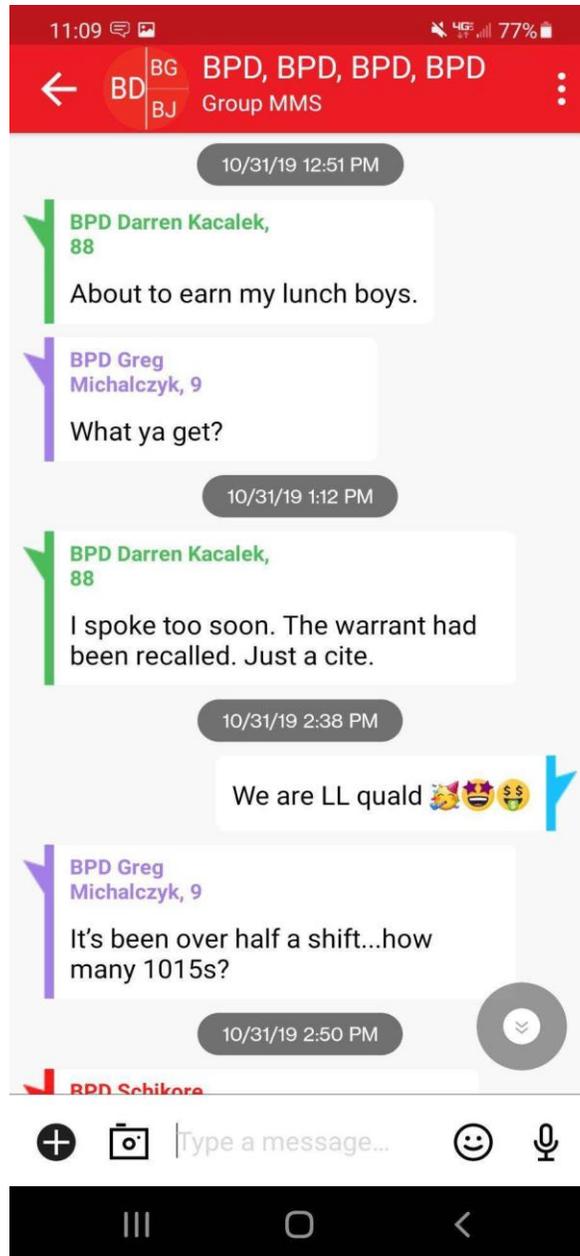


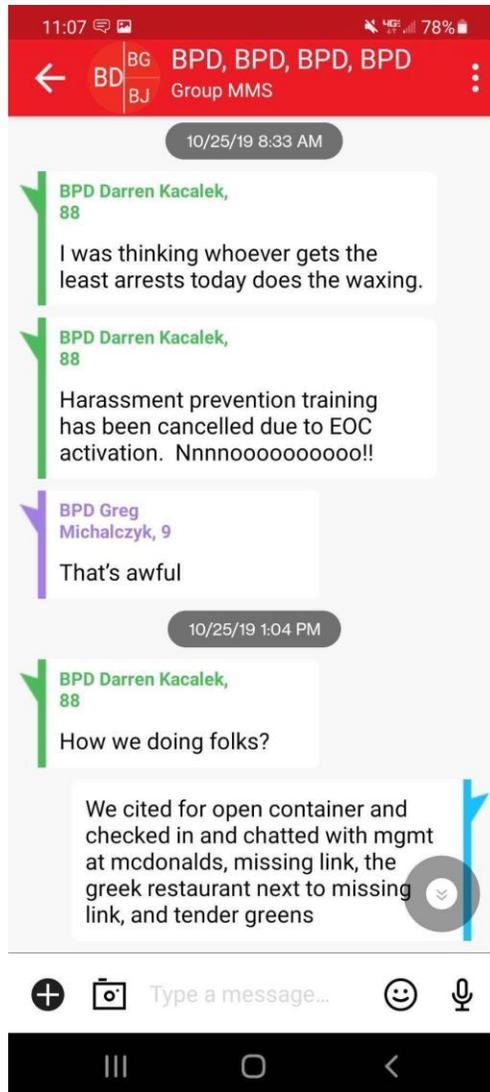


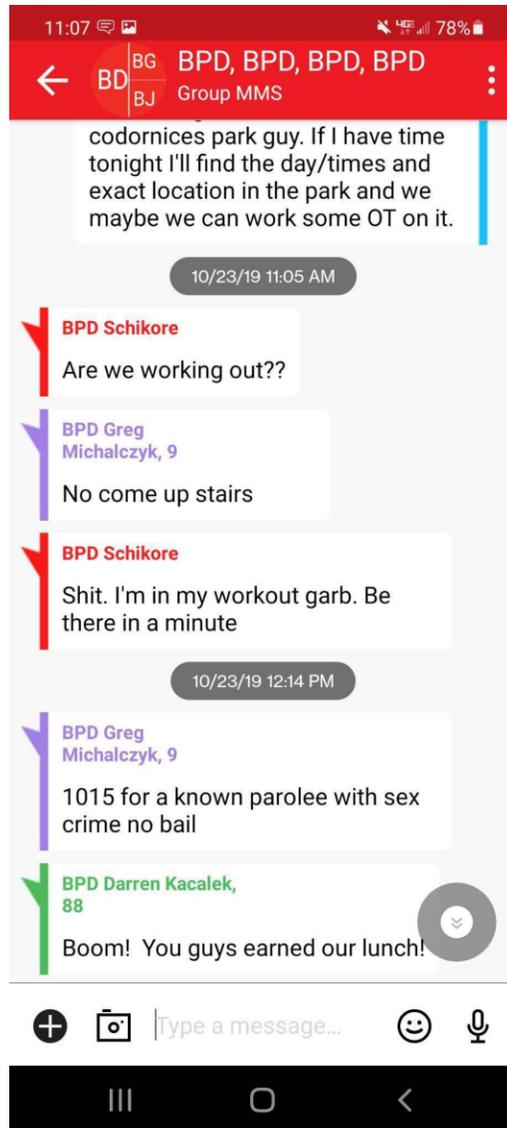


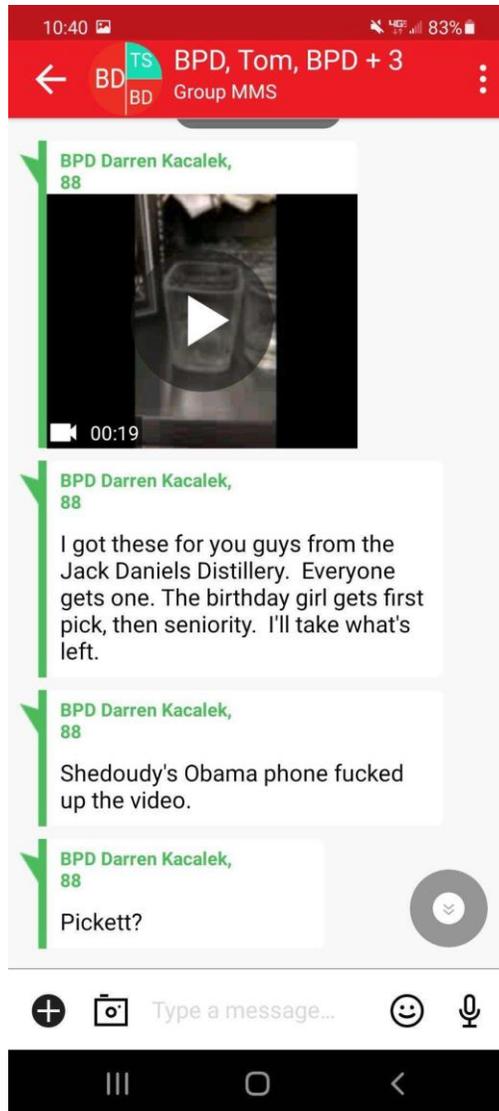
I like that way of thinking. I'm gonna come with a bike force board game. You do shit around the city to go forward. I'll come up with a cool award for the winner. Maybe like a week long challenge. Famous people arrested you get extra points.

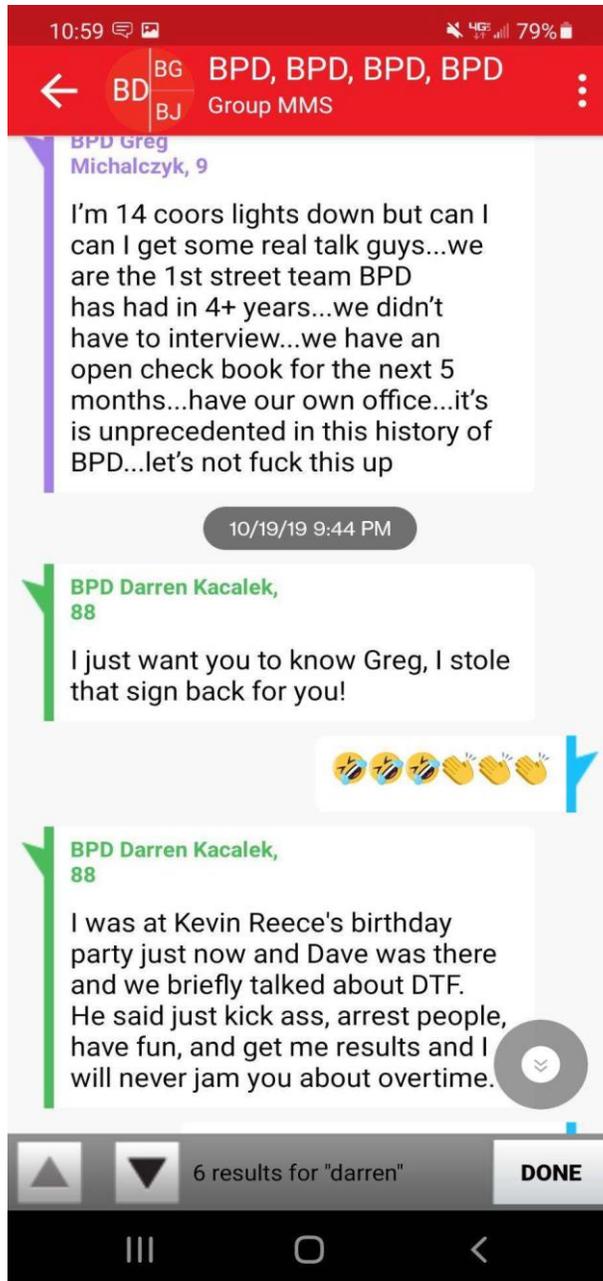


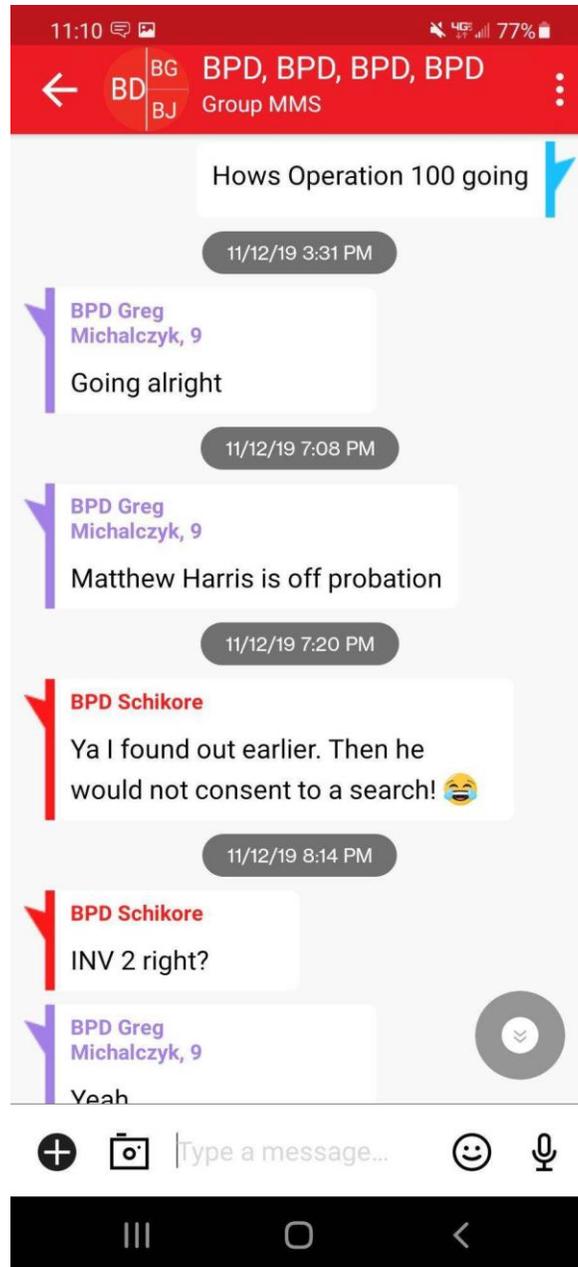


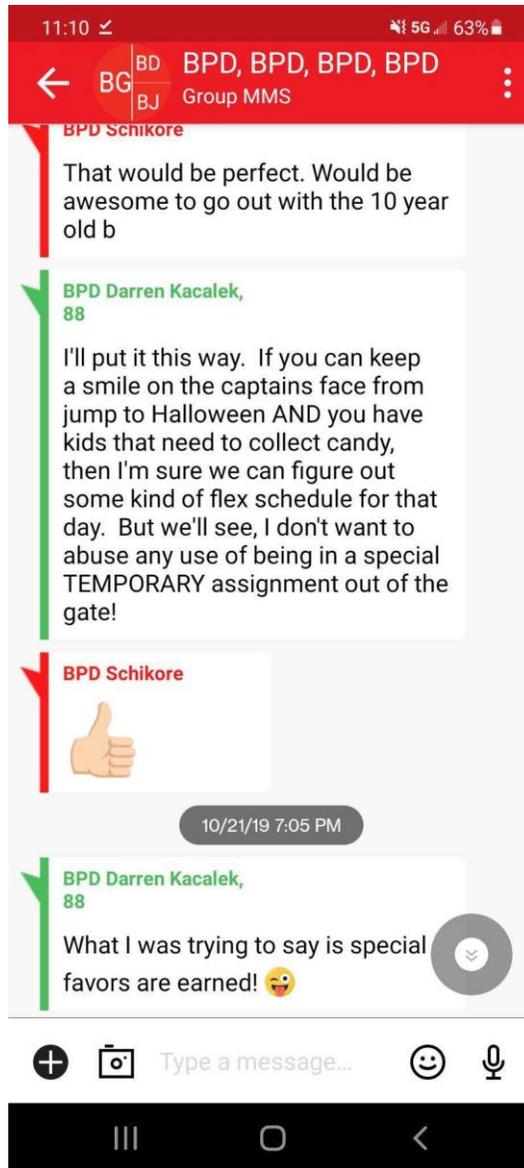


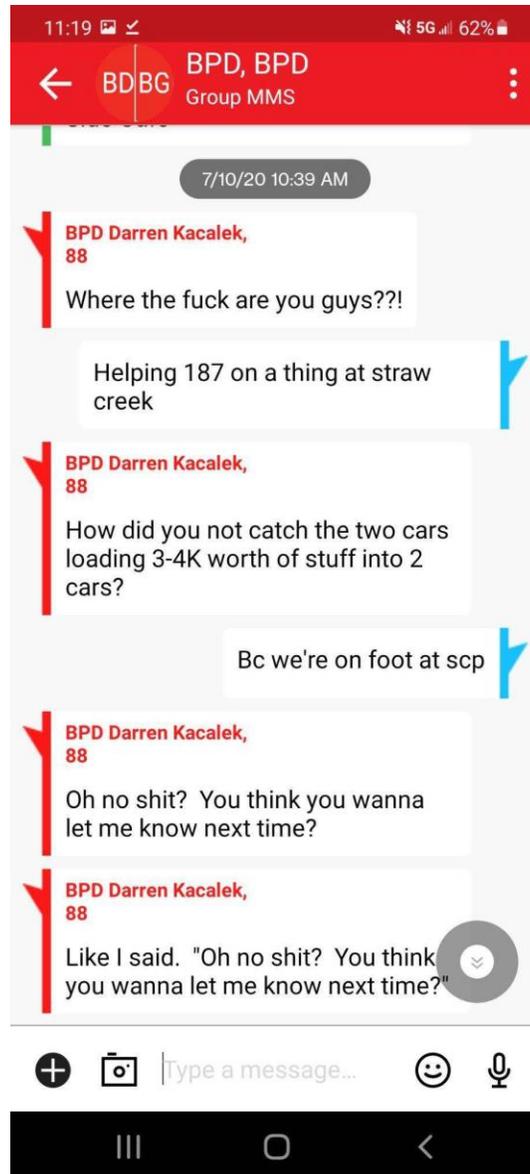


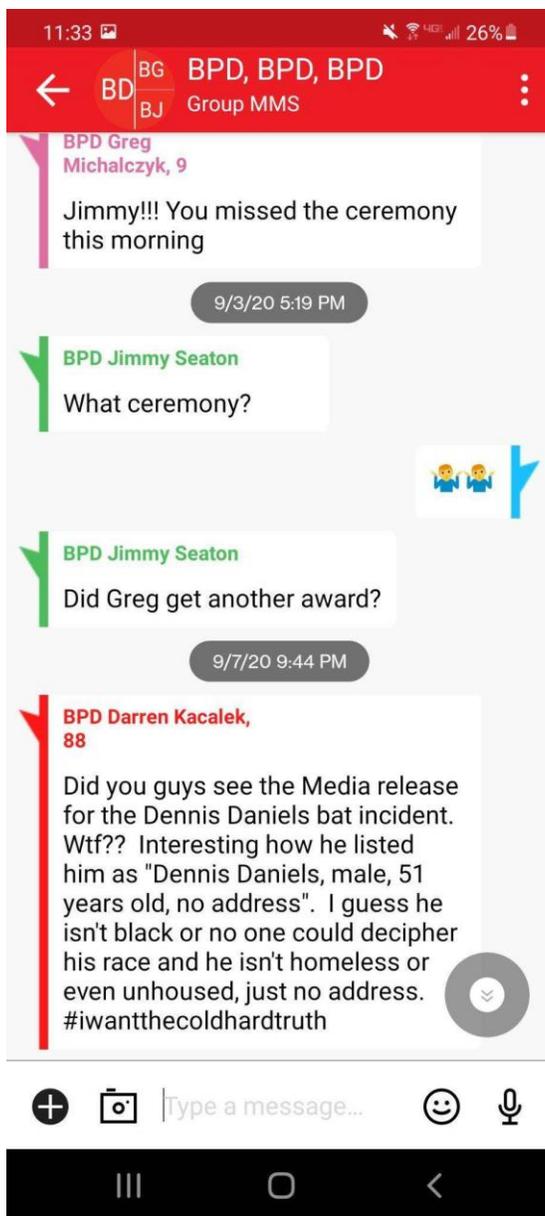


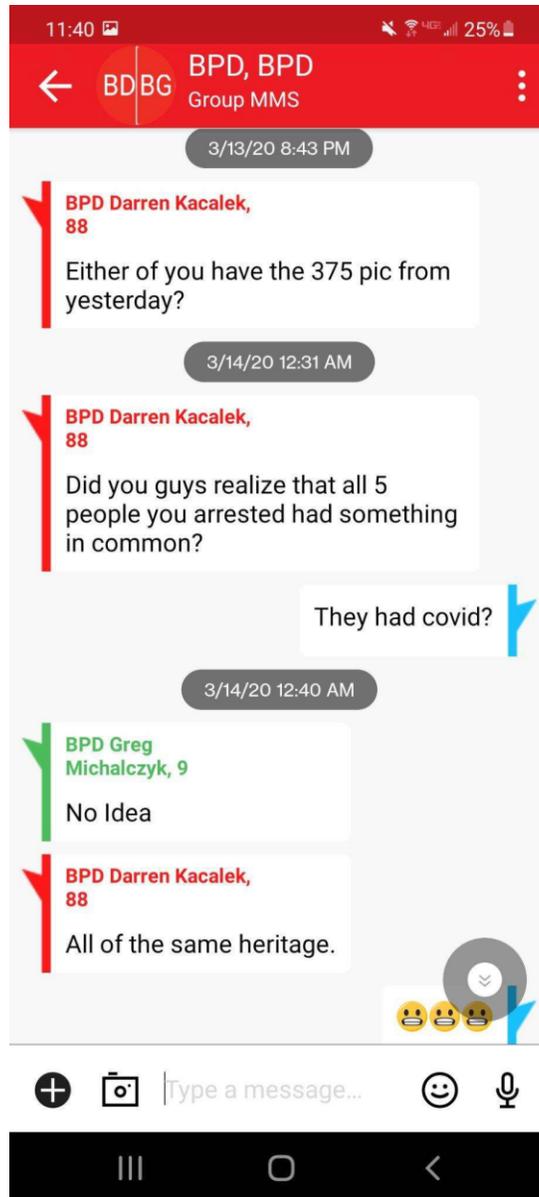


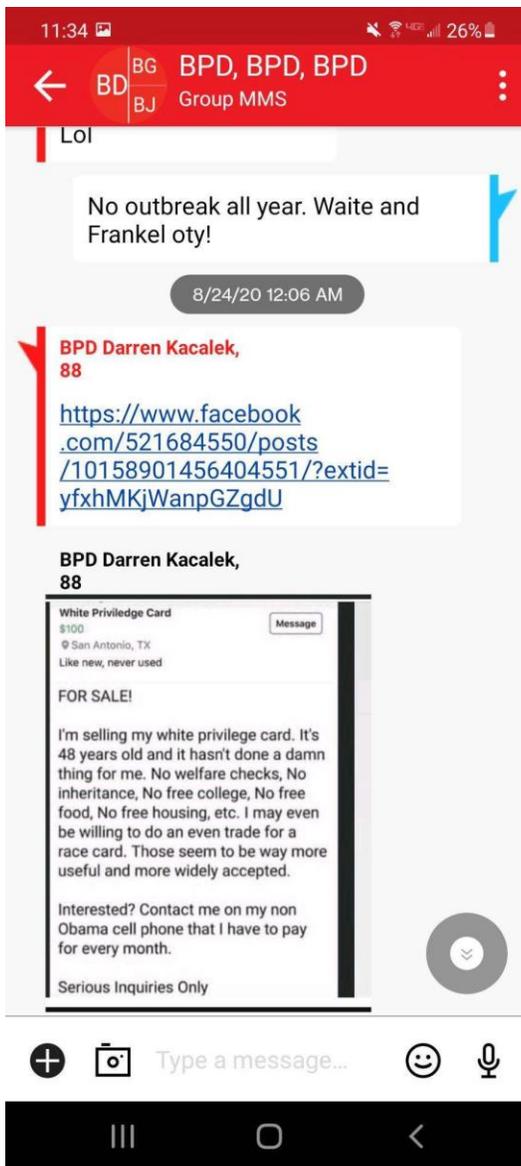


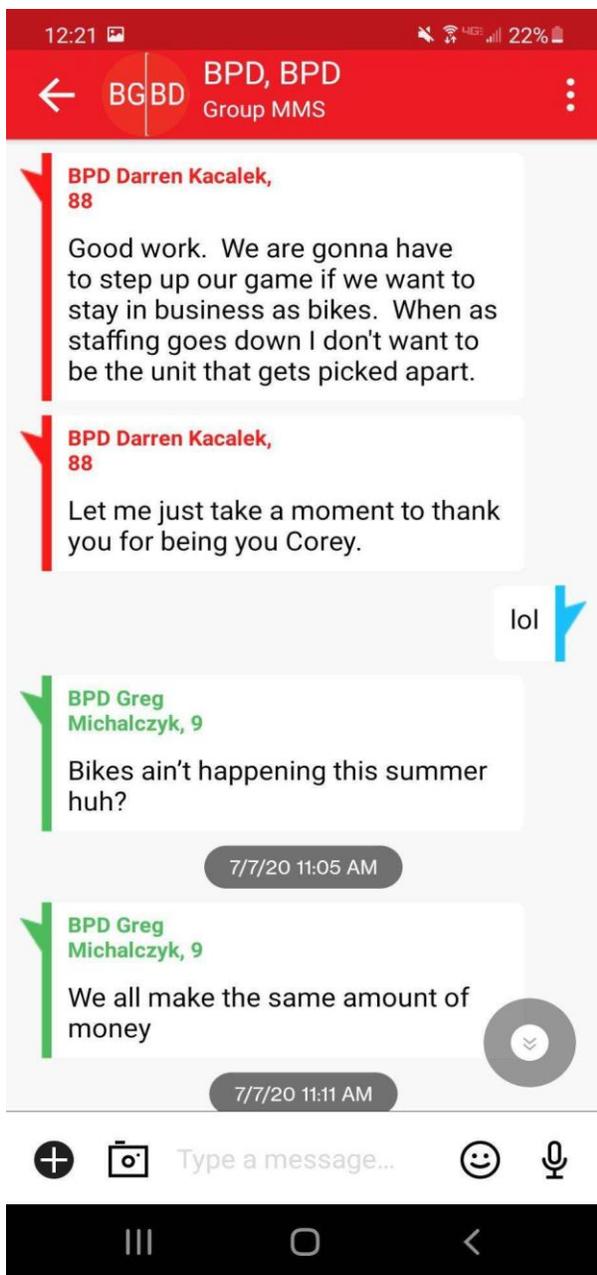












## Appendix 3. Sample Quota Ban Policy

### STOP, ARREST, AND TICKET QUOTAS PROHIBITION

#### XXX.1 PURPOSE AND SCOPE

The Berkeley Police Department (BPD) is committed to fostering fair and equitable law enforcement practices that prioritize public safety and community well-being. The purpose of this policy is to explicitly prohibit the imposition of stop, ticket, and arrest quotas in any law enforcement activities conducted by the Berkeley Police Department. This goes beyond the parameters defined in the California Vehicle Code § 41603.

Stop, ticket and arrest quotas, whether formal or informal, establish numerical targets for officers, compelling them to issue citations or make arrests based on predetermined numbers rather than legitimate law enforcement needs. This policy aims to uphold the values of fairness, impartiality, and community-focused policing, ensuring that enforcement actions are driven by genuine circumstances and the safety needs of our community.

This policy reflects the Berkeley Police Department's unwavering dedication to maintaining high standards of ethical conduct and professionalism while serving and safeguarding the interests of the Berkeley community.

#### XXX.2 POLICY

This policy unequivocally prohibits the use of quotas (**whether informal or formal**) to require or encourage officers to meet predetermined numerical targets for stops, tickets, or arrests.

The Berkeley Police Department is committed to promoting public trust, transparency, and accountability in all law enforcement endeavors. This policy serves as a cornerstone in guiding our officers to conduct themselves with integrity, professionalism, and a commitment to community service, devoid of the imposition of arbitrary enforcement quotas that could compromise these principles.

Officers are encouraged to prioritize public safety and law enforcement compliance based on objective circumstances and genuine enforcement necessities, fostering a culture of equitable and community-oriented policing.

### XXX.3 DEFINITION

The following words and terms shall have these assigned meanings throughout the Policy Manual, unless it is apparent from the content that they have a different meaning:

#### **STOP, ARREST AND TICKET QUOTAS PROHIBITION**

**Arrest quota** means any policy, practice, or directive that explicitly requires or pressures a peace officer or parking enforcement employee to make a certain number of arrests.

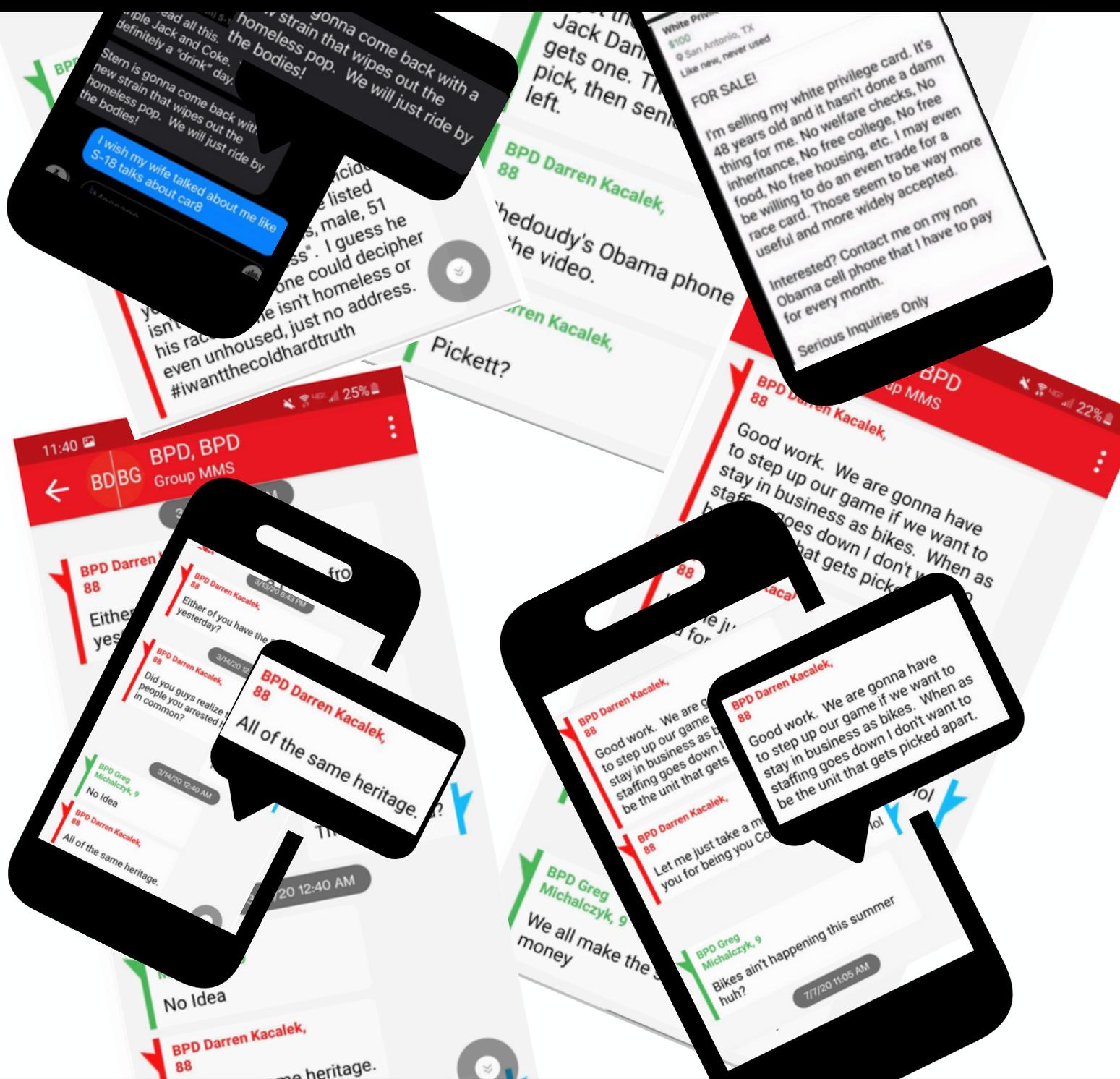
**Ticket quota** means any policy, practice, or directive that explicitly requires or pressures a peace officer or parking enforcement employee to issue a certain number of citations or tickets.

**Informal quota** means any policy, practice, or directive that implicitly requires or pressures a peace officer or parking enforcement employee to make a certain number of arrests or issue a certain number of citations. This includes, but is not limited to, the following:

- (a) Talking about specific stop, arrest, or citation targets in a way that suggests they are important.
- (b) Linking performance evaluations or promotions to arrest or citation numbers.
- (c) Providing incentives such as barbecue (BBQ), pizza, gift cards, car wash coupons, and trophies to officers who meet quotas.
- (d) Offering overtime.
- (e) Establishing adverse employment actions such as denial of days off, transfers, undesirable assignments, and termination.
- (f) Creating a competitive environment where officers are encouraged to make more arrests or issue more citations than their colleagues.
- (g) Making jokes or innuendos that incentivize achieving a specific number of stops, arrests, or tickets.



COMPANION REPORT TO  
BERKELEY POLICE DEPARTMENT TEXTING ALLEGATIONS:  
AN INDEPENDENT INVESTIGATION BY THE POLICE ACCOUNTABILITY BOARD





**MAYOR**

Jesse Arreguín

**CITY COUNCIL**

Rashi Kesarwani, District 1  
Terry Taplin, District 2  
Ben Bartlett, District 3  
Igor Tregub, District 4

Sophie Hahn, District 5  
Susan Wengraf, District 6  
Cecilia Lunaparra, District 7  
Mark Humbert, District 8

**City Manager**

LaTanya Bellow, Interim City Manager

**Berkeley Police Department**

Jennifer Louis, Chief of Police

**POLICE ACCOUNTABILITY BOARD (PAB) MEMBERS**

John "Chip" Moore, Chair  
Leah Wilson, Vice-Chair  
Brent Blackaby  
Kitty Calavita  
Joshua Cayetano  
Juliet Leftwich  
Alexander Mozes  
David Williams

**OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY (ODPA) STAFF**

Hansel Alejandro Aguilar, Director of Police Accountability  
Jose De Jesus Murillo, Policy Analyst  
Jayson Wechter, Investigator  
Keegan Horton, Investigator  
Melanie E. Beasley, Administrative Analyst  
Lucky, Therapy Animal

# Table of Contents

PREFACE ..... 2

ACKNOWLEDGEMENTS ..... 2

EXECUTIVE SUMMARY ..... 2

Introduction ..... 5

Recommendations for Council..... 6

    Call on the State Legislature to Amend Government Code section 12519 ..... 6

    Procure the services of a vendor that can conduct real-time audits and analysis of BWC footage..... 7

    Establish a protocol, subject to Council approval, with clear guidelines for how the City Manager should handle complaints against the Chief of Police ..... 7

    Establish a communications policy, corresponding training, and compliance mechanisms to ensure impartiality and neutrality during the pendency of an active personnel investigation ..... 9

    Research the viability and fitness for law enforcement accreditation for BPD and the viability of utilizing a law enforcement agency assessment tool like NYU’s Policing Project SAJE tool ..... 13

    Utilize the guidelines in the DOJ report " Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability" to critically examine the necessity, effectiveness, and oversight of specialized units within the BPD .. 14

    Adopt a resolution issuing a formal apology to the City of Berkeley community for the improper messaging displayed by this incident and reaffirm a commitment to support the work of the Fair and Impartial Policing Committee ..... 14

Recommendations for the City Manager..... 15

    Work with the City Auditor and IT to modify existing policies regarding city-issued devices and ensure compliance through randomized audits ..... 15

    Work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure similar to DPD GO 446.00 ..... 16

Recommendations for the Community ..... 17

    Seek Charter amendment to Section (15) Legal Counsel: To provide independent counsel to the ODPA/PAB for all legal advice..... 17

    Seek Charter amendment to allow ODPA/PAB to conduct personnel misconduct investigations sua sponte (of one's own accord) ..... 17

Conclusion..... 18

## PREFACE

On November 10, 2022 former Berkeley Police Department (BPD) Officer Corey Shedoudy brought allegations forward regarding improper conducted committed by BPD's Downtown Task Force and Bike Unit (DTF). The explicit nature of the texts and the gravity of the accusations of arrest quotas and questionable legal tactics jolted the Berkeley community and its political leaders. In response to these serious allegations, the City, through direction of the city manager, hired an external law firm to investigate the authenticity and implications of these texts, which were ultimately confirmed as genuine. The Police Accountability Board (PAB) conducted an independent investigation of the policies and practices related to the allegations. The report was approved for submission to the Council on July 10<sup>th</sup>, 2024.

According to the City of Berkeley Commissioners' Manual<sup>1</sup>, a companion report from the City Manager is required when the City Manager differs with the recommendations of a commission or wishes to include additional or different information. While the Commissioners' Manual does not specifically reference a companion report from the Director of Police Accountability (DPA), the DPA, as a Charter officer and secretary to the Police Accountability Board (PAB), when supporting the PAB, has in effect the same authority as it relates to the City Manager's relationship with other Boards and Commissions. Therefore, this companion report aims to augment the recommendations by providing additional objective analysis. This companion report is intended to complement the PAB report, ensuring the City Council fully understands the issue and the necessary actions.

## ACKNOWLEDGEMENTS

- Former Board Members who served during the revelation of these allegations: Nathan Mizell, Ismael Ramsey, Dobbie Levine, and Cheryl Owens
- Berkeley Copwatch for sharing the analysis of their independent investigation
- Community member Mr. Charles Clarke for his independent analysis
- Late Assemblyman John Miller for his contributions to reducing unjust practices in policing.
- People of Berkeley

## EXECUTIVE SUMMARY

The objective of this companion report is to propose additional necessary reforms to prevent future occurrences and institutional missteps that may still occur without firm city council, city manager and or community guidance. The report emphasizes the importance of transparency, accountability, and community trust in policing practices.

To that end the ODPa recommends the following actions for **COUNCIL**:

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<sup>1</sup> CITY OF BERKELEY COMMISSIONERS' MANUAL 2019 EDITION: BACKGROUND INFORMATION RULES AND PROCEDURES

<https://berkeleyca.gov/sites/default/files/2022-03/Commissioners-Manual.pdf>

1. Call on the California Legislature to amend Government Code section 12519<sup>2</sup> to include heads of civilian oversight agencies as one of the enumerated requestors.
2. Direct the City Manager and Chief of Police, with input from the newly formed Office of Strategic Planning and Accountability (OSPA), to procure the services of a vendor that can conduct real-time audits and analysis of BWC footage.
3. Direct the City Manager to work with the City Attorney's Office to establish a protocol, subject to Council approval, with clear guidelines for how the City Manager should handle complaints against the Chief of Police including designating the PAB/ODPA as an investigative body. (consider PRC Ordinance: "*that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation*").
4. Direct the City Manager to work with the City Attorney's Office to establish a communications policy, corresponding training, and compliance mechanisms to ensure impartiality and neutrality during the pendency of an active personnel investigation
5. Direct the City Manager and Chief of Police, with input from the OSPA, to expand the Berkeley Police Transparency Hub by including data on the prosecutorial outcomes of each arrest made by the BPD.
6. Direct the City Manager and Chief of Police, with input from the OSPA, to work with the PAB/ODPA to research the:
  - Viability and the fitness for law enforcement accreditation for BPD.
  - Viability and the fitness for utilizing a law enforcement agency assessment tool like NYU's Policing Project SAJE tool<sup>3</sup>
7. Direct the City Manager and Chief of Police, with input from the OSPA, to utilize the guidelines in the DOJ report " Considerations for Specialized Units A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability Specialized Units A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability " to critically

<sup>2</sup> Government Code section 12519 states:

*"The Attorney General shall give the Attorney General's opinion in writing to any Member of the Legislature, the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, Insurance Commissioner, any state agency, and any county counsel, district attorney, or sheriff when requested, upon any question of law relating to their respective offices.*

*"The Attorney General shall give the Attorney General's opinion in writing to a city prosecuting attorney when requested, upon any question of law relating to criminal matters."*

Under this statute, the Attorney General may give opinions only to these specified public officials, and not to private individuals or to public officials who are not listed in the statute.

Source: <https://oag.ca.gov/opinions/faqs#:~:text=Government%20Code%20section%2012519%20states%20that%20opinions%20shall%20be%20provided,cases%20arising%20in%20the%20city.>

<sup>3</sup> The SAJE Policing Assessment is a tool designed to define and measure the characteristics of a sound, accountable, just, and effective policing agency. This much-needed resource helps police leaders and agencies, municipal leaders, and the communities they serve understand agency performance across 100 critical metrics.

Source: <https://www.policingproject.org/saje-policing-assessment>

examine the necessity, effectiveness, and oversight of specialized units within the Berkeley Police Department (BPD)

8. Adopt a resolution issuing a formal apology to the City of Berkeley community for the improper messaging displayed by this incident and reaffirm a commitment to support the work of the Fair and Impartial Committee, the PAB, the ODPa, the Peace and Justice Commission and other City Departments, community stakeholders working towards a more equitable and just City of Berkeley.

The ODPa additionally recommends that the **CITY MANAGER**:

1. Work with the City Auditor and IT to modify existing policies regarding city-issued devices and ensure compliance through randomized audits.
2. Work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure similar to Dallas Police Department General Order 446.00<sup>4</sup>

Lastly, the ODPa calls on the **COMMUNITY** to consider the following:

1. Seek Charter amendment to Section (15) Legal Counsel<sup>5</sup>: To provide independent counsel to the ODPa/PAB for all legal advice. Independent Counsel may be a staff employed by the ODPa or on retainer.
2. Seek Charter amendment to allow ODPa/PAB to conduct personnel misconduct investigations *sua sponte* (of one's own accord).

In instances where public trust has been impacted in such a manner, it is not only important to look at ways in which systems can be improved but also to be intentional about ways to heal the community and improve relationships down the line. This requires ongoing dialogue, community engagement, and concrete actions to rebuild trust and demonstrate a genuine commitment to change.

In closing, this report seeks to fulfill our commitment to the Berkeley community by providing a thorough examination of the incident and offering actionable recommendations. The goal is to foster a law enforcement environment that upholds the highest standards of integrity and

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<sup>4</sup> 446.01 Purpose

*“The purpose of the Alcohol Rehabilitation Leave Procedure is to provide employees of the police department with support and assistance in securing confidential care to help them overcome the detrimental use of alcohol before their career and personal lives are irreparably damaged. A concerning number of alcohol-related arrests and incidents involving members of the department have occurred and continue to occur. Employee safety and well-being is paramount for the Dallas Police Department. As a proactive measure, this procedure is being implemented immediately to support department employees. Our success as a Department is dependent on a physically and mentally healthy workforce who care for themselves just as much as the community they serve.”*

Source: <https://dallaspolice.net/resources/Shared%20Documents/General-Orders.pdf>

<sup>5</sup> Berkeley Charter Section 125(15)(a):

*The Board and the Director of Police Accountability shall use the services of the City Attorney’s Office for legal advice.*

Source: [https://berkeley.municipal.codes/Charter/125\(15\)\(a\)](https://berkeley.municipal.codes/Charter/125(15)(a))

accountability, thereby restoring public trust and aligning policing practices with the values of the Berkeley community.

## Introduction

The ODPa presents this companion report subsequent to an exhaustive review conducted by the Subcommittee on Policy and Practices concerning the Downtown Task Force and Bike Unit Allegations of the PAB which was then formally discussed and approved by the full Board. Central to the concerns under scrutiny is the grave allegation of police quotas attributed to the Downtown Task Force, a matter that resonates deeply with both historical precedent and contemporary societal discourse.

The allegation of police quotas strikes at the core of the delicate balance between law enforcement's role in ensuring public safety and the imperative to safeguard individual rights and dignity. This issue's legislative history, though often obscured and scattered across many states, finds its origins rooted in Berkeley—a city renowned for its progressive and forward-thinking stance in shaping societal norms and legal frameworks (see Ossei-Owusu, 2021).

Remarkable legislative activity emerged in the 1970s, with Black Democratic Assemblyman John Miller at the helm, introducing California's bill in 1975. Miller, often described as a "progressive independent in local politics," demonstrated a keen political acumen, underpinning his support for quota bans with inclusive rhetoric (Id.). His district, which encompassed the diverse cities of Oakland and Berkeley, provided a unique perspective, one that resonated with concerns for both police officers and the general public.

Miller's stance articulated the inherent injustice in quotas, deeming them "unfair, undemocratic, and unjust." (see Ossei-Owusu, 2021 citing *Measure to Outlaw CHP's Ticket Quotas*<sup>6</sup>, *supra* note 69, at 1.) He was troubled by the notion that an officer's failure to meet quotas could lead to demotion, while simultaneously expressing concerns for "the average California driver," who might find themselves disbelieved by a "rubber stamp traffic court system." (Id.)

California's statute, birthed from a convergence of multi-constituent concerns, remains relevant today, specifically in the City of Berkeley. It serves as a historical testament to the enduring pursuit of justice and fair play, core tenets that guide our efforts in maintaining police accountability, fostering public trust, and safeguarding the principles of democracy within the City of Berkeley.

This report endeavors to shed light on the contemporary implications of the allegations surrounding police quotas, while acknowledging their historical resonance within our community's consciousness. Through our investigations, we aim to contribute to the ongoing dialogue surrounding public safety, police conditions, and the eradication of police corruption, underscoring our commitment to a just and equitable Berkeley.

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<sup>6</sup> Ossei-Owusu, S. (2021). Police quotas. NYUL Rev., 96, 529.

Additionally, this report investigates the alarming findings related to the DTF, particularly the use of arrest quotas, inappropriate behavior among officers, and the troubling internal culture that has surfaced through the examination of text messages exchanged within the unit. These findings underscore the need for immediate and decisive action to address the systemic issues within the BPD, particularly those related to the DTF's operations. This report presents a series of recommendations aimed at reforming the BPD to ensure transparency, accountability, and a renewed commitment to fair and just policing. These recommendations include proposed amendments to local legislation, the adoption of new internal policies, and the implementation of rigorous oversight mechanisms. By confronting these issues head-on and implementing the suggested reforms, Berkeley can restore public trust in its police department and reaffirm its dedication to upholding the highest standards of law enforcement.

## **Recommendations for Council**

### *Call on the State Legislature to Amend Government Code section 12519*

Civilian oversight agencies play a crucial role in maintaining transparency and accountability within law enforcement. However, their effectiveness is often limited by the scope of their authority and access to necessary resources. The current Government Code section 12519 restricts the ability to request investigative assistance from the Attorney General's office to a limited group of officials, thereby excluding civilian oversight leaders who are often at the forefront of addressing public concerns regarding police misconduct. Amending this section to include heads of civilian oversight agencies as authorized requestors would not only empower these agencies but also ensure that they can perform their duties without unnecessary hindrances, especially in cases where their investigations encounter substantial resistance or require specialized expertise.

The recent findings in the PAB report highlight the numerous obstacles civilian oversight bodies face when attempting to access critical information, such as the Swanson report and other internal records. These challenges underscore the need for civilian oversight agencies to have the legal backing necessary to overcome such barriers, particularly when investigating serious allegations of misconduct. By allowing civilian oversight leaders to request assistance from the Attorney General's office, the Legislature would be affirming the importance of transparency and accountability in law enforcement, while also providing these agencies with the tools needed to conduct thorough and effective investigations.

Moreover, this amendment would signal the Legislature's commitment to strengthening civilian oversight in California, a state that has been at the forefront of progressive policing reforms. By expanding the scope of section 12519, the Legislature would not only bolster the independence of civilian oversight agencies but also promote a more robust system of checks and balances within law enforcement. This change would be a significant step towards ensuring that all investigations into police misconduct, particularly those involving complex or sensitive issues, are conducted with the highest standards of integrity and thoroughness.

*Procure the services of a vendor that can conduct real-time audits and analysis of BWC footage.*

The integration of body-worn cameras (BWC) into police operations was initially heralded as a key tool for enhancing transparency and accountability. However, the effectiveness of BWC footage in holding officers accountable depends heavily on the ability to analyze and audit this data in a timely and systematic manner. As highlighted in the PAB report, the current oversight mechanisms are insufficient, often leaving critical data unanalyzed due to limited resources and access issues. By procuring the services of a vendor that specializes in real-time audits and analysis of BWC footage, the City can ensure that this valuable resource is fully utilized to monitor police conduct, identify potential issues early, and provide an objective record of interactions between officers and the public.

Real-time analysis of BWC footage would also serve as a proactive measure to deter misconduct and reinforce a culture of accountability within the Berkeley Police Department. By enabling continuous monitoring, the City can swiftly address any deviations from policy, reducing the likelihood of incidents escalating into more severe issues. This approach aligns with the PAB's recommendations for more robust oversight and reflects the City's commitment to upholding the highest standards of policing. Moreover, the use of advanced technology to audit BWC footage can provide comprehensive insights into patterns of behavior, helping to inform future policy decisions and training programs.

Furthermore, the involvement of the Office of Strategic Planning and Accountability (OSPA) in this process ensures that the procurement of these services aligns with the broader strategic goals of the City and the Police Department. The OSPA can provide valuable input on the selection of the vendor, ensuring that the chosen solution is tailored to the specific needs of Berkeley's oversight framework. By integrating real-time BWC footage analysis into the City's accountability systems, Berkeley can set a new standard for transparency and public trust, demonstrating a commitment to continuous improvement in police oversight.

*Establish a protocol, subject to Council approval, with clear guidelines for how the City Manager should handle complaints against the Chief of Police*

The authority and responsibility of the Chief of Police place them at the center of law enforcement operations, making it essential that any complaints against them are handled with the utmost transparency and impartiality. The recent PAB report revealed significant challenges in accessing information necessary for oversight, particularly in cases involving high-ranking officials. To address these concerns, it is recommended that the City Manager, in collaboration with the City Attorney's Office, develop a clear and robust protocol for handling complaints

against the Chief of Police. This protocol should be subject to Council approval to ensure it reflects the community's expectations for transparency and accountability.

Central to this protocol should be the designation of the PAB and the ODPa as the primary investigative bodies for such complaints. This approach is consistent with the precedent established by the PRC Ordinance, which mandates that complaints filed with other city offices, boards, or departments be referred to the appropriate oversight commission for investigation. By formalizing this process, the City can ensure that complaints against the Chief of Police are not only investigated thoroughly but also in a manner that is independent of the Police Department's internal mechanisms, thereby avoiding any potential conflicts of interest.

Additionally, the establishment of clear guidelines for handling these complaints would provide all stakeholders, including the public, with confidence in the process. It would outline the specific steps to be taken from the receipt of a complaint through to its resolution, including timelines, investigative procedures, and reporting requirements. This transparency is crucial for maintaining public trust, particularly in situations where the actions of the Chief of Police are called into question. By implementing a well-defined protocol, the City of Berkeley can demonstrate its commitment to holding all members of its law enforcement agencies accountable, regardless of rank, and ensure that the principles of justice and fairness are upheld in all circumstances.

*Establish a communications policy, corresponding training, and compliance mechanisms to ensure impartiality and neutrality during the pendency of an active personnel investigation*

Figure 1 City Manager Email to City Council acknowledging allegations

**Former Berkeley Police Officer Email-Corey Shedoudy**

 Williams-Ridley, Dee  
Arreguin, Jesse L., + 11

3:40 PM

Mayor and Council,  
I understand that you have all received a very disturbing email from former Berkeley Police Officer Corey Shedoudy. I want to assure you that the allegations will be investigated fully and any additional investigative oversight needed will be sought. The allegations and texts messages shared, should not be distributed. I will work with the City Attorney and Human Resources to determine immediate next steps in this matter.

Lastly, I do not see any reason to pause the upcoming item requesting the appointment of Jen Louis to Chief of Police. My initial inquiry affirms that she had no knowledge of the allegations or text messages provided by Former Officer Shedoudy.

If and/or when this email is made public by Shedoudy, you should expect to have inquiries from media outlets. At this time, it is best to refer all inquiries to Matthai Chakko, Public Information Officer, who will work with me and the City Attorney on messaging. Should you need to respond please use the following:

**“My office is aware of the seriousness of the matter and has been assured that the allegations will be investigated thoroughly. Since this is a confidential personnel matter, there are no other comments at this time”.**

Please call if you have any questions,  
Dee

On November 10, 2022 City Manager Williams-Ridley, by way of email, acknowledged to the Mayor and Council the allegations as brought forth by former BPD Officer Shedoudy (see Figure 1). In the email, the City Manager classified the email from the former officer as “disturbing”. Furthermore, she assured the Mayor and Council that the “allegations will be investigated fully and any additional investigative oversight needed will be sought.” This initial paragraph is without concern to the Board, but the subsequent paragraph reveals practices and policies (or lack thereof) regarding the operation of the Berkeley Police Department- as they relate to investigations of higher-ranking law enforcement officials- that are ripe for yielding prejudiced or biased conclusions.

Specifically, in the follow up paragraph, the City Manager states that she does “*not see any reason to pause the upcoming item requesting the appointment of Jen Louis to Chief of Police.*” This statement is extremely concerning in the context of serious allegations that needed to be “fully investigated” and where the item dealt with the potential subject of an investigation to be undertaken. Additionally, the City Manager adds that her “*initial inquiry affirms that she [Chief Louis] had no knowledge of the allegations or text messages provided by Former Officer Shedoudy.*” It is unclear to the Board what the depth and scope of the “initial inquiry” was, but if at that time the City Manager had not independently corroborated the lack of knowledge of the allegations by Chief Louis through independent witnesses that may had knowledge about this, through an administrative review of emails and text

messages of the Chief, it is difficult to understand how an “initial inquiry” could have *affirmed* that information. If at that time, the “initial inquiry” merely included a discussion with Chief Louis about the matter, that information, in and of itself, would have been insufficient by a preponderance of the evidence to “affirm” that the Chief had no knowledge about these allegations. At most, the Chief’s denial about having knowledge could have “suggested” that the allegations lacked or possessed questionable merit.

Notwithstanding, considering that at this juncture of the events, the City Manager had not formally recused herself from investigating this matter<sup>7</sup> and the other Departments/units within the City with authority to investigate the matter *sua sponte*<sup>8</sup> were the BPD and IAB respectively, statements made by her (or her office) could had the effect of prejudicing the investigation. From an investigative and adjudicatory perspective, this presents various obvious problems that must be addressed through the enactment of policies or the guidance of practices.

There are many sources for policy and or practice guidance on navigating the delicate nature of investigations, but two important ones that can guide our City are:

- State Bar of California- RULES OF PROFESSIONAL CONDUCT<sup>9</sup> ; and
- U.S Department of Justice, Office of Community Oriented Policing Services (COPS)- STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS: Recommendations from a Community of Practice<sup>10</sup>

In Rule 3.6 Trial Publicity, the State Bar of California prohibits lawyers who are participating or have participated in the investigation or litigation of a matter from making, “*extrajudicial statement that the lawyer knows\* or reasonably should know\* will (i) be disseminated by means*

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<sup>7</sup> Section 28(f) of the City Charter indicates that one of the powers and duties of City Manager is: “To make investigations into the affairs of the City, or any department or division thereof, or any contract, or the proper performance of any obligation running to the City.”

In practice, the City Manager does not personally investigate affairs of the City, but rather delegates them to the appropriate personnel. In this instance, a matter concerning the Berkeley Police Department (in accordance with the BMC 2.64.030) would also be under the control and supervisory authority of the Chief of Police: “*The Chief of Police shall be responsible for the supervision and control of all divisions of the department and for the performance of the functions herein assigned to the department.*”

<sup>8</sup> Section 125(3)(a)(3) of the City Charter specifies that the Board has authority to receive and consider findings of the Director of Police Accountability, where a complaint is filed by members of the public: “*To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct*”;

<sup>9</sup> State Bar of California- RULES OF PROFESSIONAL CONDUCT  
[https://www.calbar.ca.gov/Portals/0/documents/rules/Rule\\_3.6-Exec\\_Summary-Redline.pdf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_3.6-Exec_Summary-Redline.pdf)

<sup>10</sup> U.S Department of Justice, Office of Community Oriented Policing Services (COPS)- STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS: Recommendations from a Community of Practice  
<https://portal.cops.usdoj.gov/resourcecenter/ric/Publications/cops-p164-pub.pdf>

*of public communication and (ii) have a substantial\* likelihood of materially prejudicing an adjudicative proceeding in the matter.*” Serving in her capacity as the City Manager, it can be reasonably concluded that the City Manager knew or reasonably should have known (i.e. Brown Act) that her extrajudicial statements could be 1) disseminated by means of public communication and 2) have a substantial likelihood of materially prejudicing an adjudicative proceeding<sup>11</sup> in the matter.

Furthermore, the Rule provides guidance on what statements can be made depending on whether they focus on non-criminal or criminal cases. Specifically, in cases that are non-criminal in nature, according to Rule 3.6 (b), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons\* involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person\* involved, when there is reason to believe\* that there exists the likelihood of substantial\* harm to an individual or to the public but only to the extent that dissemination by public communication is reasonably\* necessary to protect the individual or the public;

Given the guidance provided by the State Bar of California's Rules of Professional Conduct, it is evident that the City Manager's public statements regarding the allegations against the Berkeley Police Department's leadership, and specifically Chief Louis, should have been more cautiously framed to avoid any potential for prejudicing ongoing investigations. The premature affirmation of the Chief's lack of knowledge, without a thorough and independent inquiry, not only risks undermining the integrity of the investigation but also erodes public trust in the fairness of the process. It is crucial for city officials, particularly those in positions of authority, to refrain from making statements that could be perceived as influencing or pre-judging the outcome of such investigations.

To address the concerns raised by this incident, it is recommended that Berkeley adopt clear policies and procedures that align with the best practices outlined in the DOJ's "Standards and Guidelines for Internal Affairs" and the State Bar's Rules of Professional Conduct. These policies should emphasize the importance of impartiality and caution in public communications,

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<sup>11</sup> Currently, the BPD's adjudicative proceeding consists of a hearing process which includes members of the City Manager's Office.

particularly when an investigation is ongoing. Moreover, the City should consider implementing training for city officials on these standards to ensure that future communications do not inadvertently compromise the integrity of investigations. By doing so, Berkeley can strengthen its commitment to transparency, accountability, and the rule of law, ensuring that all investigations are conducted with the highest standards of fairness and integrity.

*Expand the Berkeley Police Transparency Hub by including data on the prosecutorial outcomes of each arrest made by the BPD*

Expanding the Berkeley Police Transparency Hub<sup>12</sup> to include data on the prosecutorial outcomes of each arrest made by the BPD represents a significant step toward enhancing transparency and accountability within the city's law enforcement operations. The report titled "Purging the Poor: Arrest Quotas, Racist Texts and the Role of City Leadership in the "Textgate" Scandal" by Berkeley Copwatch<sup>13</sup> underscores the importance of examining the entire spectrum of police interactions, from initial stops to final prosecutorial outcomes. Subsequently, Mr. Charles Clarke submitted his independent analysis on the prosecutorial outcomes related to this unit for the PAB's and ODPa's consideration (see attachments 1 and 2). Currently, the Transparency Hub provides valuable data on police stops, arrests, and other metrics, but it lacks critical information on how these arrests are processed and adjudicated within the criminal justice system. By including prosecutorial outcomes—such as charges filed, cases dismissed, plea bargains, and trial results—the City can offer a more complete picture of the effectiveness and fairness of BPD practices, allowing the community and oversight bodies to better understand the full impact of police actions, as well as any potential disparities in how justice is administered.

This expanded dataset would also provide crucial insights into potential disparities in the criminal justice process. For instance, if data reveals that certain demographic groups are disproportionately facing harsher prosecutorial outcomes, it could signal the need for further investigation and reforms within both the police department and the prosecutorial system. Moreover, such transparency would enable the PAB and other oversight entities to identify patterns of concern, such as frequent dismissals of cases due to insufficient evidence, which might indicate systemic issues in how arrests are conducted or how evidence is gathered. Ultimately, this initiative would empower the City of Berkeley to address these issues proactively, fostering greater trust between the police department and the community it serves.

Furthermore, the inclusion of prosecutorial outcomes in the Transparency Hub would reinforce Berkeley's commitment to data-driven decision-making and continuous improvement in public safety practices. By making this information publicly available, the City would not only increase accountability but also encourage a broader dialogue among stakeholders—including law enforcement, community leaders, and policymakers—about the intersections between policing and the judicial system. This holistic approach to transparency would set a precedent for other

<sup>12</sup> <https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/>

<sup>13</sup> [https://www.berkeleycopwatch.org/files/ugd/9faa72\\_175f75bda71646b983857d0a0e352434.pdf?index=true](https://www.berkeleycopwatch.org/files/ugd/9faa72_175f75bda71646b983857d0a0e352434.pdf?index=true)

jurisdictions, demonstrating Berkeley's leadership in advancing equitable and just law enforcement practices.

*Research the viability and fitness for law enforcement accreditation for BPD and the viability of utilizing a law enforcement agency assessment tool like NYU's Policing Project SAJE tool<sup>14</sup>*

The pursuit of law enforcement accreditation and the adoption of advanced assessment tools are crucial strategies for ensuring that the BPD meets the highest standards of professional conduct and operational effectiveness. By directing the City Manager and Chief of Police, in consultation with the OSPA, to explore the viability and fitness of these initiatives, Berkeley can systematically evaluate its policing practices against national and international benchmarks. Accreditation from recognized bodies like CALEA (Commission on Accreditation for Law Enforcement Agencies) would not only affirm the BPD's commitment to excellence but also provide a structured framework for continuous improvement, covering critical areas such as policy development, training, and accountability mechanisms.

In addition to exploring accreditation, researching the potential adoption of a law enforcement assessment tool like NYU's Policing Project SAJE (Sound, Accountable Just, and Effective) would allow Berkeley to engage in a more nuanced evaluation of its policing practices. The SAJE tool is specifically designed to assess law enforcement agencies on key metrics related to justice, equity, and public safety outcomes. By implementing such an assessment, the BPD can gain deeper insights into areas that require reform or enhancement, particularly in the context of community trust and fairness in policing. This would also enable the PAB and ODPA to play a more informed role in oversight, ensuring that the department's practices align with the community's expectations and the City's commitment to equitable law enforcement.

These initiatives—pursuing accreditation and employing advanced assessment tools—would significantly strengthen Berkeley's oversight capabilities and enhance the BPD's transparency and accountability. By rigorously evaluating the department's operations through these lenses, Berkeley can identify best practices and areas for improvement, ensuring that its police force not only meets but exceeds the standards of modern, community-oriented policing. This forward-looking approach would reinforce Berkeley's role as a leader in innovative police reform and set a high bar for law enforcement agencies nationwide.

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<sup>14</sup> For preliminary research on these tools consider ODPA's memo presented to the PAB on March 13, 2024: <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2024-03-13%20PAB%20Agenda%20Packet.pdf>

*Utilize the guidelines in the DOJ report " Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability" to critically examine the necessity, effectiveness, and oversight of specialized units within the BPD*

The findings from the PAB report on the BPD Downtown Task Force and Bike Unit raise serious concerns about the operations and oversight of these specialized units, including potential misuse of power and negative community impact. To address these issues and ensure that specialized units within the BPD are functioning effectively and justly, it is recommended that the City Manager and Chief of Police, with input from the OSPA, adopt the guidelines provided in the DOJ's "Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability."<sup>15</sup>

This guide offers a comprehensive framework for law enforcement agencies to assess the appropriateness, effectiveness, and accountability of their specialized units. By applying these guidelines, the BPD can conduct a thorough evaluation of its specialized units to determine whether they are necessary, whether their operations are aligned with the department's mission and values, and whether they have appropriate oversight mechanisms in place to prevent misconduct and ensure transparency.

The evaluation should include a review of the units' goals, operational practices, and community impact, with a particular focus on identifying any areas where reforms may be needed to align with best practices for accountability and fairness. Implementing the recommendations from the DOJ guide will help ensure that all specialized units within the BPD operate in a manner that promotes public trust and community safety, reinforcing Berkeley's commitment to equitable and just policing.

*Adopt a resolution issuing a formal apology to the City of Berkeley community for the improper messaging displayed by this incident and reaffirm a commitment to support the work of the Fair and Impartial Policing Committee*

The recent revelations of improper messaging within the Berkeley Police Department, as detailed in the PAB report, have understandably caused significant concern within the community, undermining trust in local law enforcement. To address this breach of public confidence, it is essential that the City Council adopt a resolution issuing a formal apology to the City of Berkeley community. This apology should acknowledge the harm caused by the insensitive and inappropriate communications, recognizing their impact on the community's perception of the

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<sup>15</sup> National Policing Institute. 2024. Considerations for Specialized Units: A Guide for State and Local Law Enforcement Agencies to Ensure Appropriateness, Effectiveness, and Accountability. Washington, DC: Office of Community Oriented Policing Services.

Source: <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1140-pub.pdf>

police and reaffirming the City's commitment to maintaining the highest standards of professionalism and respect within its police force.

In addition to the apology, the resolution should also explicitly reaffirm the City's ongoing commitment to supporting the work of key oversight and community-oriented bodies, including the Fair and Impartial Policing Committee, the PAB, the Office of the Director of Police ODP, the Peace and Justice Commission, and other relevant City departments and stakeholders. These entities play a vital role in promoting equity, justice, and accountability in Berkeley, and their work is more important than ever in the wake of this incident. By publicly committing to support these bodies, the City Council can help ensure that they have the resources and authority needed to carry out their mandates effectively, fostering a culture of transparency and continuous improvement.

Moreover, this resolution would serve as a critical step in healing the relationship between the BPD and the community it serves. By taking responsibility for the actions of its police force and demonstrating a sincere commitment to addressing the underlying issues, the City of Berkeley can begin to rebuild trust and move forward with a renewed focus on equity and justice. This formal apology, coupled with a reaffirmed commitment to oversight and reform, would underscore the City's dedication to creating a police department that truly reflects the values and expectations of its diverse and vibrant community.

## **Recommendations for the City Manager**

*Work with the City Auditor and IT to modify existing policies regarding city-issued devices and ensure compliance through randomized audits*

The effective management and oversight of city-issued devices are critical to maintaining the integrity and security of Berkeley's operations. Current policies governing the use of these devices must be updated to reflect evolving technology, security risks, and the need for accountability in their use. Collaborating with the City Auditor and IT department will allow Berkeley to establish more stringent guidelines for the use of city-issued devices, ensuring that they are utilized appropriately and securely for official purposes. By refining these policies, the City can mitigate risks associated with data breaches, unauthorized use, and potential misconduct related to the use of these devices.

To ensure compliance with the updated policies, the City should implement a system of randomized audits. These audits will serve as a critical oversight mechanism, verifying that city-issued devices are being used in accordance with the established guidelines. Randomized audits provide a deterrent effect, reducing the likelihood of misuse by ensuring that all city employees are aware that their device usage may be subject to review at any time. This proactive approach will help to identify any instances of non-compliance or security vulnerabilities early, allowing the City to address issues before they escalate.

Moreover, this initiative will enhance transparency and accountability across all departments, demonstrating Berkeley's commitment to responsible governance and the

safeguarding of public resources. Regular audits and policy reviews will not only protect the City's technological assets but also foster a culture of accountability and ethical conduct among employees. By prioritizing the proper management of city-issued devices, Berkeley can ensure that its operations remain secure, efficient, and aligned with best practices in public administration.

*Work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure similar to DPD GO 446.00*

Recognizing the importance of supporting the well-being and health of police officers, and in light of the troubling references to alcohol in the text messages exchanged among members of the Downtown Task Force, it is recommended that Berkeley work with the BPD to draft and adopt an Alcohol Rehabilitation Leave Procedure, modeled after DPD GO 446.00<sup>16</sup>. The text messages revealed that alcohol was frequently mentioned as a prize or reward for making arrests, raising serious concerns about the role of alcohol within the department's culture. This procedure would provide a structured and compassionate approach for officers who are struggling with alcohol dependency, offering them the opportunity to seek treatment without fear of stigma or career repercussions. By adopting such a policy, Berkeley would demonstrate its commitment to the holistic health of its law enforcement personnel, acknowledging that the mental and physical well-being of officers is integral to their ability to serve the community effectively.

The Alcohol Rehabilitation Leave Procedure would outline clear guidelines for officers to request leave for alcohol rehabilitation, ensuring confidentiality and support throughout the process. This policy would include provisions for treatment programs, reintegration plans, and monitoring to ensure that officers receive the help they need while maintaining the integrity of the department's operations. By providing a pathway to recovery, the City can help officers address substance use issues proactively, reducing the risk of related misconduct, such as the troubling behaviors highlighted in the PAB report, and enhancing overall department morale.

Furthermore, implementing this procedure would align Berkeley with best practices in law enforcement, emphasizing the importance of health and wellness initiatives within the police force. By adopting a proactive stance on alcohol rehabilitation, particularly in response to the issues revealed in the text messages, the City can foster a supportive environment where officers feel empowered to seek help when needed, ultimately leading to a more resilient and effective police department. This initiative would also reflect the City's broader commitment to public health, extending support to those who serve and protect the community while addressing the underlying cultural issues that may contribute to unhealthy behaviors within the force.

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16

## Recommendations for the Community

*Seek Charter amendment to Section (15) Legal Counsel: To provide independent counsel to the ODPa/PAB for all legal advice*

To enhance the independence and effectiveness of the ODPa and the PAB, it is recommended that Berkeley seek a Charter amendment to Section 15, which governs Legal Counsel. This amendment would provide for the appointment of independent legal counsel dedicated solely to the ODPa and PAB, ensuring that all legal advice and representation is free from potential conflicts of interest. By establishing independent counsel, either as a staff position within the ODPa or through a retainer arrangement, the City can ensure that the ODPa and PAB receive unbiased, expert legal guidance tailored to their unique oversight functions.

Independent counsel would play a critical role in advising the ODPa and PAB on a wide range of legal issues, including investigations, policy reviews, and disciplinary recommendations. This arrangement would allow the ODPa and PAB to operate with greater autonomy, as they would no longer need to rely on legal advice from the City Attorney's office, which also represents the police department and other city entities. Ensuring that the ODPa and PAB have their own legal counsel would reinforce their ability to carry out their mandates effectively, without concerns about divided loyalties or conflicts of interest that might arise when the same legal office advises both oversight bodies and the police department.

Moreover, this amendment would signal Berkeley's commitment to robust civilian oversight of law enforcement, providing the ODPa and PAB with the tools they need to perform their duties independently and effectively. By securing independent legal counsel, Berkeley would enhance the credibility and authority of its police oversight institutions, fostering greater public trust in the integrity of the oversight process. This move would align Berkeley with best practices in police accountability, ensuring that the ODPa and PAB are equipped to fulfill their critical role in promoting transparency, accountability, and justice within the Berkeley Police Department.

*Seek Charter amendment to allow ODPa/PAB to conduct personnel misconduct investigations sua sponte (of one's own accord)*

To further strengthen the oversight capabilities of the ODPa and the PAB, it is recommended that Berkeley seek a Charter amendment allowing these bodies to initiate personnel misconduct investigations *sua sponte*, or of their own accord. Currently, the ODPa and PAB are often limited to responding to complaints filed by members of the public, which can restrict their ability to address misconduct proactively. By granting the authority to initiate investigations independently, the ODPa and PAB would be better equipped to address potential issues of police misconduct that may not come to light through public complaints alone.

This amendment would empower the ODPa and PAB to act on credible information or patterns of behavior that suggest misconduct, even in the absence of a formal complaint. Such

authority is crucial for addressing systemic issues within the police department that may otherwise go unchecked. By allowing these oversight bodies to investigate proactively, Berkeley can ensure that all instances of misconduct are thoroughly examined and addressed, reinforcing the city's commitment to maintaining high standards of conduct within its police force.

Moreover, this change would align Berkeley with national effective practices in police oversight, where independent civilian bodies are granted the authority to initiate investigations based on their observations or information received from other sources. By enabling the ODPA and PAB to conduct investigations *sua sponte*, Berkeley would enhance the effectiveness of its police oversight mechanisms, ensuring that the department remains accountable to the public it serves. This amendment would further solidify Berkeley's leadership in police reform and its commitment to transparency, accountability, and justice in law enforcement.

## Conclusion

The investigation into the BPD's Downtown Task Force and Bike Unit has revealed significant issues within the department, including the existence of arrest quotas, problematic messaging, and a culture that at times prioritizes performance metrics over ethical and just policing. The verified text messages that circulated among DTF members not only exhibited racial and socioeconomic biases but also suggested that alcohol was used as a reward for meeting arrest targets. These revelations underscore the urgent need for comprehensive reforms within the BPD to restore public trust and ensure that all policing practices align with the principles of fairness, equity, and transparency that Berkeley holds dear.

This companion report has provided a series of recommendations aimed at addressing the systemic issues uncovered during this investigation. These recommendations are designed to enhance the accountability of the BPD, strengthen oversight mechanisms, and support the well-being of officers to prevent future occurrences of misconduct. Key among these recommendations is the call for amendments to state legislation, the adoption of rigorous auditing and real-time monitoring of body-worn camera footage, and the establishment of clear protocols for handling complaints against high-ranking officials within the department.

The City of Berkeley has a longstanding commitment to progressive policing and community-oriented public safety. To honor this commitment, it is essential that the City Council, City Manager, and all relevant stakeholders take decisive action in implementing the recommendations outlined in this report. By doing so, Berkeley can lead by example, demonstrating that accountability and integrity are non-negotiable values in law enforcement. Moving forward, continuous dialogue, community engagement, and transparent governance will be critical in healing the divisions caused by these recent events and in building a more just and equitable future for all residents of Berkeley.

**ATTACHMENT 1.**  
**Arrest Quotas Memorandum from Charles Clarke,**  
**August 18, 2023 To the City of Berkeley Police**  
**Accountability Board and Director of Police**  
**Accountability**

## Arrest Quotas

### Memorandum from Charles Clarke, August 18, 2023 To the City of Berkeley Police Accountability Board and Director of Police Accountability

On November 10, 2022, ex-Berkeley Police Department (BPD) Officer Corey Shedoudy e-mailed to the Berkeley City Council a collection of text messages that, among other things in Shedoudy's words, "clearly outline a practice of illegal arrest quotas".<sup>1</sup> Arrest quotas have been prohibited by the California Vehicle Code since 1976:<sup>2</sup>

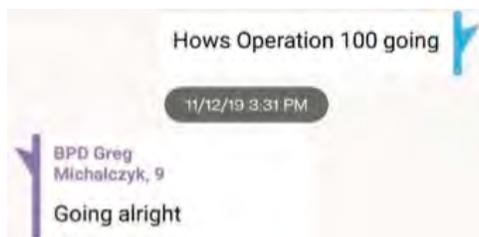
"No..local agency employing peace officers...may establish any policy requiring any peace officer...to meet an arrest quota."

This memorandum addresses the arrest quota element of Shedoudy's allegations.

### The "Operation 100" Bike Unit Text Messages Suggest an Arrest Quota

The Shedoudy text messages<sup>3</sup> provided to the City Council have been (with one exception, not relevant here) authenticated by a vendor retained by the outside investigator Swanson & McNamara.<sup>4</sup>

On November 12, 2019, an unnamed officer (most likely then-Ofcr. Shedoudy) asked Ofcr. Greg Michalczyk about "Operation 100".<sup>5</sup>



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<sup>1</sup> Police Accountability Board Special Meeting Agenda Packet, July 24, 2023, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023-07-24%20PAB%20Spe.Mtg\\_.Pkt\\_.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023-07-24%20PAB%20Spe.Mtg_.Pkt_.pdf), "November 10, 2022, Email from Corey Shedoudy to the Mayor and Berkeley City Council," p. 36

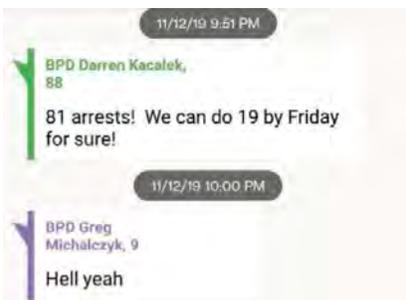
<sup>2</sup> California Vehicle Code § 41602 *Arrest Quotas*, [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?division=17.&chapter=7.&lawCode=VEH](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=17.&chapter=7.&lawCode=VEH), attached as Exhibit 1.

<sup>3</sup> PAB Packet, supra n. 1, "Text Messages Attached to Shedoudy's November 10, 2022 Email to the Mayor and City Council," pp. 38 et seq.

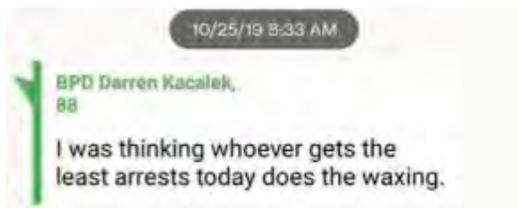
<sup>4</sup> PAB Packet, supra n. 1, "Summary of Investigation Process," p. 25

<sup>5</sup> PAB Packet, supra n. 1, p. 49

Later that day the meaning of “100” as a count of arrests was illustrated in an exchange between Ofcr. Michalczyk and Sergeant Darren Kacalek, the Bike Unit supervisor.<sup>6</sup>



The preceding month Sgt. Kacalek had suggested penalizing the officer with the fewest arrests to the drudgery of waxing (bikes, presumably).<sup>7</sup>



Also that same month Sgt. Kacalek had emphasized arrests to his unit (then known as the DTF, Downtown Task Force).<sup>8</sup>



(Overtime then as now had become a perennial challenge to the Berkeley Police Department,<sup>9</sup> so relaxing that constraint in explicit exchange for arrests ran the implicit risk of establishing a quota.)

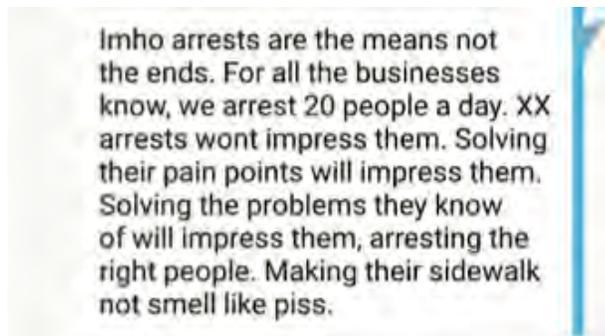
<sup>6</sup> PAB Packet, supra n. 1, p. 43

<sup>7</sup> PAB Packet, supra n. 1, p. 45

<sup>8</sup> PAB Packet, supra n. 1, p. 48, apparent approximate date October 19, 2019

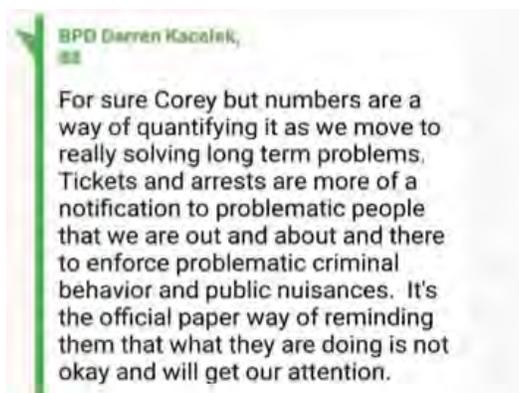
<sup>9</sup> Berkeley City Auditor, *Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities*, March 3, 2022, <https://berkeleyca.gov/sites/default/files/2022-04/Berkeley%20Police%20-%20Improvements%20Needed%20to%20Manage%20Overtime%20and%20Security%20Work%20for%20Outside%20Entities.pdf>

However, beleaguered local businesses might not connect arrest counts to their own sense of security – an issue raised by an unnamed officer (likely ex-Ofcr. Shedoudy) in an undated message.<sup>10</sup>

A screenshot of a text message with a white background and black text. The text reads: "Imho arrests are the means not the ends. For all the businesses know, we arrest 20 people a day. XX arrests wont impress them. Solving their pain points will impress them. Solving the problems they know of will impress them, arresting the right people. Making their sidewalk not smell like piss." There is a blue vertical bar on the right side of the message, likely representing a phone's status bar or a UI element.

Imho arrests are the means not the ends. For all the businesses know, we arrest 20 people a day. XX arrests wont impress them. Solving their pain points will impress them. Solving the problems they know of will impress them, arresting the right people. Making their sidewalk not smell like piss.

Sgt. Kacalek responded that “numbers are a way of quantifying it...a notification to problematic people that we are out and about.”<sup>11</sup>

A screenshot of a text message with a white background and black text. The sender is identified as "BPD Darren Kacalek, SS". The text reads: "For sure Corey but numbers are a way of quantifying it as we move to really solving long term problems. Tickets and arrests are more of a notification to problematic people that we are out and about and there to enforce problematic criminal behavior and public nuisances. It's the official paper way of reminding them that what they are doing is not okay and will get our attention." There is a green vertical bar on the left side of the message, likely representing a phone's status bar or a UI element.

BPD Darren Kacalek,  
SS

For sure Corey but numbers are a way of quantifying it as we move to really solving long term problems. Tickets and arrests are more of a notification to problematic people that we are out and about and there to enforce problematic criminal behavior and public nuisances. It's the official paper way of reminding them that what they are doing is not okay and will get our attention.

From this evidence I conclude that the Bike Unit, in the person of its supervisor Sgt. Kacalek, paid attention to the count of arrests made in late 2019. At least with Ofcr. Michalczyk there was an explicit numerical target. Whether this attention constituted a *quota* – for Ofcr. Michalczyk or the entire Bike Unit – with the attendant suggestion that at least some arrests were made *unlawfully*, is suggested but not proven by the sample of text messages so far produced. A deeper look is needed.

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<sup>10</sup> PAB Packet, supra n. 1, p. 40

<sup>11</sup> PAB Packet, supra n. 1, p. 41

## The Downtown Task Force/Bike Unit Has Met A City Policing Priority

Swanson & McNamara identified the Downtown Task Force's start date as October 22, 2019.<sup>12</sup> However, as early as 2018 BPD had "[s]taffed overtime patrols in the downtown,"<sup>13</sup> partially in response to a campaign position from Councilmember Kate Harrison reflecting concerns of her Downtown constituents:<sup>14</sup>

"More community policing – with foot and bicycle police – would improve community relations, particularly in the Downtown. Officers would get to know the merchants, residents and high school students and diffuse *[sic]* situations."

BPD would count among its 2019 strategies and accomplishments:<sup>15</sup>

"Downtown Task Force...Began Bike Patrol training and equipment acquisition."

This priority was reflected in the FY 2020/2021 biennial budget adopted in mid-2019:<sup>16</sup>

"The Bike Patrol will provide proactive patrols in the downtown and south campus, and support problem-solving efforts associated with those areas."

The onset of the COVID-19 pandemic in March 2020 led to increased concern about safety in Downtown and south of campus. In the words of three members of the City Council in June 2020:<sup>17</sup>

"During this COVID-19 emergency, City staff have received numerous complaints from local businesses regarding problematic and violent behavior, including assault of employees and property damage. As a result of increased criminal activity, the Berkeley Police Department have deployed overtime shifts in Telegraph and the Downtown to increase police patrols to respond more quickly to calls for service and to increase police presence to deter crime. While

<sup>12</sup> "Summary of Investigation Process," supra n. 4

<sup>13</sup> Berkeley Police Department, *2018 Annual Crime Report*, March 19, 2019, p. 3, <https://records.cityofberkeley.info/PublicAccess/api/Document/Ae3FvWxdiUDVkdDsWDvvyxHMc492HuYFW0lJpEpp601ZyyWihrOgcndqMWadQzZ9OpPkazKJgV5uZUIWmgvutEEac%3D/>

<sup>14</sup> Kate Harrison, *Berkeley Progressive Alliance Candidate Questionnaire*, p. 3, <https://www.berkeleytenants.org/wp-content/uploads/2017/01/Questionnaire.-Harrison.pdf>

<sup>15</sup> Berkeley Police Department, *2019 Crime Report and Five Year Use of Force Report*, October 13, 2020, p. 3,4, <https://records.cityofberkeley.info/PublicAccess/api/Document/AfPSh1Yn6aAYFbhJYqtROgUtEmAT74LfpBLjvP9AwFsfVemWdd89cg9B4IFNHSMak8ApAIICAr2wmQEKnnbbQ%3D/>

<sup>16</sup> City Manager, *FY 2020 & FY 2021 Biennial Budget Adoption*, June 25, 2019, p. 295 of 570, <https://records.cityofberkeley.info/PublicAccess/api/Document/AcuCVnDbGawvbulJ5bA6dAkBWuDHZpxNnJyKMWTP7MeEgslmZNIpG3s0vBJM4McaNB8jGcD2WeKCmVPNhEOAjU0%3D/>

<sup>17</sup> Mayor Arreguín, Councilmembers Harrison and Robinson, *Establishing a COVID-19 Business Damage Mitigation Fund*, June 2, 2020, p. 1, <https://records.cityofberkeley.info/PublicAccess/api/Document/Aa4fp020coTCJkfwrmE7ffbVgxl0b0QMhpO7jxf9dboKOZUwMkWucvfvNNoVODsyCv1JG6i1chEaCdjZu48evu4%3D/>

the deployment of the Downtown Task Force has provided additional presence and support for businesses, crime is still occurring.”

By September 2020 the Bike Unit had been fully re-launched with a complement of six officers supervised by Sgt. Kacalek.<sup>18</sup> Since the re-launch Berkeley Copwatch has added Ofcr. George Schikore, the Area 4 (West Berkeley) Coordinator,<sup>19</sup> as a target for scrutiny in the Operation 100 text messages matter.<sup>20</sup> This deeper look will focus on these eight officers, pictured in Figure 1.

**Figure 1. Downtown Task Force/Bike Unit Officers**



(upper, from left) Darren Kacalek (Badge #88 and S-18), Greg Michalczyk (#9), James Seaton (#66), Tom Stern (#8); (lower, from left) Marissa Pickett (#81), Corey Shedoudy (#127), Dan Breaux (#15), George Schikore (#13). Photos: Berkeley Copwatch

<sup>18</sup> Berkeley Police Department, *Berkeley PD re-launches our Bike Detail*, September 22, 2020, <https://berkeleyca.gov/community-recreation/news/berkeley-pd-re-launches-our-bike-detail>

<sup>19</sup> Berkeley Police Department, *Community Liaisons*, <https://berkeleyca.gov/safety-health/police/community-liaisons> (accessed August 8, 2023)

<sup>20</sup> Berkeley Copwatch, *BPD Textgate Scandal, View The Officers Here*, <https://www.berkeleycopwatch.org/textgate> (accessed August 8, 2023)

## What Do The Data Say?

The Berkeley Police Department has released Department-wide officer-level arrest activity in response to a public records request.<sup>21</sup> The dataset includes:

*Arrest Identifiers:* Date and Time; Arrest Number; Case Number; Statute(s) Violated  
*Arrest Type,* one of: Court Filed (Warrant), Field Cite, On-view by Citizen, On-view by Officer, Suspicion of Felony, Other Arrest  
*Arrestee Demographics:* Race (Asian, Black, Hispanic, White, Other); Sex (Male, Female)  
*Arresting Officer ID* (last name, first name initial when needed to disambiguate)

A total of 10,330 arrests spanning 60 months (calendar years 2018 to 2022, inclusive) have been reported. These arrests collectively accounted for a total of 22,829 reported statutory violations (on average a bit more than 2 violations per arrest, ranging from 1 to a maximum of 16).

**Table 1. Arrests Per Officer, 2018-2022 Total and Monthly Average, Bike Unit vs. BPD**

|                    | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/<br>Bike<br>Unit | Rest of<br>BPD |
|--------------------|---------|--------|------------|---------|----------|--------|----------|-------|----------------------|----------------|
| Arrests            | 52      | 121    | 536        | 114     | 117      | 198    | 84       | 168   | 1,390                | 8,940          |
| Months*            | 28      | 43     | 60         | 51      | 39       | 51     | 24       | 40    | 60                   | 60             |
| Monthly<br>Average | 1.9     | 2.8    | 8.9        | 2.2     | 3.0      | 3.9    | 3.5      | 4.2   | 3.8                  | 2.5            |

\* Months in which at least one arrest is reported

Table 1 summarizes the counts of arrests for the 8 Bike Unit officers, individually and as a group, and for the remaining non-Bike Unit officers of the Berkeley Police Department. In a typical month in the sample period about 60 non-Bike Unit BPD officers would make at least one arrest. The monthly average denotes the average over months in which that officer reported at least one arrest.

The most remarkable feature in Table 1 is the average arrest activity of Officer Michalczyk (8.9 arrests per month), more than double the monthly Bike Unit average (3.8), which is itself about 50% higher than the BPD non-Bike Unit average (2.5).

Distinguishing an officer’s voluntary vigor from his laboring under a quota is a difficult task with the data in hand. Table 2 shows the five BPD officers making the most arrests in the sample period. Ofcr. Michalczyk made significantly more arrests

<sup>21</sup> City of Berkeley, Public Record Request 23-138, <https://cityofberkeleyca.nextrequest.com/requests/23-138>

than any other BPD officer. Only one other Bike Unit member, Ofcr. Seaton, was in the top 5.

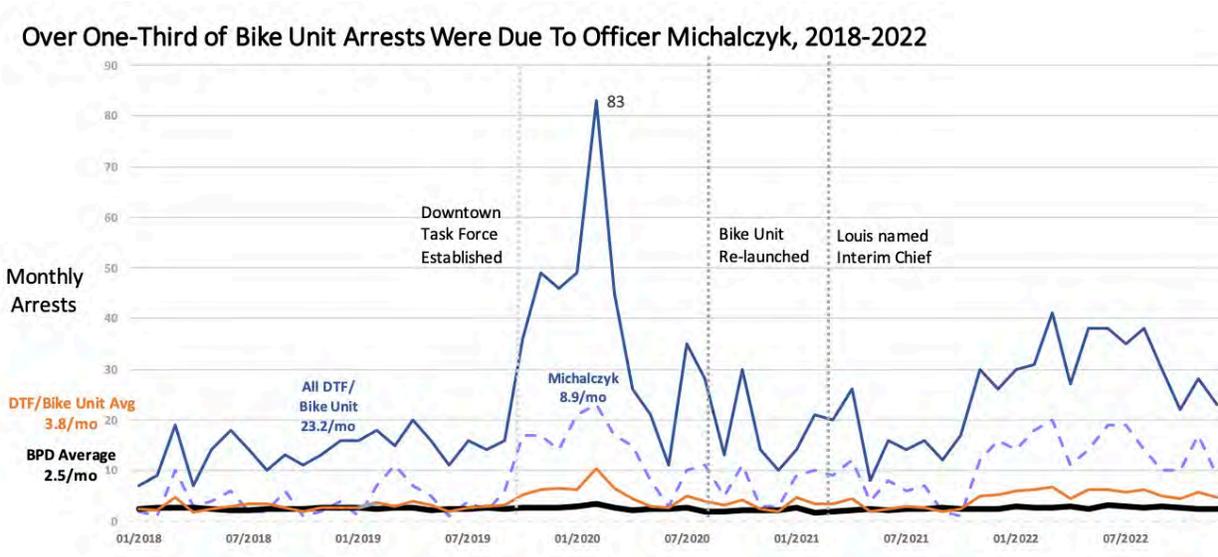
Table 2. Top 5 BPD Officers, by Arrests, 2018-2022

| Officer            | Arrests | Months* | Monthly Average |
|--------------------|---------|---------|-----------------|
| Greg Michalczyk ** | 536     | 60      | 8.9             |
| Jason Muniz        | 228     | 50      | 4.6             |
| Wesley Grover      | 202     | 54      | 3.7             |
| James Seaton **    | 198     | 51      | 3.9             |
| Graham Shivas      | 190     | 26      | 7.3             |

\* Months in which at least one arrest is reported      \*\* DTF/Bike Unit

Figure 2 displays the time patterns of Bike Unit and non-Bike Unit arrest activities. The Bike Unit (the solid blue line) attained its monthly maximum of 83 arrests in February 2020, when Ofcr. Michalczyk (the dotted blue line) also reached his monthly arrest maximum (23). Over the 3+ years of the Downtown Task Force/Bike Unit in the dataset, Ofcr. Michalczyk accounted for over one-third of the unit’s arrests. The peak in DTF/Bike Unit arrest activity shortly before and in the early days of the COVID-19 pandemic is evident.

Figure 2. Time Pattern of Bike Unit Arrests vs. BPD’s Arrest Average



The DTF/Bike Unit average (the solid orange line) of about 3.8 arrests per officer per month (including Ofcr. Michalczyk) is about 50% higher than the non-Bike Unit BPD average (the solid black line), about 2.5 arrests per arresting officer per month.

Figure 2 indicates that the “Operation 100” moniker was not literally realized, but failure to attain a quota does not disprove its existence. It is worth noting at the very time the quota was allegedly in effect (2019) the Berkeley Police Association recognized Ofcr. Michalczyk as its Officer of the Year.<sup>22</sup> Two years later a supervising sergeant recognized his (and Ofcr. Stern’s) vigor on the Bike Unit, attached as Exhibit 2.<sup>23</sup>

The Bike Unit (and its predecessor Downtown Task Force) was intended to increase police presence to deter crime. Because a bike officer could be said to be “closer” to the public than a car-borne officer, I would expect a Bike Unit officer to see more instances of crime directly and to respond more rapidly to citizen reports of crimes. This expectation is broadly fulfilled by the relative proportions of arrest types reported in Table 3 below.

In particular, 50% of DTF/Bike Unit arrests were made pursuant to direct observation by the officer (vs. 38% for the rest of BPD). The proportion of Bike Unit arrests due to citizen identifications was also somewhat greater (18% vs. 15%). The shares due to warrant service – aggregating warrants from BPD and outside jurisdictions, felonies and misdemeanors – were equal (15%) between the Bike Unit and the rest of the BPD.

In summary the DTF/Bike Unit arrest type mix shown in Table 3 broadly reflects a more up-close community policing approach than the rest of the BPD. The variation of arrest types across Bike Unit officers does not immediately suggest to me a Unit-wide quota based on the type of arrest.

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<sup>22</sup> Berkeley Police Association, December 12, 2019, <https://www.facebook.com/BerkeleyPoliceAssoc/posts/pfbid02kCFphZQkQLccoszcUMBtVQAxDsN5tmocjdKumwetFAycNN12zzK3KsZXcKs2Bftkl>

<sup>23</sup> Berkeley Police Department Memorandum, *Commendation for Officers Michalczyk and Stern*, April 21, 2021, p. 72 in PAB Special Meeting Packet (part 1 of 3), April 27, 2022, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022.04.27.PAB\\_.Pkt%281of3%29.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2022.04.27.PAB_.Pkt%281of3%29.pdf). Attached hereto as Exhibit 2.

Table 3. Arrest Type Proportions, DTF/Bike Unit vs. BPD, 2018-2022

|                    | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/<br>Bike<br>Unit | Rest of<br>BPD |
|--------------------|---------|--------|------------|---------|----------|--------|----------|-------|----------------------|----------------|
| On-View by Officer | 50%     | 43%    | 53%        | 32%     | 59%      | 58%    | 46%      | 40%   | 50%                  | 38%            |
| On-View by Citizen | 13%     | 14%    | 21%        | 14%     | 6%       | 21%    | 24%      | 17%   | 18%                  | 15%            |
| Warrant            | 2%      | 17%    | 12%        | 24%     | 28%      | 11%    | 8%       | 17%   | 15%                  | 15%            |
| Susp. Of Felony    | 31%     | 14%    | 13%        | 19%     | 4%       | 9%     | 14%      | 23%   | 14%                  | 27%            |
| Field Cite         | 4%      | 10%    | 0%         | 11%     | 2%       | 2%     | 7%       | 4%    | 3%                   | 5%             |
| Other Arrest       | 0%      | 2%     | 0%         | 0%      | 1%       | 0%     | 0%       | 0%    | 0%                   | 1%             |
| Total              | 100%    | 100%   | 100%       | 100%    | 100%     | 100%   | 100%     | 100%  | 100%                 | 100%           |

### Did the Bike Unit Charge Different Violations From the Rest of BPD?

Ex-Ofcr. Shedoudy has alleged the DTF/Bike Unit under Sgt. Kacalek used “questionable legal tactics that included stop and frisk, probation searches with no reasonable suspicion of a crime, and a very loose interpretation of stay-away orders from UC Berkeley.”<sup>24</sup> The available *arrest* data do not directly measure Bike Unit *search* behavior but they do indicate the frequency that officers (claimed to have) found probable cause that certain statutory violations could be charged to make an arrest.

The top ten statutory violations charged by the Bike Unit and by the rest of BPD over the sample period 2018-2022 are shown in Table 4. These statutory violations (*charges*) can be grouped into meaningful categories of the California Penal Code<sup>25</sup> as follows:

- *Warrants* for arrest issued by a court pursuant to a probable-cause statement by BPD or another law enforcement agency, for felony or misdemeanor offenses;<sup>26</sup>
- *Violation of a court order*, including *probation* for felony (f) or misdemeanor (m) offenses, or prohibition of some other activity (e.g. a stay-away order);<sup>27</sup>

<sup>24</sup> “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 36

<sup>25</sup> California Penal Code, <https://leginfo.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PEN&tocTitle=+Penal+Code+-+PEN>

<sup>26</sup> Cal. P.C. §§ 813-829, The Warrant of Arrest. Note that the Table 4 proportions for Warrant arrests are lower than in Table 3 because other offenses for a given arrest may have been reported in Table 4.

<sup>27</sup> Cal. P.C. §§ 1203.2 (felony & misdemeanor), 166(A)(4)

- *Substance abuse*, specifically possession of drug paraphernalia or methamphetamine, or public intoxication;<sup>28</sup>
- *Property crime*, specifically petty theft (value less than \$950) or burglary;<sup>29</sup> and
- *Resisting arrest* incident to apprehension for some other offense.<sup>30</sup>

These listed charges in Table 4 constituted 63% of Bike Unit arrests but only 44% of arrests by the rest of BPD, consistent with more diffuse crime patterns across the wider city.

**Table 4. Arrest Charge Proportions, DTF/Bike Unit vs. BPD, 2018-2022**

| Charge                      | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/<br>Bike<br>Unit | Rest of<br>BPD |
|-----------------------------|---------|--------|------------|---------|----------|--------|----------|-------|----------------------|----------------|
| Warrant*                    | 6%      | 12%    | 11%        | 18%     | 21%      | 10%    | 7%       | 12%   | 12%                  | 11%            |
| Probation violation (m)     | 10%     | 7%     | 15%        | 8%      | 11%      | 15%    | 16%      | 11%   | 13%                  | 5%             |
| Probation violation (f)     | 4%      | 5%     | 2%         | 1%      | 2%       | 3%     | 2%       | 2%    | 2%                   | 4%             |
| Violation of court order    | 5%      | 0%     | 4%         | 1%      | 5%       | 3%     | 3%       | 1%    | 3%                   | 1%             |
| Poss. of drug paraphernalia | 7%      | 9%     | 14%        | 11%     | 9%       | 9%     | 11%      | 14%   | 12%                  | 5%             |
| Poss. of methamphetamine    | 3%      | 4%     | 8%         | 5%      | 7%       | 6%     | 5%       | 7%    | 7%                   | 4%             |
| Public intoxication         | 7%      | 2%     | 2%         | 5%      | 4%       | 6%     | 3%       | 2%    | 3%                   | 3%             |
| Petty theft                 | 2%      | 3%     | 9%         | 8%      | 1%       | 6%     | 11%      | 7%    | 7%                   | 4%             |
| Burglary                    | 1%      | 0%     | 1%         | 0%      | 1%       | 1%     | 1%       | 1%    | 1%                   | 4%             |
| Resisting arrest            | 4%      | 2%     | 3%         | 4%      | 2%       | 4%     | 4%       | 5%    | 3%                   | 3%             |
| Subtotal                    | 48%     | 44%    | 69%        | 61%     | 63%      | 64%    | 63%      | 62%   | 63%                  | 44%            |
| Other                       | 52%     | 56%    | 31%        | 39%     | 37%      | 36%    | 37%      | 38%   | 37%                  | 56%            |
| Grand Total                 | 100%    | 100%   | 100%       | 100%    | 100%     | 100%   | 100%     | 100%  | 100%                 | 100%           |

\* Warrant = BPD & Outside Agency, felony (f) & misdemeanor (m) Poss. = possession

**The Bike Unit executed warrants in approximately the same proportion of its arrests (12%) as the rest of BPD (11%), and arrested approximately the same proportion due to property crime (both totaling about 8%) and for resisting arrest (both 3%).**

<sup>28</sup> Cal. P.C. §§ 11364(A), 11377(A), 647(F)

<sup>29</sup> Cal. P.C. §§ 484(A), 459

<sup>30</sup> Cal. P.C. § 148(A)(1)

**Bike Unit arrests for violation of court orders were about twice as frequent relative to the rest of BPD**, especially for misdemeanor probation violation (13% vs. 5%) and other court orders (3%, about triple BPD’s 1%).

This relatively greater frequency bears upon the “questionable legal tactics” that ex-Ofcr. Shedoudy has alleged. It is noteworthy that, among Bike Unit members, the ex-officer made proportionately the most arrests for misdemeanor probation violation (16% of his total) and approximately the Bike Unit average (3%) for violation of court orders (e.g. stay-aways).

**Bike Unit arrests for substance abuse were about twice as frequent relative to the rest of BPD**, particularly possession of drug paraphernalia (12% vs. 5%) and possession of methamphetamine (7% vs. 4%).

The prevalence of drug abuse in the Bike Unit’s territory – and consequent arrests – should come as no surprise to anyone who walked the streets of downtown Berkeley (especially Shattuck Avenue from Hearst Ave. south to Derby St.) or south of campus (including Peoples Park), particularly in the 2019-2022 period.

For example, on August 30, 2021, about 7:30 PM, I walked past an encampment on the southeast corner of Shattuck Ave. and Blake St. Three men focused intently on a vessel they held over a camp stove. They glowered at me as I passed, seemingly irritated at my presence on a public street corner. A fourth man wearing a blanket in the manner of a cape danced with a nearby streetlight pole, oblivious to the world. I later learned that, two hours later at that site, a BPD officer revived a man who may have overdosed on fentanyl.<sup>31</sup> The encampment, the glowering, the oblivion, the overdose has become all too typical in Berkeley, particularly in the Bike Unit’s territory.

**Bike Unit arrests solely for resisting arrest were slightly more frequent than for the rest of BPD.** Arrests for which the only statutory violation listed is 148 (A)(1) (resisting the arrest itself) naturally invite scrutiny to determine whether the arrest was otherwise baseless – a possible abuse of police discretion – or whether a legitimate basis for arrest was not captured in the dataset. In the data 20 of the BPD’s 8,940 arrests were solely for resisting arrest, or a rate of 0.22%. The corresponding rate for the Bike Unit was 4 of 1,390 arrests, or 0.29% (slightly higher, implying 1 more such arrest by the Bike

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<sup>31</sup> Berkeley Police Department, *Unresponsive man revived with Narcan*, August 31, 2021, <https://berkeleyca.gov/community-recreation/news/unresponsive-man-revived-narcan>

Unit than if the BPD rate had obtained). This difference does not point toward a quota being satisfied with this potentially worrisome cause for arrest.

In summary the DTF/Bike Unit mix of charges (statutory violations) is more heavily weighted toward probation violations and substance abuse violations than the rest of the Police Department. Whether this emphasis reflects *lowered thresholds* below Constitutionally and Departmentally acceptable standards, or *higher prevalence* among the arrestee community in the Bike Unit territory, is an open question with the data in hand.

### Were Bike Unit Arrests Racially Discriminatory?

Ex-Ofcr. Shedoudy has alleged a “practice of...racism...inside that [DTF/Bike] unit.”<sup>32</sup> The arrest data can identify what the Bike Unit officers *did* in practice, but not what they *felt* in principle or attitude. The racial categorization of each Bike Unit officer’s arrests, and for the DTF/Bike Unit as a whole and for the rest of the BPD, is presented in Table 5.

**Table 5. Arrestee Race Proportions, DTF/Bike Unit vs. BPD**

| Race     | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/<br>Bike<br>Unit | Rest of<br>BPD |
|----------|---------|--------|------------|---------|----------|--------|----------|-------|----------------------|----------------|
| Black    | 42%     | 52%    | 48%        | 54%     | 30%      | 44%    | 44%      | 51%   | 47%                  | 50%            |
| White    | 52%     | 27%    | 41%        | 31%     | 51%      | 40%    | 37%      | 39%   | 40%                  | 28%            |
| Asian    | 0%      | 2%     | 1%         | 3%      | 5%       | 1%     | 2%       | 1%    | 2%                   | 3%             |
| Hispanic | 2%      | 17%    | 8%         | 10%     | 9%       | 12%    | 13%      | 5%    | 9%                   | 14%            |
| Other    | 4%      | 2%     | 3%         | 3%      | 4%       | 3%     | 4%       | 4%    | 3%                   | 5%             |
| Total    | 100%    | 100%   | 100%       | 100%    | 100%     | 100%   | 100%     | 100%  | 100%                 | 100%           |

**As a unit, the DTF/Bike Unit arrested proportionately fewer Black and Hispanic persons than the rest of the BPD as a whole** (Black: 47% vs. 50%, Hispanic: 9% vs. 14%), and markedly proportionately more white persons (40% vs. 28%).

**The variation across Bike Unit officers displays no distinct pattern.** Of the Bike Unit members, Ofcr. Pickett arrested proportionately the most Black persons (54%); Sgt. Kacalek arrested proportionately the most white persons (52%); Ofcr. Schikore arrested proportionately the fewest Black persons (30%); while Ofcr. Breaux arrested

<sup>32</sup> “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 36

proportionately the fewest white persons (27%) but proportionately the most Hispanic persons (17%, nearly twice the Bike Unit average).

As the Center for Policing Equity summarized in 2018, at least two competing but not mutually exclusive explanations could be at work: *community factors* such as racially disparate crime rates, and *policing factors* whereby officer discretion results in observed differences.<sup>33</sup> It would be premature to assign variation only to policing factors from outcome data such as in Table 5. Additional information such as text messages among the Bike Unit could be illuminating.

In summary, compared to the rest of the Berkeley Police Department during the sample period 2018-2022, the DTF/Bike Unit racial disparities of arrests are weighted more heavily toward white arrestees and less toward Black and Hispanic arrestees. Nonetheless there persists a disparity in arrests of Black persons relative to their proportion of Berkeley residents due to a mix of community and policing factors. But I do not observe the operation of a quota according to race – a traditional concern about quotas – from the proportions shown for Bike Unit officers in Table 5.

### Berkeley’s History Against Arrest Quotas

August Vollmer, the first chief of the Berkeley Police Department, was applauded by an audience of his fellow police chiefs in 1919 when he identified arrests as an incomplete measure of public safety:<sup>34</sup>

“Police efficiency should be measured by the amount of crime, poverty and sickness which is prevented on the beat, and not by the number of arrests made by the officer. (Applause)”

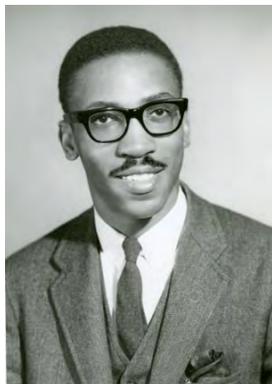


August Vollmer in 1929  
Photo: Library of Congress

(Chief Vollmer’s speech is attached as Exhibit 3. I commend it as a marker of police thought from a century ago that could inform today’s Reimagining Public Safety initiative.)

<sup>33</sup> Center for Policing Equity, *Berkeley Police Department - National Justice Database City Report*, May 2018, pp. 7-8, in *Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group*, February 23, 2021, <https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations.pdf> (pp. 51-52 of 201)

<sup>34</sup> August Vollmer, “The Policeman as a Social Worker,” *Proceedings of the 26th Convention of the International Association of Chiefs of Police*, New Orleans, Louisiana, April 14-16, 1919, p. 36. Attached hereto as Exhibit 3.



Assemblymember John J. Miller in 1969. Photo: California State Library

Since 1976 California has legislated against arrest quotas<sup>35</sup> due to the advocacy of Assemblymember John J. Miller, who chaired the Assembly Judiciary Committee while representing Berkeley and Oakland in the then-13th District. As he said at the time,<sup>36</sup>

“[A police officer] will feel under an obligation to write a ticket even in those cases where a citizen may not have committed a crime beyond all reasonable doubt...[It] goes against our historical concepts of justice and fair play.”

(Asm. Miller represented Berkeley until 1978 when he was succeeded by Elihu Harris. He then served on the California First District Court of Appeal until his death in 1985.)

Recent legal commentary has explored *police quotas*, of which arrest quotas are an important variety. Professor Shaun Ossei-Owusu of the University of Pennsylvania Carey Law School has explained that, despite objections from police unions and racial minorities, arrest quotas are still practiced, even in jurisdictions in which they have been prohibited.<sup>37</sup>

Quotas risk sacrificing quality (particularly legality) for quantity in undesirable ways.<sup>38</sup> His article is attached as Exhibit 5.

(To continue the Berkeley theme of this section: Professor Ossei-Owusu earned his J.D. from Berkeley Law School and his Ph.D. from the U.C. Berkeley Department of African American Studies.)<sup>39</sup>



Shaun Ossei-Owusu  
Photo: Penn Carey Law School

## Issues of Potential Interest to the Police Accountability Board

**The PAB should continue its investigation, I hope with the benefit of this memorandum’s findings.** I suggest several investigative directions:

<sup>35</sup> California Vehicle Code §§ 41600-41603, *Arrest Quotas*, supra n. 2. Also attached as Exhibit 1.

<sup>36</sup> *Berkeley Gazette*, “Measure to outlaw CHP’s ticket quotas,” July 22, 1975, p. 1. Attached as Exhibit 4.

<sup>37</sup> Shaun Ossei-Owusu, “Police Quotas,” 96 *New York University Law Review* 529-605, available as Faculty Scholarship at Penn Law, [https://scholarship.law.upenn.edu/faculty\\_scholarship/2835](https://scholarship.law.upenn.edu/faculty_scholarship/2835). Attached as Exhibit 5.

<sup>38</sup> E.g. Ossei-Owusu, supra n. 37, pp. 579-580, “Thin Evaluations,” esp. fn. 305

<sup>39</sup> Shaun Ossei-Owusu LPS ’08, <https://www.law.upenn.edu/faculty/oss>

1. Ex-Ofcr. Shedoudy has characterized the text messages he has already released as “the tip of the iceberg,” and that he would release “hundreds of DTF / Bike Force text messages” at the conclusion of his arbitration (appealing his termination from BPD service).<sup>40</sup> **This Board should request those additional text messages from ex-Ofcr. Shedoudy** for review to more fully understand the operation of the alleged arrest quota that my analysis in this memorandum has failed to detect.
2. Ex-Ofcr. Shedoudy has alleged that the Bike Unit was ordered to perform “probation searches with no reasonable suspicion of a crime.”<sup>41</sup> Table 4 above indicates that (among Bike Unit members) ex-Ofcr. Shedoudy arrested proportionally the most persons for misdemeanor probation violations. **This Board should invite the ex-officer to disclose whether the alleged arrest quota induced him to make arrests that were, in retrospect, unjustifiable in the eyes of the law.**
3. The strongest evidence that a quantitative target may have driven arrests concerned Ofcr. Michalczyk’s “Operation 100.” Table 2 and Figure 2 illustrate that Ofcr. Michalczyk has arrested far more people than any other BPD officer in the past five years. **This Board should seek Ofcr. Michalczyk’s account of this activity**, including his perception of the beat he has patrolled, and whether Bike Unit practices (including but not limited to a quota) have given rise to it. Under the City Charter this Board can compel attendance, and even subpoena, an officer,<sup>42</sup> but I do not envision this account to require those measures. The purpose of my suggestion is for the Board to review this particular Police Department practice so as to understand it.
4. The arrest *quantities* reported in this memorandum are separate from their *quality*, most notably their adequacy for prosecution by the Alameda County District Attorney (ACDA). **This Board should seek from ACDA the prosecutorial outcomes for the cases brought by Bike Unit arrests and for the**

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<sup>40</sup> “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 37, 36

<sup>41</sup> “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 36

<sup>42</sup> Berkeley City Charter, Article XVIII, *Police Accountability Board and Director of Police Accountability*, § 125(3)(a)(5), <https://berkeley.municipal.codes/Charter/ArtXVIII>

**Department as a whole.** In particular, charges that ACDA deems *legally insufficient* (possibly indicating inadequate police work) should be distinguished from charges dropped for other reasons such as the exercise of prosecutorial discretion. The consultation of an outside source as to arrest quality would benefit the Board's understanding of BPD arrest activity.

5. A separate (albeit coarse) measure of an arrest's quality is whether it has given rise to a citizen complaint to the Board, the Police Department, or the courts.

**This Board should seek from BPD all complaints (indexed with the BPD Case Number) in the past 5 years to determine whether any were connected to the Bike Unit,** and how they compared to complaints about the rest of BPD.

Any inquiry by this Board into legal actions resulting from BPD arrests would likely compete with Berkeley Copwatch's recruitment of class-action plaintiffs to sue the City of Berkeley,<sup>43</sup> so I am less optimistic about that effort.

6. There has been much recent discussion of an early intervention system (EIS) to "inform goals and strategies and improve [BPD] accountability and transparency."<sup>44</sup> **This Board should consider in its investigation the**

**informational requirements of an EIS** capable of (correctly) detecting an alleged arrest quota, including in the case of the energetic Ofcr. Michalczyk.

Would information outside the Police Department be required to correctly identify an undesirable (indeed, illegal) practice such as an arrest quota? If so, what? This consideration may help set realistic expectations for the performance of the EIS ultimately adopted (now in the acquisition process).

7. The quantitative analysis presented here has compared the Bike Unit (and its individual officers) to the rest of BPD to determine whether the Bike Unit exhibited problematic behavior due to the alleged arrest quota on its operations. Such problematic behavior has not been found. This analysis has *not* established that the rest-of-BPD comparator is free from problematic behavior, contrary to

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<sup>43</sup> Berkeley Copwatch, *BPD Textgate Scandal*, supra n. 20, "We are now in a process of gathering information and looking for plaintiffs for a class-action lawsuit" (accessed August 9, 2023)

<sup>44</sup> Councilmember Harrison and Vice Mayor Bartlett, *Referral \$100,000 to the June 2023 Budget Process to Design a Comprehensive Berkeley Police Early Intervention and Risk Management System*, April 11, 2023, <https://berkeleyca.gov/sites/default/files/documents/2023-04-11%20Item%2025%20Referral%20100%2C000%20to%20the%20June%2C%202023.pdf>

the assertions of one City official.<sup>45</sup> Indeed, these assertions were rejected by deputy city manager LaTanya Bellow: “We regret that the investigation’s findings were characterized too broadly in the press.”<sup>46</sup> I quite agree.

The analysis here *has* established that Black persons in Berkeley are arrested by both the Bike Unit and the rest of BPD at a rate more than six times their proportion of the City’s residential population. Table 6 compares the racial proportions of Table 5 to the proportions from the 2020 Census.<sup>47</sup>

**Table 6. Berkeley Population vs. Arrestee Race Proportions, DTF/Bike Unit & BPD**

| Race     | 2020 Census | DTF/<br>Bike Unit | Rest of BPD |
|----------|-------------|-------------------|-------------|
| Black    | 7.6%        | 47%               | 50%         |
| White    | 50.2%       | 40%               | 28%         |
| Asian    | 19.9%       | 2%                | 3%          |
| Hispanic | 13.7%       | 9%                | 14%         |
| Other    | 8.6%        | 3%                | 5%          |
| Total    | 100%        | 100%              | 100%        |

This disparity likely traces to the community factors and policing factors touched on by the Center for Policing Equity.<sup>48</sup> In any event the true measure of fair and impartial policing would be whether the *threshold of arrest* across the racial categories is equal. Assessing such a threshold turns out to be a remarkably difficult technical problem.<sup>49</sup> Arrest data such as in Tables 5 and 6 do not suffice to establish that proposition, so sliding from (mathematical) racial *disparity* to (behavioral) racial *bias* would be unjustified at this stage.

<sup>45</sup> Emilie Raguso, “No arrest quotas, no racial bias: Berkeley police bike team cleared of claims by fired cop,” The Berkeley Scanner, July 20, 2023, <https://www.berkeleyscanner.com/2023/07/20/policing/berkeley-police-bike-team-cleared-systemic-problems/>. (“The investigation found that the department does not have a practice of racial bias,” said city spokesman Matthai Chakko. “The investigation found that the department does not have any arrest quotas.”)

<sup>46</sup> LaTanya Bellow remarks, City Council regular meeting, July 25, 2023, 2:12:01-2:13:24, [http://berkeley.granicus.com/player/clip/5093?view\\_id=5&redirect=true&entrytime=7921&stop\\_time=8024&autostart=0&embed=1&redirect=true&h=40d32dbeb55e5e9296a17e679bea5bb0](http://berkeley.granicus.com/player/clip/5093?view_id=5&redirect=true&entrytime=7921&stop_time=8024&autostart=0&embed=1&redirect=true&h=40d32dbeb55e5e9296a17e679bea5bb0)

<sup>47</sup> Wikipedia, *Berkeley, California – Demographics – 2020 Census*, [https://en.wikipedia.org/wiki/Berkeley,\\_California#2020\\_census](https://en.wikipedia.org/wiki/Berkeley,_California#2020_census)

<sup>48</sup> Center for Policing Equity, *supra* n. 33

<sup>49</sup> Camelia Simoiu, Sam Corbett-Davies, and Sharad Goel, “The Problem of Infra-Marginality in Outcome Tests for Discrimination,” 11 *The Annals of Applied Statistics* 3: 1193-1216, September 2017, <https://5harad.com/papers/threshold-test.pdf>

A police officer's task is to arrest the arrest-worthy, not some arbitrary percentage of the population. For the arrestee population to match the residential population along some dimension would require (incongruously enough) a sort of quota. **This Board should remain aware of the range of factors that lead to arrest outcomes** as displayed in Tables 5 and 6. At this stage those outcomes neither indict nor exonerate the Police Department as to racial discrimination.

## Conclusions

1. I do not find quantitative evidence of an arrest quota despite the attention of the Bike Unit supervisor to the count of arrests.
2. I do find that one particular Bike Unit officer has made an unusually large number of arrests during the past five years.
3. The mix of Bike Unit arrest types is broadly consistent with the community policing orientation of the Bike Unit.
4. The mix of statutory violations charged is more heavily weighted toward drug offenses and probation violations than the overall BPD, possibly a consequence of the types of offenders found in the Bike Unit's territory.
5. The racial disparity in Bike Unit arrests is more heavily weighted toward white arrestees than arrests by the rest of the Police Department, but still exhibits the same disparity of arrests of Black persons that has long characterized police activity in Berkeley.

I recommend that the Police Accountability Board continue its investigation to understand more completely the alleged arrest quota scheme and whether individual officer behavior suffices to explain observed arrest patterns. I also recommend that other elements beyond the alleged arrest quota – notably, racist and malicious communications during City work time – be fully investigated.

Exhibit 1 – California Vehicle Code §§ 41600-41603 Arrest Quotas

Exhibit 2 – Commendation for Officers Michalczyk and Stern, April 21, 2021

Exhibit 3 – August Vollmer, "The Policeman as a Social Worker," April 1919

Exhibit 4 – *The Berkeley Gazette*, "Measure to outlaw CHP's ticket quotas," July 22, 1975

Exhibit 5 – Shaun Ossei-Owusu, "Police Quotas," *New York University Law Review*, May 2021

# EXHIBIT 1



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## VEHICLE CODE - VEH

**DIVISION 17. OFFENSES AND PROSECUTION [40000.1 - 41610]** ( *Division 17 enacted by Stats. 1959, Ch. 3.* )

### CHAPTER 7. Arrest Quotas [41600 - 41603] ( *Chapter 7 added by Stats. 1976, Ch. 1111.* )

**41600.** For purposes of this chapter, "arrest quota" means any requirement regarding the number of arrests made, or the number of citations issued, by a peace officer, or parking enforcement employee, or the proportion of those arrests made and citations issued by a peace officer or parking enforcement employee, relative to the arrests made and citations issued by another peace officer or parking enforcement employee, or group of officers or employees.

(*Amended by Stats. 2002, Ch. 105, Sec. 1. Effective January 1, 2003.*)

**41601.** For purposes of this chapter, "citation" means a notice to appear, notice of violation, or notice of parking violation.

(*Added by Stats. 1976, Ch. 1111.*)

**41601.5.** For purposes of this chapter, "agency" includes the Regents of the University of California.

(*Added by Stats. 2002, Ch. 105, Sec. 2. Effective January 1, 2003.*)

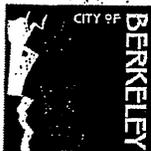
**41602.** No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code or any local ordinance adopted pursuant to this code, may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.

(*Amended by Stats. 2002, Ch. 105, Sec. 3. Effective January 1, 2003.*)

**41603.** No state or local agency employing peace officers or parking enforcement employees engaged in the enforcement of this code shall use the number of arrests or citations issued by a peace officer or parking enforcement employees as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the agency. Those arrests or citations, and their ultimate dispositions, may only be considered in evaluating the overall performance of a peace officer or parking enforcement employees. An evaluation may include, but shall not be limited to, criteria such as attendance, punctuality, work safety, complaints by civilians, commendations, demeanor, formal training, and professional judgment.

(*Amended by Stats. 2016, Ch. 99, Sec. 7. (AB 1953) Effective January 1, 2017.*)

# EXHIBIT 2



## BERKELEY POLICE DEPARTMENT MEMORANDUM



April 21<sup>st</sup>, 2021

**To:** Chief Louis  
Via Chain of Command

**From:** Sergeant Bonaventure S-10

**Re:** Commendation for Officers Michalczyk and Stern

On 4/10/21, approximately 1030 hours, Bike Force Officers Greg Michalczyk and Thomas Stern were proactively patrolling the downtown area when dispatch broadcast a bank robbery in progress at Bank of America, located at [redacted]. Within 1 minute of the broadcast, Officers Michalczyk and Stern arrived on scene and exited their vehicle. As they were approaching the bank, Officers Michalczyk and Stern observed a male, later identified as [redacted], walking in a rapid pace away from the bank. As [redacted] was walking away he peered over his shoulder, looked directly at Officers Stern and Michalczyk, and began to run away. Both Officers chased after [redacted] as he ran across the street and into a Wells Fargo Bank.

In an effort to detain [redacted] before he could victimize anyone else inside Wells Fargo Bank, Officers Stern and Michalczyk drew their firearms and entered through the front doors.

As Officers Stern and Michalczyk entered the bank, they saw [redacted] leaning against a table with his right hand concealed behind his back. They immediately gave [redacted] commands to show his hands, however, he did not immediately comply. After several commands, [redacted] exposed his right hand which was holding a significant amount of U.S. currency. [redacted] then began to walk away from the Officers and towards a glass door that connected the bank to another business. Both Officers Michalczyk and Stern ran towards [redacted], grabbed him before he could escape, and placed him in handcuffs.

A search of [redacted] revealed he was in possession of a large knife and the U.S. Currency that he stole from the bank.

A records check revealed that [redacted] was on parole for prior bank robberies.

Officers Michalczyk and Stern deserve to be commended for their proactive policing and their courageous effort to detain a dangerous parolee who had just robbed a bank, and ran into another bank to elude capture. If it was not for their quick response, [redacted] would have gotten away with bank robbery that day. If it was not for their courage, [redacted] would have had the time to victimize more Berkeley Citizens within the second bank.

# EXHIBIT 3

*International Association*  
... of ...  
**CHIEFS of POLICE**



*Proceedings 26th Convention*

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*NEW ORLEANS, LOUISIANA*  
*April 14, 15 and 16, 1919*

President Long: We shall next hear a paper prepared by Chief Vollmer, of Berkeley, California. (Applause).

Chief Vollmer: Mr. President, ladies and gentlemen: I always esteem it a privilege to prepare a paper. When the President calls upon me to prepare a paper, I am pretty well flattered. I think it is a wonderful thing to get an opportunity to present your views, even if they may be wrong. It gives the other fellow an opportunity to tell you that you are wrong, and you may get a good idea.

The subject of my paper is: "The policeman as a social worker."  
Crime prevention, that all-important police function, is compelling the attention of some of the world's greatest thinkers, and though

the appreciation of criminology as a science is still in its infancy, and the surface has been merely scratched, sufficient light has been thrown on the subject to prove that old methods of dealing with crime must be changed, and newer ones adopted. The time to begin is past but the time to keep going what has been started is now.

Ordinarily, the policeman feels that his duty is well done when the offender is promptly apprehended and placed behind the bars. His failure to note that the prisoner may be the sole support of a large family, who, left to shift for themselves, must steal or starve, is only one of numerous mistakes that our peace guardians are making, in their efforts to serve the public faithfully.

Big, healthy, honest, and kind, ready to die without hesitancy when duty calls them, their usefulness is impaired by reason of their ignorance of the many causes of delinquency. Even though the experienced policeman knows that poverty, unemployment, defective home conditions, bad companions, sickness, alcohol, gambling and prostitution are crime factors, he does not feel that it is any part of his duty to assist in the correction or elimination of these great contributors to criminality.

Co-operation with social service agencies is out of the question; they can do nothing to help him, nor has he the time nor the inclination to assist them. Policemen do aid the injured, give the needy lodger a cot to sleep on, search for missing persons, and render other services not necessarily police duties, but here ends their activities as humanitarians.

However, the pendulum is beginning to swing the other way, and the policeman is beginning to realize his power as a social worker, and the future is fraught with wonderful possibilities, if all will realize their potential worth.

The policeman is learning that dependency, criminality and industrial unrest have a common origin, and that upon him rest far more important and far greater obligations than the mere apprehending and prosecuting of lawbreakers. He is fast learning that dealing with criminals after the evil habits have been formed is a hopeless task as far as the eradication, or even lessening of crime is concerned.

If he would serve his community by reducing crime he must go up the stream a little further and dam it up at its source, and not wait until it is a rushing torrent, uncontrollable and resistless. Moreover, if he would succeed in his efforts he must utilize to the fullest extent every helpful agency in the community, such as schools, churches, recreation and juvenile departments, public welfare and employment bureaus, clinics, dispensaries, hospitals and fraternal and labor organizations. Co-operation is also necessary with character forming organizations, such as Boy Scouts, Campfire Girls, well organized boys' clubs, community social centers and auxiliary and junior police forces.

Nor must the modern police overlook the importance of publicity in social police work, since after all is said and done, unless the public is informed his efforts to bring about a better state of affairs will not be fruitful of results. This most desirable publicity of police social work should be spread by the citizens of the community and by proper newspaper propaganda.

And the work which Major Pullman has just referred to is one of the things that we should keep going, and keep going fast.

Much desirable publicity can also be spread by means of special educational circularization, and not by any means the least important, an occasional instructive as well as interesting moving picture of such police work should be presented.

Such moving pictures as have been spoken of by Major Pullman just

now, and others, think, specially prepared by the Los Angeles Police Department, showing the things that actually confronts the policeman, showing the difficulties and the temptations that beset him, showing after all that the policeman is not such a bad fellow.

You will ask what can the policeman do, and how shall he proceed to get the best results. My answer is,—fight for everything which helps to decrease crime and dependency, and in this connection a few suggestions are offered for social service work in the community and state. And let me add that these are merely a few suggestions. There are many, many possibilities.

In many cities the schools are unable to accommodate all of the school children. This results in many of them being on the streets, with the attendant evils. The policeman can do his share to correct this condition by stating the facts to the voters whenever an opportunity is afforded.

It is also true that no city in this country gives sufficient thought to the physical welfare of the children. Supervised recreation grounds are few in number, and we know from experience that much of our juvenile problem may be traced to misdirected energy. Here again, the policeman in his rounds, and in contact with people generally, can be useful by calling attention to the community's need for sufficient play ground space for children to give expression to their play tendencies.

The school and the church as community social centers have passed the experimental stage in several cities. As agencies for the Americanization of the community's foreign element the school and the church community social centers rank first. Social centers will displace the saloons, the dance halls and gambling dens and will serve to dispel or prevent other social factors of evil tendencies. Social center activities should be encouraged in every way.

The child study departments in our schools are of great importance in detecting the child of unusual abilities or disabilities, thus making it possible to give timely physical, mental and moral direction to the potentially dependent or delinquent child as well as to give wholesome encouragement and special direction to the child of more than average ability. The data which the child study department is able to furnish will be of immense value to the teachers in our schools in training our children toward better citizenship.

Free clinics and dispensaries are invaluable in the community, but frequently are handicapped by lack of funds. Statistics are not wanting of cases of delinquency directly attributable to physical abnormalities, such as defective vision, defective hearing, defective teeth, adenoids, and numerous other pathological conditions. Poor people may be unable to employ the services of a family physician to correct these defects, and if there are no well conducted clinics to which the child can be taken for diagnosis and treatment, there is always the possibility that the police may have to deal with the child as a delinquency problem.

Public welfare bureaus, like the clinics and dispensaries, actually have to fight for existence in this civilized country. Their efforts are often viewed with suspicion, due to the lack of knowledge of social service work. Often the public does not understand that the rehabilitation of the family by scientific social service is more beneficial than sporadic donations of money, food, fuel, clothing and shelter. The public welfare bureau performs excellent crime preventive work, and should have the support of every police official. Where is there a police department that has not dealt with the man or woman who in desperation has stolen to keep the family from starving, and further,

that has not dealt with the product of the other family which starved rather than steal?

Considering at this time only the unemployed, and not the unemployable (the latter being institutional problems), the police should not only advocate the establishment of municipal, state and federal employment bureaus, but in addition thereto, should cooperate with such bureaus to the fullest extent in finding positions for the deserving and capable. Friendly relations must be established with labor unions as their assistance is occasionally required in these cases.

Furthering the cause of laws to provide funds for orphans, industrial compensation for the injured, prevention of child labor, eight hour labor laws, probation laws, prohibition, venereal disease control and other legislative acts having for their purpose the prevention of feeble-mindedness, insanity, criminality, prostitution, dependency, and the protection of the family, is the bounden duty of every member of the police force.

From investigations conducted by Healy, Bowers, Glueck, Stearns, Ball, Hoag and others, we are safe in assuming that at least one-half of our criminals and prostitutes are persons suffering from mental peculiarities or abnormalities. This immediately suggests the need for psychopathic clinics in juvenile detention homes, police departments and state prisons in order that we may reclaim those who may be helped and permanently confine the defective or insane criminal, who will always be a menace to society if permitted to roam at large. The psychopathic clinics should be identified with a state psychopathic hospital which will not only serve as a clearing house for their activities, but will also care for the incipient mental and nervous cases. The policeman can render no greater service to the community than to participate in the movement to establish psychopathic clinics and hospitals in his city and state.

I may say, just at this moment, before going further, that the Boston psychopathic hospital had sent to them, year before last, over 1500 suspected cases of venereal disease, and out of that group, just one fourth of them were found to be suffering from syphilitic infection, and this institution sent out their workers and brought in to the institution the other members of the families, and in that one-fourth of those persons who were found suffering, one-third of the persons who were brought in—coming willingly in most cases—were actually found to be infected, and not known to be infected. Now, we know that 25 per cent of all of our insane are syphilitic. You will find the figures are absolute in every institution throughout the country.

Every humane and intelligent official recommends and should work for, the establishing of industrial farms for prostitutes, drunkards, drug addicts, and criminals, and more modern institutions and a more sane treatment for the insane or defective criminal.

Any one who has given thought to the conditions in the average city prison and county jail must know that they are schools for crime, and few men profit morally by their confinement in these institutions. Some better method of dealing with minor offenders should be devised. Who, assuming that the official has the proper training, is better qualified to solve this problem than the policeman?

We have discussed briefly what can be done by the policeman in the city and state, let us next consider the neighborhood, or, in language more familiar to the police, the beat. No single individual in the community has more opportunities to do good, solid, constructive social service than the intelligent, sympathetic and trained policeman. His intimate knowledge of the character of the people residing on his beat makes it possible for him to acquaint immigrants liv-

ing therein with the laws of this country, protect them from petty political and business grafters, as well as from other unscrupulous persons, and help them to become decent, law-abiding citizens.

By close co-operation with schools and public welfare agencies, he will soon learn who the potential delinquents and dependents are, and can do much to assist in preventing them from becoming social failures. Boy gangs may be transformed into juvenile police and taught to be friendly helpers, or they may be helped to join boy scouts or similar boys' organizations, and through these agencies become helpful members of the community.

Wayward girls may be saved from taking the final plunge into a life of evil, and many homes saved from disgrace and sadness, by the kindly counsel of the policeman. Sick and poor may be directed to the established places for their relief. These cases should be carefully followed up and nothing left undone which would be of assistance in their rehabilitation.

Police efficiency should be measured by the amount of crime, poverty and sickness which is prevented on the beat, and not by the number of arrests made by the officer. (Applause.)

In his daily contact with cases of delinquency the policeman has unlimited opportunities to demonstrate his ability as a social worker and public benefactor. The few cases cited below illustrate what may be done if policemen are properly trained.

Now, let me say to you that the men who took care of these cases, the men who followed up the cases that I am going to mention, are the old-time policemen that you and everybody here knows, men who have been trained; but they were the old-type, the old fellow who believed that the way to suppress crime was to knock them down and bring them in.

Annie,—aged 14, stole five dollars from the purse of a fellow employée who reported the theft to the police. The officer detailed discovered that Annie had been systematically pilfering money and articles from other employées. He learned, too, that these thefts began shortly after she had been engaged by the firm. During the examination the girl gave as her reason for taking money, "I just wanted to look nice like the other girls." The officer visited the home and found that her family were living in an unclean and poorly furnished three-room house. Because the father earned but little money it was impossible to provide sufficient wholesome food for the family. The mother was tubercular, and the father an unstable and nervous fellow. Two sisters died in infancy. One sister now ten years of age was suffering from heart trouble, and one eight year old brother was physically weak. Annie's school teacher said that she was an ordinary pupil until she reached the fifth grade; at the age of thirteen she left the school, at which time she was doing poor work in the sixth grade. She was taken to the psychopathic clinic, where it was found that she was somewhat retarded mentally. It was the opinion of the medico-psychologist that adenoids and enlarged tonsils might be responsible for her defect. Accordingly the consent of the mother and child was secured and an appointment made with the specialist at the public clinic to perform the required operations. A change in environment and employment was also recommended by the medico-psychologist, and a position was obtained for Annie in a respectable family. The rest of the family are receiving medical aid at the dispensary and some financial help through a public welfare bureau.

Harry,—aged thirteen, was arrested for burglary, and turned over to his parents for attention and correction. Later this boy entered not less than twenty stores during the night hours, and took money from

the cash registers. His family history was good, no evidence of anything serious on either side. Two sisters, sixteen and eighteen, respectively, were apparently normal girls. From the family physician and parents it was learned that Harry was an ordinary boy physically. He had had measles, mumps and whooping cough when a little fellow, but had never suffered any severe ills. This child was also taken to the psychopathic clinic where it was learned that he was two years above his age. His parents accepted the suggestion made by the medico-psychologist and sent the boy to a relative in the country. It was also arranged at the same time to have him advanced two grades in his school work. From the last report received concerning this boy he is making good, absolutely, and without the advantage of the psychopathic clinic, plus intelligent handling of the case by the policeman he would have been in a reform school learning to be a real crook.

John Doe—age fifty eight years, high school teacher and inventor, was arranged on a charge of burglary. From the investigation conducted by the officers it was learned that his previous reputation for honesty in the community was excellent. Some years prior to his arrest the prisoner suffered a nervous collapse and quit teaching for two or three years. During this period he conducted a curio store in a neighboring town; there was no patronage, and he was obliged to close the doors of his place of business. He was heavily in debt and again took up teaching as a profession. His creditors crowded him for money and he eventually fell into the hands of some loan sharks. At this time he was also busily engaged in perfecting an invention which would assist in aerial navigation. Between teaching and work on his invention he was considerably overworked. From the general appearance and conduct of Doe at the time of his arrest the investigating officer came to the conclusion that he was a medical problem, despite the fact that he answered questions intelligently, and seemingly was possessed of all of his faculties. The medical examiner reported that the prisoner was a neurasthenic with morbid impulses; the result of over-work and financial worries. He was turned over to his family for care and treatment, and subsequently confined in a private sanitarium where he remained for a year or more. Through a few friends who were interested in the case, sufficient money was secured to tide the family over the difficult period immediately following his arrest. John Doe has recovered sufficiently to return to the community where he has again firmly established himself, and is regarded as one of our best citizens.

Now, I might go on and cite to you cases indefinitely. I am full of them. But it is enough to show you what may be done by the policeman.

Regardless of the policeman's efforts to contribute to social and economic betterment in the manner described above, we cannot close our eyes to the fact that crime will always be with us. Much can be done to further reduce the evil, providing we raise the educational and intellectual standard of our police departments, elevate the position of the policeman to that of a profession, eliminate politics entirely from the force, and secure the people's confidence, sympathy, respect and co-operation.

Policemen should jealously guard the reputation of their profession, and establish a code of ethics. Any and every member of the force who violates the provisions of the code should be vigorously prosecuted and expelled from the ranks. Policemen's lives must be dominated by the highest ideals if they hope to establish themselves in the affections of the people, and win for the profession such an exalted

38

INTERNATIONAL ASSOCIATION

plane that positions on the force will be sought for by the nation's best manhood. Let us speed the day when the appointment as a policeman shall be considered the greatest honor that the municipality may bestow upon one of its citizens. (Applause.)

# EXHIBIT 4



# BERKELEY GAZETTE

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## WEATHER

Fair through tomorrow except patchy night and morning clouds along the coast. Slightly warmer with highs today and tomorrow in the 60s along the coast to low 80s inland. Lows tonight in the 50s. West to northwest winds at 10-20 m.p.h.

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## Measure to outlaw CHP's ticket quotas

The Chairman of the Assembly Judiciary Committee, Assemblyman John J. Miller (D-Berkeley-Oakland) said today the CHP "ticket slow-down" has persuaded him to introduce legislation out-lawing ticket quotas.

"For years we have been told that the highway patrol and various city and county traffic police do not have a quota of tickets to write," Miller said, "but recent statements by the CHP Commissioner which promise discipline and even dismissal of officers whose number of tickets fall below a certain number convinces me that an expected level of crimes is depended on by the CHP management. A quota by any other name — 'historical level of citation issuance' — is still a quota."

"If a CHP officer or any city or

county police officer knows that he is expected to write so many citations, he will feel under an obligation to write a ticket even in those cases where a citizen may not have committed a crime beyond all reasonable doubt," Miller said. "It is simply unrealistic to tell the average California driver that his word is as good as that of a traffic cop in court. So the driver, I believe, has 2 1/2 strikes against him: an officer who is pressured by his superiors to write citations; and a rubber stamp traffic court system which finds 90 percent of those cited guilty."

Miller said his legislation will prohibit ticket quotas in California for the same reason that speed traps were outlawed: "they are unfair, undemocratic and unjust. The spectacle of cities gaining revenue for the

conviction of citizens, and judges creating revenue by making criminals out of those brought before them for fair trials somehow goes against our historical concepts of justice and fair play," he said.

The Bay Area legislator said he believes that traffic policemen should be guardians of safety on California streets and highways. "They should catch speeders who are endangering others and be helpful to motorists who are stranded or have flat tires. But if they find more stranded motorists on a given week than speeding motorists, should they be demoted or disciplined?"

Miller said he expects his legislation to be opposed by cities and counties "who make money off ticket quotas."

# EXHIBIT 5

## POLICE QUOTAS

SHAUN OSSEI-OWUSU\*

*The American public is slowly recognizing the criminal justice system's deep defects. Mounting visual evidence of police brutality and social protests are generating an appetite for something different. How to change this system is still an open question. People across the political spectrum vary in their conceptions of the pressing problems and how to solve them. Interestingly, there is one consequential and overlooked area of the criminal justice system where there is broad consensus: police quotas.*

*Police quotas are formal and informal measures that require police officers to issue a particular number of citations or make a certain number of arrests. Although law enforcement leadership typically denies implementing quotas, courts, legislators, and officers have all confirmed the existence of this practice and linked it to odious criminal justice problems such as racial profiling, policing for profit, and over-criminalization. These problems have led legislators in many states to implement statutory prohibitions on quotas. Some of these statutes are of recent vintage and others are decades old. Nevertheless, these prohibitions and their attendant litigation have escaped sustained analytical scrutiny. Legal scholars typically overlook police quotas, subsume them within other categories (e.g., broken windows policing), or give pat acknowledgment of their existence without explaining how they work.*

*This Article corrects these omissions and makes two arguments. First, it contends that police quotas are a significant but undertheorized feature of criminal law and procedure. Quotas make police rewards and sanctions significant features of punishment in ways that can trump criminal offending and pervert due process principles. Second, it argues that quota-based policing is a unique area where there is widespread agreement and possibilities for change. Liberals, libertarians, conservatives, police officers, police unions, and racial minorities have all criticized police quotas. These vastly different constituents have argued that quotas distort police discretion and produce unnecessary police-civilian interactions. This Article supplements these arguments with a novel descriptive, statutory, and jurisprudential account of police quotas in the United States. It offers a framework for understanding the arguments for and objections to quotas, and proposes some normative strategies that could build on statutory and litigation successes.*

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|                                                            |     |
|------------------------------------------------------------|-----|
| INTRODUCTION .....                                         | 531 |
| I. THE TEXTURE OF POLICE QUOTAS .....                      | 537 |
| A. <i>The Definitional Landscape</i> .....                 | 537 |
| 1. <i>Formality</i> .....                                  | 537 |
| 2. <i>Numerical Requirements</i> .....                     | 539 |
| 3. <i>Law Enforcement Activity</i> .....                   | 540 |
| 4. <i>Incentives/Adverse Employment Actions</i> .....      | 541 |
| B. <i>Statutory Landscape</i> .....                        | 542 |
| 1. <i>A Brief History</i> .....                            | 543 |
| 2. <i>Types of Quota Prohibitions</i> .....                | 546 |
| II. POLICE QUOTA LITIGATION .....                          | 551 |
| A. <i>Police Speech and the Blue Code</i> .....            | 552 |
| B. <i>Evidentiary Challenges for Civilians</i> .....       | 555 |
| C. <i>Wins and Losses</i> .....                            | 557 |
| D. <i>Settlements</i> .....                                | 562 |
| III. THE THEORETICAL CONTOURS OF POLICE QUOTAS ....        | 567 |
| A. <i>Defenses</i> .....                                   | 568 |
| 1. <i>Police Idleness</i> .....                            | 568 |
| 2. <i>Productivity</i> .....                               | 570 |
| 3. <i>Evaluation</i> .....                                 | 571 |
| 4. <i>Revenue Generation</i> .....                         | 573 |
| B. <i>Counterarguments</i> .....                           | 575 |
| 1. <i>The Allure of Activity</i> .....                     | 575 |
| 2. <i>Arbitrariness</i> .....                              | 578 |
| 3. <i>Thin Evaluations</i> .....                           | 579 |
| 4. <i>Tradeoffs and Revenue-Based Defenses</i> .....       | 581 |
| C. <i>Additional Objections</i> .....                      | 582 |
| 1. <i>Law Enforcement Objections</i> .....                 | 582 |
| 2. <i>Racial Vulnerability</i> .....                       | 584 |
| 3. <i>The General Significance of Quotas</i> .....         | 587 |
| IV. NORMATIVE PATHS FORWARD.....                           | 590 |
| A. <i>A Prospective Research Program</i> .....             | 591 |
| B. <i>Investigative Agendas and Public Awareness</i> ..... | 592 |
| C. <i>Statutory Reform</i> .....                           | 595 |
| CONCLUSION .....                                           | 597 |
| APPENDIX A. STATE STATUTES .....                           | 598 |
| APPENDIX B. STATE BILLS .....                              | 603 |
| APPENDIX C. MODEL STATUTE .....                            | 605 |

## INTRODUCTION

Before the Great Lockdown, criminal justice reformers across the ideological spectrum lamented “policing for profit.”<sup>1</sup> Commentators usually discuss this practice through the more sanitized sounding category of “legal financial obligations” (LFOs).<sup>2</sup> The economic implications of the COVID-19 pandemic have put a spotlight on this type of predatory “cash register justice.”<sup>3</sup> As of this writing, the National League of Cities has reported that 2,100 cities anticipate budget deficits.<sup>4</sup> Since hundreds of jurisdictions have relied on LFOs in the past,<sup>5</sup> and some have continued to do so during the crisis,<sup>6</sup> there is good cause for concern that LFOs will figure into an uncertain economic future. As Professor Brandon Garrett notes, “[a]fter the last financial crisis, most states ramped up on fines and fees,” transformed police

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<sup>1</sup> DICK M. CARPENTER II, LISA KNEPPER, ANGELA C. ERICKSON & JENNIFER McDONALD, *INSTITUTE FOR JUSTICE, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE* (2d ed. 2015); Roger Pilon, *America’s Frightening “Policing for Profit” Nightmare*, NAT’L INT. (Jan. 23, 2015), <https://nationalinterest.org/feature/americas-frightening-policing-profit-nightmare-12094>; Emma Andersson & Susan Dunn, *‘Policing For Profit’ Is Alive and Well in South Carolina*, ACLU (Feb. 12, 2019, 3:45 PM), <https://www.aclu.org/blog/criminal-law-reform/reforming-police/policing-profit-alive-and-well-south-carolina>.

<sup>2</sup> These LFOs include, but are not limited to: “usage fees” levied on defendants for their arrest, adjudication, incarceration, probation, and electronic monitoring; statutory fines that impose economic sanctions as punishments for crimes; and civil forfeiture laws that allow governments to confiscate money and property that are purportedly linked to crime.

<sup>3</sup> See Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash Register Justice in the Criminal System*, 57 B.C. L. REV. 1483 (2016) (discussing the turning of the criminal justice system into a revenue center for state courts and corrections); see also *Developments in the Law—Policing and Profit*, 128 HARV. L. REV. 1706, 1723–46 (2015) (discussing usage fees, for-profit probation supervision and civil forfeiture); Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 175–78 (2020) (discussing predatory fees various U.S. cities impose on residents through excessive fines, property forfeiture, and debtors’ prisons); Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 285–88 (2014) (describing various economic sanctions, including statutory fines, restitution, forfeitures, administrative court costs, incarceration costs, parole processing, and probation fees).

<sup>4</sup> NAT’L LEAGUE OF CITIES & U.S. CONF. OF MAYORS, *THE ECONOMY AND CITIES: WHAT AMERICA’S LOCAL LEADERS ARE SEEING* (2020), <https://www.usmayors.org/2020/04/14/the-economy-and-cities-what-americas-leaders-are-seeing>.

<sup>5</sup> See Mike Maciag, *Addicted to Fines*, GOVERNING (Sept. 2019), <https://www.governing.com/topics/finance/gov-addicted-to-fines.html> (finding through an extensive national analysis that fines fund “more than 10 percent of general fund revenues in nearly 600 U.S. jurisdictions”).

<sup>6</sup> Brandon L. Garrett, *Guest Post: Court Fines and Fees Shouldn’t Be Used to Recover Lost Revenue from Pandemic*, WASH. POST (May 12, 2020, 7:00 AM), <https://www.washingtonpost.com/crime-law/2020/05/12/guest-post-court-fines-fees-shouldnt-be-used-recover-lost-revenue-pandemic/> (“[S]ome jurisdictions are still jailing people for unpaid debt, potentially exposing them to the novel coronavirus, which is exploding in our jails.”).

officers into “revenue collectors,” and relied on “our poorest citizens to fund basic functions of government.”<sup>7</sup>

Amidst the epidemiological crisis, the summer 2020 protests inspired a new, popular reexamination of policing. Rooted primarily in anger around anti-Black police violence, the protests productively altered public opinion and amplified longstanding issues tied to the political economy of policing.<sup>8</sup> Concerns about cities using the police to generate municipal funds—which garnered attention after the Ferguson unrest six years ago<sup>9</sup>—remain on the reform agenda. But now there is closer scrutiny on the core functions of the police. Popular opinion still hews to the belief that law enforcement serves a public safety function,<sup>10</sup> but visual evidence of racialized police killings is applying pressure to that assumption. These instances of state violence have forced the general public to grapple with the racially and financially exploitative nature of the criminal justice system. Lurking beneath these concerns is a practice that has eluded legal scholars despite its reported prominence in criminal justice administration: police quotas.

Police quotas are formal and informal measures that require police officers to issue a particular number of citations or make a certain number of arrests. They are sometimes formal and pre-specify a quantity.<sup>11</sup> Other times, they are informal and premised on an implied understanding that employment actions—promotion, compensation, or discipline—will be predicated on an officer’s ability to engage in a “sufficient” amount of enforcement activity.<sup>12</sup> Evaluative jargon such

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<sup>7</sup> *Id.*

<sup>8</sup> See Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2020), <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html> (noting leftward public opinion shift in support of race and criminal justice issues).

<sup>9</sup> See Editorial, *Policing for Profit Perverts Justice: Our View*, USA TODAY (Mar. 11, 2015, 7:01 PM), <https://www.usatoday.com/story/opinion/2015/03/11/ferguson-mo-police-traffic-tickets-justice-department-editorials-debates/70175690> (bringing attention to “policing for profit” after Ferguson protests).

<sup>10</sup> See Kendall Karson, *64% of Americans Oppose ‘Defund the Police’ Movement, Key Goals: Poll*, ABC NEWS (June 12, 2020, 5:30 AM), <https://abcnews.go.com/Politics/64-americans-oppose-defund-police-movement-key-goals/story?id=71202300> (describing how Americans oppose calls for defunding the police).

<sup>11</sup> See, e.g., MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) (“No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis.”).

<sup>12</sup> See, e.g., TEX. TRANSP. CODE ANN. § 720.002(a)(1) (West, Westlaw through end of 2019 Reg. Sess.) (“A political subdivision or an agency of this state may not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a peace officer according to the officer’s issuance of a predetermined or specified number of any type or combination of types of traffic citations.”).

as “benchmarks,”<sup>13</sup> “productivity goals,”<sup>14</sup> and a host of other terms often obscure the operation of what are sheer police quotas.<sup>15</sup>

Quotas may seem like an inapt object of inquiry considering current calls for radical change as opposed to incremental reforms. But, as this Article shows, quotas animate important criminal justice issues, chiefly racial profiling, civil rights violations, and police corruption. In *Floyd v. City of New York*, the federal decision that struck down the New York Police Department’s racially discriminatory stop-and-frisk policy, quotas were prominent themes.<sup>16</sup> The Department of Justice’s report on Ferguson, which made the country aware of policing for profit, highlighted quota abolition in its Recommendation section.<sup>17</sup> Interestingly, more than twenty states have statutory prohibitions on police quotas.<sup>18</sup> Criminal defendants, civil rights plaintiffs, aggrieved police officers, and police unions have deployed these statutes in state and federal courts to challenge quotas and extract concessions from municipalities.<sup>19</sup> Nevertheless, police quotas, like criminal enforcement mechanisms more generally,<sup>20</sup> have not received meaningful consideration by legal academics.<sup>21</sup> Instead, scholars typically engage quotas via the related but analytically distinct practice of broken windows policing or anecdotal accounts.<sup>22</sup> This lack of sustained attention

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<sup>13</sup> SERDAR KENAN GUL & PAUL E. O’CONNELL, POLICE PERFORMANCE APPRAISALS: A COMPARATIVE PERSPECTIVE 71 (2013) (acknowledging the existence of quotas and noting how some police departments use “benchmark targets for summonses and arrests”).

<sup>14</sup> POLICE REFORM ORG. PROJECT, WORKING TOWARDS A MORE SAFE AND FAIR CITY: ABOLISHING QUOTAS AND INVOLVING COMMUNITIES 2 (2014), [https://www.policereformorganizingproject.org/wp-content/uploads/2012/09/Working\\_Towards\\_a\\_More\\_Safe\\_and\\_Fair\\_City.pdf](https://www.policereformorganizingproject.org/wp-content/uploads/2012/09/Working_Towards_a_More_Safe_and_Fair_City.pdf) (“[P]roductivity goals”[sic] are a euphemism for a ‘quota system.’”).

<sup>15</sup> See *infra* notes 32–36.

<sup>16</sup> 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013).

<sup>17</sup> U.S. DEP’T OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 91 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [hereinafter Ferguson Report].

<sup>18</sup> See *infra* Appendix A.

<sup>19</sup> See *infra* Part II.

<sup>20</sup> Alice Ristroph, *The Thin Blue Line from Crime to Punishment*, 108 J. CRIM. L. & CRIMINOLOGY 305 (2018) (describing how substantive criminal law scholarship rarely addresses issues of police conduct).

<sup>21</sup> Some noteworthy exceptions that have given some attention to quotas include Nathaniel Bronstein, Note, *Police Management and Quotas: Governance in the CompStat Era*, 48 COLUM. J.L. & SOC. PROBS. 543 (2015) and Mary De Ming Fan, *Disciplining Criminal Justice: The Peril Amid the Promise of Numbers*, 26 YALE L. & POL’Y REV. 1 (2007).

<sup>22</sup> On broken windows policing, see generally ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING (2018) (investigating the consequences of broken windows policing in New York City). For anecdotal accounts, see COREY PEGUES, ONCE A COP: THE STREET,

persists despite scores of case law,<sup>23</sup> empirical evidence,<sup>24</sup> references in government reports,<sup>25</sup> and annual settlements,<sup>26</sup> that all point to the existence of police quotas across the country.

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THE LAW, TWO WORLDS, ONE MAN 146 (2016) (former NYPD officer describing the existence of quotas in the department); NORM STAMPER, TO PROTECT AND SERVE: HOW TO FIX AMERICA'S POLICE 1–4 (2016) (former San Diego officer describing the existence of quotas in his department); John Marzulli, *We Fabricated Drug Charges Against Innocent People to Meet Arrest Quotas, Former Detective Testifies*, N.Y. DAILY NEWS (Oct. 13, 2011), <https://www.nydailynews.com/news/crime/fabricated-drug-charges-innocent-people-meet-arrest-quotas-detective-testifies-article-1.963021> (officer admitting that the NYPD framed people to meet quota requirements).

<sup>23</sup> See, e.g., *Becker-Ross v. State*, 595 S.W.3d 261, 265, 269, 272 (Tex. App. 2020) (finding that there was sufficient evidence to show that the city administrator pressured the city marshal to write a certain number of traffic tickets within a specified period in violation of state prohibition on quotas); *Policemen's Benevolent Labor Comm. v. City of Sparta*, No. 5-19-0039, 2019 WL 5457948, at \*1, \*7 (Ill. App. Ct. Oct. 22, 2019) (concluding that a police department's practice of evaluating citations, traffic stop warnings, and extra-duty assignments violated state law prohibiting the implementation of quotas); *Gerwer v. Kelly*, 980 N.Y.S.2d 275, 275 (Sup. Ct. 2013) (ruling against an officer who falsified thirty-seven fictitious summonses in order to meet an alleged quota requirement); *People v. Schwartz*, No. 282028, 2009 WL 30457, at \*1, (Mich. Ct. App. Jan. 6, 2009) (noting that the defendant officer's issuing of four undated speeding tickets to meet a quota would secure entitlement to overtime).

<sup>24</sup> See JOHN McLAUGHLIN, McLAUGHLIN & ASSOC.'S, *NEW YORK PATROLMEN'S BENEVOLENT ASSOCIATION MEMBERSHIP STUDY* 53 (2016), <https://www.nycpba.org/media/19346/160315-pbasurvey.pdf> (surveying approximately 6,000 members of New York City's police union which found that 89% of respondents believed that NYPD supervisors imposed quotas); Jonathan Auerbach, *Are New York City Drivers More Likely to Get a Ticket at the End of the Month?*, SIGNIFICANCE MAG., Aug. 2017, at 25 (using significance testing to conclude that New York City drivers are more likely to receive a ticket at the end of the month, substantiating a long-held belief about the use of quotas); Scott W. Phillips, *Police Discretion and Boredom: What Officers Do When There Is Nothing to Do*, 45 J. CONTEMP. ETHNOG. 580, 589 (2016) (qualitative study of a police department finding that officers noted that there was no formal quota but that they were expected write about ten tickets a month).

<sup>25</sup> See Ferguson Report, *supra* note 17, at 11; U.S. DEP'T OF JUST., C.R. DIV. & U.S. ATT'Y.'S OFF., DIST. OF N.J., *INVESTIGATION OF THE NEWARK POLICE DEPARTMENT* 21 (2014), [https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark\\_findings\\_7-22-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf).

<sup>26</sup> See Mike Sprague, *Whittier to Pay \$3 Million to Settle Police Ticket Quota Case*, WHITTIER DAILY NEWS (Jan. 16, 2020, 2:11 PM), <https://www.whittierdailynews.com/2020/01/15/whittier-to-pay-3-million-to-settle-police-ticket-quota-case>; Matt Sledge, *Gretna Police Agree to \$70K Settlement in Ex-Cop's Lawsuit Claiming Arrest Quotas*, NEW ORLEANS ADVOC., (June 3, 2019, 11:12 AM), [https://www.nola.com/news/courts/article\\_b1990837-e425-5c46-a3d8-4817a8b81367.html](https://www.nola.com/news/courts/article_b1990837-e425-5c46-a3d8-4817a8b81367.html); Joshua Sharpe, *DeKalb Still Denies Police 'Quota' System After Settling Suit for \$150K*, ATLANTA J.-CONST. (Sept. 27, 2018), <https://www.ajc.com/news/crime-law/dekalb-still-denies-police-quota-system-after-settling-suit-for-150k/IuFHQg3pT4lnsVyPETZxkM>; Peggy Wright, *Mendham Twp. Cop's 'Ticket Quota' Lawsuit Settles for \$650K*, MORRISTOWN DAILY REC. (Dec. 5, 2017, 8:37 AM), <https://www.dailyrecord.com/story/news/2017/12/04/mendham-twp-cops-ticket-quota-lawsuit-settles-650-k/918964001>; Hailey Branson-Potts & Emily Alpert Reyes, *City Will Pay LAPD Officer Nearly \$1 Million to End Lawsuit over Ticket Quotas*, L.A. TIMES (Jan. 13, 2016, 11:05 PM), [59 | Page 264](https://www.latimes.com/local/cityhall/la-me-0114-lapd-</a></p>
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This Article makes two straightforward arguments. First, it contends that police quotas shape the enforcement of criminal laws by introducing a host of perverse incentives into an already insecure body of criminal procedure. This leads to the Article's second claim. I argue that quota-based policing is a discrete area where there is widespread agreement about the problems with quota-based policing and possibilities for change. Police unions, often considered the source of our penal status quo, have argued that such requirements distort discretion and generate unnecessary police-civilian contact.<sup>27</sup> Liberal, conservative, and libertarian reformers have all lodged similar arguments and emphasized the ways quotas lead to violations of civil liberties.<sup>28</sup>

The broad condemnation of quota-based policing makes this issue a particularly ripe place for reform, and an area that should be scrutinized by legal scholars and advocates. This Article inaugurates the conversation. It builds on the fragments of existing scholarship to offer a robust framework for understanding police quotas. It offers a novel descriptive and statutory account of police quotas and is the first piece of scholarship to describe the jurisprudential landscape of this practice.

Eliminating police quotas would be no panacea. However, it is an underappreciated area that has synergies with a larger constellation of penal change strategies. For abolitionists, addressing quotas could be an interim step toward a world with a smaller police imprint.<sup>29</sup> If advocates achieve the goal of defunding the police, addressing quotas will become especially central, as smaller police forces may increas-

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settlement-20160114-story.html; J. David Goodman, *Officer Who Disclosed Police Misconduct Settles Suit*, N.Y. TIMES (Sept. 29, 2015), <https://www.nytimes.com/2015/09/30/nyregion/officer-who-disclosed-police-misconduct-settles-suit.html> (\$600,000); Dave Phillips, *Former Novi Officer Gets \$280,000 in Ticket Quota Lawsuit Settlement*, OAKLAND PRESS (Apr. 17, 2014), [https://www.theoaklandpress.com/news/nation-world-news/former-novi-officer-gets-280-000-in-ticket-quota-lawsuit-settlement/article\\_35e4db17-f817-5965-98c9-cef2484f562b.html](https://www.theoaklandpress.com/news/nation-world-news/former-novi-officer-gets-280-000-in-ticket-quota-lawsuit-settlement/article_35e4db17-f817-5965-98c9-cef2484f562b.html); Joel Rubin & Catherine Saillant, *L.A. Approves \$6-Million Settlement over Alleged Traffic Ticket Quotas*, L.A. TIMES (Dec. 10, 2013, 12:00 AM), <https://www.latimes.com/local/la-xpm-2013-dec-10-la-me-tickets-20131204-story.html>.

<sup>27</sup> See *infra* Section III.C.1.

<sup>28</sup> See *infra* Section III.C.3.

<sup>29</sup> See Dorothy E. Roberts, *The Supreme Court, 2018 Term - Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 11, 114–18 (2019) (arguing that abolition movement activists can utilize the Reconstruction Amendments and “non-reformist reforms” to temporarily further their aims and ultimately build a society without prisons); Anna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 460 (2018) (describing how the abolitionist approach focuses on reducing the greater social and fiscal footprint of police on society as opposed to efforts to improve the police and criminal law).

ingly rely on quotas and technology to do more with less personnel.<sup>30</sup> This is precisely what has occurred in Camden, New Jersey, a city that is considered a model for police reform.<sup>31</sup> For law enforcement officials who oppose quotas and a general public who believe the police have a role in our social order, attention to quotas could lead to more rigorous conversations about the function of police.

This Article proceeds in four Parts. Part I sketches the different ways police quotas take shape organizationally. It then offers a brief legislative history and analysis of anti-quota statutes.

Part II moves to the caselaw and describes how police officers, criminal defendants, and civil rights plaintiffs have challenged police quotas. This Part shows how doctrinal and evidentiary hurdles have hampered claims, but also details how some parties have succeeded in court or extracted settlements from municipalities.

Part III captures the definitional contours of quotas. First, I discuss the defensibility of this practice. Though often unarticulated, police quotas give law enforcement leadership a way to monitor, measure, and evaluate police activity while guarding against legitimate concerns about officers shirking their duties. Such evaluations are akin to the kinds of assessments that are standard in many workplaces. This Part offers responses to these defenses. It also describes additional problems that police quotas pose for three groups: police officers forced to comply with these requirements; marginalized communities that are often the subjects of quota-satisfying officers; and a general public that can be deprived of efficiently used resources because of quotas.

Part IV takes a normative turn. This Part offers suggestions for how to raise public awareness of quota-based policing and generate coalition-building in states that do not already have quota prohibitions. This Part also provides suggestions on how to improve existing statutes.

The Conclusion offers thoughts on the urgency of this topic, and the Appendices offer a comprehensive list of quota bills and statutes.

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<sup>30</sup> Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277, 285 (2020) (suggesting that defunding police could lead to excessive ticketing and civil asset forfeiture); see Ingrid Burrington, *What Amazon Taught the Cops*, NATION (May 27, 2015), <https://www.thenation.com/article/archive/what-amazon-taught-cops> (discussing how algorithmic criminal justice assumes the credibility of the underlying crime data and noting how “countless scandals over quotas” in policing suggest that this is a huge assumption).

<sup>31</sup> See Sidney Fussell, *What Disbanding the Police Really Meant in Camden, New Jersey*, WIRED (July 1, 2020, 3:03 PM), <https://www.wired.com/story/disbanding-police-really-meant-camden> (describing the increase in electronic surveillance after the city overhauled its police department); see *infra* notes 177–83 and accompanying text.

## I

## THE TEXTURE OF POLICE QUOTAS

This Part maps the terrain of police quotas. Scholars and the media often discuss the existence of quotas, but the term itself is often undefined or poorly described. Section I.A offers a robust representation of how quotas are administered. Section I.B details the statutory landscape of anti-quota laws and categorizes the twenty-one states that have enacted such legislation.

A. *The Definitional Landscape*

Quotas are formal and informal measures that require law enforcement to have a certain number of contacts with individuals or issue a certain number of citations or arrests. Because quotas have a pejorative connotation, law enforcement organizations use a range of alternative terms to accomplish the same work. These phrases—which are sometimes used earnestly and sometimes as subterfuge—include “benchmarks,”<sup>32</sup> “productivity goals,”<sup>33</sup> “targets,”<sup>34</sup> “performance management,”<sup>35</sup> and “objectives.”<sup>36</sup> To get a more granular understanding of quotas, one might consider four features of this police practice: 1) the level of formality; 2) how they are quantified; 3) the law enforcement action that is required; and 4) the prospect of an adverse/favorable employment action.

1. *Formality*

Quotas range in their formality. Like any other policy, quotas can operate through formal channels (e.g., in writing or through official

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<sup>32</sup> GUL & O’CONNELL, *supra* note 13.

<sup>33</sup> See POLICE REFORM ORG. PROJECT, *supra* note 14; Robert Gangi, *When Police Are Encouraged to Abuse, Not Protect*, ALTERNET (Nov. 30, 2012), <https://www.alternet.org/2012/11/when-police-are-encouraged-abuse-not-protect> (“NYPD officials use the term ‘productivity goals’ as a poorly veiled euphemism for the Department’s quota system, as a thin cover for the pressure placed on street officers to make an expected number of arrests, or to issue a sufficient number of summonses.”).

<sup>34</sup> Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, NEW PERSPS. POLICING BULL., Mar. 2015, at 1, 18 (“[S]ome departments set targets for functional outputs, including enforcement activities such as arrests, stops, searches and traffic citations.”).

<sup>35</sup> Jen Chung, *Bloomberg Says Police Quotas Will Be Investigated*, GOTHAMIST (Nov. 9, 2010, 5:45 PM), <https://gothamist.com/news/bloomberg-says-police-quotas-will-be-investigated> (quoting Mayor Bloomberg as saying “we don’t have quotas . . . but we certainly have performance management”).

<sup>36</sup> TODD DOUGLAS, *THE POLICE IN A FREE SOCIETY: SAFEGUARDING RIGHTS WHILE ENFORCING THE LAW* 71 (2017) (noting that many police agencies “have informal quotas: *precinct averages, benchmarks, performance goals, objectives, targets*, and other euphemistic references to what is essentially a quota”).

communication) or through informal mechanisms. A useful example of a formal quota can be found in Ridgetop, Tennessee.<sup>37</sup> The city of approximately 2,000 people disbanded its police department in 2019 after officers exposed an attempt by the mayor and vice mayor to impose a quota. Officers recorded both officials demanding that the department write 210 citations to help generate revenue for the city.<sup>38</sup> Another example is from Brooklyn, New York, where a New York Police Department (NYPD) official posted memos in a police stationhouse detailing how many summonses cops were required to hand out.<sup>39</sup> One document outlined the specific number of tickets needed: sixty cell phone, fifty seatbelts, sixty-five double park, forty bus stops, and twenty-five tints.<sup>40</sup> Another memo began, “[g]ood day we need the following,” and proceeded to list various moving violations.<sup>41</sup> That document required that summonses be handed out at accident-prone locations and specified five intersections.<sup>42</sup>

Quotas can also be informal and based on unwritten requirements or implied understandings.<sup>43</sup> In North Brunswick, New Jersey, one veteran officer recounted how officers would receive four hours of overtime pay for every forty tickets written.<sup>44</sup> Though the police department had no official policy, there was an “unwritten understanding.”<sup>45</sup> Another law enforcement official described how officers would “go hunting” in Black and Latinx neighborhoods and compete to see who could issue the most tickets.<sup>46</sup> This kind of informality is especially common in states that legally prohibit police quotas, since police brass want to avoid memorializing requirements in ways that

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<sup>37</sup> Zuri Davis, *A Tennessee Police Department's Last Officer Resigns over Ticket Quotas*, REASON (Nov. 6, 2019, 2:45 PM), <https://reason.com/2019/11/06/a-tennessee-police-departments-last-officer-resigns-over-ticket-quotas/printer>.

<sup>38</sup> *Id.*

<sup>39</sup> See Chung, *supra* note 35.

<sup>40</sup> *Id.*

<sup>41</sup> James Fanelli, *Cops at Brooklyn's Crime-Ridden 77th Precinct Told to Meet Quotas for Moving Violations, Memos Say*, N.Y. DAILY NEWS (Nov. 8, 2010), <https://www.nydailynews.com/new-york/cops-brooklyn-crime-ridden-77th-precinct-told-meet-quotas-moving-violations-memos-article-1.452621>.

<sup>42</sup> *Id.*

<sup>43</sup> See Rich Morin, Kim Parker, Renee Stepler & Andrew Mercer, *Inside America's Police Departments*, PEW RSCH. CTR. (Jan. 11, 2017), <https://www.pewsocialtrends.org/2017/01/11/inside-americas-police-departments> (finding that about a third of police officers say they are expected to meet a quota for arrests and tickets).

<sup>44</sup> Sarah Wallace, *NJ Police Targeted Black and Latino Neighborhoods to Fulfill Ticket Quotas, Cops Say*, NBC N.Y. (Feb. 13, 2020, 8:08 PM), <https://www.nbcnewyork.com/investigations/nj-police-targeted-black-and-latino-neighborhoods-to-fulfill-ticket-quotas-cops-say>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

can be subject to discovery in future litigation or scrutinized by the media.

## 2. Numerical Requirements

Police quotas have quantitative dimensions. Sometimes they are numerically specific, as in the Brooklyn example mentioned above. Other examples are instructive. Police documents from Dekalb County, Georgia, for instance, revealed that officials kept detailed statistics on officer activities, with categories including “citation goal[s],” “total citations,” and “% to goal citations.”<sup>47</sup> A slogan for the police department was, “[t]wo tickets a day keep the sergeants away. Five a day keep the lieutenants at bay.”<sup>48</sup> In Pennsylvania, two officers lied about a DUI arrest and were caught on police dashcam video conferring about which one would get credit for the arrest because they both needed their “20 for the month.”<sup>49</sup> When criminal justice commentators discuss quotas, they usually focus on these numerically specific requirements.

But not all quotas are numerically precise. Sometimes the numerical dimension of a quota requirement is just a general guide and some quotas don’t specify any number at all. On the former, Denver, Colorado, is noteworthy. Colorado has no statutory prohibition on quotas. In 2016, the City, which generated \$30 million annually from parking citations, inked a \$50 million contract with a software company to manage its parking enforcement.<sup>50</sup> Contract documents indicated that predictive algorithms produced a “daily citation expectation” for agents.<sup>51</sup> The City insisted that the goal was not a strict requirement but a “guide.”<sup>52</sup> A legislative audit of West Virginia State Police, which identified an informal quota regime, illustrates the further vagueness of quotas that specify no number at all. The auditor’s survey included many responses from officers who indicated

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<sup>47</sup> Rhonda Cook, *Arrest Quotas Led Dekalb Officer to Plant Drugs, Lawsuit Claims*, ATLANTA J.-CONST. (Nov. 28, 2016), <https://www.ajc.com/news/local/arrest-quotas-led-dekalb-officer-plant-drugs-lawsuit-claims/5AMfRowntaQrZfQLsAhL6K>.

<sup>48</sup> Sharpe, *supra* note 26.

<sup>49</sup> Peter Hall, *Lawsuit Ends with Reminder to Pennsylvania State Troopers About Rule Against Ticket Quotas*, MORNING CALL (June 26, 2018), <https://www.mcall.com/news/police/mc-nws-pa-state-police-dui-quota-settlement-20180626-story.html>.

<sup>50</sup> Jeremy Jojola, *A Quota Behind Denver Parking Citations?*, 9NEWS (Feb. 27, 2017, 11:12 PM), <https://www.9news.com/article/news/local/investigations/a-quota-behind-denver-parking-citations/415777446>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

that no specific requirements existed, but that “numbers are strongly emphasized.”<sup>53</sup>

### 3. Law Enforcement Activity

Quotas require a particular kind of law enforcement activity. This is typically an arrest, citation, or ticket. In rare instances, they require contacts, warnings, or stops. Arrests, citations, and tickets are at the center of police quotas and constitute much of this Article’s discussion. Allegations and settlements surrounding arrest quotas have hounded the NYPD for years.<sup>54</sup> Citations and tickets were at the center of the Department of Justice’s Ferguson Report.<sup>55</sup> Contacts or stops require more explanation.

Sometimes contacts substitute for arrests and citations. For example, in Arizona, a state without a statutory prohibition on quotas, a Tucson police chief was criticized for an overt one-ticket-a-day policy. After he changed it to a one-contact-a-day requirement,<sup>56</sup> Republicans led a push for an anti-quota bill. Though the Fraternal Order of Police supported the bill, Governor Doug Ducey ultimately vetoed it.<sup>57</sup> As a result, police in Arizona remain free to use contacts to fulfill quota requirements.

South Carolina, which does have a statutory prohibition,<sup>58</sup> highlights the importance of contacts in police quotas. The Santee Police Department, situated along the well-traveled Interstate 95, came under scrutiny in 2019 after a memo demanding “a heavy increase” in traffic stops surfaced.<sup>59</sup> Lieutenant Riley Null authored the memo,

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<sup>53</sup> W. VA. LEGIS. AUDITOR, PERFORMANCE EVALUATION & RSCH. DIV., LEGISLATIVE PERFORMANCE REVIEW—WEST VIRGINIA STATE POLICE: SURVEY COMMENTS 46, 52, 54 (2008). The auditor asked: “Does the WVSP require each Trooper to issue a specified number of traffic citations or warning citations on a monthly basis?” Some of the responses included: “No specific #, but we have to show results. . . . No specific number is given, but ‘numbers’ are strongly emphasized. . . . There is no specific number but if you don’t have contacts they reprimand you. . . . No specific #, but get bad [employee performance appraisals] or verbally reprimand [sic] for not having a considerable amount of contacts.” *Id.* at 43–54.

<sup>54</sup> See *infra* notes 194–95.

<sup>55</sup> See Ferguson Report, *supra* note 17.

<sup>56</sup> Howard Fischer, *Arizona Bill Would Outlaw Police Traffic Ticket Quotas*, TUSCON.COM (Jan. 23, 2015), [https://tucson.com/news/local/crime/arizona-bill-would-outlaw-police-traffic-ticket-quotas/article\\_d6bf8125-aec6-5e2e-ad0d-4ab16b181d4c.html](https://tucson.com/news/local/crime/arizona-bill-would-outlaw-police-traffic-ticket-quotas/article_d6bf8125-aec6-5e2e-ad0d-4ab16b181d4c.html).

<sup>57</sup> Ducey argued that “in its current form, I worry that police chiefs and local entities will be prevented from objectively gauging performance in their departments—a concern for officers themselves, the public and overall public safety.” Matthew Hendley, *Ducey Vetoes Ban on Police Ticket Quotas*, PHX. NEW TIMES (Apr. 2, 2015, 5:57 AM), <https://www.phoenixnewtimes.com/news/ducey-vetoes-ban-on-police-ticket-quotas-6661896>.

<sup>58</sup> See S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.).

<sup>59</sup> Michael Majchrowicz, *Internal Memo Suggests SC Police Department Violated Law Banning Ticket Quotas*, POST & COURIER (May 16, 2019), <https://>

sent it to patrol officers, and called for increased “contacts” with motorists.<sup>60</sup> Null threatened, “if activity is not increased, you will be required to have your body cameras recording during your entire shift to try and determine what activity is consuming your time.”<sup>61</sup> Because the South Carolina statute makes an exception for points of contact,<sup>62</sup> the memo is likely legal. This is why it is important to offer the definitional landscape of quotas before delving into the statutory prohibitions: many of the statutes that prohibit quotas do not cover the full range of police activity that could be considered a quota.

#### 4. Incentives/Adverse Employment Actions

Incentives and adverse employment decisions loom in the background of police quotas. Police departments have offered overtime, barbecue, pizza, gift cards, car wash coupons, and trophies to officers who meet quotas.<sup>63</sup> Failure to meet quotas can result in adverse employment actions, including denial of days off, transfers, undesirable assignments, and, of course, termination.<sup>64</sup> Police leadership can communicate the threat of an adverse employment action to an officer in an attempt to make them comply with a quota. In the cash-strapped city of Gretna, Louisiana, situated across the Mississippi River from New Orleans, threats of adverse employment decisions were rampant. In a recorded conversation with a patrolman, Lieutenant J.R. Rogers

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[www.postandcourier.com/news/internal-memo-suggests-sc-police-department-violated-law-banning-ticket-quotas/article\\_aa02a4d6-77f2-11e9-8a32-b75a8475adde.html](http://www.postandcourier.com/news/internal-memo-suggests-sc-police-department-violated-law-banning-ticket-quotas/article_aa02a4d6-77f2-11e9-8a32-b75a8475adde.html).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See § 23-1-245 (defining “points of contact” as a “law enforcement officer’s interaction with citizens and businesses within their jurisdictions and the law enforcement officer’s involvement in community-oriented initiatives” and allowing for evaluations based on this category).

<sup>63</sup> Randy Travis, *Douglasville Cops Offered BBQ if They Wrote Enough Traffic Tickets*, FOX 5 ATLANTA (Mar. 10, 2020), <https://www.fox5atlanta.com/news/douglasville-cops-offered-bbq-if-they-wrote-enough-traffic-tickets> (barbeque); Daniela Altimari & John Lender, *Police Commissioner Says ‘Pizza Memo’ Was Not Ticket Quota*, HARTFORD COURANT (Apr. 2, 2012), <https://www.courant.com/news/connecticut/hc-xpm-2012-04-02-hc-pizza-tickets-report-0403-20120402-story.html> (pizza); Justin George, *Metro Transit Police Held a Competition to Encourage Arrests and Other Enforcement*, WASH. POST (Feb. 20, 2020, 7:02 PM), [https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-held-a-competition-to-encourage-arrests-and-other-enforcement/2020/02/12/02146d84-4dd7-11ea-9b5c-eac5b16dafa\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-held-a-competition-to-encourage-arrests-and-other-enforcement/2020/02/12/02146d84-4dd7-11ea-9b5c-eac5b16dafa_story.html) (gift cards); Debbie Dujanovic, *Emails Reveal Incentives Behind Cottonwood Police Issuing Tickets*, KSL BROAD. (Oct. 24, 2013, 11:01 PM), <https://www.ksl.com/article/27376993/emails-reveal-incentives-behind-cottonwood-police-issuing-tickets> (carwash coupons and gift cards); Jack Douglas Jr. and Jason Allen, *One North Texas Officer Says Ticket Quotas Do Exist. . . And It May Be a Ticket to a Trophy*, CBS DFW (May 20, 2013, 10:23 PM), <https://dfw.cbslocal.com/2013/05/20/one-north-texas-officer-says-ticket-quotas-do-existand-it-may-be-a-ticket-to-a-trophy> (trophies and letters of appreciation).

<sup>64</sup> Cook, *supra* note 47.

insisted, “[s]omebody has got to go to jail every 12 hours,” and threatened termination if the subordinate failed to comply.<sup>65</sup> Another officer testified that officers were told the city would stop paying for their insurance and contribute less to their retirement fund if they did not increase their arrests and citations.<sup>66</sup> The tethering of quota compliance to job security was so blatant that one officer gave a sergeant who was recently passed over for a promotion “a gift of knee pads, vaseline [sic], and ink pen refills—the implication being that the only way he’d be able to get that promotion was to either write up more of his patrolmen for not meeting the quota or perform sexual favors.”<sup>67</sup>

Understanding these four features of quota-based policing—the level of formality, the nature of the numerical requirement, the enforcement activity demanded, and the potential employment actions—is important for a few reasons. First, the scholarly literature has yet to offer a robust description of quotas that captures the different permutations of the practice. Second, statutory prohibitions fall short of capturing the full scope of police activities that constitute quotas, which partially explains why quotas still exist in places that have enacted rules proscribing the practice. Third, these categories highlight gray areas in a non-transparent culture of policing. The strongest version of a quota would be a memorialized demand that police arrest a specific amount of people or face termination. A less detectable iteration might involve an informal communication to an officer to “increase their activity” with no threat of adverse employment outcome.<sup>68</sup> Such conduct would be permissible under some statutes and prohibited in others. Therefore, having a definitional grasp of these features is integral to understanding the following discussion about statutory prohibitions.

### B. Statutory Landscape

This subsection briefly describes the politics that animated some of the legislative prohibitions on quotas. Some of these statutes are of late-twentieth-century vintage and developed against the backdrop of police professionalization. These early anti-quota laws were driven by interests in police work conditions, public safety, and fair policing.

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<sup>65</sup> Michael Isaac Stein, *Police Lawsuits Provide an Inside View of Cash Register Justice in Louisiana*, SCALAWAG (Nov. 5, 2018), <https://www.scalawagmagazine.org/2018/11/louisiana-cash-register-justice>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., CRIME + PUNISHMENT (Hulu 2018) (describing a conversation in which an NYPD lieutenant tells an officer that he needs to “catch up with everybody” in terms of numbers of arrests).

These issues, along with concerns about racial justice, have continued to inspire more recent statutes. After explaining this history, this subsection categorizes the various anti-quota statutes.

### 1. *A Brief History*

The legislative history of quota prohibitions is scattered because, in many states, legislators passed these laws without fanfare. However, a close inspection can impose some coherence and highlight themes of public safety, police conditions, and police corruption. Noteworthy legislative activity surfaced in the 1970s. Black Democratic Assemblyman John Miller ushered California's bill in 1975.<sup>69</sup> Miller, who has been described as a "progressive independent in local politics," was politically shrewd and couched his support for quota bans in inclusive rhetoric.<sup>70</sup> The Howard University-trained lawyer—whose district included the racially and socio-economically diverse cities of Oakland and Berkeley—voiced a simultaneous concern for police officers and for the public. Describing quotas as "unfair, undemocratic, and unjust," Miller was troubled by the idea that failure to meet quotas could lead to an officer's demotion.<sup>71</sup> At the same time, Miller expressed concern about "the average California driver" who would be unbelievably by a "rubber stamp traffic court system which finds 90 percent of those cited guilty."<sup>72</sup> Finally, Miller highlighted due process issues and pre-saged the problems the Department of Justice would find forty years later in Ferguson when he stated: "The spectacle of cities gaining revenue for the conviction of citizens, and judges creating revenue by making criminals out of those brought before them . . . goes against our historical concepts of justice and fair play."<sup>73</sup> In many ways, California's statute was motivated by multi-constituent concerns that remain applicable today.

New York passed its bill in 1978, and though police and the public may have been beneficiaries, the statute was a response to outright police corruption.<sup>74</sup> The Commission to Investigate Alleged Police

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<sup>69</sup> See *Measure to Outlaw CHP's Ticket Quotas*, BERKELEY GAZETTE, July 22, 1975, at 1 (describing Miller's role in helping pass California's anti-quota law).

<sup>70</sup> David Mundstock, *Chapter 10 – The June 1976 Campaign and the New Slate Politics*, BERKELEY CITIZENS ACTION, [https://berkeleycitizensaction.org/?page\\_id=397](https://berkeleycitizensaction.org/?page_id=397) (last visited Dec. 28, 2020).

<sup>71</sup> See *Measure to Outlaw CHP's Ticket Quotas*, *supra* note 69, at 1.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*; see Ferguson Report, *supra* note 17, at 2 ("This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.").

<sup>74</sup> See Bronstein, *supra* note 21, at 544.

Corruption, or the Knapp Commission (led by United States District Court Judge Percy Knapp), produced one of the earliest and most extensive insights into the use of quotas in modern urban policing.<sup>75</sup> The Commission found that “informal arrest quotas” were “an inducement to a particular kind of corruption,” most specifically, “the arrest of individuals not actually apprehended in the commission of the charged crime.”<sup>76</sup> Testimony to the Commission described “a pattern of requiring a quota of four felony arrests per month.”<sup>77</sup> The informal policy led to a practice of “flaking,” which is when police plant drugs on suspects.<sup>78</sup> The longstanding, sexist practice of arresting sex workers and not their procurers also featured prominently in New York’s quota-based culture. “Plainclothesmen assigned to prostitution details were faced with the necessity of producing a stipulated number of arrests a night and, in order to do so, often arrested persons they considered to be ‘obvious’ prostitutes, without obtaining sufficient legal evidence.”<sup>79</sup>

Finally, the Commission unearthed widespread collusion between police and numbers runners, particularly in “ghetto neighborhoods” where investigators discovered “numerous bookmaking operations and some high-stakes, organized card and dice games.”<sup>80</sup> These operations were brazenly public and payoffs to police ensured that these activities would go unpunished, “except for token arrests made to give an appearance of activity.”<sup>81</sup> The report’s description, which reveals the intricacy of corruption and its relationship to quotas, is worth quoting at length:

Most often, when plainclothesmen needed a token arrest to meet arrest quotas or to give the appearance of activity, they would tell the operator of a spot and arrange a time and place for the arrest. The operator would then select someone to take the arrest, who was usually either one of his employees who had a relatively clean arrest record or an addict who was paid for his trouble. Whoever took the arrest would put a handful of bogus policy slips in his pocket and meet the plainclothesman at the designated time and place, where, often as not, he would get into their car without even waiting to be asked.<sup>82</sup>

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<sup>75</sup> COMM’N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY’S ANTI-CORRUPTION PROCEDURES, COMM’N REP. 28 (1972).

<sup>76</sup> *Id.* at 28.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 71.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 83.

Whereas work conditions and the unfair doling out of tickets helped generate the enactment of the California statute, in New York it was the excesses of police culture and corruption that necessitated statutory prohibitions on quotas. In the ensuing decades, many states would pass laws that drew on one or more of these rationales.

Concerns about the work environment of police inspired the enactment of a few statutes. Democratic State Representative Perry Bullard introduced Michigan's statute in 1988 after speaking with police officers who described how the pressure to comply with quotas diminished their ability to fight crime.<sup>83</sup> During testimony for the bill, Jack Brown, executive director of the Fraternal Order of Police, lamented, "One of the most disgusting things we have as police officers is these quotas."<sup>84</sup> Wisconsin, led by Republican State Assemblyman DuWayne Johnsrud, passed its bill more than a decade later in 1998.<sup>85</sup> Before the bill's passage, Johnsrud said, "[a]ny time an officer has to work under a quota, he has to make decisions with a hammer hanging over his head."<sup>86</sup> Reflecting on the bill fifteen years after its passage, Johnsrud's rationale was the same. He explained that the bill came at the wishes of the State Patrol Troopers Union, which was concerned that officers were writing tickets at the expense of other safety-related work.<sup>87</sup> In Utah, Republican State Senator Howard Stephenson helped the state pass its bill in 2018.<sup>88</sup> Stephenson noted his opposition to police operating as revenue generators and claimed, "I don't believe policemen should be looking to meet a quota on bad behavior. What if there isn't enough bad behavior? Do you just have to make it up?"<sup>89</sup> The various statutes, passed in states spanning the east coast to the west coast, demonstrate the public safety-interested, police officer-protecting nature of quota prohibitions.

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<sup>83</sup> See Jim Mitzfield, *Ticket Quotas Cost Undeserving Drivers: Police*, S. BEND TRIB., Sept. 1, 1987, at B2; MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

<sup>84</sup> Mitzfield, *supra* note 83.

<sup>85</sup> *Police Banned from Using Speeding Ticket Quotas*, J. TIMES (Mar. 25, 1998), [https://journaltimes.com/news/national/police-banned-from-using-speeding-ticket-quotas/article\\_a6faa127-90da-566f-a702-d46300ecf88f.html](https://journaltimes.com/news/national/police-banned-from-using-speeding-ticket-quotas/article_a6faa127-90da-566f-a702-d46300ecf88f.html).

<sup>86</sup> Reid Magney, *Officials Say Standards Are Needed for Police*, LA CROSSE TRIBUNE, Jan. 8, 1998, at A6.

<sup>87</sup> Adam Schragar, *Legislators: State Patrol Policy Lists Quota, is 'Against the Law.'*, CHANNEL3000 (Dec. 28, 2018, 1:32 AM), <https://www.channel3000.com/legislators-state-patrol-policy-lists-quota-is-against-the-law>.

<sup>88</sup> See Ben Winslow, *Utah Could Soon Ban Police Quotas in Traffic Stops*, FOX 13 (Feb. 5, 2018, 11:58 PM), <https://www.fox13now.com/2018/02/05/utah-could-soon-ban-police-quotas-in-traffic-stops>.

<sup>89</sup> *Id.*

Racial controversy has also inspired some states' prohibitions on police quotas. After the killing of Michael Brown exposed Ferguson's police practices, then-state congressman and future Republican Attorney General Eric Schmitt shepherded Missouri's legislation. Schmitt said that he authored the bill to "ensure that our citizens wouldn't simply be used as ATMs to fill municipal government coffers."<sup>90</sup> The police killing of Walter Scott, an unarmed Black motorist, likely led to the enactment of South Carolina's statute. After thirty-three-year-old officer Michael Slager stopped fifty-year-old Scott for a broken taillight, Scott fled, and Slager shot him in the back.<sup>91</sup> Slager claimed that he struggled with Scott over his taser and shot him out of fear.<sup>92</sup> Video evidence taken by a bystander later revealed that Scott was seventeen feet away when the officer shot him and that Slager had dropped his taser near him in "an attempt to plant evidence and skew the investigation."<sup>93</sup> Justin Bamberg, a civil rights attorney who represented the Scott family and serves as a Democratic Representative in the South Carolina General Assembly, subsequently authored the bill.<sup>94</sup> After Tennessee passed its quota bill in June 2020, Democratic Representative Rick Staples noted that quotas lead to Black people being frisked by police officers, and said that the "legislation will limit unnecessary contact between the two."<sup>95</sup> The existence of bipartisan and multi-constituent opposition to quotas is apparent from the widespread enactment of these statutory prohibitions.

## 2. *Types of Quota Prohibitions*

This subsection details the different types of anti-quota laws. The varying types of legislation make straightforward generalizations

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<sup>90</sup> *Missouri's Attorney General Sues City of Marshfield for Illegal Traffic Ticket Quota Scheme*, KY3 (Dec. 9, 2019, 4:06 PM), <https://www.ky3.com/content/news/Missouris-attorney-general-sues-city-of-Marshfield-for-illegal-traffic-ticket-quota-scheme-565986731.html>.

<sup>91</sup> See Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Grace Beahm, *Haley Signs Bill Banning Law Enforcement Ticket Quotas*, POST & COURIER (June 9, 2016), [https://www.postandcourier.com/politics/haley-signs-bill-banning-law-enforcement-ticket-quotas/article\\_7449a3c5-b4ff-509f-b716-7bd7b72a38c7.html](https://www.postandcourier.com/politics/haley-signs-bill-banning-law-enforcement-ticket-quotas/article_7449a3c5-b4ff-509f-b716-7bd7b72a38c7.html) (reporting on Bamberg's representation of the Scott family and his sponsorship of the bill).

<sup>95</sup> Tyler Arnold, *Criminal Penalties for Issuing Police Ticket Quotas Passes Tennessee House*, CENTER SQUARE (June 11, 2020), [https://www.thecentersquare.com/tennessee/criminal-penalties-for-issuing-police-ticket-quotas-passes-tennessee-house/article\\_eb5a2f34-ac0e-11ea-b5cc-6fd6b8293d42.html](https://www.thecentersquare.com/tennessee/criminal-penalties-for-issuing-police-ticket-quotas-passes-tennessee-house/article_eb5a2f34-ac0e-11ea-b5cc-6fd6b8293d42.html).

tricky. Indeed, the difficulty of offering a general framework might help explain the scholarly gap on police quotas. Some of these laws are either poorly drafted or cover a small amount of activity. Consider two examples. Florida's statute simply states: "a traffic enforcement agency may not establish a traffic citation quota."<sup>96</sup> This prohibition does not define what a quota is or whether it has to be numerically specific in order to fall under the scope of the statute. Such interpretative tasks are left to courts, assuming that allegations of quotas get that far.

Utah's statute, passed in 2018, is a bit more specific. It defines quotas as "any requirement or minimum standard regarding the *number or percentage* of citations or arrests."<sup>97</sup> But this provision still does not specify whether the prohibited "requirement" or "standard," must be formal.

The shortcomings of Utah and Florida's statutes are representative of the many limitations of anti-quota laws. Most statutes only cover some aspects of quota-based policing, and each statute is different. What one state considers an illegal quota, another state may find permissible. Most basically, anti-quota laws vary on how formal or numerically specific quotas must be to fall under the statute. All statutes prohibit departments from requiring officers to issue a certain amount of citations or traffic violations. Some laws go further and include arrests, while others cover precursory law enforcement activities such as stops and warnings. Most focus on whether the failure to meet a quota leads to some kind of employment action.

*Formality:* As Figure 1 demonstrates, state statutes vary in their language and their characterization of quotas as formal and/or informal. "Direct" and "indirect" are also words used to capture formality. For example, Nebraska only prohibits law enforcement from "directly" requiring an officer to meet a quota.<sup>98</sup> Informal pressure put on a police officer to improve their numbers is not covered. Pennsylvania's statutory language, by contrast, forbids any law enforcement agency from establishing or maintaining any policy "directly or indirectly."<sup>99</sup> Other jurisdictions, like New Jersey, are silent on which communicative mechanisms are forbidden and state that law enforcement may not "establish any quota for arrests or cita-

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<sup>96</sup> FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.).

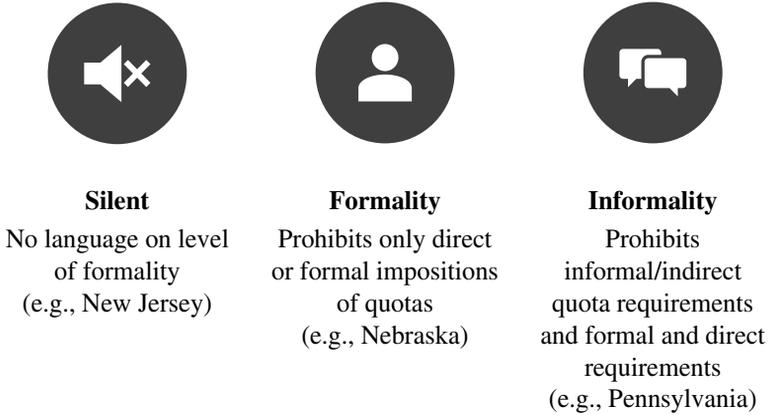
<sup>97</sup> UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.) (emphasis added).

<sup>98</sup> NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.).

<sup>99</sup> 71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West 2020).

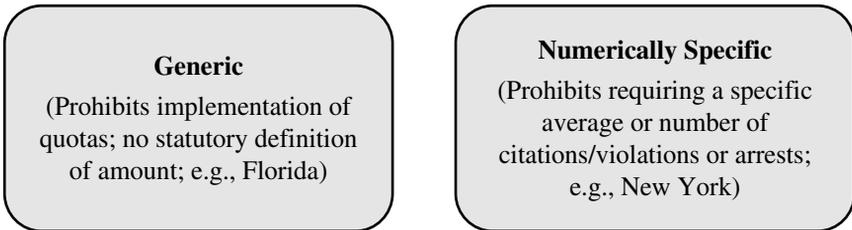
tions.”<sup>100</sup> This might include direct or indirect quotas, or encapsulate only formal quotas. Since many of these statutes are under-litigated, the available language is crucial for parties seeking to bring a claim that an agency violated the prohibition.

FIGURE 1. FORMALITY AND QUOTA STATUTES



*Quantification:* Numerical requirements are also present in some state prohibitions. Michigan’s statute is typical in that it bars agencies from requiring a “predetermined or specified number of citations.”<sup>101</sup> Some states, like Florida, do not make any reference to numbers, which could simply mean that a number is implied in the definition of quota but could also leave room for the use of averages, which some departments use to circumvent quota prohibitions.<sup>102</sup>

FIGURE 2. QUANTIFICATION AND QUOTA STATUTES



*Law Enforcement Activity:* All statutes specify which law enforcement activities cannot be subject to a quota. Seventeen states prohibit

<sup>100</sup> N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2).

<sup>101</sup> MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

<sup>102</sup> See Sparrow, *supra* note 34.

quotas for citations and traffic violations.<sup>103</sup> Nine states include citations, traffic violations, and arrests.<sup>104</sup> Other states are overinclusive or underinclusive when it comes to activity outside of citations, traffic violations, and arrests. Two states, Wisconsin and Rhode Island, include warning notices and investigative stops, respectively.<sup>105</sup> These states seem to recognize that warnings and stops can lead to the kind of law enforcement activity that quota legislation is designed to cover, and accordingly include these precludes into their statutory schemes. Some jurisdictions take the opposite approach. Missouri excludes warnings from its statute,<sup>106</sup> whereas South Carolina and Illinois make *exceptions* for “points of contact.”<sup>107</sup> In these three jurisdictions, such precursory activity does not fall under the state statute. All other states are silent on whether these kinds of law enforcement activities are covered by their statutes. Thus, read in whole, American statutes that prohibit quotas focus primarily on citations, traffic violations, and arrests, leaving significant room for penumbral pursuits that are related but do not fall into those specific law enforcement activities.

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<sup>103</sup> These states include Connecticut, Illinois, Florida, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.

<sup>104</sup> Arkansas, California, Louisiana, Maryland, New Jersey, New York, North Carolina, Rhode Island, and Utah all include citations, tickets, and arrests.

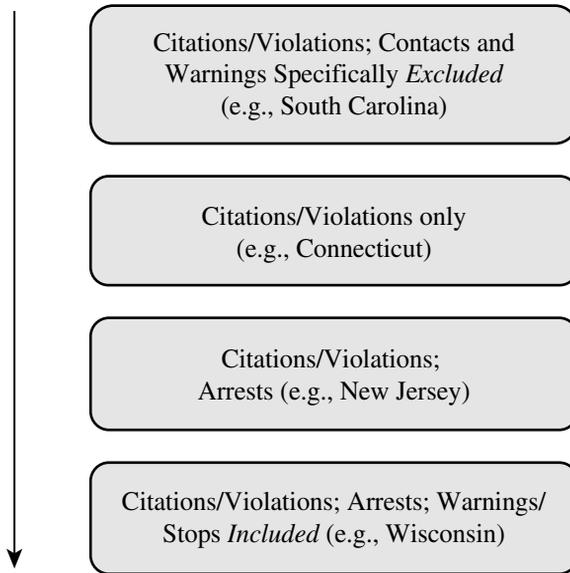
<sup>105</sup> WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186); 31 R.I. GEN. LAWS ANN. § 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

<sup>106</sup> MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) (“This section shall not apply to the issuance of warning citations.”).

<sup>107</sup> S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.); 20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651).

FIGURE 3. LAW ENFORCEMENT ACTIVITY AND QUOTA STATUTES

## Least Expansive



## Most Expansive

*Employment Actions:* A few states use specific language prohibiting the use of quotas for incentives and adverse employment actions. Texas, for example, prohibits the use of quotas to “*evaluate, promote, compensate, or discipline*” police officers.<sup>108</sup> Some states focus only on adverse employment actions. New York’s ban, which has been subject to the most litigation, prohibits “a reassignment, a scheduling change, an adverse evaluation, a constructive dismissal, the denial of a promotion, or the denial of overtime, based in whole or in part on such employee’s failure to meet a quota.”<sup>109</sup> By specifying the range of employment actions, these statutes supply potential plaintiffs (typically police officers) with the statutory language to bring claims against departments that implement quotas. States like Arkansas, by contrast, are silent on this issue. One could interpret this silence to mean that employment action is impliedly forbidden by the statute or as an intentional omission by the legislature.

<sup>108</sup> TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.) (emphasis added).

<sup>109</sup> N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

FIGURE 4. EMPLOYMENT ACTIONS AND QUOTA STATUTES



**Silent**

(No language on Type of Employment Action; e.g., Arkansas)



**Adverse Employment Action Only**

(e.g., New York)



**Employment Benefits + Adverse Action**

(e.g., Texas)

*Additional Features:* Two statutes have unique features that are worth noting. First, Illinois has a provision that attempts to address potential funding complications that may arise from prohibitions.<sup>110</sup> Its statute states that the prohibition on quotas “shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.”<sup>111</sup> Second, Tennessee amended its prohibition in July 2020 and made violation of the statute a Class B misdemeanor subject to a fine.<sup>112</sup> Since it is a new amendment, time will tell if this will successfully deter police brass attempting to implement quotas. The shortcomings of each of these different types of state quota prohibitions often interface with other legal obstacles and shape litigation outcomes. That will be the topic of the next Part.

II

POLICE QUOTA LITIGATION

The national patchwork of quota-based statutes has produced a variegated body of caselaw. Police officers are the typical plaintiffs that bring these cases to court. They usually argue that their resistance to or inability to meet a quota led to some adverse employment action. Alternatively, officers claim that they endured retaliation for speaking out about quotas—a claim that usually involves First Amendment issues.

People subject to criminal law enforcement are also common parties in police quota litigation.<sup>113</sup> These individuals fall into two catego-

<sup>110</sup> 65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651).

<sup>111</sup> *Id.*

<sup>112</sup> Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, <https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf>.

<sup>113</sup> There are a handful of cases where governments have brought charges against public officials who implemented or conformed to quotas, but these are rare. *See* Becker-Ross v. State, 595 S.W.3d 261 (Tex. App. 2020); Gerwer v. Kelly, 980 N.Y.S.2d 275 (Sup. Ct. 2013).

ries. They can be criminal defendants who argue that their contact with law enforcement was predicated on an officer's compliance with an illegal quota system. In essence, these parties raise the practice of quota-based policing as an affirmative defense. In instances where alleged quota-based contact resulted in dropped charges or the termination of the criminal action, parties have also brought federal civil rights lawsuits under 42 U.S.C. § 1983.<sup>114</sup> In these cases, which sometimes emerge from jurisdictions without anti-quota laws, plaintiffs argue that law enforcement's adherence to police quotas led to a violation of their civil rights.

Whether the party challenging the quota is an officer or a civilian, there are a range of socio-legal, doctrinal, and evidentiary hurdles that litigants must overcome before courts will meaningfully engage with their claims. This subsection briefly describes these hurdles for both groups, then describes the varying outcomes of these cases.

### A. *Police Speech and the Blue Code*

Police officers are the group most likely and best positioned to litigate challenges to quotas, but the "code of silence," which prohibits officers from reporting misconduct, serves as a barrier.<sup>115</sup> This code<sup>116</sup>—which commentators also refer to as "the blue wall of

<sup>114</sup> 42 U.S.C. § 1983.

<sup>115</sup> See, e.g., Isidoro Rodriguez, *The Plight of the Police Whistleblower*, CRIME REPORT (June 18, 2020), <https://thecrimereport.org/2020/06/18/the-plight-of-the-police-whistleblower> (quoting Seth Stoughton, law professor and former police officer, saying "[t]here is tremendous pressure in policing, a cultural pressure, to not expose fellow officers to either professional or physical threats").

<sup>116</sup> See SANJA KUTNJAK IVKOVIC, *FALLEN BLUE KNIGHTS: CONTROLLING POLICE CORRUPTION* 20 (2005) (describing the code as "the informal prohibition within police culture of reporting misconduct by fellow officers—binds police together"); see also Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257, 1285–92 (2011) (describing the code as an anti-snitching norm rooted in ideas about group loyalty and family); David Rudovsky, *Police Abuse: Can the Violence Be Contained?*, 27 HARV. C.R.-C.L. L. REV. 465, 487 (1992) ("The code of silence does more than prevent testimony. It mandates that no officer report another for misconduct, that supervisors not discipline officers for abuse, that wrongdoing be covered up, and that any investigation or legal action into police misconduct be deflected and discouraged."). Courts have also recognized the code in § 1983 actions. See Gabriel J. Chin & Scott C. Wells, *The "Blue Wall of Silence" as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 239, n.16 (1998) (listing cases). See generally Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering "Custom" in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 18 (2000) (exploring the police "code of silence" as an unconstitutional police practice under § 1983). In the context of quotas, the blue code could be understood in two ways. First, it could be understood as a prohibition against one officer revealing another officer's compliance with an illegal quota (a form of misconduct) to a perceived outsider (i.e. the public, the media). Alternatively, it could apply to an officer who reveals that law enforcement leadership is enforcing quotas. At its core, the code is about a brotherhood in which some police officers might not include management. Put another way, there is an

silence,” “blue cocoon,” “blue shield,” or “blue curtain”<sup>117</sup>—has been a problem in American policing for almost a century.<sup>118</sup> One police misconduct attorney explains how a breach of this code can be consequential: “while police officers may feel that a fellow officer has acted wrongfully, they fear that they will lose their job, or be subject to ridicule, ostracization, and physical reprisals from their comrades if the truth is told.”<sup>119</sup> The same applies to speaking out about quotas. The case of Adrian Schoolcraft is telling. Schoolcraft worked for the NYPD and secretly recorded superiors discussing illegal quotas or, as some officials described it, “paying the rent.”<sup>120</sup> Three weeks after he made misconduct allegations, a dozen officers, led by a deputy chief, went to his apartment.<sup>121</sup> A tape recording of the event revealed that the deputy chief Mike Marino, who has been described as a devotee of NYPD’s numbers-driven policing,<sup>122</sup> warned Schoolcraft, “they are going to treat you like an EDP [emotionally disturbed person] . . . . Now, you have a choice. You get up like a man and put your shoes on and walk into that bus, or they’re going to treat you as an EDP and

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argument that the blue code is about protecting not police leadership, but rank and file. But actual instances involving police officers revealing the existence of quotas suggest that leadership is considered part of the code. *See generally* Radley Balko, Opinion, *The Blue Wall: Stronger than Ever*, WASH. POST (Sept. 4, 2015), <https://www.washingtonpost.com/news/the-watch/wp/2015/09/04/the-blue-wall-stronger-than-ever> (describing instances of police officers who have revealed the existence of quotas and allege retaliation from their peers and leadership).

<sup>117</sup> *See* Chin & Wells, *supra* note 116, at 237 n.15 (describing the different terms for the code).

<sup>118</sup> *See* Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago’s South Side: Acknowledging the Realities*, 2016 U. CHI. LEGAL F. 125, 182 (noting that “over the last eighty-five years, at least nine different commissions around the nation have identified the police code of silence as a serious problem that prevents accountability” and listing all of the reports).

<sup>119</sup> G. Flint Taylor, *A Litigator’s View of Discovery and Proof in Police Misconduct Policy and Practice Cases*, 48 DEPAUL L. REV. 747, 758 (1999); *see also* Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. CHI. LEGAL F. 213, 247–48 (“Scholarship on policing amply shows that police officers enforce the code of silence with social ostracism, refusals to answer calls for backup, denials of promotion, reassignments to less desirable postings, and threats of violence.”).

<sup>120</sup> Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy’s 81st Precinct*, VILLAGE VOICE (May 4, 2010), <https://www.villagevoice.com/2010/05/04/the-nypd-tapes-inside-bed-stuys-81st-precinct>.

<sup>121</sup> *See* Graham Rayman, *NYPD Tapes Update: Queens DA Richard Brown’s Report on Whistleblower Cop Raises More Questions than It Answers*, VILLAGE VOICE (Dec. 13, 2012), <https://www.villagevoice.com/2012/12/13/nypd-tapes-update-queens-da-richard-browns-report-on-whistleblower-cop-raises-more-questions-than-it-answers>.

<sup>122</sup> *See* Graham Rayman, *Deputy Chief Michael Marino in Stop-and-Frisk Trial: ‘Do Your Job or Suffer the Consequences,’* VILLAGE VOICE (Mar. 25, 2013), <https://www.villagevoice.com/2013/03/25/deputy-chief-michael-marino-in-stop-and-frisk-trial-do-your-job-or-suffer-the-consequences>.

that means handcuffs.”<sup>123</sup> Schoolcraft was subjected to the latter and forcibly committed to a psychiatric ward.<sup>124</sup> After six days in the ward, he was discharged and suspended and continued to receive visits from police officers.<sup>125</sup> Ultimately, he made the tapes public and sued the NYPD for retaliation.<sup>126</sup> The NYPD settled.<sup>127</sup> Since the incident, the City has not “released one report, document or even scrap of paper which explains the NYPD’s handling of the episode or details the department’s conclusions about Schoolcraft’s allegations.”<sup>128</sup> While this is one of the more spectacular examples of what happens when the code of silence is breached, it highlights its retaliatory nature.<sup>129</sup> As some of the cases discussed in this Article show, the threat of retaliation can determine whether quota cases make it to courts and, if they do, the posture in which they enter the legal system.

The code of silence bleeds into First Amendment issues involving police speech. The Supreme Court in *Garcetti v. Ceballos* ruled that public employees who speak pursuant to their job duties have no First Amendment protection from retaliation for such speech.<sup>130</sup> If an officer speaks about a quota in their official capacity, then a First Amendment retaliation claim cannot succeed. The only way such a claim could prevail is if the officer demonstrates that she spoke as a citizen and not as an employee. Post-*Garcetti*, federal district and appeals courts have rejected retaliation claims brought by police officers who argued that they were subject to an adverse employment action due to their complaints about police quotas.<sup>131</sup> Considering the

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<sup>123</sup> Graham Rayman, *NYPD Tapes 4: The WhistleBlower, Adrian Schoolcraft*, VILLAGE VOICE (June 15, 2010), <https://www.villagevoice.com/2010/06/15/nypd-tapes-4-the-whistleblower-adrian-schoolcraft>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Goodman, *supra* note 26.

<sup>127</sup> *Id.*

<sup>128</sup> Graham Rayman, *Adrian Schoolcraft: The Other NYPD Scandal in the Room*, VILLAGE VOICE (Apr. 20, 2011), <https://www.villagevoice.com/2011/04/20/adrian-schoolcraft-the-other-nypd-scandal-in-the-room>.

<sup>129</sup> Roberta Ann Johnson, *Whistleblowing and the Police*, 3 RUTGERS J.L. & URB. POL’Y 74, 83 (2005) (“The threat of retaliation against whistleblowers has a chilling effect. The threat prevents officers from coming forward to expose corrupt and abusive practices and it prevents serious wrongdoing from being addressed in-house.”).

<sup>130</sup> 547 U.S. 410, 424 (2006).

<sup>131</sup> See, e.g., *Taylor v. Pawlowski*, 551 F. App’x 31, 31 (3d Cir. 2013) (ruling that officer’s statements to his superiors about the illegality of a quota system for traffic stops were not protected speech under the First Amendment, and that he was acting as a public employee speaking pursuant to his duties); *Cid v. Bd. of Cnty. Comm’rs*, No. 18-4012, 2019 WL 161495, at \*7 (D. Kan. Jan. 9, 2019) (rejecting a First Amendment retaliation claim brought by a terminated officer because he “directed his speech to his immediate supervisors and others in his chain of command—but no one outside that chain of command” and did not make a showing that his speech “involve[d] a matter of public concern and not merely a

inadequacy of whistleblower laws, which often fail to cover police officers and impose technical requirements, *Garcetti* presents a quagmire.<sup>132</sup> Officers concerned about quota-based policing in their departments can keep their objections in-house and follow typical grievance procedures. However, this process typically requires the grievant to inform a chain of command (e.g., their immediate supervisor, then chief of police, then the city manager).<sup>133</sup> The grievance process can subject the officer to the hazards of retaliation for breaking the code of silence, and under *Garcetti*, the officer may not be protected. The officer could also go public, as some have recently done,<sup>134</sup> but that option can be similarly, if not more, antagonizing to colleagues and lead to resignations that are difficult to remediate.<sup>135</sup> These social and legal constraints provide some insight into why statutes prohibiting quotas are infrequently litigated.

### B. Evidentiary Challenges for Civilians

Challenges to quota-based policing brought by civilians raise many of the evidentiary problems discussed in “access to justice” scholarship. This body of work describes how infidelity to discovery rules, strict pleading standards, and the judicial hostility to the enforcement of civil rights make courts inaccessible to civilians.<sup>136</sup> As a threshold matter, discovery disputes can preclude parties from demonstrating that quota-based policing exists. For example, in cases

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personal issue internal to the workplace”); *Whitehead v. City of New York*, 953 F. Supp. 2d 367, 375 (E.D.N.Y. 2012) (“[P]laintiff’s refusal to comply with the quota policy is not protected by the First Amendment because he confined his opposition to and criticism of the quota policy within the NYPD and never attempted to communicate his complaints to the public.”). *But see* *Matthews v. City of New York*, 779 F.3d 167, 176 (2d Cir. 2015) (finding that officer spoke as a citizen when he spoke to his commanding officers about its arrest policy).

<sup>132</sup> Whistleblower laws sometimes lack statutory coverage for municipal and county employees (categories police officers often fall in) and have various technical requirements for coverage (e.g., mandated initial disclosure to supervisors for protection to attach). *See* Ann C. Hodges & Justin Pugh, *Crossing the Thin Blue Line: Protecting Law Enforcement Officers Who Blow the Whistle*, 52 U.C. DAVIS L. REV. ONLINE 1, 26–31 (2018).

<sup>133</sup> *See* LARRY K. GAINES & JOHN L. WORRALL, POLICE ADMINISTRATION 344–45 (2012) (describing grievance procedures).

<sup>134</sup> *See infra* note 330; *supra* notes 37, 44, 65, 120–29.

<sup>135</sup> *See* Huq & McAdams, *supra* note 119, at 247–48 (suggesting that harassment that forces an officer to resign should be understood as a constructive discharge and noting “the well-known reality is that it remains difficult or impossible to prove constructive discharge in any individual case, given the code of silence”).

<sup>136</sup> *See* STEPHEN B. BURBANK & SEAN FARHANG, RIGHTS AND RETRENCHMENT: THE COUNTERREVOLUTION AGAINST FEDERAL LITIGATION (2017); ERWIN CHERMERINSKY, CLOSING THE COURTHOUSE DOOR: HOW YOUR CONSTITUTIONAL RIGHTS BECAME UNENFORCEABLE (2017); SARAH STASZAK, NO DAY IN COURT: ACCESS TO JUSTICE AND THE POLITICS OF JUDICIAL RETRENCHMENT (2015).

involving criminal defendants who were charged with driving while intoxicated and sought arrest data to prove the existence of police quotas, some courts have ruled that such information is not relevant or would not bear any material information.<sup>137</sup>

Some civil rights plaintiffs have unsuccessfully brought legal actions arguing that quota-satisfying officers violated their rights. For example, in *D.H. v. City of New York*, a group of women of color were arrested and charged with loitering for the purposes of prostitution.<sup>138</sup> They brought a § 1983 suit against the City of New York and their arresting officers. The plaintiffs challenged the constitutionality of the loitering statute and argued that they were discriminated against on the basis of their race, gender, and gender identity.<sup>139</sup> The plaintiffs also argued that the arrests were products of quota-based policing.<sup>140</sup> To support their claim, they relied on statistical evidence and a statement from a former police officer who noted that arrest quotas led cops to go after “black, . . . Hispanic, . . . [and] LGBT communit[ies].”<sup>141</sup> Notwithstanding this evidence, New York’s anti-quota statute,<sup>142</sup> and the NYPD’s documented struggles with quotas,<sup>143</sup> the court found their arguments unpersuasive. The court granted the defendants’ motion to dismiss and ruled that the plaintiffs had failed to show that “one of *these* defendants needed to make these arrests to meet his or her performance goals and arrest quotas, assuming such goals and quotas existed.”<sup>144</sup> By requiring this kind of evidence at the pleading stage, particularly in a jurisdiction that has

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<sup>137</sup> See, e.g., *Mayes v. City of Oak Park*, No. 05-CV-74386-DT, 2007 WL 9751967, at \*1 (E.D. Mich. Sept. 28, 2007), *aff’d*, 285 F. App’x 261 (6th Cir. 2008) (ruling that the plaintiff, a former public safety officer who claimed his termination was based on race and disability discrimination, was not entitled to racial data on arrests and tickets in Oak Park because it was not relevant to his claim); *Page v. State*, 7 S.W.3d 202, 206 (Tex. App. 1999) (rejecting defendant’s request for DWI task force information, which he argued was material and could be used to impeach the arresting officer since a DWI quota directive would have given the officer a motive to falsify his report); *County of Nassau Police Dep’t v. Judge*, 654 N.Y.S.2d 174, 175 (App. Div. 1997) (ruling that motorist was not entitled to production of internal police directives and orders that allegedly established DWI quota system because the respondent did not demonstrate that any information would be relevant or exculpatory).

<sup>138</sup> 309 F. Supp. 3d 52, 63 (S.D.N.Y. 2018).

<sup>139</sup> *Id.* at 64.

<sup>140</sup> *Id.* at 76.

<sup>141</sup> *Id.* at 75.

<sup>142</sup> N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

<sup>143</sup> See Bronstein, *supra* note 21 (arguing that the New York anti-quota statute has largely failed to rectify the negative practices of the NYPD).

<sup>144</sup> *D.H.*, 309 F. Supp. 3d at 76 (emphasis added).

been the poster-child for police quotas, the court created a high bar for future civil rights plaintiffs seeking to challenge this practice.

Many of the same problems arise in federal cases out of jurisdictions that do not have quota legislation. Before Tennessee passed its legislation, a federal court in that state heard a case brought by Terry Wynn, a Black physician who was stopped by the police after speeding to a hospital to help deliver a patient's baby.<sup>145</sup> Despite the intervention of a hospital supervisor who came to the hospital parking lot to inform the arresting officer that Wynn was indeed a doctor, the officer prepared a criminal summons against Wynn for speeding, felony evading arrest, resisting arrest, and a host of other violations.<sup>146</sup> A local prosecutor dropped the charges.<sup>147</sup> Meanwhile, the officer was suspended for a month for what the police chief described as a failure of judgement.<sup>148</sup> Wynn brought a § 1983 suit, arguing that the officer and the City had violated her Fourth and Fourteenth Amendment rights.<sup>149</sup> She argued that the City of Pulaski had a quota that required law enforcement to obtain "10 'traffic or custodial arrests' per month as a work performance goal," citing the arresting officer's own testimony as evidence.<sup>150</sup> The court ruled that this testimony was not indicative of a "hard-and-fast policy of the department."<sup>151</sup> If it was a formal policy, the court added, "municipal liability cannot attach in the absence of showing some link between the quota and the allegedly false arrest of, and use of excessive force on, Dr. Wynn."<sup>152</sup> Ultimately, in the federal tribunals where non-officers bring their challenges to quotas, courts demand tight causal links between the alleged quota and the constitutional violation. These evidentiary demands, along with different statutory conceptions of quotas, have likely stunted the development of case law in this area.

### C. Wins and Losses

Challenges to quotas that get beyond these hurdles have had mixed success. This subsection describes the few wins that plaintiffs have achieved when litigating police quotas, as well as the many losses.

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<sup>145</sup> Wynn v. City of Pulaski, No. 11-0025, 2013 WL 527154 (M.D. Tenn. Feb. 11, 2013).

<sup>146</sup> *Id.* at \*3.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at \*13.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

Some criminal defendants have persuaded appellate tribunals that quotas governed their arrests and were not adequately considered by trial courts. In Pennsylvania, for example, various courts have interpreted the state's anti-quota law as creating an affirmative defense if defendants can prove a violation of the statute by a preponderance of the evidence.<sup>153</sup> In *Commonwealth v. Greene*, a Pennsylvania court reversed a speeding conviction after the defendant produced a memo from a sergeant to patrol supervisors imploring them to increase their citations from 168 to 450 a month and insisting that they "get the numbers up."<sup>154</sup> The court ruled that the defendant met his burden, and interpreted the memo as creating an impermissible quota.<sup>155</sup>

A Texas appeals court came to a similar conclusion, reversing the DWI conviction of a defendant who was precluded from cross-examining the arresting officer about a departmental quota for DWI arrests, even though the officer was the state's sole witness and had testified that a quota existed.<sup>156</sup> The appellate court ruled that the trial court had abused its discretion and deprived the appellant of his Sixth Amendment right to confrontation.<sup>157</sup> A cross-examination that revealed the existence of a DWI quota would also play a role in a Louisiana court's decision to vacate a conviction.<sup>158</sup>

Police officers who exposed the existence of quotas have also successfully brought retaliation claims against police departments. These decisions were not per se challenges to the alleged quota system, but they remain important because they contribute to the small body of litigation that addresses quotas, shed light on the existence of the practice, and demonstrate the stakes for police officers who complain about this kind of policing. Many of these challenges were First Amendment retaliation cases, decided before *Garcetti* ruled out employee claims of retaliation for things they said while on duty.<sup>159</sup> Other cases, decided before and after *Garcetti*, did not hinge on First Amendment claims, and involved officer complaints about quotas and

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<sup>153</sup> See, e.g., *Woolston v. Cutting*, 474 A.2d 698, 701 (Pa. 1984) (holding that in authoring the anti-quota statute, the legislature intended it to function as an affirmative defense rather than a civil cause of action).

<sup>154</sup> *Commonwealth v. Greene*, 32 Pa. D. & C.3d 48, 52–53 (Ct. Com. Pl. 1984).

<sup>155</sup> *Id.* at 53–54.

<sup>156</sup> *Alexander v. State*, 949 S.W.2d 772, 773–74 (Tex. App. 1997).

<sup>157</sup> *Id.* at 775. *But see* *Hollier v. State*, No. 14-99-01348-CR, 2001 WL 951014, at \*7 (Tex. App. Aug. 23, 2001) (rejecting a similar claim because, unlike in *Alexander*, the appellant could not show that the arresting officer was operating under a quota at the time of arrest).

<sup>158</sup> See *State v. Sampia*, 696 So. 2d 618, 620 (La. Ct. App. 1997).

<sup>159</sup> See, e.g., *Begg v. Moffitt*, 555 F. Supp. 1344, 1365 (N.D. Ill. 1983) (finding a violation under the First Amendment); *Ruhlman v. Barger*, 435 F. Supp. 447, 450 (W.D. Pa. 1976) (same).

police misconduct. Two are noteworthy. *Iglesias v. City of Hialeah*, the more modest and recent of the two, took place in a small city outside of Miami.<sup>160</sup> Juan Iglesias, an officer in the City's police department,<sup>161</sup> sent letters to the City's police chief and mayor protesting the enforcement of illegal ticket quotas.<sup>162</sup> Nevertheless, he received multiple disciplinary notices for not meeting traffic enforcement standards.<sup>163</sup> He used the state's whistleblower law to argue that the City had illegally retaliated against him for complaining about the quotas.<sup>164</sup> The trial court awarded him lost wages but precluded him from seeking noneconomic damages—a decision that the appellate court reversed.<sup>165</sup>

*Martinez v. Village of Mount Prospect* is the most noteworthy court victory involving a police challenge to a quota.<sup>166</sup> The case involved a Latinx police trainee, Martinez, who brought a national origin employment discrimination claim against the Village of Mount Prospect, a community outside of Chicago.<sup>167</sup> He argued that police leadership directed officers to target Latinx drivers to meet ticket quota requirements; to support his claim, he presented evidence highlighting the disproportionate number of traffic tickets given to Latinx drivers.<sup>168</sup> A federal district court entered an approximately \$1.1 million settlement for Martinez<sup>169</sup> and enjoined the Village from “directing, suggesting, ordering or otherwise communicating that any police officer should focus, concentrate, target, profile, or otherwise modify law enforcement efforts in any way on the sole basis of the national origin of any person.”<sup>170</sup> Finally, the presiding judge sent a letter, included in the opinion, to the Department of Justice.<sup>171</sup> The

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<sup>160</sup> *Iglesias v. City of Hialeah*, No. 3D18-639, 2019 WL 3309040 (Fla. Dist. Ct. App. July 24, 2019).

<sup>161</sup> *Id.* at \*1.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at \*2. This dispute spawned a separate ongoing case involving Iglesias's sergeant, Paul DiPietro. In his testimony for Iglesias's case, DiPietro was reprimanded for failing to adequately discipline Iglesias, and then in Iglesias's civil suit, gave testimony that contradicted the City's position that there was no traffic quota. He argued that he was retaliated against by reassignment to a far location and then terminated. DiPietro brought his own claim into federal court, which the parties settled in 2020. *See* Joint Stipulation for Dismissal With Prejudice at 1, *DiPietro v. City of Hialeah*, No. 19-cv-23212 (S.D. Fla. Sept. 10, 2020), ECF No. 50.

<sup>166</sup> 92 F. Supp. 2d 780 (N.D. Ill. 2000).

<sup>167</sup> *Id.* at 781.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 782.

<sup>171</sup> *Id.*

letter highlighted the interface of the quota policy and racial profiling and encouraged the agency to investigate the Village for civil rights violations.<sup>172</sup>

*Martinez* represents one of the more significant rulings on police quotas, but when cases are decided on the merits, it is much more common for plaintiffs to lose. Judicial rebuffs come in a variety of forms. Sometimes courts, relying on *Garcetti*, rule that officer objections to police quotas do not constitute protected speech, which often ends the analysis.<sup>173</sup> Sometimes courts are unpersuaded by evidence that points to the existence of quotas.<sup>174</sup> Sometimes the claims are outright unpersuasive, as in *Gravitt v. N.C. Division of Motor Vehicles*,<sup>175</sup> where the Fourth Circuit rejected claims brought by a police officer and a police union who argued that North Carolina's quota policy violated officers' right to equal protection because the policy operated in some districts but not others.<sup>176</sup>

Two litigation losses are particularly instructive for thinking about quota-based policing in the future. Both cases, brought by police unions, reveal how departments and jurisdictions can work around statutory prohibitions. The first concerns Camden, New Jersey, which has been at the center of police reform for its drastic reboot of its police department.<sup>177</sup> In *Fraternal Order of Police, Lodge 1 v. City of Camden*, the Fraternal Order of Police challenged the City's implementation of a "directed patrol" program that required

<sup>172</sup> *Id.*

<sup>173</sup> See, e.g., *Whitehead v. City of New York*, 953 F. Supp. 2d 367, 375 (E.D.N.Y. 2012) (holding that the plaintiff officer's objections to the quota were not protected by the First Amendment because refusing to comply with the quota does not constitute expressive conduct).

<sup>174</sup> See, e.g., *Statewide Univ. Police Ass'n v. Bd. of Trs. of Cal. State Univ.*, B290293, 2020 WL 2213040, at \*5–6 (Cal. Ct. App. May 7, 2020) (finding no violation of the state's quota statute where personal evaluation "comment cards" offering feedback on the lack of parking enforcement citations were not punitive in nature); *Oliverio v. Butler Univ.*, No. 15-cv-01630, 2017 WL 1650501, at \*9 (S.D. Ind. May 2, 2017) (rejecting plaintiff's invocation of the respondent's quota requirement for parking tickets as not relevant because he was arrested for battery); *Matarazzo v. Safir*, 689 N.Y.S.2d 494, 495 (App. Div. 1999) (dismissing claim because petitioners gave no indication of how many tickets petitioners had to write and the only evidence offered was from two supervising officers from two different precincts who directed the individual petitioners to perform duties, during their meal breaks, that were likely to result in the issuance of tickets); *Commonwealth v. McClellan*, 45 Pa. D. & C.3d 627, 628 (C.P. Chester 1987) (rejecting defendant's affirmative quota defense because he only offered budget statements that showed projected revenues, which the court argued did not establish the existence of a quota system).

<sup>175</sup> 33 F. App'x 45, 47 (4th Cir. 2002).

<sup>176</sup> The plaintiffs also raised relatively unpersuasive claims under the Due Process clause, the Privileges and Immunities clause, and the Fourth Amendment. See *id.* at 47, 49.

<sup>177</sup> See Fussell, *supra* note 31.

police officers to “engage” people whether or not they were suspected of wrongdoing.<sup>178</sup> The directed patrol program consisted of “a structured 15–20 minute deployment into a targeted area to accomplish a specific patrol or crime reduction function.”<sup>179</sup> The contacts were to be tracked and recorded, and officers on regular patrol were expected to perform a minimum of eighteen contacts.<sup>180</sup> According to plaintiffs, failure to comply with these numerical requirements was cause for disciplinary action.<sup>181</sup> The City argued that the program was not a quota because it required police-civilian interactions and not arrests or citations.<sup>182</sup> The Third Circuit relied on the text of the statute and, in a short analysis, agreed.<sup>183</sup> *Fraternal Order* is a paradigmatic example of how a police department can circumvent a statutory prohibition on quotas by focusing on precursory activity such as stops and contacts.

Another failed litigation challenge highlights the sophisticated ways through which police departments can subvert quota statutes. In *Phillipsburg Policemen’s Benevolent Ass’n Local No. 56 v. Township of Phillipsburg*, a local police union challenged a township’s “self-directed patrol index policy,” which created a point system to evaluate police officers.<sup>184</sup> The index assigned different values to different kinds of arrests and citations:

- 4 Points - Narcotics arrests (4 points per subject arrested)
- 4 Points - Burglary and theft arrests
- 3 Points - Warrant arrests (1 subject, multiple warrants = 3 points)
- 2 Points - All moving motor vehicle summonses
- 2 Points - Quality of life summonses (e.g., excessive noise, alcohol related offenses, and animal offenses)
- 2 Points - Other arrests (e.g., disorderly conduct, domestic violence offense; 2 points per subject)
- 2 Points - Unsecured business found (report completed)
- 1 Point - All other town ordinance violations
- 1 Point - Hazardous conditions reported (report must be completed for incident)
- 1 Point - All parking tickets

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<sup>178</sup> 842 F.3d 231, 236 (3d Cir. 2016).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 237.

<sup>183</sup> *Id.* at 239.

<sup>184</sup> *Phillipsburg Policemen’s Benevolent Ass’n Local No. 56 v. Twp. of Phillipsburg*, A-5016-12T3, 2014 WL 8765463, at \*1 (N.J. Super. Ct. App. Div. May 5, 2015).

- 1/2 Point - For every two individual community policing contacts per tour of duty (4 contacts = 2 points, 6 contacts = 3 points, etc.)<sup>185</sup>

Officers who received an index of two or more points received an exceptional performance evaluation.<sup>186</sup> The union argued that the policy undermined the state's prohibition on quotas, and the trial court agreed.<sup>187</sup>

The appellate court struggled because the statute's language only prohibited traffic violations and arrests and, according to the Township, officers could achieve an excellent evaluation without resorting to either.<sup>188</sup> The court acknowledged that the policy "does not, on its face, require quotas" but went on to find that the "defendants cannot avoid the statutory prohibition by crafting a carefully worded policy that does not, when read literally, violate a statutory mandate, but does so when implemented."<sup>189</sup> It added, "if it looks like a duck, quacks like a duck, then it probably is a duck."<sup>190</sup> Notwithstanding the court's acknowledgment of possible subterfuge, it reversed the trial court's conclusion that the policy constituted an illegal quota.<sup>191</sup> As I explain in more detail in Part IV, decisions like *Fraternal Order* and *Phillipsburg* are more than simple losses for police unions. They demonstrate how quota statutes can be evaded in ways that harm the public and frustrate efforts to reign in police malfeasance.

#### D. Settlements

Social norms, legal hurdles, and an unfavorable jurisprudential landscape are features of quota litigation, but so are settlements. Government settlements with officers and civilians have touched various parts of the country—from small cities to big cities—and have ranged from five-figure to eight-figure payouts.<sup>192</sup> Though settlements often come with the qualification that they are not admissions of guilt, they provide a provisional glimpse behind the "blue wall" that quotas sometimes operate behind. Settlements typically come after courts reject motions by governments to dispense with litigation, leaving a body of law that may be useful for future challenges. At a bare min-

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at \*2.

<sup>188</sup> *Id.* at \*3.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at \*4.

<sup>192</sup> *See supra* note 26.

imum, settlements reveal how much a jurisdiction wants to avoid litigating their public insistence that they do not use quotas.

New York City, the jurisdiction with the country's largest police force,<sup>193</sup> has struggled with quota allegations and doled out the most in settlements. Adrian Schoolcraft—the involuntarily committed officer discussed above—survived a motion for summary judgment after a federal judge ruled that his speech was protected because he spoke as a citizen. Shortly thereafter, the City of New York settled with Schoolcraft for \$600,000.<sup>194</sup> That same year, the City settled with Craig Matthews, an NYPD officer who complained that his Bronx precinct had competitions for who could make the most arrests, conduct the most stop-and-frisks, and issue the most summonses.<sup>195</sup> The Second Circuit ruled that Matthews's speech was protected by the First Amendment and the City subsequently settled with Matthews for \$280,000 to avoid further litigation.<sup>196</sup>

A little less than a year later, after a federal judge certified a class of defendants subject to quota-based policing and subsequently imposed sanctions on the NYPD for destroying relevant evidence, the City of New York settled with the class for \$75 million.<sup>197</sup> Under the settlement, the City agreed to reiterate its policy that quotas were illegal and that supervisors who implemented them could be subject to discipline.<sup>198</sup> In *Floyd v. City of New York*, the famous “stop and frisk” decision, quotas were a significant theme.<sup>199</sup>

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<sup>193</sup> SHELLEY S. HYLAND & ELIZABETH DAVIS, BUREAU OF JUST. STAT., LOCAL POLICE DEPARTMENTS, 2016: PERSONNEL 3 (2019), <https://www.bjs.gov/content/pub/pdf/lpd16p.pdf> (noting that in 2016, New York City had the largest local police department with more than three times the number of employees than any other department).

<sup>194</sup> Goodman, *supra* note 26.

<sup>195</sup> *Matthews v. City of New York*, 779 F.3d 167, 169 (2d Cir. 2015); *see also* Christopher Mathias, *NYC to Pay \$280,000 Over Cop Who Exposed City's Quota System*, HUFFPOST (Dec. 7, 2015, 3:48 PM), [https://www.huffpost.com/entry/craig-matthews-nypd-quotas\\_n\\_5665cab8e4b072e9d1c6d86b](https://www.huffpost.com/entry/craig-matthews-nypd-quotas_n_5665cab8e4b072e9d1c6d86b).

<sup>196</sup> Mathias, *supra* note 195.

<sup>197</sup> *See* *Stinson v. City of New York*, No. 10 Civ. 4228, 2016 WL 54684, at \*2–3 (S.D.N.Y. Jan. 5, 2016) (describing how the City failed to issue a litigation hold until three years after the complaint was filed, maintained a policy that provided for the destruction of evidence, destroyed materials related to CompStat meetings, destroyed activity reports, failed to preserve text messages, produced few responsive documents, was “grossly negligent,” and acted in “bad faith”); Benjamin Weiser, *New York City to Pay Up to \$75 Million Over Dismissed Summonses*, N.Y. TIMES (Jan. 23, 2017), <https://www.nytimes.com/2017/01/23/nyregion/new-york-city-agrees-to-settlement-over-summonses-that-were-dismissed.html>.

<sup>198</sup> Weiser, *supra* note 197.

<sup>199</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013) (analyzing the pressure that quotas impart on officers to increase their stop numbers); *see also* Jenn Rolnick Borchetta, *Continuing to Reform the NYPD's Stop and Frisk Practice*, DEMOS (Feb. 16, 2016), <https://www.demos.org/blog/continuing-reform-nypds-stop-and-frisk-practice> (noting the NYPD norm of officers being judged “on how many stops they do”).

On the other side of the country, the City of Los Angeles has paid millions in settlements to police officers who claim that the Los Angeles Police Department (LAPD) illegally required them to comply with ticket quotas. All of the settlements derive from allegations that Captain Nancy Lauer ordered officers to write at least eighteen traffic tickets each shift and required that eighty percent of citations be for major violations.<sup>200</sup> Officers who did not comply would be denied overtime or receive undesirable work assignments.<sup>201</sup> Despite the City's claim that the number was a goal and not a mandate, a jury awarded two officers over \$1 million in damages.<sup>202</sup> Two years later, the City agreed to pay a settlement of almost \$6 million to eleven police officers in a separate lawsuit over the same quota system.<sup>203</sup> In 2016, the City paid \$950,000 to a former officer who also claimed that he was retaliated against for not participating in a ticket quota system.<sup>204</sup> Most recently, the City of Whittier, located in Los Angeles County, settled for \$3 million with six officers who refused to participate in an arrest quota scheme.<sup>205</sup>

Miami Gardens, which has the largest Black population in Florida and has been called the “stop-and-frisk capital of America,”<sup>206</sup> has produced two settlements tied to quota-based policing. The first involved Earl Sampson, a Black man who was stopped more than four hundred times between 2008 and 2013, often for trespassing at his place of work.<sup>207</sup> Sampson led a class of Black and Latinx defendants who sued the City of Miami Gardens, arguing that the City's police department violated their constitutional rights by adhering to a racialized system of quota-based policing that led officers to selectively stop and frisk Black males ages fifteen to thirty.<sup>208</sup> A few weeks after a

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<sup>200</sup> Joel Rubin & Catherine Saillant, *LAPD to Pay \$10 Million in Traffic Ticket Quota Controversy*, L.A. TIMES (Dec. 10, 2013, 12:00 AM), <https://articles.latimes.com/2013/dec/10/local/la-me-ln-ticket-quota-20131210>.

<sup>201</sup> *Id.*

<sup>202</sup> Special Verdict, *Chan v. City of Los Angeles*, No. BC 418750 (Cal. Super. Ct. Apr. 11, 2011); Andrew Blankstein & Joel Rubin, *LAPD Officers Who Complained About Ticket Quotas Are Awarded \$2 Million*, L.A. TIMES (Apr. 12, 2011, 12:00 AM), <https://www.latimes.com/local/la-xpm-2011-apr-12-la-me-ticket-quotas-20110412-story.html>.

<sup>203</sup> Rubin & Saillant, *supra* note 200.

<sup>204</sup> Branson-Potts & Reyes, *supra* note 26.

<sup>205</sup> Sprague, *supra* note 26; *see also* Rivera v. City of Whittier, No. BC574443, 2017 WL 3579659, at \*1 (Cal. Super. Ct. July 7, 2017) (evaluating the six plaintiffs' claims that they had been retaliated against for whistleblowing the existence of an illegal quota).

<sup>206</sup> Meg O'Connor, *Inside 'The Stop-and-Frisk Capital of America,'* APPEAL (Feb. 21, 2019), <https://theappeal.org/inside-the-stop-and-frisk-capital-of-america>.

<sup>207</sup> *Id.*

<sup>208</sup> *Sampson v. City of Miami Gardens*, No. 13-CV-24312, 2015 WL 11202372, at \*1 (S.D. Fla. May 27, 2015).

federal court declined a motion for summary judgment on those issues, the City settled with the plaintiffs for an undisclosed amount.<sup>209</sup>

During the litigation and subsequent settlement, a dispute about the use of quotas took place inside the police department. Wanda Gilbert, a Black crime analyst responsible for the police department's statistics, grew concerned about dubious arrests and quota-based policing that she claimed were tied to five percent yearly raises.<sup>210</sup> She corroborated the testimony in the *Sampson* litigation and claimed that the Black police chief, Matthew Boyd, directed officers "to stop all Black males between the ages of 15 and 30 years old."<sup>211</sup> She also described how "boys as young as seven," and adolescents "riding their bikes home from school" were accosted by police.<sup>212</sup> Gilbert wrote multiple memos to Boyd and met with City administrators, who told her not to put her concerns in writing because they would become public record.<sup>213</sup> She was fired after she wrote a final memo in 2011 protesting the department's practices. After Gilbert's own protracted legal battles, which made their way to the Eleventh Circuit, the City settled with her for approximately \$1 million.<sup>214</sup>

Quota-based policing can also be fatal, as was the case in Atlanta when police officers killed an elderly woman during an illegal raid of her home. Officers in the Atlanta Police Department's narcotics unit, operating under a quota, pulled a gun on a man they had previously arrested, planted marijuana on him, and demanded that he tell them where they could find drugs.<sup>215</sup> He made up an address, which happened to be the residence of ninety-two-year-old Kathryn Johnston and had a wheelchair ramp in the front.<sup>216</sup> The officers made false statements to a magistrate judge to secure a no-knock search warrant.<sup>217</sup> They could not kick down the security gate, so they used a pry bar and a battering ram during the nighttime raid.<sup>218</sup> Johnston lived

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<sup>209</sup> See Order and Notice of Settlement, *Sampson v. City of Miami Gardens*, No. 13-CV-24312 (S.D. Fla. June 23, 2015), ECF No. 228.

<sup>210</sup> See Charles Rabin, *She Was Fired After Speaking Out About Bad Arrests. She Sued and Just Won \$1 Million*, MIAMI HERALD (Dec. 4, 2018, 6:01 PM), <https://www.miamiherald.com/news/local/crime/article222442315.html>.

<sup>211</sup> Heather Dunhill, *Retired Crime Analyst Wanda F. Gilbert on Police Reform and Growing Up in Segregated South Florida*, SARASOTA MAG. (Aug. 17, 2020, 11:42 AM), <https://www.sarasotamagazine.com/news-and-profiles/2020/08/wanda-f-gilbert>.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Rabin, *supra* note 210.

<sup>215</sup> Radley Balko, *The Militarization of America's Police Forces*, 11 CATO'S LETTER 1, 1–2 (2013).

<sup>216</sup> Ted Conover, *A Snitch's Dilemma*, N.Y. TIMES MAG. (June 29, 2012), <https://www.nytimes.com/2012/07/01/magazine/alex-white-professional-snitch.html>.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

alone in a dangerous neighborhood, where an elderly neighbor was recently raped.<sup>219</sup> She fired one shot, which provoked 39 shots by the officers, some of which ultimately killed her.<sup>220</sup> After the shooting, the officers searched the home, found no drugs, and subsequently planted three bags of marijuana they had seized earlier that day in Johnston's basement.<sup>221</sup> Afterward, the officers conspired to fabricate a story that they then shared with homicide investigators.<sup>222</sup> An FBI investigation found that the narcotics unit had a performance quota of nine arrests per month.<sup>223</sup> In her sentencing of the three officers, U.S. District Judge Julie Carnes concluded that the pressure to adhere to the quotas played a role in the killing.<sup>224</sup> The City of Atlanta ultimately awarded a \$4.9 million settlement to the family of Kathryn Johnston.<sup>225</sup>

It would be a mistake to understand quota settlements as a big city phenomenon. Some of these settlements have surfaced in small towns across the country. Local governments have settled cases involving allegations of quota-based policing in the City of Mendham in central New Jersey,<sup>226</sup> Smyrna, Delaware,<sup>227</sup> Lehigh, Pennsylvania,<sup>228</sup> Novi, Michigan,<sup>229</sup> Byrnes Mills, Missouri,<sup>230</sup> and the central California city of Paso Robles.<sup>231</sup> Financially, law professors Joanna Schwartz and John Rappaport have explained how these kinds

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<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Third Atlanta Police Officer Pleads Guilty in Fatal Shooting of Elderly Woman*, DEPT. OF JUST. (Oct. 30, 2008), <https://www.justice.gov/archive/opa/pr/2008/October/08-crt-972.html>.

<sup>222</sup> *Id.*

<sup>223</sup> Bill Rankin, *Ex-Cops Get 5–10 Years for Drug Raid – Judge Agrees Atlanta Police Quotas Influenced Officers' Behavior*, ATLANTA J.-CONST., Feb. 25, 2009, at C1.

<sup>224</sup> *Id.*

<sup>225</sup> Ernie Suggs, *City to Pay Slain Woman's Family \$4.9 Million*, ATLANTA J.-CONST. (Aug. 11, 2012), <https://www.ajc.com/news/local/city-pay-slain-woman-family-million/GWqsgDARzmOhvpb7iPY6FI>.

<sup>226</sup> See Wright, *supra* note 26.

<sup>227</sup> *ACLU Reaches Settlement with Smyrna Police over Wrongful Arrests*, ACLU (Feb. 19, 2015), <https://www.aclu.org/press-releases/aclu-reaches-settlement-smyrna-police-over-wrongful-arrests>.

<sup>228</sup> See Hall, *supra* note 49.

<sup>229</sup> See Phillips, *supra* note 26.

<sup>230</sup> See Robert Patrick & Jeremy Kohler, *Former Byrnes Mill Police Chief Stole \$12,800 from Suspects, Feds Say*, ST. LOUIS POST-DISPATCH (Apr. 20, 2017), [https://www.stltoday.com/news/local/crime-and-courts/former-byrnes-mill-police-chief-stole-from-suspects-feds-say/article\\_faa278bd-25ef-5a8d-953a-534bc11f62c0.html](https://www.stltoday.com/news/local/crime-and-courts/former-byrnes-mill-police-chief-stole-from-suspects-feds-say/article_faa278bd-25ef-5a8d-953a-534bc11f62c0.html).

<sup>231</sup> See Scott Brennan, *City Pays \$125,000 to Settle Lawsuit over Ticket Quotas*, PASO ROBLES DAILY NEWS (Mar. 24, 2014, 8:23 PM), <https://pasoroblesdailynews.com/city-pays-125000-settle-lawsuit-ticket-quotas/15896>.

of settlements can be consequential for smaller jurisdictions.<sup>232</sup> Socially, such settlements—which circulate in mainstream media outlets as well as in local papers of the day—can lead to the kinds of distrust in police that exists in bigger cities. The crucial difference is that many of these localities are not freighted by the same racial politics of large urban cities.<sup>233</sup> The geographical diversity of these settlements highlights how disputes about quota-based policing impact not only racial minorities—the presumed subjects of mass incarceration—but a broader and unassuming public.

Overall, one can glean a few themes from the legal challenges to police quotas discussed in this Part. First, many hurdles preclude these cases from being meaningfully heard by courts. Some obstacles reflect the general “closing of the courthouse doors” to civil rights litigants and criminal defendants.<sup>234</sup> Other impediments, like the code of silence, are specific to police culture and jurisprudence. Second, cases that do make it to a trial on the merits are still unlikely to win. Third, and relatedly, quota litigation is especially likely to settle. Settlements sit alongside victories, allegations, memoirs, police recordings, and criminological scholarship that all point to the existence of police quotas. With the definitional, statutory, and jurisprudential landscape sketched out, the Article will now turn to consider policy considerations both for and against the practice of police quotas.

### III

#### THE THEORETICAL CONTOURS OF POLICE QUOTAS

Most observers of the criminal justice system typically understand quotas through a pejorative lens. In scholarly literature, robust defenses of quotas are relatively rare. The closest thing to a defense is the claim by criminology scholars and law enforcement officials that police need to be evaluated and monitored in some way. This Part begins by considering the best possible rationales for why quotas

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<sup>232</sup> See John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539, 1565–66 (2017) (describing how large municipalities have “broad tax bases and big budgets” that allow them “to absorb the shock of large judgments and settlements that might seriously damage a smaller city”); see also Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1174 (2016) (“Smaller jurisdictions will presumably feel the financial effects of lawsuits more acutely.”).

<sup>233</sup> See KIM PARKER ET AL., PEW RSCH. CTR., WHAT UNITES AND DIVIDES URBAN, SUBURBAN, AND RURAL COMMUNITIES 4 (2018), <https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2018/05/Pew-Research-Center-Community-Type-Full-Report-FINAL.pdf> (describing the racial makeup and attitudes across different types of geographical communities).

<sup>234</sup> See CHEMERINSKY, *supra* note 136 (describing how the Supreme Court’s decisions have resulted in restricted access to the courts for those hoping to enforce their constitutional rights).

might be desirable and defensible. Despite the normative position this Article adopts, it is analytically unsatisfying to oppose police quotas without confronting possible arguments.

Although some of the arguments in favor of quotas are weighty, Section III.B contends there are more compelling reasons on the side of prohibiting them. This Section builds on arguments that have been raised by opponents by offering a more comprehensive view of why quotas constitute bad policy. Moreover, it situates these objections within the definitional, statutory, and jurisprudential context described in Parts I and II. In doing so, Section III.B lays the groundwork for Part IV's normative claims.

### A. *Defenses*

There are at least four possible defenses of quotas that surface in criminology, in the media, and in public statements made by law enforcement officials. The first is that quotas protect against police shirking and idleness. The second is that quotas make the police more productive (e.g., through “performance targets,” “goals,” “expectations”). Both of these defenses assume that there is a specific amount of illegal activity occurring in the world, and that officers should respond to some portion of it. The third defense involves the evaluative utility of quotas and maintains that quotas provide an ostensibly neutral way to assess police performance. The final defense of quotas is rare and accepts the profit-generating nature of policing.

#### 1. *Police Idleness*

The cultural stereotype of lazy, underactive police officers is tied to a longstanding anxiety about police productivity. Concerns about shirking invoke basic agency theory where police officers act as agents for the principal. It is assumed that police officer-agents, “will shirk their responsibilities when given half a chance.”<sup>235</sup> If they are not “sufficiently monitored or bonded, agents will be lazy or irresponsible—or at least not entirely selfless in their motivations.”<sup>236</sup> Quotas are an attempt to reduce the agency costs that come with police administration. Although concerns about shirking exist across many organizations,<sup>237</sup> these worries have unique expressions in policing. In 1909, Leonhard Fuld, one of the earliest scholars of American urban

<sup>235</sup> Eric W. Orts, *Shirking and Sharking: A Legal Theory of the Firm*, 16 YALE L. & POL'Y REV. 265, 276–77 (1998).

<sup>236</sup> *Id.*

<sup>237</sup> See generally JOHN BREHM & SCOTT GATES, WORKING, SHIRKING, AND SABOTAGE: BUREAUCRATIC RESPONSE TO A DEMOCRATIC PUBLIC (1997) (studying shirking in federal, state, and local bureaucracies in order to debunk the concept of the “lazy bureaucrat”).

policing, observed that “the policeman’s life is a lazy life . . . as much of his time is spent doing nothing.”<sup>238</sup> Fuld also noted that police are different because “[t]he authority with which they are invested . . . create in them an inordinate desire to shirk their work or, as they themselves express it, ‘to take it easy.’”<sup>239</sup> NYPD spokesman Al O’Leary captured this sentiment in the 1990s. When six transit cops donned nooses at a news conference to protest their “bondage” to quotas, O’Leary lambasted: “If the union is suggesting we should go back to the days of coffee-drinking, doughnut eating, do-nothing cops, then they’re way out of sync with policing today.”<sup>240</sup>

Most defenses of quotas reject the formal label but embrace the idea of evaluating officers because of a concern about laziness. When Atlanta Police Chief Richard Pennington rejected the idea that his department utilized quotas, he conceded to maintaining a related euphemism and admitted, “Yes, we have performance measures in the Atlanta Police Department. We have to have performance measures because if we don’t have them, the officers would come in every day with nothing on their sheets.”<sup>241</sup> Departments certainly cannot eliminate shirking, but quotas can address this concern by demanding a minimum amount of law enforcement activity while utilizing employment sanctions to ensure compliance. Considering the significant amount of money spent on policing,<sup>242</sup> it is reasonable to expect some minimum output level, whether in the seemingly mundane realm of traffic enforcement or the more serious world of arrests.<sup>243</sup>

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<sup>238</sup> LEONHARD FELIX FULD, *POLICE ADMINISTRATION: A CRITICAL STUDY OF POLICE ORGANISATIONS IN THE UNITED STATES AND ABROAD* 91 (2d ed. 1910).

<sup>239</sup> *Id.* at 48–49.

<sup>240</sup> Dean Chang, *Tix Quota No Token Rule: TA Cops*, N.Y. DAILY NEWS, Nov. 17, 1992, at 15.

<sup>241</sup> Brenda Goodman, *Atlanta’s Mayor Defends Chief Against Misconduct Accusations*, N.Y. TIMES (May 1, 2007), <https://www.nytimes.com/2007/05/01/us/01atlanta.html>.

<sup>242</sup> See Niall McCarthy, *How Much Are U.S. Cities Spending on Policing in 2020?*, FORBES (June 12, 2020, 5:21 AM), <https://www.forbes.com/sites/niallmccarthy/2020/06/12/how-much-are-us-cities-spending-on-policing-in-2020-infographic> (stating that police budgets run as high as billions of dollars in several major cities in the United States, including New York (\$5.61 billion), Los Angeles (\$1.73 billion), and Chicago (\$1.68 billion)).

<sup>243</sup> See generally CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD P. HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* (2014) (describing the impact of police stops on racial disparities and perceptions of citizenship in the United States); Anna Roberts, *Arrests as Guilt*, 70 ALA. L. REV. 987 (2019) (examining the consequences of arrests and the implicit fusion of arrests and guilt); Rachel A. Harmon, *Why Arrest?*, 115 MICH. L. REV. 307 (2016) (arguing against the outsized role arrests play in policing); Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809 (2015) (examining how arrests are systematically used as a regulatory tool outside of the criminal justice system).

## 2. Productivity

Ensuring sufficient police activity is another rationale for quotas.<sup>244</sup> While related to idleness, this defense is premised on the idea that there is a certain amount of illegal activity in the world (i.e., traffic violations or criminal offenses) and that officers should attend to some portion of it.<sup>245</sup> Lieutenant Colonel Kelly of Chesterfield County, located outside of Richmond, Virginia, captured this sentiment when he stated, “Our officers are on the road 12 hours a day, so, if in a 12-hour period of time they stop three cars, I don’t think that’s unfairly targeting our citizens.”<sup>246</sup> Productivity rationales also ostensibly ensure the fair distribution of work within a police force.<sup>247</sup> An officer in Georgia recently recounted how one of his colleagues refused to answer calls or provide backup to other officers, and admitted that the department would “need a quota system to get a guy like that moving or he’d just park his car and sleep.”<sup>248</sup>

To make this productivity rationale more concrete, consider the case of drunk driving. Although Americans generally agree that driving while drunk is wrong and dangerous, many still tolerate it.<sup>249</sup> Setting aside real and often consequential issues of implementation,<sup>250</sup> as a general matter, one might argue that the careful dedication of police resources to drunk driving is uncontroversial. It would also be

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<sup>244</sup> See Bronstein, *supra* note 21, at 551–53.

<sup>245</sup> See NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DEP’T OF TRANSP., 2 MANUAL FOR POLICE TRAFFIC SERVICES PERSONNEL PERFORMANCE EVALUATION SYSTEM 1 (1977) (“Productivity is not another name for ‘quotas.’ Productivity refers to measures of job performance to be used in comparison to expected levels of performance.”).

<sup>246</sup> Melissa Hipolit, *Former Police Officer Exposes Chesterfield’s Ticket Quota Goals*, WTVR (July 15, 2014, 6:04 AM), <https://wtvr.com/2014/07/14/chesterfield-quota-investigation>.

<sup>247</sup> See ATLANTA CITIZEN REV. BD., STUDY AND INQUIRY INTO THE ATLANTA POLICE DEPARTMENT’S INVOLVEMENT IN THE DEATH OF MS. KATHRYN JOHNSTON 24 (2010) (“A manager must ensure that officers are working and the work is fairly distributed.”).

<sup>248</sup> Bill Torpy, *Did DeKalb’s Cops Have Arrest and Ticket Quotas?*, ATLANTA J.-CONST. (Oct. 2, 2016), <https://www.ajc.com/news/local/bill-torpy-large-did-dekalb-cops-have-arrest-and-ticket-quotas/GxkflThnOJlUaFTSQ5Fd7N>.

<sup>249</sup> See generally BARRON H. LERNER, ONE FOR THE ROAD: DRUNK DRIVING SINCE 1900 (2011) (tracing the history of drunk driving and efforts to stop it); JAMES B. JACOBS, DRUNK DRIVING: AN AMERICAN DILEMMA (1989) (analyzing Americans’ drunk driving problem and anti-drunk driving policies); Fredrick Kunkle, *Americans Are Still Way Too Tolerant of Drunken Driving*, WASH. POST (Aug. 31, 2016, 8:02 AM) <https://www.washingtonpost.com/news/tripping/wp/2016/08/31/americans-are-still-way-too-tolerant-of-drunk-driving-safety-advocates-say> (discussing the problem of drunk driving in the United States today).

<sup>250</sup> Implementation questions are related but not necessarily fatal to this rationale; instead such administrative issues—which unavoidably implicate questions of race, poverty, gender, and sexual orientation—can be attended to by training, oversight, and compliance.

reasonable to expect results, particularly in places where drunk driving is likely to occur (e.g., large sporting events) or during times of the year when people may be more willing to drink and drive (e.g., holidays). The absence of a numerical goal or a threat of adverse employment action would render this enforcement priority an empty mandate. For supporters of this defense, ticket quotas raise the stakes.

### 3. Evaluation

One might also argue that quotas can be useful for evaluative purposes. Various arguments are available on this front. First, as a general matter, employment-based, numerical expectations are unremarkable. In its discussion of quotas, the Atlanta Citizen Review Board explained, “Production quotas are a common part of modern life. Almost all of us work at jobs where [sic] we have explicit or implicit numerical goals.”<sup>251</sup> The power to arrest and a legally sanctioned monopoly over violence differentiate police from typical employees, but it is not obvious that these extraordinary powers should exempt law enforcement from standard models of employer evaluation. In fact, such an exemption might add another layer to “police exceptionalism,” much to the chagrin of criminal justice reformers.<sup>252</sup> Defenders of quotas might argue that numbers-based imperatives should not be the *only* standards for evaluating police officers, but they would certainly include quotas among them. They would likely point to the fact that many statutes expressly prohibit law enforcement from relying exclusively on numbers when assessing officers.<sup>253</sup> This argument for the evaluative utility of quotas focuses on the standard nature of numbers-based evaluations in the employment world and highlights the need to consider numbers alongside other factors.

Besides the normalcy of quantitative requirements in work settings, evaluation-based defenses of quotas also focus on their perceived tangibility and neutrality. On the former, Joe Giacalone, a former New York City law enforcement officer who defends the use

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<sup>251</sup> ATLANTA CITIZEN REV. BD., *supra* note 247, at 22.

<sup>252</sup> See, e.g., Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1843 (2015) (“Policing agencies—for that is what they are, agencies of executive government—fail to play by the rules of administrative governance.”).

<sup>253</sup> See, e.g., N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.126 and J.R. No. 2) (“The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force.”); N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) (“Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made.”).

of quantitative benchmarks, claims that “[t]here are very few ways we can evaluate police officers’ activity.”<sup>254</sup> Since it is impossible to “count how many times [police officers] shake someone’s hand on the street,” Giacalone is unbothered by critiques of quotas and insists that “it’s written in the job description to make arrests and write summons.”<sup>255</sup> Alongside this results-oriented approach to policing is the idea that quotas are straightforward and empirically superior to subjective assessments. Indeed, criminologists have acknowledged that quotas are sometimes justified because “such numbers are easy to calculate and compare.”<sup>256</sup> Some describe these quantitative metrics as less vulnerable to the idiosyncrasies of police management.<sup>257</sup>

The idea of objectivity is significant because promotion in policing is notoriously nepotistic and subject to interpersonal politics.<sup>258</sup> Quotas, it could be argued, provide a more impersonal way to assess employee productivity and address longstanding concerns about diversity in law enforcement.<sup>259</sup>

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<sup>254</sup> George Joseph, *NYPD Commander’s Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), <https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists>.

<sup>255</sup> *Id.*

<sup>256</sup> STEVEN M. COX, SUSAN MARCHIONNA & BRIAN D. FITCH, INTRODUCTION TO POLICING 243–44 (3d ed. 2017).

<sup>257</sup> See FRANK J. LANDY, PERFORMANCE APPRAISAL IN POLICE DEPARTMENTS 6 (1977) (“One of the major issues in performance measurement is the nature of the information gathered . . . . Most critics of subjective or judgmental performance evaluation imply that the judgment made by the supervisor is more related to personal idiosyncrasies than to the behavior of the person being rated.”).

<sup>258</sup> See THOMAS J. GRADEL & DICK SIMPSON, CORRUPT ILLINOIS: PATRONAGE, CRONYISM, AND CRIMINALITY 136 (2015) (discussing how a Chicago police officer failed to receive a promotion for failing to follow the directions of a corrupt local politician); STEVEN LEINEN, BLACK POLICE, WHITE SOCIETY 136 (1984) (discussing how promotion for detectives in the NYPD relied on both quantitative factors (number of arrests), and the leveraging of personal connections (“having ‘sponsors’ or ‘personal contacts’ on the job”)); Andrea Shalal & Jonathan Landay, *Black Cops Say Discrimination, Nepotism Behind U.S. Police Race Gap*, REUTERS (July 2, 2020, 10:28 AM), <https://www.reuters.com/article/us-minneapolis-police-blackofficers/black-cops-say-discrimination-nepotism-behind-u-s-police-race-gap-idUSKBN2432T8> (stating that discrimination in hiring and promotion has hampered Black representation in police forces in the United States).

<sup>259</sup> On diversity, see MANGAI NATARAJAN, WOMEN POLICE IN A CHANGING SOCIETY: BACK DOOR TO EQUALITY (2008) (describing the development of women police over the past twenty years); DAVID E. BARLOW & MELISSA HICKMAN BARLOW, POLICE IN A MULTICULTURAL SOCIETY: AN AMERICAN STORY (2018) (describing the role that social, political, and economic relationships have played in the historical development of the police); see generally David Alan Sklansky, *Not Your Father’s Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209 (2006) (describing the recent dramatic shift in the demographics of police departments).

#### 4. Revenue Generation

The image of mercenary police officers seizing civilians to meet quantitative goals is unsavory and makes explicitly revenue-based defenses of quotas rare. However, administrative practices across the country reveal an undeniable fact: law enforcement helps generate money for municipal coffers. This stark reality became clear in Nevada a few years ago, when state legislators vigorously protested the decriminalization of traffic tickets.<sup>260</sup> They argued that such an action would lead to an annual loss of \$33 million in the counties of Washoe and Reno.<sup>261</sup>

The profitability of law enforcement also helps explain why cities get nervous when police officers engage in purposeful work slow downs. Public safety is an issue, but so is money. “Cops not writing summonses is usually very effective” and garners immediate attention “because it affects the city finances greatly.”<sup>262</sup> Perhaps the most obscene version of policing for profit was the well-documented debacle in Ferguson, Missouri, where the federal government found that revenue, rather than public safety needs, shaped the city’s racially discriminatory policing.<sup>263</sup> Defenders of revenue-based policing might concede that profit-motivated arrest quotas are indefensible and instead limit their defense to quotas for traffic tickets and violations, which represent the core feature of all anti-quota statutes and pending bills.<sup>264</sup>

A revenue-based defense of police quotas would highlight the fact that, in many jurisdictions, revenue from traffic violations helps finance socially valuable goods. Pennsylvania imposes a two-dollar surcharge on traffic violations that goes to its Access to Justice Account, which funds civil legal services in the state.<sup>265</sup> A recent California law imposes a four-dollar fee on moving violations to support emergency air medical services.<sup>266</sup> In a driver-friendly state with

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<sup>260</sup> James DeHaven, *Do Traffic Tickets Unfairly Hurt the Poor? Nevada Lawmakers Eyeing Traffic Law Reforms*, RENO GAZETTE-J. (Dec. 21, 2017, 4:42 PM), <https://www.rgj.com/story/news/politics/2017/12/21/do-traffic-tickets-unfairly-hurt-poor-nevada-lawmakers-again-eyeing-traffic-law-reforms-despite-city/975423001>.

<sup>261</sup> *Id.*

<sup>262</sup> Haven Orecchio-Egresitz, *Police Have Traditionally Protested Anti-Police Rhetoric by Making Fewer Arrests. Right Now That’s Exactly What the Public Wants*, INSIDER (June 16, 2020, 1:41 PM), <https://www.insider.com/police-have-historically-protested-by-making-fewer-arrests-its-become-2020-6>.

<sup>263</sup> See Ferguson Report, *supra* note 17.

<sup>264</sup> See *infra* Appendices A & B.

<sup>265</sup> 42 PA. STAT. AND CONS. STAT. ANN. § 3733.1(c)(3) (West, Westlaw through 2020 Reg. Sess. Act 95).

<sup>266</sup> *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, PR NEWswire (Oct. 8, 2019, 2:42 PM), <https://www.prnewswire.com/news->

the country's largest population, this surcharge directly helps the critical victims of automobile accidents<sup>267</sup> and improves services to rural residents who need critical care in urban centers.<sup>268</sup> Surcharges for traffic violations in New Jersey fund research on spinal cord repair, brain injury, and autism treatment.<sup>269</sup> In Michigan during the 2017-2018 fiscal year, penal fine revenues, including fines from traffic tickets, generated approximately \$24.6 million, with \$24.2 million distributed to public libraries and \$392,800 distributed to law libraries.<sup>270</sup> Notably, all of these states have quota prohibitions on the books.<sup>271</sup> Government benefits derived from traffic violations, defenders would argue, are not extraordinary.

With this reality of government-generated profit in mind, a defender of quotas would argue that the remaining issue is whether quotas are an ideal way to actualize the subsidies that flow out of traffic laws. This is a question of tradeoffs.

Many jurisdictions rely on these kinds of cross-subsidies because of the legislative and electoral unpopularity of raising taxes. Jeff Cumins, a political scientist and expert in state budgets, captures this problem: "Legislators can get creative in ways to find revenue. Particularly in the last decades we've been in an anti-tax orientation, and so this is one way to raise money for legislators' pet projects and programs."<sup>272</sup> Funding by traffic violations is particularly salient in rural parts of the country as well as states in the southeast, where research has shown that jurisdictions have an unusually high reliance on fees and fines.<sup>273</sup> These localities have small property tax bases and collect fewer sales taxes than their urban counterparts because of relatively lower commerce.<sup>274</sup> Thus, "[e]ven when the ethical and fiscal problems with financing government through fines are apparent,

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releases/governor-signs-bipartisan-bill-to-extend-funding-for-emergency-air-medical-services-300934138.html; CAL. GOV'T CODE § 76000.10(c)(1) (West, Westlaw through ch. 372 of 2020 Reg. Sess.).

<sup>267</sup> § 76000.10(e)(1).

<sup>268</sup> *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, *supra* note 266.

<sup>269</sup> Laura Herzog, *We Paid \$405M in Tickets Last Year; See Where the Money Went*, NJ.COM (Jan. 16, 2019), [https://www.nj.com/news/2016/05/where\\_your\\_ticket\\_payment\\_money\\_goes\\_funds\\_new\\_jer.html](https://www.nj.com/news/2016/05/where_your_ticket_payment_money_goes_funds_new_jer.html).

<sup>270</sup> MICHIGAN HOUSE OF REPRESENTATIVES FISCAL AGENCY, FISCAL BRIEF: TRAFFIC CITATION REVENUE 5 (2019), [https://www.house.mi.gov/hfa/pdf/alpha/fiscal\\_brief\\_traffic\\_citation\\_revenue.pdf](https://www.house.mi.gov/hfa/pdf/alpha/fiscal_brief_traffic_citation_revenue.pdf).

<sup>271</sup> *See infra* Appendix A.

<sup>272</sup> Liz Gonzalez, *Special Report: Why Traffic Tickets in California Are So High*, FOX26 NEWS (Apr. 29, 2019), <https://kmpm.com/news/local/special-report-why-traffic-tickets-in-california-are-so-high>.

<sup>273</sup> *See* Maciag, *supra* note 5.

<sup>274</sup> *Id.*

viable alternatives remain hard to find.”<sup>275</sup> Defenders of quota-based policing would contend that such regimes are just one part of a larger set of tradeoffs when policymakers are considering how to diversify money streams. They would argue that this version of policing should be openly debated and carefully considered instead of categorically rejected based on grotesque examples. Implementation and the specter of discrimination still loom, but defenders of quotas would maintain that these issues are analytically distinct and correctable.<sup>276</sup>

### B. Counterarguments

Law enforcement, scholars of policing, critics of the police, and the media have all offered insights that quickly dispense with some of these rationales for quotas. This subsection supplements these insights with new objections. It offers a point-by-point refutation of the above-described defenses of quotas—some of which are compelling at first glance but suffer from practical and empirical problems.

#### 1. *The Allure of Activity*

First, quota-based policing does not guard against shirking. Quotas may produce law enforcement activity, but officers who want to shirk will still find ways to cut corners even when there are quotas in place designed to keep them productive.<sup>277</sup> Consider the cases of Blaine Morgan and Michael Baker, two police officers in Charleston, South Carolina. Both officers disclosed that they falsified traffic tickets in an effort “to boost their respective citations totals” and subsequently resigned.<sup>278</sup> Their scam involved writing bogus traffic tickets without motorists’ knowledge.<sup>279</sup> The officers had the tickets dismissed because they had no intention of following through on them in court. But, as one news article said at the time, “one of the officers apparently slipped up. He did not dismiss a ticket in time for court

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<sup>275</sup> Matt Ford, *The Problem with Funding Government Through Fines*, ATLANTIC (Apr. 2, 2015), <https://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387>.

<sup>276</sup> See *supra* note 249.

<sup>277</sup> See TOM BARKER, POLICE ETHICS: CRISIS IN LAW ENFORCEMENT 131 (3d ed. 2011) (“Supervisors who impose quotas . . . increase the risks that officers will cut corners or bend the laws . . . to meet the quotas . . .”); ROGER G. DUNHAM & GEOFFREY P. ALPERT, CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 207 (7th ed. 2015) (“Management practices may encourage corruption by imposing pressures for arrest quotas or make it acceptable to cut corners to effect arrests.”).

<sup>278</sup> Michael Majchrowicz, *2nd Charleston Police Officer Who Falsified Traffic Tickets Resigns from Department*, POST & COURIER (Sept. 14, 2019), [https://www.postandcourier.com/news/2nd-charleston-police-officer-who-falsified-traffic-tickets-resigns-from-department/article\\_16b6279e-a334-11e9-a925-87076f916396.html](https://www.postandcourier.com/news/2nd-charleston-police-officer-who-falsified-traffic-tickets-resigns-from-department/article_16b6279e-a334-11e9-a925-87076f916396.html).

<sup>279</sup> *Id.*

and the driver was notified.”<sup>280</sup> After Officer Morgan resigned; the Charleston Police Department admitted that Morgan artificially inflated the number of tickets written in an attempt to conceal the fact that he was not actively and appropriately patrolling his area.<sup>281</sup> This statement casts doubts on whether quotas can mitigate shirking and highlights the perverse incentives they invite.

A similar case involving the termination of a ticket-falsifying, quota-fulfilling officer made it to the Supreme Court of Mississippi. The state fired officer Sammy William Ray for writing “ghost tickets.”<sup>282</sup> In a sworn statement, he confessed, “During the time I have been employed with the [Mississippi Department of Public Safety], I have written 20–25 tickets that may or may not be factual tickets . . . . This was done to increase my ticket activity.”<sup>283</sup> In an interview where he was questioned about his motives, he unambiguously added, “I was just trying to play a numbers game. You know, just trying to stay out of hot water.”<sup>284</sup>

A massive overtime abuse scandal in Massachusetts also injects doubt into whether police quotas actually make officers more productive. The overtime scandal dated back to 1996 and involved more than twenty officers in the now-defunct Troop E of the Massachusetts State Police (MSP), which patrolled the Massachusetts Turnpike.<sup>285</sup> Prosecutors claimed that officers were “expected to issue a minimum of 8–10 citations” for each shift.<sup>286</sup> Inability to meet this requirement “had to be explained to supervisors and command staff,” and “[r]epeated failures to meet this quota often resulted in a trooper being blocked from receiving [such] overtime opportunities.”<sup>287</sup>

Because MSP received federal funding, the Department of Justice became involved and ultimately charged and convicted eight people of

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<sup>280</sup> Anne Emerson, *CPD Chief: Full-Scale Investigation into Unwarranted Ticket Writing*, ABC4 NEWS (July 11, 2019), <https://abcnews4.com/news/local/cpd-chief-full-scale-investigation-into-unwarranted-ticket-writing>.

<sup>281</sup> *Id.*

<sup>282</sup> Ray v. Miss. Dep’t of Pub. Safety, 172 So. 3d 182, 184 (Miss. 2015).

<sup>283</sup> *Id.* at 186.

<sup>284</sup> *Id.* at 185.

<sup>285</sup> Matt Rocheleau, *State Police Overtime Scheme, Illegal Ticket Quota Was Devised by Higher-Ups 20 Years Ago, Former Trooper Says*, BOS. GLOBE (Feb. 6, 2020, 8:56 PM), <https://www.bostonglobe.com/2020/02/07/metro/state-police-overtime-scheme-ticket-quota-system-stretches-back-20-years-former-trooper-says>.

<sup>286</sup> Scott J. Croteau, *Were Mass. State Police Troopers in OT Scandal Told to Fill Ticket Quotas? Agency Denies New Allegation in Federal Court Filing*, MASS. LIVE (Mar. 20, 2019), <https://www.masslive.com/news/2019/03/were-mass-state-police-troopers-in-ot-scandal-told-to-fill-ticket-quotas-agency-denies-new-allegation-in-federal-court-filing.html>.

<sup>287</sup> *Id.*

various embezzlement-related charges.<sup>288</sup> Quotas were a motivating factor in the overtime scheme. According to one of the Department of Justice's sentencing announcements, the officers "admitted that they had been paid for hours they did not work, and for overtime shifts from which they left early."<sup>289</sup> The scheme was so elaborate that the federal judge directed prosecutors to revisit whether the parties should be charged with conspiracy.<sup>290</sup>

Elsewhere, quota-based policing has led officers to plant crack on innocent people,<sup>291</sup> lazily dump summonses on clearly abandoned cars,<sup>292</sup> cite fictitious drivers,<sup>293</sup> and ticket dead people.<sup>294</sup> Such malfeasance is not only in the domain of individual decisionmaking but can shape organizational culture. Police supervisors who require officers to meet quotas are also beholden to numbers in ways that encourage the aforementioned forms of misconduct.<sup>295</sup> The absence of empirical scholarship on quota-based shirking, coupled with the exis-

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<sup>288</sup> See, e.g., U.S. Attorney's Office, District of Mass., *Former Massachusetts State Trooper Sentenced to Three Months in Prison for Overtime Fraud* (Mar. 26, 2019), <https://www.justice.gov/usao-ma/pr/former-massachusetts-state-trooper-sentenced-three-months-prison-overtime-fraud>.

<sup>289</sup> Press Release, U.S. Attorney's Office: District of Mass., *Two Massachusetts State Troopers Sentenced in Overtime Abuse Investigation* (June 4, 2019), <https://www.justice.gov/usao-ma/pr/two-massachusetts-state-troopers-sentenced-overtime-abuse-investigation>.

<sup>290</sup> Matt Rocheleau, *Judge Orders Federal Prosecutors to Explore Whether State Police OT Scandal Was a 'Conspiracy,'* BOS. GLOBE (Jan. 30, 2020, 3:45 PM), <https://www.bostonglobe.com/2020/01/30/metro/judge-wolf-orders-federal-prosecutors-explore-whether-state-police-overtime-scandal-was-conspiracy>.

<sup>291</sup> See Oren Yaniv, *Ex-Cop Jason Arbeeney Cries for Judge, Gets Probation; Judge Gustin Reichbach Could Have Given Him 4 Years*, N.Y. DAILY NEWS (Feb. 3, 2012), <https://www.nydailynews.com/new-york/ex-cop-jason-arbeeney-cries-judge-probation-judge-gustin-reichbach-4-years-article-1.1016083>; Press Release, Drug Policy Alliance, *Former NYPD Detective Testifies that Police Regularly Plant Drugs on Innocent People to Meet Arrest Quota* (Oct. 12, 2011), <https://www.drugpolicy.org/news/2011/10/former-nypd-detective-testifies-police-regularly-plant-drugs-innocent-people-meet-arrest>; Jim Dwyer, *The Drugs? They Came from the Police*, N.Y. TIMES (Oct. 13, 2011), <https://www.nytimes.com/2011/10/14/nyregion/those-drugs-they-came-from-the-police.html>.

<sup>292</sup> ELIZABETH REUSS-IANNI, *TWO CULTURES OF POLICING: STREET COPS AND MANAGEMENT COPS* 112 (1983).

<sup>293</sup> Tom Jackman, *Md. Trooper Wrote DWI Tickets to Fictitious Drivers, Pleads Guilty to Perjury*, WASH. POST (Aug. 6, 2020, 6:33 AM), <https://www.washingtonpost.com/crime-law/2020/08/06/md-trooper-wrote-dwi-tickets-fictitious-drivers-pleads-guilty-perjury>.

<sup>294</sup> Paul Pizzuto, *Ex-NYPD Officer, Says He Ticketed Dead People to Meet Quotas*, HUFFPOST (Sept. 7, 2012, 11:17 AM), [https://www.huffpost.com/entry/paul-pizzuto-ex-nypd-officer-ticketed-dead-people-quotas\\_n\\_1864310](https://www.huffpost.com/entry/paul-pizzuto-ex-nypd-officer-ticketed-dead-people-quotas_n_1864310).

<sup>295</sup> See Christopher Slobogin, *Testifying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1044 n.32 (1996) ("[P]olice supervisors, driven by the same crime control and quota pressures that drive field officers, actively encourage testifying.").

tence of widespread evidence of police corruption,<sup>296</sup> leads to the reasonable conclusion that these requirements do not incentivize diligent policing and instead contribute to the scourge of wrongful convictions.<sup>297</sup>

## 2. *Arbitrariness*

Arbitrariness and inattention to quality foil the expectation that quotas will enhance police productivity. It bears noting that how one measures productivity depends on how one envisions the function of police. The purpose of law enforcement is usually tied to standard conceptions of crime control, public safety, and private property protection. But many critics of the criminal justice system attribute other, less uplifting goals, to the police, including enforcement of the racial order and oversight of the poor. There is much evidence to support the latter understanding.<sup>298</sup> However, this Section's analysis will proceed, for argument's sake, with the former, good-faith conception of the police.

Even assuming that police serve the socially beneficial purpose of protecting life and property, numbers will not be completely impeachable and have a role in how this division of government is evaluated. But per se quotas are blunt objects that do not neatly get at public

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<sup>296</sup> See IVKOVIC, *supra* note 116; Rudovsky, *supra* note 116; Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U. L. REV. 1133, 1133 (2013); Carroll Seron, Joseph Pereira & Jean Kovath, *Judging Police Misconduct: "Street-Level" Versus Professional Policing*, 38 L. & SOC'Y REV. 665 (2004) (surveying New York City residents' accounts of instances where police officers engaged in prohibited behavior such as use of unnecessary force and abuse of authority).

<sup>297</sup> See JESSICA S. HENRY, *SMOKE BUT NO FIRE: CONVICTING THE INNOCENT OF CRIMES THAT NEVER HAPPENED* 66 (2020) ("Quotas result in no-crime wrongful convictions because they motivate the police to arrest people for crimes that never happened and cause innocent people to plead guilty [to them] so they can go home.").

<sup>298</sup> See, e.g., PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017); SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* (2001); ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* (2016); TALITHA L. LEFLOURIA, *CHAINED IN SILENCE: BLACK WOMEN AND CONVICT LABOR IN THE NEW SOUTH* (2015); ALEXANDRA NATAPOFF, *PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL* (2018); ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009); NEIL WEBSDALE, *POLICING THE POOR: FROM SLAVE PLANTATION TO PUBLIC HOUSING* (2001); Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. SOC. (1999).

safety. Scholars and legislative supporters have noted their arbitrariness,<sup>299</sup> but there is more to unearth.

The arbitrariness of police quotas is highlighted by their overinclusive and underinclusive nature. Unreasonably high quotas can extract officers' time and prevent them from addressing more serious threats that, if attended to, could lead to greater public safety benefits.<sup>300</sup> When quotas are low, as supporters claim, public safety benefits are questionable.<sup>301</sup> A quota of two arrests every six weeks led one cop to offer the following query: "Suppose the officer makes two arrests the first two weeks? What does he do the next four?"<sup>302</sup> If the productivity rationale governs, the officer could technically coast. Ultimately, the productivity defense for quotas is rife with incoherence. It can be irresponsible to public safety by serving as a distraction from more serious criminal wrongdoing. This rationale can also be insensitive to public safety by only scratching the surface of illegality and allowing officers to satisfy a minimal threshold quota that may not correspond with actual criminal offending.

### 3. *Thin Evaluations*

It is undeniable that law enforcement leadership needs some method to evaluate officers, but quotas are subpar instruments for such assessments. Critics of quotas inside and outside of law enforcement have taken the laziness rationale and deployed it against supervisors, with one online commenter arguing that "[q]uotas are management's lazy attempt to make a very few lazy employees pick up the pace."<sup>303</sup> But a simpler, less loaded critique is available: Quotas poorly capture the qualitative dimensions of policing and misguidedly

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<sup>299</sup> See, e.g., Bronstein, *supra* note 21, at 545; Mitch Smith, *New Law Bans Police Use of Ticket Quotas*, CHI. TRIB. (June 16, 2014), <https://www.chicagotribune.com/news/ct-xpm-2014-06-16-chi-quinn-signs-into-law-bill-banning-police-ticket-quota-20140615-story.html> (noting support for Illinois's quota statute and quoting one legislator who stated, "Arbitrary quotas on the number of tickets that have to be issued by police officers undermines the public trust in the police departments' priorities . . . [b]y eliminating these quotas, we can restore that trust and ensure that police officers are free to do their job protecting the public").

<sup>300</sup> David I. Dewar, *Goal Displacement*, in *ENCYCLOPEDIA OF PUBLIC ADMINISTRATION AND PUBLIC POLICY* 193, 196 (David Andrew Schultz & James A. Beverly eds., 2004).

<sup>301</sup> See *id.*

<sup>302</sup> Athelia Knight & Benjamin L. Weiser, *Street Cops*, WASH. POST (July 12, 1982), <https://www.washingtonpost.com/archive/politics/1982/07/12/street-cops/68359866-8b67-4514-a6a2-3aa39b4a1b38>.

<sup>303</sup> Stephen Cain, Comment to *Ticket Quota for Ypsilanti Police Officers Is Illegal, Arbitrator Finds*, ANN ARBOR NEWS (Feb. 5, 2010, 6:04 AM), <http://www.annarbor.com/news/ticket-quota-for-ypsilanti-police-officers-is-illegal-arbitrator-finds>.

privilege quantity. The insights of criminologist Malcolm Sparrow are helpful here. Professor Sparrow writes:

Some departments set targets for functional outputs, including enforcement activities such as arrests, stops, searches and traffic citations. This . . . should never be the default position or become normal practice. If you want quality work from a carpenter, it makes no sense to demand that he or she drill a certain number of holes or hammer a quota of nails. The essence of craftsmanship involves mastery of all the tools and the ability to select among them based on a clear understanding of the specific task in hand. Functional quotas make little sense in this context.<sup>304</sup>

The obsession with quantity sacrifices a long list of qualitative concerns that are relevant to policing, namely good judgment, fairness, reasonableness, and legality.<sup>305</sup> Defenders of quotas may point to statutes that prohibit exclusive consideration of citations and arrests and require evaluations to be holistic. Nevertheless, the constellation of case law, settlements, officer testimony, and media accounts described in this Article suggests that, at a bare minimum, holistic evaluation of police is not a typical practice.<sup>306</sup>

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<sup>304</sup> Sparrow, *supra* note 34, at 18.

<sup>305</sup> *Id.* at 18–20; *see also* Floyd v. City of New York, 959 F. Supp. 2d 540, 601 (S.D.N.Y. 2013) (“For the purposes of performance review, an unconstitutional stop is no less valuable to an officer’s career than a constitutional one—because the two are indistinguishable.”); Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why it Matters*, 54 WM. & MARY L. REV. 1865, 1875–80 (2013) (describing rightful policing, which focuses on the fairness of police conduct, as opposed to the traditional emphases on lawful or efficient policing). The obsession with numbers is not unique to policing: Scholars have criticized how prosecutors, too, overemphasize convictions and their win-loss records at the expense of fair criminal justice outcomes. *See* Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. PA. L. REV. 959, 992, 987 (2009) (suggesting that “prosecutors view their jobs as maximizing convictions” and, along the lines of Professor Sparrow, noting how “conviction statistics ignore other important outcomes, such as declinations, sentences, and victim satisfaction”); Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869, 883 (2009) (“Prosecutors may feel the need to be able to point to a record of convictions and long sentences if they want to be promoted or to land high-powered jobs outside the government.”); Angela J. Davis, *The American Prosecutor: Power, Discretion, and Misconduct*, 23 CRIM. JUST. 24, 28 (2008) (remarking that most of the prosecutors the author, a criminal procedure scholar and former director of the D.C. Public Defender Service, engaged with “seemed to focus almost exclusively on securing convictions, without consideration of whether a conviction would result in the fairest or most satisfactory result for the accused or even the victim”).

<sup>306</sup> STAMPER, *supra* note 22, at 3 (“In fact, many supervisors believe that counting and recapping activity is the only way to evaluate police performance.”).

#### 4. Tradeoffs and Revenue-Based Defenses

Finally, it should go without saying that the police should not be tasked with generating revenue. Though such a normative claim may seem obvious, it chafes against the entrepreneurial realities of American policing. “Economic sanctions,” Beth Colgan explains, “constitute the most common form of punishment in the United States.”<sup>307</sup> If the profit-based defense of police quotas rests on a question of tradeoffs—that is, tickets allow localities to generate revenue when they cannot raise taxes—then the tradeoffs at least need to be named and assessed.

Fortunately, empiricists are beginning to name the costs of for-profit policing. Many of their studies focus on the disproportionate racial effects of policing for profit.<sup>308</sup> But even when measured only in terms of the public-safety purpose of policing, quotas come with considerable costs. Rebecca Goldstein and her colleagues have studied how municipal reliance on fees, fines, and forfeitures, as opposed to taxes, produce “undesirable outcomes that may not have been anticipated by policymakers aiming simply to cover a revenue shortfall.”<sup>309</sup> Relying on census data that collected the revenue and expenditure data of approximately 90,000 local governments, they found that reallocating police resources to money-generating activity was “associated with neglect of other important police functions, namely, the investigation of violent crimes.”<sup>310</sup> This revenue-based orientation ultimately “compromises their ability to perform their traditional functions.”<sup>311</sup> According to the study, a one percent increase in the share of revenues from fees, fines, and forfeitures is associated with a 3.7 per-

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<sup>307</sup> Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1537 (2020).

<sup>308</sup> See generally, Akheil Singla, Charlotte Kirschner & Samuel B. Stone, *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFFS. REV. 1132 (2020); Allison P. Harris, Elliott Ash & Jeffrey A. Fagan, *Fiscal Pressures and Discriminatory Policing: Evidence from Traffic Stops in Missouri*, 5 J. RACE, ETHNICITY, & POL. 450 (2020), <https://doi.org/10.1017/rep.2020.10>; Kelsey Shoub, Leah Christiani, Frank R. Baumgartner, Derek A. Epp & Kevin Roach, *Fines, Fees, Forfeitures, and Disparities: A Link between Municipal Reliance on Fines and Racial Disparities in Policing*, 0 POL’Y STUD. J. 1 (Aug. 7, 2020), <https://doi.org/10.1111/psj.12412>.

<sup>309</sup> Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFFS. REV. 5, 24 (2018); see also Michael D. Makowsky & Thomas Stratmann, *Political Economy at Any Speed: What Determines Traffic Citations?*, 99 AM. ECON. REV. 509, 510 (2009) (finding in empirical study that “the likelihood and dollar amounts of fines [for speeding tickets] are decreasing functions of local property tax revenue” and also that “the likelihood of receiving a speeding fine is higher in towns that are in a fiscal crunch caused by a rejected increase in the property tax limit”).

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

centage point decrease in the clearance rate for violent crimes.<sup>312</sup> Economist Anna Harvey has similarly concluded that “fiscal incentives can distort the allocation of law enforcement effort[s]” in ways that have distributional consequences for public safety.<sup>313</sup> Notwithstanding empirical work that highlights the compromising cost of profit-based policing, there are a host of other constituent-specific problems with police quotas.

### C. *Additional Objections*

It is essential to not let defenses of quotas and counterarguments to them totally consume how quotas are understood. This subsection offers a series of additional reasons why quotas constitute lousy policy. To highlight the unique possibility for building consensus on prohibiting quotas, this subsection focuses specifically on three constituents: law enforcement, the general public, and racial minorities.

#### 1. *Law Enforcement Objections*

Police officers and police unions have been some of the most prominent opponents of quotas. Two criticisms often offered by unions stand out. The first concerns how quotas curtail the discretion of officers.<sup>314</sup> Patrick Lynch, head of the Police Benevolent Association, the police union for the NYPD, has been vocal on this issue. In an op-ed that was relatively dismissive of the racial dimensions of police-citizen encounters, Lynch argued that quotas were the source of New York City’s policing woes.<sup>315</sup> Such requirements, he complained, “risk turning officers into automatons.”<sup>316</sup> The Illinois Fraternal Order of Police Labor Council, which supported Illinois’s quota statute, echoes a similar sentiment on its website, stating that “[q]uotas turn police officers into tax collection machines instead of

<sup>312</sup> *Id.*

<sup>313</sup> Anna Harvey, *Fiscal Incentives in Law Enforcement*, 22 AM. L. & ECON. REV. 173, 173 (2020). In his support for Illinois’s statute, Chicago State Senator Bill Cunningham relevantly noted, “Policing should not be used as a revenue enhancement strategy by municipalities. . . . Officers will no longer be distracted from their regular law enforcement duties in order to meet ticket quotas.” See *Cunningham Bill Signed into Law*, BEVERLY REV. (Aug. 28, 2018), [https://www.beverlyreview.net/news/community\\_news/article\\_618a47fe-aae8-11e8-9a28-872a66178e5c.html](https://www.beverlyreview.net/news/community_news/article_618a47fe-aae8-11e8-9a28-872a66178e5c.html); see also Michael D. Makowsky, Thomas Stratmann & Alex Tabarrok, *To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement*, 48 J. LEGAL STUD. 189, 189 (2019) (finding in empirical study “that revenue-driven law enforcement can distort police behavior and decision-making, . . . altering the quantity, type, and racial composition of arrests”).

<sup>314</sup> See Bronstein, *supra* note 21, at 550.

<sup>315</sup> Patrick J. Lynch, *The Real Fix for Stop-and-Frisk*, N.Y. DAILY NEWS (Oct. 7, 2013, 4:20 AM), <https://www.nydailynews.com/opinion/real-fix-stop-and-frisk-article-1.1476893>.

<sup>316</sup> *Id.*

professional law enforcement officers. It distracts police officers in the exercise of their day-to-day law enforcement activities.”<sup>317</sup>

Quotas are legal in Arizona, but the Tucson Police Officers Association has advocated for a statutory prohibition. Jason Winsky, government affairs director for the union, declared, “We’re just philosophically opposed to any kind of quota . . . . It’s a morale issue for us because the officer no longer has discretion.”<sup>318</sup> In Washington, where quotas are also legal, retired Spokane police officer and Washington State Senator Jeff Holy sponsored a bill prohibiting the practice.<sup>319</sup> For Holy, “[a]n officer’s ability to make an independen[t] decision allows them to apply the level of enforcement action they believe to be appropriate for the situation. An officer being *directed* to apply enforcement action to comply with an employer policy or ticket quota reflects badly on law enforcement.”<sup>320</sup> These discretion-based objections are organized around the belief that quotas lead officers to be ruled by numbers instead of common-sense judgment.

Curtailed discretion bleeds into the second major criticism offered by police: that quotas limit the scope of their work. This critique works in two different directions. On one end is a concern that quotas prevent officers from attending to more serious crimes. Quantitative studies of law enforcement priorities lend support to this idea.<sup>321</sup> On the other end is a concern that quotas disincentivize police from engaging in socially beneficial activity that is less penal and harder to quantify. “If I break up a fight between two boys and send them home, I don’t get credit,” an officer explained.<sup>322</sup> “If I help deliver a baby in an emergency, I get no credit. But I score points if I issue a seat belt summons . . . .”<sup>323</sup>

When quotas distract from serious crimes and preclude the ostensible services that law enforcement holds itself out as offering (officers

<sup>317</sup> Brenda Schory, *New Law to End Ticket Quotas; Locally, Most Local Police Agencies Say They Never Had Them Anyway*, KANE CNTY. CHRON. (July 31, 2014, 10:48 PM), <https://www.kcchronicle.com/2014/07/29/new-law-to-end-ticket-quotas-most-local-police-agencies-say-they-never-had-them-anyway/afzdt5z>.

<sup>318</sup> Yoohyun Jung, *Police Union Calls for Elimination of Traffic-Ticket Quota*, ARIZ. DAILY STAR (Oct. 9, 2014), [https://tucson.com/news/blogs/police-beat/police-union-calls-for-elimination-of-traffic-ticket-quota/article\\_2cde50a7-10a0-5e18-8908-7335510ce811.html](https://tucson.com/news/blogs/police-beat/police-union-calls-for-elimination-of-traffic-ticket-quota/article_2cde50a7-10a0-5e18-8908-7335510ce811.html).

<sup>319</sup> *New WA Bill Would Discourage Traffic-Ticket Quotas for Officers*, MYNORTHWEST (Feb. 17, 2020, 2:44 PM), <https://mynorthwest.com/1723060/ticket-quotas-officers-washington>.

<sup>320</sup> *Senate Passes Holy Bill that Seeks to Discourage Traffic-Ticket Quotas for Officers*, WASH. STATE SENATE REPUB. CAUCUS (Feb. 17, 2020) (emphasis added), <https://jeffholy.src.wastateleg.org/tag/sen-jeff-holy>.

<sup>321</sup> See *supra* text accompanying notes 309–13.

<sup>322</sup> POLICE REFORM ORG. PROJECT, *supra* note 14, at 3.

<sup>323</sup> *Id.*

pledge to protect and *serve*), the nature of police work narrows, and public safety is compromised. Of course, quotas are not diametrically opposed to public safety, but they create scenarios where the public safety objective is deprioritized. Adherence to quotas leads police officers to be more concerned about obtaining a reward or avoiding a penalty.<sup>324</sup> Many officers are unbothered by this state of affairs and play the numbers game, but some disapprove. Their objections supply a powerful internal critique.

It is critical to understand that police unions are not typically torchbearers of criminal justice reform. In many ways, they have impeded reform.<sup>325</sup> As organizations tasked with ensuring optimal work conditions for their members, union concerns about quotas are far from selfless. Officers who protest quotas in their individual capacities typically do so as a response to employment grievances rather than altruistic civil rights concerns. These sobering realities do not, however, mean that the police's insights on quotas are bankrupt. In fact, their complaints are consonant with scholarly observations and warrant meaningful consideration.

## 2. *Racial Vulnerability*

Vulnerability to violent police encounters, and the racial subjugation that has been a feature of policing, make racial minorities foreseeable critics of quotas. This opposition is well warranted. Officers have confessed to using racial minorities to fulfill their quotas and pad their statistics.

In New Jersey, one officer described quota compliance as a sport that took place in minority communities. "Guys were going out. They were competing for how many tickets each guy could get," he revealed.<sup>326</sup> "They're saying they're going out hunting. You go to traffic court and you see the impact. 90% of the people you see there are blacks and latinos."<sup>327</sup> The practice of "hunting" occurred in New York, too. In an affidavit in one of many cases involving police quotas, former NYPD officer Christopher LaForce said that he had decided

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<sup>324</sup> Molly Davis, *Why the Utah Legislature Banned Police Quotas*, LIBERTAS INST. (Mar. 19, 2018), <https://libertasutah.org/op-eds/why-the-utah-legislature-banned-police-quotas>.

<sup>325</sup> See Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1340–46 (2020) (describing the critiques of police unions); Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 747–56 (2017) (discussing how police unions have been obstacles to criminal justice reform); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1191 (2017) (arguing that internal disciplinary procedures developed by police unions during the collective bargaining process can hinder criminal justice reform).

<sup>326</sup> Wallace, *supra* note 44.

<sup>327</sup> *Id.*

to retire because of the fatigue that quota-inspired racial profiling induced. “I got tired of hunting Black and Hispanic people because of arrest quotas,” he complained.<sup>328</sup> In addition to civilians, quotas also impact minority officers. These officials, who some hold out as a solution to racist policing, are sometimes forced to comply with a practice that facilitates discrimination and jeopardizes police relations with minority communities.<sup>329</sup> Additional empirical evidence suggests that minorities bear the brunt of the kinds of revenue-based policing that sometimes informs quota regimes.

On the federal level, Immigration and Customs Enforcement (ICE) has long had formal arrest quotas that impact the undocumented population and the predominantly Latinx community that is subject to ICE raids.<sup>330</sup> The Department of Justice’s investigation into the City of Ferguson led it to conclude that “[F]erguson’s police and municipal court practices both reflect and exacerbate existing racial bias,” and specifically recommended that the Ferguson Police Department “[p]rohibit the use of ticketing and arrest quotas, whether formal or informal.”<sup>331</sup>

The vulnerability of racial minorities to being targeted by quotas can lead to unnecessary, and sometimes violent, contact with the police. Recall that South Carolina passed its quota statute in response to a police officer’s killing of Walter Scott, an unarmed Black man. The defense team argued that the encounter stemmed from the officer’s attempt to fulfill his department-mandated quota of three minor violations every shift.<sup>332</sup> A desire to decrease unnecessary police and citizen contact also motivated Tennessee’s recent quota

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<sup>328</sup> Joseph Goldstein & Ashley Southall, ‘I Got Tired of Hunting Black and Hispanic People,’ N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html>.

<sup>329</sup> See *id.*; CRIME + PUNISHMENT, *supra* note 68; Sklansky, *supra* note 259 (discussing how the diversification of police departments affects their relationships with the communities they serve).

<sup>330</sup> See *Diaz-Bernal v. Myers*, 758 F. Supp. 2d 106, 114 (D. Conn. 2010); Nathan Treadwell, *Fugitive Operations and the Fourth Amendment: Representing Immigrants Arrested in Warrantless Home Raids*, 89 N.C. L. REV. 507, 560–61 (2011); Michael J. O’Brien, “Widespread” Uncertainty: *The Exclusionary Rule in Civil-Removal Proceedings*, 81 U. CHI. L. REV. 1883, 1898–99 (2014).

<sup>331</sup> Ferguson Report, *supra* note 17, at 2, 91.

<sup>332</sup> Cynthia Roldan, *Ticket Quota Limit Proposal for Law Enforcement Heads for Senate Floor*, POST & COURIER (Nov. 2, 2016), [https://www.postandcourier.com/politics/ticket-quota-limit-proposal-for-law-enforcement-heads-for-senate/article\\_14f44c11-d0f2-57c0-91b1-69b23bd536c8.html](https://www.postandcourier.com/politics/ticket-quota-limit-proposal-for-law-enforcement-heads-for-senate/article_14f44c11-d0f2-57c0-91b1-69b23bd536c8.html).

statute,<sup>333</sup> which levies criminal fines on law enforcement officials who impose quotas.<sup>334</sup>

A pause is necessary here, lest causal mechanisms get confused. Quotas do not cause police brutality and killings. Rogue officers and legal cultures of impunity are better explanations. But quotas can create the conditions for violent or even lethal interactions. Quotas figured prominently in an almost 200-page decision where a federal judge painstakingly described how the NYPD maintained a racist stop-and-frisk policy that flouted constitutional rules.<sup>335</sup> That policy encouraged officers to “crush the fucking city,” and indiscriminately stop Black and Latinx people without any legal reason because they “‘can always articulate’ some basis for a stop after the fact.”<sup>336</sup> Testimonies given to the Center for Constitutional Rights, which litigated the Floyd case, described how stops often resulted in excessive use of force by police against minorities who were slapped, thrown against walls, tasered, and brutalized.

Moreover, quotas subject racial minorities to police interactions that are often devoid of legal remedies and exacerbate their marginalization. Devon Carbado’s insights into the relationship between racial vulnerability and police misconduct are clarifying. “The more vulnerable a group is to predatory policing, the greater that group’s police contact and thus the greater the exposure to the possibility of violence.”<sup>337</sup> Such predation “trades on and compounds the marginalization of an already marginalized group” and “facilitates police violence by increasing the frequency [of minority contact] with the police.”<sup>338</sup>

An intersectional analysis further reveals how quotas exacerbate social inequality and make marginalized groups easy targets for police misconduct. Women of color, low-income people, and members of the LGBTQ community are particularly susceptible to being targeted by quota-fulfilling police officers. Police whistleblower Adhyl Polanco explains:

[W]hen you go hunting, when you put any type of numbers on a police officer to perform, we are going to go for the most vulnerable. Of course, we’re going to go for the LGBT community, we’re

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<sup>333</sup> See Arnold, *supra* note 95.

<sup>334</sup> Act of July 15, 2020, ch. 801, 2020 Tenn. Pub. Acts, <https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf>.

<sup>335</sup> Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

<sup>336</sup> *Id.* at 598–99.

<sup>337</sup> Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 561 (2017).

<sup>338</sup> *Id.*

going to the black community, we're going to those that have no vote, that have no power.<sup>339</sup>

Quotas exacerbate social vulnerability and make marginalized groups easy targets for police misconduct. When set against the larger context of police corruption, the predatory nature of quotas demonstrates why the practice constitutes bad policy.

### 3. *The General Significance of Quotas*

Police quotas should concern the general population. Some people may be undisturbed or feel unaffected by the problems police quotas invite either because they occupy a demographic group that is not a posterchild for mass incarceration or because they imagine themselves as law-abiding and invulnerable to quota-based policing. Criminal law theorist Doug Husak invites skepticism of such beliefs.<sup>340</sup> He observes that “[o]ffenses are so far-reaching that almost everyone has committed one or more at some time or another; the criminal law no longer distinguishes ‘us’ from ‘them.’”<sup>341</sup> Going a step further, Professor Husak estimates that “over 70% of living adult Americans have committed an imprisonable offense at some point in their life.”<sup>342</sup> Thus, the average person should be concerned about quotas because they likely engage in activities that come under the purview of this kind of policing.

Quotas can also lead to routine violations of constitutional rights and civil liberties. An officer who is forced to comply with a quota “will find it difficult to be sympathetic to procedural due process guidelines which stand in the way of filling his quota.”<sup>343</sup> In addition to due process issues, quotas invite equal protection problems, implicate Fourth Amendment issues related to unconstitutional police stops, and raise First Amendment concerns involving a police officer’s ability to speak out about quotas without fear of retaliation. Constitutional problems with quotas have arisen in large, diverse metropolitan areas like New York, Chicago, and Los Angeles as well as small cities like Mount Enterprise, Texas (with a population of approximately 450

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<sup>339</sup> Sarah Wallace, *More NYPD Officers Say There’s Proof of Quota-Driven Arrests*, NBC N.Y. (Apr. 1, 2016, 8:48 PM), <https://www.nbcnewyork.com/news/local/nypd-officers-arrest-quota-exclusive-interview-pressure-numbers>.

<sup>340</sup> See DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* 24 (2008).

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> Albert T. Quick, *Attitudinal Aspects of Police Compliance with Procedural Due Process*, 6 AM. J. CRIM. L. 25, 31 (1978).

people) and racially homogenous states like Utah (approximately ninety percent white).<sup>344</sup>

James Spadola, a former Delaware officer who has advocated for anti-quota legislation in his state, argues that “quotas transform civilians into a performance measure and potential arrest statistic, as opposed to an American with constitutional rights and protections that should be served and protected by the police.”<sup>345</sup> The availability of more sanitized euphemisms (e.g., performance standards, targets, activity) and the lack of rigorous investigations into quotas keep the general public from realizing how common they are in law enforcement. In a country that is only beginning to understand the problems of over-policing, quotas are a poorly understood practice that compromise an already fragile body of constitutional law.

For conservatives and liberals who believe that the police serve a public safety function, quotas are distortive and jeopardize the legitimacy of law enforcement. These distortive features may be of particular concern to law-and-order conservatives. John Eterno, a criminologist who spent two decades as an officer and retired as a captain in the NYPD, explains how quotas pervert police goals in his book *The Crime Numbers Game: Management by Manipulation*.<sup>346</sup> Eterno and his co-author Eli Silverman (also a criminologist) argue that quotas encourage police to focus on less difficult crimes “at the expense of more significant and arduous arrests.”<sup>347</sup> In a society where consensual crimes like drug trafficking leave no discernible complainant, murders often go unsolved, sexual assault is underreported, and white-collar crimes go unpunished. This should be a cause of concern for fiscal conservatives, law-and-order advocates, and supporters of victims’ rights.

Deeper questions of legitimacy also abound, as quotas undermine liberal concerns about procedural justice and the rule of law. Laurie Robinson, who was responsible for developing recommendations after the Department of Justice’s Ferguson investigation, explained how quotas and numbers-policing can shape public opinion: “If citizens believe that tickets are being issued or arrests are being made for rea-

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<sup>344</sup> *Mount Enterprise, Texas Population 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-cities/mount-enterprise-tx-population> (last visited Jan. 9, 2020); *Utah Population 2020*, WORLD POPULATION REV., <https://worldpopulationreview.com/states/utah-population> (last visited Dec. 20, 2020).

<sup>345</sup> James Spadola, *Delaware Should Ban Police Quotas*, DEL. ONLINE (July 28, 2017, 11:45 AM), <https://www.delawareonline.com/story/opinion/contributors/2017/07/28/delaware-should-ban-police-quotas-james-spadola/519661001>.

<sup>346</sup> JOHN A. ETERNO & ELI B. SILVERMAN, *THE CRIME NUMBERS GAME: MANAGEMENT BY MANIPULATION* (2017); see also Bronstein, *supra* note 21, at 555–56.

<sup>347</sup> ETERNO & SILVERMAN, *supra* note 346, at 11.

sons other than the goal of law enforcement,” she contends, “then their trust in the legitimacy of the system is really eroded.”<sup>348</sup> Others have echoed this view.<sup>349</sup> As liberal reformers and some conservative allies work to repair a criminal justice system riddled with imperfections, they need to address how quotas influence internal enforcement priorities and shape public conceptions of fairness.

Skeptics of incremental criminal justice reform—a group in which I find membership—may believe that reforming the practice of police quotas fails to confront the incorrigible nature of American policing. The strongest version of this critique would likely come from abolitionists who resist reformist reforms that tinker at the edges of the criminal justice system, as opposed to non-reformist reforms, which “have as their end goal the eventual dismantling of that system and are understood to be individual elements or steps in a larger strategy of structural transformation.”<sup>350</sup> This is a valid concern. Eliminating police quotas cannot solve the problems of white supremacy and poverty management that are central to the criminal justice system, but there are at least three reasons why abolitionists and radicals should care about police quotas. These reasons are theoretical, tactical, and temporal.

First, addressing the problem of quotas can be an important interim step toward reducing the imprint of the penal state, which is one goal of abolitionism.<sup>351</sup> Enforcing quota statutes and stamping out the practice elsewhere could shift the police away from understanding civilians as “stats to be harvested” and reduce unnecessary police encounters.<sup>352</sup> Taken one step forward, addressing quotas could also turn out to be especially necessary if the previously unorthodox, but increasingly recognizable, goal of defunding the police is achieved.<sup>353</sup> There is a strong reason to believe, based on the Camden example,

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<sup>348</sup> Joel Rose, *Despite Laws and Lawsuits, Quota-Based Policing Lingers*, NPR (Apr. 4, 2015, 4:47 AM), <https://www.npr.org/2015/04/04/395061810/despite-laws-and-lawsuits-quota-based-policing-lingers>.

<sup>349</sup> See Smith, *supra* note 299; Jonathan Banks, *Thing Blue Lies: How Pretextual Stops Undermine Police Legitimacy*, 66 CASE W. RESV. L. REV. 931 (2016).

<sup>350</sup> Marina Bell, *Abolition: A New Paradigm for Reform*, LAW & SOC. INQUIRY 1, 14 (2000).

<sup>351</sup> See, e.g., *Abolition Can't Wait*, 8 TO ABOLITION, <https://www.stoabolition.com/why> (last visited Jan. 9, 2020); Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration>.

<sup>352</sup> *The Big Reason Tampa Police Write So Many Tickets: They're Told To*, TAMPA BAY TIMES (Dec. 16, 2015), <https://www.tampabay.com/news/publicsafety/crime/theres-a-big-reason-tampa-police-write-so-many-tickets/2252912>.

<sup>353</sup> See Peter Simek, *What 'Defunding' the Dallas Police Department Could Look Like*, D MAG. (June 12, 2020, 11:14 AM), <https://www.dmagazine.com/frontburner/2020/06/what-defunding-the-dallas-police-department-could-look-like>.

that quotas could become more prominent in police forces with reduced personnel.<sup>354</sup>

Finally, quotas speak directly to an emerging discourse about the *purpose* of police. As this Article has shown, quota-based policing applies sharp pressure to common-sense assumptions about the public safety, crime-fighting conception of law enforcement. Attacking quotas—which have demonstrable connections to financial exploitation and racial subjugation—is at least consonant with the abolitionist insistence on rethinking punishment and reimagining the state’s relationship to vulnerable communities and the general population.

#### IV NORMATIVE PATHS FORWARD

What is one to do with these descriptive and definitional insights? This Part offers some recommendations on how to curb police quotas. Before beginning, I want to stress two things. First, any solution to the problem of police quotas cannot be strictly legal. A gauntlet of obstacles—white supremacy,<sup>355</sup> some jurisdictions’ narcotic addiction to profit-based policing,<sup>356</sup> judicial hostility to the enforcement of civil rights in federal courts,<sup>357</sup> and many others—are too mountainous for any set of neat positive law or policy prescriptions. Any attempt to curb quotas must be multi-pronged and multi-disciplinary.

Second, I do not try to propose *better* mechanisms for evaluating or incentivizing the police. I resist that normative move because it has already been taken up by criminologists<sup>358</sup> but more importantly because strategies for better policing dangerously invert the analysis. Almost half of American states have legislatively determined that police quotas are impermissible, and a few others have pending bills. The crucial normative issues are not about substitute incentives or evaluation metrics, but instead about how existing statutory schemes can be improved and how they can be introduced to jurisdictions that have not yet recognized the imprudence of police quotas.

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<sup>354</sup> See *supra* text accompanying notes 177–88; Fussell, *supra* note 31; Rushin & Michalski, *supra* note 30.

<sup>355</sup> See FBI, WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT 4 (2006), <https://s3.documentcloud.org/documents/402521/doc-26-white-supremacist-infiltration.pdf>; Vida B. Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 LEWIS & CLARK L. REV. 205, 211 (2019).

<sup>356</sup> See Maciag, *supra* note 5.

<sup>357</sup> See *supra* note 136 and accompanying text.

<sup>358</sup> See Sparrow, *supra* note 34; NAT’L INST. OF JUST., PERSPECTIVES ON RESEARCH AND EVIDENCE-BASED POLICING 15–20 (2020); GUL & O’CONNELL, *supra* note 13, at 51–98.

### A. *A Prospective Research Program*

Legal scholars must scrutinize police quotas as a critical component of the criminal justice system and as a practice that interacts with other areas of law. Police quotas matter because they animate and intersect with issues that legal scholars wrestle with, wrangle over, and consider to be fundamental to ideas about quality and justice. Traditionally, legal scholars have relinquished the study of quotas to criminologists who have a different set of intellectual interests and commitments. Instead of engaging directly with quotas, legal scholars have either overlooked them, subsumed them within other categories (e.g., broken windows policing), or given no more than pat acknowledgment of their existence. This Article supplies a framework for understanding how police quotas work, how they are defended, and why they are indefensible, but these formulations are only initial steps.

The demonstrated existence of police quotas abrades core understandings of criminal law and constitutional procedure. What does it mean when criminalization is not a product of wrongdoing, but is instead spawned by police attempts to thwart employment sanctions or garner occupational rewards? On the procedural side, the existence of race-based police quotas has been verified by federal courts, police officers, and sponsors of legislative prohibitions. How can this reality be reconciled with our country's frail Equal Protection jurisprudence<sup>359</sup> or with an exception-riddled Fourth Amendment<sup>360</sup> that makes satisfying quotas at the expense of minorities fairly straightforward?

For civil rights scholars, litigation involving police quotas highlights the disparity between actual government practices and stingy judicial interpretations of what constitutes a custom or policy under § 1983. Civilians are not the only aggrieved subjects of quota-based policing. Most of the relevant statutes are about work conditions. Criminal justice scholars are increasingly devoting their attention to labor law and employment law, and police quotas fit neatly into such considerations.<sup>361</sup> Examining the issue of police quotas may provide a new entry point into thinking about live controversies in criminal justice administration and civil rights more generally.

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<sup>359</sup> See Russell K. Robinson, *Unequal Protection*, 68 STAN. L. REV. 151, 154 (2016) (discussing how “the Supreme Court has steadily diminished the vigor of the Equal Protection Clause”).

<sup>360</sup> See RIC SIMMONS, *SMART SURVEILLANCE: HOW TO INTERPRET THE FOURTH AMENDMENT IN THE TWENTY-FIRST CENTURY* 174 (2019).

<sup>361</sup> See *supra* text accompanying note 324.

Quotas also showcase intragovernmental tensions that matter to local government law scholars and legislative experts. In states where they are prohibited, law enforcement leadership often imposes quotas to demonstrate productivity.<sup>362</sup> Scholars who study how governments work could provide fruitful insights on how to enforce anti-quota statutes and how to counteract pathologies that stand in the way. Tax law scholars could also help clarify the relationship between local tax policy and policing for profit—which often serves as a substitute for increased taxing.<sup>363</sup> Police quotas are often the mechanisms for such “taxation by citation”<sup>364</sup> and make critical tax law scholars relevant interlocutors.<sup>365</sup>

Outstanding empirical questions remain. Besides litigation outcomes and settlements, scholars and the general public do not have any empirical data on the efficacy of quota statutes. It would be helpful to know how jurisdictions with prohibitions compare to jurisdictions where quotas are permissible. Scholars should examine how prohibitions affect a jurisdiction’s incidence of police misconduct, the size of its misdemeanor docket, clearance rates, its reliance on legal financial obligations (e.g., fees and fines), and the satisfaction of its citizens. The results could help shed light on issues specific to criminal justice as well as broader questions at the intersection of law and inequality.

### B. Investigative Agendas and Public Awareness

The media should continue to play an important role in uncovering and publicizing the existence of police quotas. As Justice Brennan correctly observed, “[c]ommentary and reporting on the criminal justice system is at the core of First Amendment values, for the operation and integrity of that system is of crucial import to citizens concerned with the administration of government.”<sup>366</sup> Interestingly, Justice Brennan’s comments were in a decision that involved media reporting on a murder trial. This felony-centric, trial-oriented understanding of criminal justice does not represent the bulk of cases

<sup>362</sup> See NATAPOFF, *supra* note 298, at 59.

<sup>363</sup> See *supra* notes 308, 312; Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POLITICS 1090 (2017).

<sup>364</sup> DICK M. CARPENTER, KYLE SWEETLAND & JENNIFER McDONALD, INST. FOR JUST., *THE PRICE OF TAXATION BY CITATION 5* (2019), <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf>.

<sup>365</sup> See Nancy J. Knauer, *Critical Tax Policy: A Pathway to Reform?*, 9 NW. J.L. & SOC. POL’Y 206, 254 (2014); Anthony C. Infanti, *Tax Equity*, 55 BUFF. L. REV. 1191, 1196 (2008) (discussing the concept of tax equity and its applications).

<sup>366</sup> *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 587 (1976).

that are currently churned through the system. Slapdash misdemeanor processing better approximates the criminal justice system.<sup>367</sup> Nevertheless, Justice Brennan's observations maintain relevance. Journalism still "contribute[s] to the public's understanding of . . . the . . . criminal justice system" and can address some of its failures.<sup>368</sup>

The task of local news outlets and investigative journalists is to look beyond trials and examine police conduct and practices. This is not a simple task, but our current political climate is ripe for such scrutiny. First, many news outlets are increasingly reexamining their longstanding fidelity to police accounts. They are more willing to disbelieve how police describe criminal justice administration.<sup>369</sup> This reconsideration is undoubtedly influenced by social protest movements and video evidence of brutality that often contradicts initial police accounts. This journalistic skepticism should apply to the longstanding insistence of police leaders that they do not administer quotas despite evidence suggesting otherwise.<sup>370</sup> Second, the current legal landscape will also enable journalistic investigation into police quotas. The Court's First Amendment jurisprudence, which generally does not protect officers from retaliation if they object to quotas in their employee capacity, essentially funnels their speech into the public sphere. Many of the litigated quota cases involve officers who leaked information to the media.<sup>371</sup> Finally, the general public's increasing recognition of the bias and brutality of American law enforcement is creating space for a more receptive audience to journalistic accounts of police quotas.<sup>372</sup>

Local news, mainstream media, and nonprofit investigative reporters are well-situated to more robustly examine police quotas. In places like Charleston, Rhode Island, and Damascus, Arkansas, media reporting on police quotas have led to the ACLU sending letters to all

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<sup>367</sup> NATAPOFF, *supra* note 298 at 218 (describing the misdemeanor process, which represents the bulk of criminal justice cases, as "sloppy, inaccurate, unpredictable and disrespectful").

<sup>368</sup> Nebraska Press Ass'n, 427 U.S. at 587.

<sup>369</sup> See Paul Farhi & Elahe Izadi, *Journalists Are Reexamining Their Reliance on a Longtime Source: The Police*, WASH. POST (June 30, 2020), [https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/lifestyle/media/journalists-are-reexamining-their-reliance-on-a-longtime-source-the-police/2020/06/30/303c929c-b63a-11ea-a510-55bf26485c93_story.html) (discussing how some journalists are now unwilling to take the police's account of events "at face value").

<sup>370</sup> See *supra* text accompanying notes 35, 240, 245.

<sup>371</sup> See CRIME + PUNISHMENT, *supra* note 68; Rayman, *supra* note 120; Rayman, *supra* note 121; Rayman, *supra* note 122; Tracy Oppenheimer, *Auburn Cop Fired for Resisting Quotas Gets Online Support; City Officials Deny Deny Deny*, REASON (July 26, 2013, 10:45 AM), <https://reason.com/2013/07/26/online-community-comes-to-whistle-blower>.

<sup>372</sup> See Cohn & Quealy, *supra* note 8.

police chiefs in the state reminding them of the illegality of quotas<sup>373</sup> and the loss of the right to issue tickets,<sup>374</sup> respectively. Mainstream news outlets like the socialist *Jacobin*,<sup>375</sup> the moderate *New York Times*,<sup>376</sup> the libertarian *Reason*,<sup>377</sup> and the conservative *Washington Examiner*<sup>378</sup> have all reported on police quotas and done so in unfavorable terms. The same is true for criminal justice-specific outlets such as *The Marshall Project*<sup>379</sup> and *The Appeal*.<sup>380</sup>

All of these organizations have the infrastructure to probe how police quotas operate. They know how to gather difficult-to-obtain documents and data like evaluation reports that demonstrate the existence of quotas and testimonial evidence.<sup>381</sup> Drawing from these sources, the media can shape public understanding by giving coverage to officers and civilians who have persuasive evidence that they have been governed by or subject to police quotas. Since, as discussed in Part II, many allegations of police quotas do not make it to courts or get quietly settled, journalistic accounts can be crucial to encouraging policy changes or legislative reform.

Reporters can also probe the connections between quotas and other pathologies. In states that do not have prohibitions on quotas, journalists—armed with a deeper understanding of how quotas operate—could examine how this practice is tied to police misconduct, policing for profit, and racial profiling. In states that have legislated against police quotas, reporters should consider these requirements within the larger category of police corruption that has been of interest to journalists. Overall, the public has traditionally understood

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<sup>373</sup> Patrick Anderson, *RI ACLU to Police Departments: Traffic Ticket Quotas Are Illegal*, PROVIDENCE J. (Nov. 28, 2017, 4:38 PM), <https://www.providencejournal.com/news/20171128/ri-aclu-to-police-departments-traffic-ticket-quotas-are-illegal>.

<sup>374</sup> Debra Hale-Shelton, *Arkansas Town's Bid to Lift Speed-Trap Sanctions Denied: Still Can't Write Tickets*, ARKANSAS DEMOCRAT-GAZETTE (May 17, 2018, 4:30 AM), <https://www.arkansasonline.com/news/2018/may/17/damascus-bid-denied-still-can-t-write-t>.

<sup>375</sup> See Nick Tabor, *The Mayor Who Cracked Down on Baltimore*, JACOBIN (May 14, 2015), <https://www.jacobinmag.com/2015/05/omalley-baltimore-clinton-democratic-primary-president>.

<sup>376</sup> See Goldstein et al., *supra* note 309.

<sup>377</sup> See Oppenheimer, *supra* note 371.

<sup>378</sup> See Editorial, *Arrests Should Be Based on Crimes, Not Quotas*, WASH. EXAMINER (June 6, 2006, 12:00 AM), <https://www.washingtonexaminer.com/editorial-arrests-should-be-based-on-crimes-not-quotas>.

<sup>379</sup> Ken Armstrong, *How to Fix American Policing*, MARSHALL PROJECT (July 13, 2016, 10:00 PM), <https://www.themarshallproject.org/2016/07/13/how-to-fix-american-policing>.

<sup>380</sup> See George Joseph, *NYPD Commander's Text Messages Show How the Quota System Persists*, APPEAL (Dec. 12, 2018), <https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists>.

<sup>381</sup> See DAVID CULLIER & CHARLES N. DAVIS, *THE ART OF ACCESS: STRATEGIES FOR ACQUIRING PUBLIC RECORDS* 114–26 (2011) (chronicling methods for handling evasive agency responses and noting the success of some news organizations' tactics).

the media as a government watchdog.<sup>382</sup> This oversight function is no different in the area of police quotas.

### C. Statutory Reform

The remaining issues concern getting quota provisions enacted in states without them and improving existing statutes. Enacting new statutes is simultaneously straightforward and challenging. It is straightforward because bipartisan support has already helped get quota bills passed in many states and objections to police quotas have been made by interest groups across the ideological spectrum. At the same time, getting quota statutes on the books is not easy, as demonstrated by the nine states that have drafted bills but have not been able to convert them to enacted legislation; some of these bills were drafted more than a decade ago.<sup>383</sup> Police chiefs and politicians worry that these bills will hamper their ability to evaluate officers.<sup>384</sup> The research and investigative agendas mentioned above could engender more public awareness, whereas intentional partnerships could move the legislative ball forward. South Carolina, Missouri, and Tennessee—all states that recently adopted statutes—did so by considering and representing that quotas impacted a cross-section of diverse interests.<sup>385</sup>

The other task is to shore up existing statutes. Most anti-quota laws have appreciable shortcomings, including ambiguity about whether they apply to informal requirements, and loopholes for stops and warnings. To this end, the Appendix includes the skeleton of a model statute addressing some of these shortcomings and collating the best features of existing legislation.<sup>386</sup> It is far from comprehensive since this Article cannot supply answers to critical questions about future implementation. But, it is a starting point for statutory amendments as well as consideration of new anti-quota laws.

The model statute also proposes an additional provision that is not found in existing quota statutes and requires explanation: Pension forfeiture should be a consequence of violating the statute. This may

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<sup>382</sup> See JAMES L. AUCOIN, *THE EVOLUTION OF AMERICAN INVESTIGATIVE JOURNALISM* 12 (2005).

<sup>383</sup> See *infra* Appendix B.

<sup>384</sup> See, e.g., N.J. STATE ASS'N OF CHIEFS OF POLICE, *LEGISLATIVE POSITION PAPER: OPPOSITION TO S1105 / A2126* (2016), <https://www.njsacop.org/Files/NJSACOP%20Position%20Paper%20-%20Opposition%20to%20S1105%20A2126.pdf> (opposing amendments to state anti-quota law).

<sup>385</sup> See *supra* Section I.B.

<sup>386</sup> See *infra* Appendix C.

sound like an extraordinary ramification.<sup>387</sup> But many states already have laws that either revoke, reduce, or suspend the pensions of public employees who have been convicted of a felony<sup>388</sup> or any crime related to their public employment.<sup>389</sup> West Virginia's pension forfeiture law is arguably the most liberal, simply stating that "honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan."<sup>390</sup> The efficacy of quota statutes is still an open empirical question, but it is clear from the litigation discussed in Part II that police continue to implement police quotas even in states that prohibit them. Where judicial avenues for redress are limited, pension forfeiture can be a potential deterrent. The measure has been proposed by police abolitionists,<sup>391</sup> and economists have tentatively found that states with stronger pension forfeiture laws experience lower rates of police misconduct.<sup>392</sup> Adding a pension forfeiture provision could add teeth to existing statutes and help stamp out stubborn police quotas.

<sup>387</sup> James Jacobs and his colleagues have analyzed arguments for and against pension forfeiture and conclude that imprisonment and fines would be better sanctions. This suggestion might be subject to concerns about "progressive punitivism" that uses incarceration to advance social justice goals. Jacobs and his colleagues do suggest a model for pension revocation that would be less harsh than some states' schemes. See James B. Jacobs, Coleen Friel & Edward O'Callaghan, *Pension Forfeiture: A Problematic Sanction for Public Corruption*, 35 AM. CRIM. L. REV. 57, 89–91 (1997); Hadar Aviram, *Progressive Punitivism: Notes on the Use of Punitive Social Control to Advance Social Justice Ends*, 68 BUFF. L. REV. 199, 201–02 (2020).

<sup>388</sup> See, e.g., 40 ILL. COMP. STAT. ANN. 5/2-156 (West, Westlaw through P.A. 101-651); VA. CODE ANN. § 51.1-124.13 (West, Westlaw through 2020 Reg. Sess.); OHIO REV. CODE ANN. § 2929.192 (West, Westlaw through File 60 of 133d Gen. Assemb. 2019-2020); N.C. GEN. STAT. ANN. § 135-18.10 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.).

<sup>389</sup> MASS. GEN. LAWS ANN. ch. 32, § 15(4) (West, Westlaw through ch. 226 of 2020 2d Ann. Sess.) ("In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance."); GA. CODE ANN. § 47-1-21(b) (West, Westlaw through 2020 Legis. Sess.) ("If a public employee commits a public employment related crime . . . in the capacity of a public employee and is convicted for the commission of such crime, such employee's membership in any public retirement system shall terminate on the date of final conviction and such employee shall not at any time thereafter be eligible for membership in any public retirement system."); see also ALASKA STAT. ANN. § 37.10.310 (West, Westlaw through ch. 32 of 2020 2d Reg. Sess.); ME. REV. STAT. ANN. tit. 5, § 17062 (West, Westlaw through 2019 2d Reg. Sess.); N.J. STAT. ANN. § 43:1-3.1(b)(17) (West, Westlaw through L.2020, c.127 & J.R. No.2); 43 PA. STAT. AND CONS. STAT. ANN. § 1313(a) (West, Westlaw through 2020 Reg. Sess. Act 95); 36 R.I. GEN. LAWS ANN. § 36-10.1-3 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

<sup>390</sup> W. VA. CODE ANN. § 5-10A-1 (West, Westlaw through 2020 Reg. Sess.).

<sup>391</sup> See *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE, [https://www.criticalresistance.org/wp-content/uploads/2020/08/CR\\_NoCops\\_reform\\_vs\\_abolition\\_REV2020.pdf](https://www.criticalresistance.org/wp-content/uploads/2020/08/CR_NoCops_reform_vs_abolition_REV2020.pdf) (last visited Dec. 30, 2020).

<sup>392</sup> See D. Bruce Johnsen & Adam David Marcus, *Pension Forfeiture and Police Misconduct*, 14 J.L. ECON. & POL'Y 1, 30 (2017).

### CONCLUSION

Although police quotas have escaped serious in-depth scrutiny, a diverse cross-section of the public rejects their use and believes that criminal sanctions should not be tied to law enforcement statistics or incentives. This Article provides descriptive insights into how police quotas work and why they are a pressing criminal justice issue. Moving forward, interim and long-term strategies must confront the reality that, across the country, quotas are a basic feature of policing.

APPENDIX A. STATE STATUTES

| Statutory Prohibitions on Police Quotas |                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State                                   | Statute Title                                                                                                            | Statute Overview                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Arkansas</b>                         | ARK. CODE ANN. § 12-6-302 (West, Westlaw through 2020 1st Extraordinary Sess. and 2020 Fiscal Sess.)                     | No state or local agency employing law enforcement officers engaged in the enforcement of any motor vehicle traffic laws of this state or any local ordinance governing motor vehicle traffic may establish any policy requiring any law enforcement officer to meet an arrest quota . . . .                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>California</b>                       | CAL. VEH. CODE § 41602 (West, Westlaw through Ch. 372 of 2020 Reg. Sess.)                                                | No state or local agency . . . may establish any policy requiring any peace officer or parking enforcement employees to meet an arrest quota.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Connecticut</b>                      | CONN. GEN. STAT. ANN. § 7-282d (West, Westlaw through 2020 Reg. Sess.)<br>Imposition of traffic ticket quotas prohibited | <ul style="list-style-type: none"> <li>• No municipal police department may impose any quota with respect to the issuance of . . . summonses for motor vehicle violations upon any policeman in such department.</li> <li>• “Quota” means a specified number of . . . summonses for motor vehicle violations to be issued within a specified period of time.</li> <li>• Nothing in this section shall prohibit such department from using data concerning the issuance of . . . summonses in the evaluation of an individual’s work performance provided such data is not the exclusive means of evaluating such performance.</li> </ul>                                                                                                                        |
| <b>Florida</b>                          | FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.)                                          | 8(b): A traffic enforcement agency may not establish a traffic citation quota.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Illinois</b>                         | 20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651)<br>State Police quotas prohibited                  | The Department may not require a Department of State Police officer to issue a specific number of citations within a designated period of time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                         | 65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651)<br>Quotas prohibited                             | <ul style="list-style-type: none"> <li>• A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.</li> <li>• A municipality may not, for purposes of evaluating a police officer’s job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties.</li> <li>• Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer’s points of contact.</li> </ul> |

|                         |                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>Louisiana</b></p> | <p>LA. STAT. ANN. § 40:2401.1 (West, Westlaw through 2020 2d Extraordinary Sess.)<br/>Prohibition against quotas</p> | <p>No municipality or any police department . . . shall establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a law enforcement officer on the basis of the officer making a predetermined or specified number of any type or combination of types of arrests or require or suggest to a law enforcement officer, that the law enforcement officer is required or expected to make a predetermined or specified number of any type or combination of types of arrests within a specified period.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Maryland</b></p>  | <p>MD. CODE ANN. PUB. SAFETY § 3-504 (West, Westlaw through 2020 Reg. Sess.)</p>                                     | <p>(a) In this section, “quota” means the mandating of a finite number of arrests made or citations issued that a law enforcement officer must meet in a specified time period.<br/>(b) A law enforcement agency may not: (1) establish a formal or informal quota for the law enforcement agency or law enforcement officers of the agency; or (2) use the number of arrests made or citations issued by a law enforcement officer as the sole or primary criterion for promotion, demotion, dismissal, or transfer of the officer.<br/>(c) This section does not preclude a law enforcement agency from: (1) using quantitative data for arrests, citations, and other law enforcement activities as management tools or in evaluating performance; (2) collecting, analyzing, and applying information concerning the number of arrests and citations in order to ensure that a particular law enforcement officer or group of law enforcement officers does not violate an applicable legal obligation; or (3) assessing the proportion of the arrests made and citations issued by a law enforcement officer or group of law enforcement officers.</p> |
| <p><b>Michigan</b></p>  | <p>MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.)</p>                 | <ul style="list-style-type: none"> <li>• A police officer shall not be required to issue a predetermined or specified number of citations for violations of this act or of local ordinances substantially corresponding to provisions of this act, including parking or standing violations.</li> <li>• A police officer’s performance evaluation system shall not require a predetermined or specified number of citations to be issued.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Minnesota</b></p> | <p>MINN. STAT. ANN. § 169.985 (West, Westlaw through 2020 Reg. Sess.)</p>                                            | <p>A law enforcement agency may not order, mandate, require, or suggest to a peace officer a quota for the issuance of traffic citations, including administrative citations authorized under section 169.999, on a daily, weekly, monthly, quarterly, or yearly basis.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>Missouri</b></p>  | <p>MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.)</p>                                           | <p>No political subdivision or law enforcement agency shall have a policy requiring or encouraging an employee to issue a certain number of citations for traffic violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis. This section shall not apply to the issuance of warning citations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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| <p><b>Nebraska</b></p>       | <p>NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.)</p>                                                                                        | <p>A state agency or political subdivision shall not directly require a law enforcement officer employed by the state agency or political subdivision to issue a certain number or percentage of traffic citations, police citations, memoranda of traffic violations, memoranda of faulty equipment, or any other type of citation on any periodic basis.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>New Jersey</b></p>     | <p>N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2)</p>                                                                                    | <ul style="list-style-type: none"> <li>• A State, county or municipal police department . . . shall not establish any quota for arrests or citations.</li> <li>• The department or force shall not use the number of arrests or citations issued by a law enforcement officer as the sole criterion for promotion, demotion, dismissal, or the earning of any benefit provided by the department or force.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>New York</b></p>       | <p>N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387) Discrimination against employees for failure to meet certain ticket quotas</p> | <p>No employer or his or her duly authorized agent shall transfer or in any other manner penalize or threaten . . . based in whole or in part on such employee’s failure to meet a quota . . . .</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>North Carolina</b></p> | <p>N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) Quotas prohibited</p>                                                              | <ul style="list-style-type: none"> <li>• The Secretary of Public Safety shall not make or permit to be made any order, rule, or regulation requiring the issuance of any minimum number of traffic citations, or ticket quotas . . . .</li> <li>• Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Pennsylvania</b></p>   | <p>71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West, Westlaw through 2020 Reg. Sess. Act 95)</p>                                                                                | <p>No political subdivision or agency of the Commonwealth shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest to any police officer . . . that said police officer . . . shall issue a certain number of traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>Rhode Island</b></p>   | <p>31 R.I. GEN. LAWS 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.) Ticket quotas prohibited</p>                                                               | <ul style="list-style-type: none"> <li>• No state or municipal agency engaged in the enforcement of any motor vehicle traffic or parking laws of this state, or any local ordinance governing motor vehicle traffic or parking, may establish or maintain any policy, formally or informally, requiring any officer to meet a quota.</li> <li>• “Quota” means any requirement regarding the number of arrests or investigative stops made, or summonses or citations issued, by an officer regarding motor vehicle traffic or parking violations.</li> <li>• Nothing contained herein shall preclude a local or municipal agency from using data concerning arrests or investigative stops made, or summonses or citations issued, and their disposition in the evaluation of an officer’s work performance, provided such data is not the exclusive means of evaluating such performance.</li> </ul> |

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>South Carolina</b></p> | <p>S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• A law enforcement agency, department, or division may not require a law enforcement officer employed by the agency, department, or division to issue a specific amount or meet a quota for the number of citations he issues during a designated period of time.</li> <li>• An employee of a law enforcement agency, department, or division who files a report with an appropriate authority alleging a violation of the provisions contained in this section is protected by the provisions contained in Chapter 27, Title 8. (D) As contained in this section: (1) “law enforcement agency, department, or division” includes, but is not limited to, municipal police departments, sheriff departments, the Highway Patrol, SLED, and other agencies that enforce state and local laws; (2) “quota” means a fixed or predetermined amount; (3) “points of contact” means a law enforcement officer’s interaction with citizens and businesses within their jurisdictions and the law enforcement officer’s involvement in community-oriented initiatives.</li> <li>• Nothing in this section shall prohibit a law enforcement agency, department, or division from evaluating an officer’s performance based on the officer’s points of contact.</li> </ul> |
| <p><b>Tennessee</b></p>      | <p>TENN. CODE ANN. § 39-16-516 (West, Westlaw through end of 2020 2d Extraordinary Sess.)<br/>                 Traffic offense citation quotas — Performance standards</p> <p>Replaced by Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, <a href="https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf">https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf</a>.<br/>                 See also TENN. CODE ANN. § 50-1-304 (West, Westlaw through end of 2020 2d Extraordinary Sess.) (Whistleblower Act)</p> | <ul style="list-style-type: none"> <li>• A public official or employee shall not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a law enforcement officer solely by the issuance of a predetermined or specified number of any type or combination of types of traffic citations.</li> <li>• A public official or public employee shall not require or suggest to a law enforcement officer that the law enforcement officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period.</li> <li>• Nothing in this section shall prohibit a municipal corporation, a political subdivision or any agency of this state, from establishing performance standards for law enforcement officers that include issuance of traffic citations, but do not require issuance of a predetermined or specified number or any type or combination of types of citations as the sole means of meeting such performance standards.</li> </ul>                                                                                                                                                                                                                    |

|                         |                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Texas</b></p>     | <p>TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.)<br/>                 Prohibition on Traffic-Offense Quotas</p>               | <ul style="list-style-type: none"> <li>• A political subdivision or an agency of this state may not establish or maintain, formally or informally, a plan to evaluate, promote, compensate, or discipline a peace officer according to the officer’s issuance of a predetermined or specified number of any type or combination of types of traffic citations . . . .</li> <li>• A political subdivision or an agency of this state may not require or suggest to a peace officer, a justice of the peace, or a judge of a county court, statutory county court, municipal court, or municipal court of record . . . that the peace officer is required or expected to issue a predetermined or specified number of any type or combination of types of traffic citations within a specified period.</li> </ul> |
| <p><b>Utah</b></p>      | <p>UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.)<br/>                 Quotas for arrest, citation prohibited</p>                        | <p>A political subdivision or law enforcement agency employing a peace officer may not require or direct that a peace officer meet a law enforcement quota. Subsection (2) does not prohibit a political subdivision or law enforcement agency from including a peace officer’s engagement with the community or enforcement activity as part of an overall determination of the peace officer’s performance.</p>                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>Wisconsin</b></p> | <p>WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186)<br/>                 Quotas relating to the enforcement of traffic regulations prohibited</p> | <p>No state agency or political subdivision of this state may require a law enforcement officer to issue a specific number of citations, complaints or warning notices during any specified time period for violations of traffic regulations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

APPENDIX B. STATE BILLS

| State Bills on the Prohibition of Police Quotas |                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State                                           | Bill Title                                                                                                                                  | Bill Overview                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Arizona</b>                                  | H.R. 2410, 52d Leg., 1st Reg. Sess. (Ariz. 2015)                                                                                            | <p>Prohibits municipalities, police departments, boards of supervisors, sheriffs and DPS from:</p> <ul style="list-style-type: none"> <li>• implementing or establishing a traffic complaint quota for peace officers (officers) employed by a police department, sheriff’s department or DPS;</li> <li>• basing the determination of an officer’s rank or classification on the number of traffic complaints the officer issues; or</li> <li>• consider[ing] the number of traffic complaints an officer issues as a factor when determining the officer’s rank or classification.</li> </ul>                                                                                                                                                                                                                                                      |
| <b>Colorado</b>                                 | S. 84, 67th Gen. Assemb., 2nd Reg. Sess. (Colo. 2010)                                                                                       | <p>16-2.5-311. Arrest Quotas.</p> <ul style="list-style-type: none"> <li>• An employing agency may not establish any policy requiring any peace officer to meet an arrest quota.</li> <li>• An employing agency may not use the number of arrests or citations issued by a peace officer as the sole criteria for promotion, demotion, reprimand . . . .</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>District of Columbia</b>                     | Sense of the Council in Support of Enhanced Metro Transit Police Department Oversight Resolution of 2020, 67 D.C. Reg. 14611 (Dec. 1, 2020) | <ul style="list-style-type: none"> <li>• Finding that “some MTPD officers had created and were participating in a ‘game’ in which officers were rewarded for making arrests and issuing citations.”</li> <li>• Establishing an independent review body to address officer complaints.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Georgia</b>                                  | H.R. 738, 2009 Gen. Assemb., Reg. Sess. (Ga. 2009) 2009 Bill Text GA H.B. 738                                                               | <ul style="list-style-type: none"> <li>• No local governing authority, law enforcement unit, or peace officer shall by influence or demand require that peace officers employed by a law enforcement unit meet quotas for arrests or the issuance of citations or otherwise increase or maintain the number of arrests or citations for the purpose of providing or increasing revenue.</li> <li>• No local governing authority shall withhold or decrease or threaten, suggest, or imply that such local governing authority will withhold or decrease any funding, revenues, or the operation budget for a law enforcement unit that fails to meet quotas for arrests or the issuance of citations or otherwise fails to increase or maintain the number of arrests or citations for the purpose of maintaining or increasing revenue.</li> </ul> |

|                      |                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Nevada</b>        | S. 390, 1999 Leg., 70th Sess. (Nev. 1999)                                                                                                                                           | <p>[A] state or local law enforcement agency in this state shall not:</p> <ul style="list-style-type: none"> <li>• establish or carry out a policy that requires or encourages, either directly or indirectly, a police officer employed by the law enforcement agency to meet a quota for issuing citations or making arrests.</li> <li>• consider the number of citations issued or arrests made by police officers employed by the law enforcement agency when determining the needs of the agency with respect to equipment, funding or staffing.</li> </ul> |
| <b>Virginia</b>      | H.R. 1376, 2015 Sess. (Va. 2015)                                                                                                                                                    | <p>A sheriff shall not . . .</p> <ul style="list-style-type: none"> <li>• establish a formal or informal quota that requires a deputy to make a specific number of arrests or issue a specific number of summonses within a designated period of time.</li> <li>• use the number of arrests made or summonses issued by a deputy as the sole criterion for evaluating a deputy's job performance.</li> </ul>                                                                                                                                                     |
| <b>Washington</b>    | S.R. 6316, 66th Leg., Reg. Sess. (Wash. 2020)                                                                                                                                       | <p>The number of citations issued by a law enforcement officer for traffic infractions, or the amount of penalties assessed from the issuance of such citations, may not be considered in any performance review, evaluation, rating, assessment, salary, promotion, or assignment of the law enforcement officer.</p>                                                                                                                                                                                                                                           |
| <b>West Virginia</b> | <p>1992 Bill Tracking W. Va. H.R. 4037 Prohibiting the use of ticket writing quotas by the Department of Public Safety</p> <p>H.B. 2984 (W. Va. 2000) Prohibiting arrest quotas</p> | <p>Any state or local agency . . .</p> <ul style="list-style-type: none"> <li>• May not establish policy or expectations requiring any officer to meet an arrest quota or use the number of arrests or citations issued by an officer as the criterion for promotion, demotion, dismissal or the earning of any benefit provided by the agency.</li> <li>• May not use the number of arrests or citations issued by their officers as the criterion for funding, staffing or equipment needs.</li> </ul>                                                         |

## APPENDIX C. MODEL STATUTE

No political subdivision or law enforcement agency employing a law enforcement officer shall require or suggest, directly or indirectly, that a law enforcement officer should follow a quota.

“Quota” means a specified average, percentage, or number of warnings, stops, citations, or arrests to be issued on any daily, weekly, monthly, quarterly or yearly basis.

No political subdivision or law enforcement agency employing a law enforcement officer shall use the number of warnings, stops, citations, or arrests issued by a law enforcement officer as the sole or primary criterion for an officer’s demotion, penalization, transfer, termination, constructive dismissal, promotion, or earning of any benefit.

Any officer penalized for failing to adhere to a quota system shall be fully compensated and shall be provided an avenue of legal remedy beyond the unit’s internal complaint system.

A violation of this section is a Class B misdemeanor, subject to pension forfeiture only.

A court of this State shall enter an order of pension forfeiture pursuant to this section immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of the pension forfeiture pending a hearing on the merits at the time of sentencing.

Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member’s public service.

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2021

### Police Quotas

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*University of Pennsylvania Carey Law School*

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**ATTACHMENT 2.**  
**Arrest Quotas Update Memorandum from Charles  
Clarke, February 19, 2024 to the City of Berkeley  
Police Accountability Board and Director of Police  
Accountability**

## Arrest Quotas Update

Memorandum from Charles Clarke, February 19, 2024  
To the City of Berkeley Police Accountability Board  
and Director of Police Accountability

My earlier *Arrest Quotas* memorandum<sup>1</sup> reported absence of quantitative evidence for the operation of an alleged arrest quota among the members of the Berkeley Police Department (BPD) Bike Unit (formerly known as the DTF, Downtown Task Force). The presence of *qualitative* evidence, mainly intra-Bike Unit/DTF text messages, prompted my recommendation that this Board and the Director continue their investigation of the alleged arrest quota.

One issue of potential interest to this Board that I identified in my earlier memorandum concerned arrest *quality*, not just quantity:<sup>2</sup>

4. The arrest *quantities* reported in this memorandum are separate from their *quality*, most notably their adequacy for prosecution by the Alameda County District Attorney (ACDA). This Board should seek from ACDA the prosecutorial outcomes for the cases brought by Bike Unit arrests and for the Department as a whole. In particular, charges that ACDA deems *legally insufficient* (possibly indicating inadequate police work) should be distinguished from charges dropped for other reasons such as the exercise of prosecutorial discretion. The consultation of an outside source as to arrest quality would benefit the Board's understanding of BPD arrest activity.

Berkeley Copwatch has recently issued a report on the alleged arrest quotas.<sup>3</sup> Part of Copwatch's effort included publication of a dataset recording Alameda County District Attorney (ACDA) decisions whether to charge BPD arrestees.<sup>4</sup> This update memorandum addresses arrest quality using the data provided by Berkeley Copwatch. **I find the vast majority of dismissed charges may have been more due to pandemic-caused change in ACDA charging practice, than to policing deficiencies.**

<sup>1</sup> *Arrest Quotas*: Memorandum from Charles Clarke to the City of Berkeley Police Accountability Board and Director of Police Accountability, August 18, 2023

[https://drive.google.com/file/d/14oJZkx43301MOxsLYO7oqA\\_pi3AAxlsi/view](https://drive.google.com/file/d/14oJZkx43301MOxsLYO7oqA_pi3AAxlsi/view)

<sup>2</sup> *Arrest Quotas*, supra n. 1, pp. 15-16

<sup>3</sup> *Purging The Poor: Arrest Quotas, Racist Texts and the Role of City Leadership in the 'Textgate' Scandal*, Berkeley Copwatch, January 16, 2024 (accessed February 18, 2024)

[https://www.berkeleycopwatch.org/files/ugd/9faa72\\_175f75bda71646b983857d0a0e352434.pdf](https://www.berkeleycopwatch.org/files/ugd/9faa72_175f75bda71646b983857d0a0e352434.pdf)

<sup>4</sup> Filename `combined-arrests-built20230421.xlsx` (accessed February 18, 2024)

<https://docs.google.com/spreadsheets/d/148YRpAp2cOvcUjnIqfgS3TYaY0xcHEIO/edit#gid=1464294616>

## What Are The Data?

ACDA's case management system, DALITE, tracks all phases of a case's prosecutorial lifecycle from intake of an arrestee through electronic filing of charges with the Alameda County Superior Court (ACSC)'s Odyssey criminal case management system.<sup>5</sup> On occasion a case's path is more complicated than basic filing through Odyssey, in which case DALITE records the variance with a *disposition* ("T") code.

The disposition codes are elaborated in a decade-old guide sheet<sup>6</sup> that mentions Odyssey's predecessor system, CORPUS (replaced in 2016). Despite its age the guide sheet seems to document current disposition codes, a sample of which is in Table 1.

**Table 1. Sample of Alameda County District Attorney Disposition Codes**

| Disposition Code                   | Illustrative Subcodes                                                                                                                              |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| T1 – Lack of Corpus                | Conduct lawful; Insufficient proof of value                                                                                                        |
| T2 – Lack of Sufficient Evidence   | Insufficient corroboration;<br>Insufficient evidence to connect suspect;<br>Insufficient quantity of drugs                                         |
| T3 – Admissibility Factors         | Questionable execution (search warrant);<br>Questionable probable cause for arrest/officer not present;<br>Questionable search and seizure problem |
| T4 – Victim Factors                | Victim credibility issues;<br>Victim uncooperative                                                                                                 |
| T5 – Witness Factors               | Necessary witness credibility issues                                                                                                               |
| T6 – Other Cases and/or Counts     | Declined in favor of other counts/case                                                                                                             |
| T7 – Interest of Justice           | Defendant provided immunity;<br>Exonerating evidence/information revealed;<br>Nature of offense/relationship of parties                            |
| T8 – Other                         | Referred to State Attorney General                                                                                                                 |
| T9 – Prosecutor Prefiling Deferral | DA Corrective Intervention Program                                                                                                                 |

Source: *T Series for Refusals*, ACDA, via Berkeley Copwatch. See Exhibit 1.

The Copwatch dataset includes an ACDA disposition code for about four-fifths of BPD arrests in calendar years 2018-2022. Copwatch interprets the remaining one-fifth of recorded arrests lacking a disposition code as having not been dropped by the District Attorney.<sup>7</sup> I concur with this interpretation.

<sup>5</sup> Alameda County Information Technology Department, *Projects: District Attorney's Case Management System DALITE*, <https://itd.acgov.org/projects/> (accessed February 18, 2024)

<sup>6</sup> ACDA, *T Series for Refusals: 02/03/2014*, [https://drive.google.com/file/d/1Rd8Cy9hsal-Tj1Wh5Eaj5CDz\\_dYIKvUi/view](https://drive.google.com/file/d/1Rd8Cy9hsal-Tj1Wh5Eaj5CDz_dYIKvUi/view) (accessed February 18, 2024) Attached as Exhibit 1.

<sup>7</sup> *Purging the Poor*, supra n. 3, p. 13

**The T Codes.** From the perspective of constitutional policing the most troubling reasons for a DA to decline to prosecute an arrestee would be codes **T1** (lack of corpus, meaning lack of legally valid grounds for arrest); **T2** (insufficient evidence of arrestee culpability); and **T3** (evidence admissibility problems). Copwatch has (properly) flagged these codes for scrutiny, given the possibility of unconstitutional police work.

Three other T codes pertain to non-police actors whose actions bear less directly on arrest quality: **T4** (victim factors), **T5** (witness factors), and **T6** (prosecutorial decision to charge an arrestee in a different case or with different counts than those arrested for). Copwatch has (properly) not flagged these codes.

However, Copwatch has also flagged **T7**, a very broad “interest of justice” category encompassing grounds in which (with one exception) the police seem to play no role. The phrase seems to draw upon, for example, the California statute that confers discretion upon a court to dismiss a criminal prosecution, either on its own motion or at the prosecutor’s request, “in furtherance of justice.”<sup>8</sup> “Interest of justice” seems to be a term of legal art (with a fuzzy meaning to outsiders like myself), so I will henceforth preserve the quotation marks around the phrase “interest of justice.”

The one T7 subcode that *does* directly implicate police is subcode T7-K, “Police request no prosecution.” California statute allows such a request, for example, in connection with citations for misdemeanors.<sup>9</sup> Unfortunately the T7 subcodes are not reported in the Copwatch dataset, so a more specific basis for the DA’s declining to prosecute a T7-coded arrest is not known.

In my view, unless contrary evidence becomes known, prosecutions dropped due to code T7 should be viewed as the *District Attorney’s exercise of prosecutorial discretion*, not as “unnecessary” arrests by BPD (as Copwatch would have it).<sup>10</sup> **On this view, the disposition codes of greatest concern to the people and police of Berkeley should be T1, T2, and T3, not T7.**

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<sup>8</sup> California Penal Code § 1385(a), *Dismissal of the Action for Want of Prosecution or Otherwise* [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=1385](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=1385).

<sup>9</sup> California Penal Code § 853.6(j)(3), *Citations for Misdemeanors* (“If...the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.”) (italics added) [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=853.6](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=853.6).

<sup>10</sup> *Purging the Poor*, supra n. 3, p. 13

**The COVID-19 Pandemic and the “Interest of Justice.”** This more benign view of the T7 disposition code is grounded in recent history. There is reason to suspect that in early 2020 the ACDA made its charging standards more lenient due to the onset of the COVID-19 pandemic. An April 2020 ACDA press release announced:<sup>11</sup>

*The DA’s Office is only filing cases that involve serious or violent felony crimes. In fact, our average week’s filings since the Shelter in Place Order was given are down nearly 70% from an average week’s filing of new cases a year ago. The Court is only open two days a week (Tuesday and Friday) to arraign defendants on new cases. [italics added]*

Reduced court availability due to Alameda County’s COVID-19 Shelter In Place Order<sup>12</sup> clearly figured in ACDA’s limiting its charging to only serious or violent felonies. ACDA did not issue a press release announcing when its pre-pandemic charging standard had been restored, but the Superior Court did announce its gradual reopening over the next two years. Specifically, all courthouses reopened on June 15, 2021,<sup>13</sup> and courtrooms reopened to the public on April 25, 2022.<sup>14</sup> This latter reopening preceded by 10 months the official termination of California’s COVID-19 state of emergency on February 28, 2023,<sup>15</sup> but court availability would likely not have constrained ACDA beyond April 2022.

I use the courts’ state of reopening as a (very imperfect) proxy for the *timing* of pandemic-related prosecutorial changes. This proxy’s main virtue is that courts’ reopening is observable and bears some correlation with ACDA’s changes. Its main imperfection is the risk of erroneously inferring the District Attorney’s *substantive* legal

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<sup>11</sup> Office of the Alameda County District Attorney, “DA O’Malley Makes Statement on Release of Individuals from Santa Rita Jail,” April 9, 2020, <https://web.archive.org/web/20200628234909/https://www.alcoda.org/newsroom/2020/apr/statement-on-release-from-santa-rita-jail> (accessed February 18, 2024) Attached as Exhibit 2.

<sup>12</sup> Order of the [Alameda] County Health Officer to Shelter in Place, March 16, 2020 (accessed February 18, 2024) <https://www.acgov.org/documents/Final-Order-to-Shelter-In-Place.pdf> Attached as Exhibit 3.

<sup>13</sup> Alameda County Superior Court press release, June 14, 2021 (accessed February 18, 2024) <https://www.alameda.courts.ca.gov/system/files/june-14-2021-press-release-re-further-reopening.pdf> Attached as Exhibit 4.

<sup>14</sup> Alameda County Superior Court press release, April 14, 2022, (accessed February 18, 2024) [https://www.alameda.courts.ca.gov/system/files/april-14-2022-press-release-re-reopening-courtrooms-and-expanded-office-hours-final\\_1.pdf](https://www.alameda.courts.ca.gov/system/files/april-14-2022-press-release-re-reopening-courtrooms-and-expanded-office-hours-final_1.pdf) Attached as Exhibit 5.

<sup>15</sup> Executive Department, State of California, *A Proclamation by the Governor of the State of California Terminating State of Emergency*, February 28, 2023 (accessed February 18, 2024) <https://www.gov.ca.gov/wp-content/uploads/2023/02/COVID-SOE-Termination-Proclamation-2.28.23.pdf?emrc=1db54f> Attached as Exhibit 6.

decisionmaking from the Superior Court's *scheduling* availability. Therefore I use this proxy solely to demarcate when ACDA likely modified its charging practices in some degree due to the pandemic, but I do not measure that degree.

**The Main Hypothesis.** Following the reasoning of the previous paragraph my main hypothesis is that the District Attorney dismissed more arrests “in the interest of justice” due to the pandemic between March 17, 2020 (the onset of Shelter In Place) and April 25, 2022 (when public access to courtrooms resumed). **Within this 25-month period I expect more frequent dropping of less serious charges “in the interest of justice” – that is, more frequent appearance of code T7 during the pandemic than before or after it.**

The phased court reopening dates suggest distinguishing the “early” pandemic (after March 2020 but before the June 2021 courthouse reopenings) from the “late” pandemic (after June 2021 but before the April 2022 courtroom reopenings). These phases of the pandemic are associated with increased COVID-19 vaccination rates in Alameda County, which I also expect to be associated with resumption of normal (pre-pandemic) ACDA charging practice. As it happened Alameda County (2020 population: 1.68 million<sup>16</sup>) had administered 1.03 million full vaccination series by June 15, 2021 (61% of the population, up from zero in March 2020) and 1.37 million full vaccination series by April 25, 2022 (82% of population).<sup>17</sup> Leniency due to the pandemic would likely have lost explanatory power by the latter date.

A more sophisticated econometric approach to analyze the ACDA “regime change” in charging decisions due to COVID-19 would be *switching regression*, a well-studied technique that would take more time to implement than the one afternoon I spent to write this memorandum.<sup>18</sup> With this direction for future research in mind, the results I report in this memorandum should be viewed as suggestive – perhaps even strongly suggestive – but not conclusive.

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<sup>16</sup> United States Census Bureau, *Alameda County, California, Populations and People* (accessed February 18, 2024) [https://data.census.gov/profile/Alameda County, California?g=050XX00US06001#populations-and-people](https://data.census.gov/profile/Alameda%20County,%20California?g=050XX00US06001#populations-and-people)

<sup>17</sup> California Department of Public Health, Statewide COVID-19 Vaccines Administered By County (accessed February 18, 2024) <https://data.ca.gov/dataset/covid-19-vaccine-progress-dashboard-data/resource/317f8cd8-7225-4b7e-99d1-6ea441043a51>

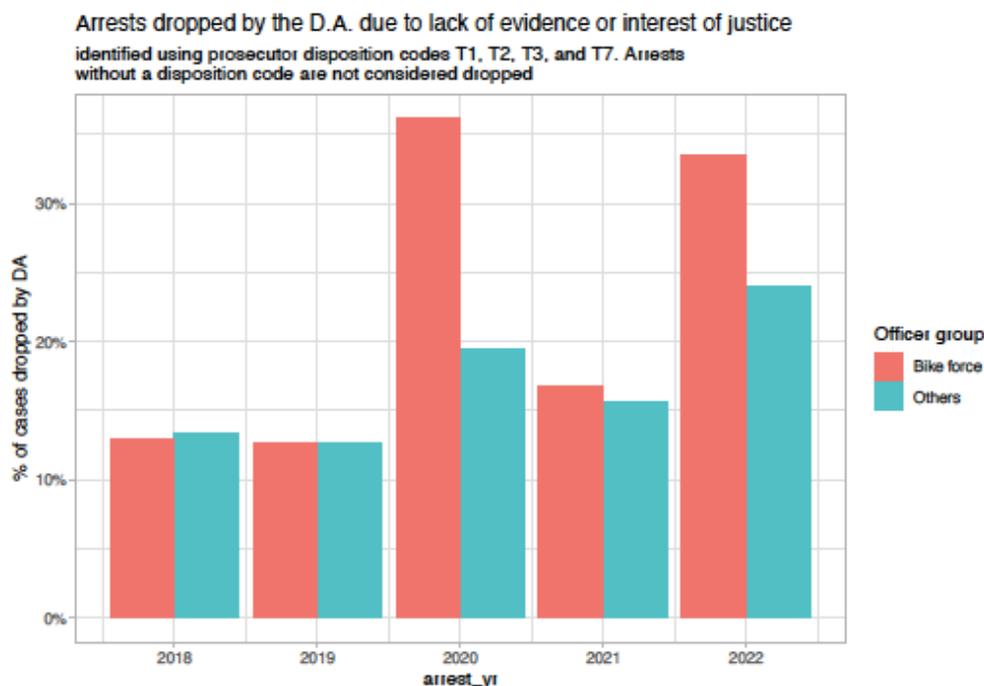
<sup>18</sup> For more on switching regression, see Lung-Fei Lee and Robert H. Porter, “Switching Regression Models with Imperfect Sample Separation Information – With an Application on Cartel Stability,” *Econometrica* 52:2 (March 1984), pp. 391-418, <https://www.jstor.org/stable/1911495>

## What Do The Data Say?

The Copwatch dataset contains a slightly different sample of arrests than the one I reported in my August 2023 memorandum. Copwatch has observations on 10,159 BPD arrests across calendar years 2018-2022 whereas my August dataset observed 10,330 arrests over the same period. For this memorandum I analyze the Copwatch sample without investigating this discrepancy further.

It turns out that the Bike Unit had *zero* arrests dropped due to T1 (invalid detention) and T3 (admissibility problem) in the 2018-2022 sample period. The rest of BPD (other than the Bike Unit) had 0.2% of arrests dropped due to T1 and 0.07% due to T3. In view of the paucity of these events I choose to focus on the relative prevalence of codes T2 and T7, which Copwatch has lumped together (unjustifiably, in my view) in their figure below.<sup>19</sup>

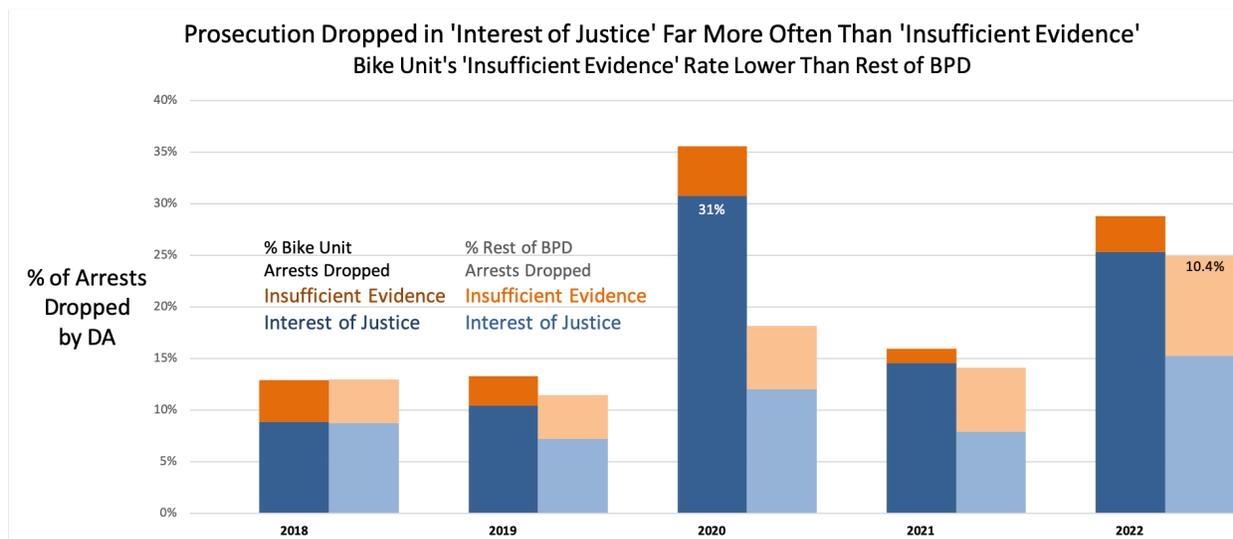
**Figure 1. Copwatch's Summary of the Data**



A more informative approach would distinguish T2 (insufficient evidence, which raises the possibility of a policing problem) from T7 (“interest of justice,” which doesn’t) to display their relative prevalence, as in Figure 2 below.

<sup>19</sup> *Purging the Poor*, supra n. 3, p. 13

**Figure 2. Distinguishing 'Interest of Justice' from 'Insufficient Evidence'**



Source: Author's tabulation of ACDA data via Copwatch

In Figure 2 the left column (colored more vividly) within each year's cluster displays the fraction of Bike Unit arrests dropped by the District Attorney; the right column (colored more mutedly) is the same fraction for the rest of BPD. Each orange bar refers to prosecutions dropped due to insufficient evidence (code T2); each blue bar to prosecutions dropped "in the interest of justice" (code T7).

The most remarkable feature of Figure 2 is the twin spikes of Bike Unit arrests dropped in the "interest of justice" in 2020 (31% of arrests!) and 2022, particularly when compared to the much lower levels exhibited by the rest of the Police Department. This feature seems to be the confluence of (1) the Bike Unit's community-policing orientation that focused on lesser offenses before they became serious<sup>20</sup> and (2) the District Attorney's pandemic-related shift in focus predominately (or exclusively) toward serious or violent felonies.

Mixed support for my main hypothesis comes from the time pattern of prosecutions dropped "in the interest of justice" during the pandemic (both early and late) compared to before the pandemic – the pandemic exhibited more frequent "interest of justice" dismissals, as hypothesized. However, the post-pandemic rate of dismissals did not return to the pre-pandemic rate and, in the case of BPD (excluding

<sup>20</sup> *Arrest Quotas*, supra n. 1, esp. pp. 4-5 ("The Downtown Task Force/Bike Unit Has Met A City Policing Priority") and pp. 9-12 ("Did the Bike Unit Charge Different Violations From the Rest of BPD?")

the Bike Unit), actually increased substantially (from 12.8% to 15.2%). Table 2 summarizes these patterns.

**Table 2. Prosecutions Dropped As % Of Arrests, by Pandemic Phase**

| Disposition Code         | Unit        | Pre-Pandemic | Early Pandemic | Late Pandemic | Post-Pandemic |
|--------------------------|-------------|--------------|----------------|---------------|---------------|
| Insufficient Evidence T2 | Bike Unit   | 3.5%         | 3.9%           | 3.0%          | 3.0%          |
|                          | Rest of BPD | 4.5%         | 5.4%           | 7.7%          | 10.4%         |
| "Interest of Justice" T7 | Bike Unit   | 16.7%        | 20.6%          | 24.7%         | 22.9%         |
|                          | Rest of BPD | 8.9%         | 7.9%           | 12.8%         | 15.2%         |

Notes Pre-Pandemic=01/01/2018 to 03/16/2020 Early Pandemic=03/17/2020 to 06/14/2021  
Late Pandemic=06/15/2021 to 04/24/2022 Post-Pandemic=04/25/2022 to 12/31/2022

The 2021 "trough" between the twin spikes of Figure 2 is not explicable from the recent history already discussed, thereby illustrating a limitation of using calendar dates of pandemic phases to proxy for ACDA charging policy.

A second remarkable feature of Figure 2 is the much lower incidence of Bike Unit arrests dropped due to insufficient evidence (about 3-4%) compared to the rest of BPD (rising to 10.4% in the post-pandemic period). Although the focus of this memorandum (and its prequel) is the Bike Unit, the higher and increasing proportion of rest-of-BPD arrests dropped for insufficient evidence would be worth explaining, which I cannot do with the time and data now available. Part of the explanation would be greater detail about the circumstances under which ACDA records a T2 code, as well as the Police Department explaining what (if anything) it does in response to ACDA's dropping a prosecution due to insufficient evidence (T2), as well as the association of T2 codes with various statutory violations (charges).

A third remarkable feature of Figure 2 circles back to the reason for its creation: the preponderance of prosecutions dropped "in the interest of justice" relative to those dropped due to insufficient evidence, particularly for the Bike Unit but also (to lesser degree) for the rest of BPD. This feature reinforces the need for greater detail about the circumstances under which ACDA issues a T7 code (starting with the relevant subcode) so as to better understand the operation of the Alameda County criminal justice system and BPD's role within it.

From this cursory analysis of the data obtained thus far, to label any of BPD's arrests as "unnecessary" (as Copwatch does) would be as recklessly premature as declaring them flawless. Two additional analyses support this caution: The first asks

about variation across officers of the Bike Unit (and potentially the rest of BPD). The second asks about variation of prosecutions dropped across the arrestees' races.

**Bike Unit and BPD Performance.** Table 3 presents the prosecutions dropped due to T2 and T7 for the individual Bike Unit officers, their performance as a whole (which is just the average across officers, weighted by each officer's arrest count), and the performance of the rest of BPD as a whole. Table 3 echoes the earlier analysis that found (1) a much higher proportion of Bike Unit arrests dropped "in the interest of justice" relative to the rest of BPD (nearly double, 20.1% vs. 10.4%), and (2) a much lower proportion (a bit more than one-half, 3.4% vs. 6.2%) of Bike Unit arrests dropped for insufficient evidence, relative to the rest of BPD.

**Table 3. Prosecutions Dropped as % of Arrests, DTF/Bike Unit vs. BPD, 2018-2022**

| Disposition Code         | Kacalek | Breaux | Michalczyk | Pickett | Schikore | Seaton | Shedoudy | Stern | DTF/<br>Bike<br>Unit | Rest<br>of<br>BPD |
|--------------------------|---------|--------|------------|---------|----------|--------|----------|-------|----------------------|-------------------|
| Insufficient Evidence T2 | 0%      | 3%     | 2%         | 8%      | 5%       | 4%     | 4%       | 3%    | 3.4%                 | 6.2%              |
| "Interest of Justice" T7 | 10%     | 18%    | 26%        | 12%     | 23%      | 17%    | 17%      | 31%   | 20.1%                | 10.4%             |

A more thorough analysis than presented here would investigate how consistently ACDA dropped the same offenses across different arresting officers, particularly across the four calendar subdivisions of Table 2. As a polar example, if all arrests for a statutory violation were dismissed during the pandemic but prosecuted before and after the pandemic, then the pandemic-era dismissals should not be ascribed to reduced arrest quality but rather to more lenient ACDA charging policy. Another polar example could posit that if all arrests by exactly one officer were dismissed, but prosecuted for all the other officers, then the quality of that officer's arrests would warrant additional scrutiny.

The variation across individual officers on display in Table 3 represents some combination of the quality of an officer's arrests and the ACDA's policy toward the offenses alleged against an arrestee (which could vary across pandemic phases). Explaining that variation would be a worthy direction for future research.

**Race.** Table 4 below presents the prosecutions dropped due to T2 and T7 according to the race of the arrestee. To simplify presentation and to avoid diluting non-white groups, I have consolidated arrestees of more than one race/ethnicity with one of the main race/ethnicity groups to which they belong. Thus, *Hispanic* includes Hispanic/White and Hispanic/Other; *Black* includes Black/Hispanic and Black/Other.

**Table 4. Prosecutions Dropped as % of Arrests, By Race, DTF/Bike Unit vs. BPD, 2018-2022**

| Race     | Bike Unit |       | Rest of BPD |       | All BPD |       |
|----------|-----------|-------|-------------|-------|---------|-------|
|          | T2%       | T7%   | T2%         | T7%   | T2%     | T7%   |
| Black    | 1.5%      | 8.6%  | 2.9%        | 4.7%  | 2.7%    | 5.2%  |
| White    | 1.5%      | 9.4%  | 1.6%        | 3.6%  | 1.6%    | 4.3%  |
| Hispanic | 0.3%      | 1.5%  | 1.2%        | 1.3%  | 1.0%    | 1.3%  |
| Asian    | 0.0%      | 0.4%  | 0.2%        | 0.2%  | 0.2%    | 0.2%  |
| Other    | 0.1%      | 0.3%  | 0.3%        | 0.6%  | 0.3%    | 0.6%  |
| Total    | 3.4%      | 20.1% | 6.2%        | 10.4% | 5.8%    | 11.6% |

Notes T2=Insufficient Evidence, T7="Interest of Justice"

*Black* includes 'Black,' 'Black/Hispanic,' and 'Black/Other'

*Hispanic* includes 'Hispanic,' 'Hispanic/White,' and 'Hispanic/Other'

*Asian* includes 'Asian' and 'Asian/Other'

*Other* includes 'Other and 'White/Other'

Over the entire 2018-2022 sample period the officers of the Bike Unit had prosecutions dropped due to insufficient evidence (code T2) at an equal rate for Black and white arrestees (1.5%), whereas the rest of BPD had a noticeably higher rate for Black arrestees (2.9%) than white arrestees (1.6%). Keeping in mind that insufficient evidence is a possible indicator of inadequate policing, this disparity (as well as the higher rest-of-BPD insufficient-evidence rates) warrants further examination.

The Bike Unit's arrests dropped "in the interest of justice" (code T7) were more heavily weighted toward white arrestees (9.4%) than Black arrestees (8.6%). The proportionately fewer arrests by the rest of BPD dropped "in the interest of justice" were weighted more toward Black arrestees (4.7%) than white arrestees (3.6%).

As I noted in my August memorandum, the Center for Policing Equity has explained such disparities as due to *community factors* (e.g. racially disparate crime rates) and *policing factors* (e.g. officer discretion),<sup>21</sup> now with the added consideration of pandemic-caused change to ACDA charging practice toward certain crimes that could have affected observed outcomes according to race.

<sup>21</sup> *Arrest Quotas*, supra n. 1, p. 13

A more sophisticated analysis would study the variation of disposition codes (T2, T7) across races, during various pandemic phases, taking into account the crime types that had given rise to arrest. As with the earlier discussion of Table 3, explaining the variation in Table 4 would be a worthy direction for further research.

## Issues of Potential Interest to the Police Accountability Board

The main finding of this memorandum is the preponderance of BPD, especially Bike Unit, arrests whose prosecution was dropped “in the interest of justice,” especially compared to the relative few dropped for lack of sufficient evidence. See Figure 2.

The many Bike Unit arrests dropped “in the interest of justice” seem related to a pandemic-era change in ACDA charging standards. Offenses for which the Bike Unit would likely make arrests would not (and did not) rise to the District Attorney’s pandemic-era standard of “serious or violent felony crimes.”

I suggest several investigative directions following this analysis:

1. Direct inquiry to the Alameda County District Attorney office about the meaning of the various T codes, particularly T7; the meaning of “in the interest of justice” as it pertains to the dropping of a criminal charge; and whether T7 can be equated with “the exercise of prosecutorial discretion.”
2. Request to ACDA for data about the *subcodes* that more specifically identify the basis for declining prosecution.
3. Direct inquiry to the ACDA about the pandemic-related change to the office’s charging practice.
4. Request to ACDA of other measures of arrest quality that might exist from the prosecutorial perspective.
5. Elicitation from BPD of its usage, if any, of prosecutorial decisions to evaluate officer performance, especially usage of codes T1, T2, and T3.
6. More detailed analysis of prosecutions dropped due to Insufficient Evidence (code T2), including patterns associated with specific officers, specific offenses, arrestee race, and (for the rest of BPD) its growth over time.

## Conclusions

1. A large fraction of Bike Unit arrests has not been prosecuted by the District Attorney “in the interest of justice,” especially during the COVID-19 pandemic.

2. The interruption of Superior Court availability during the pandemic may have led the District Attorney to decline to prosecute “in the interest of justice,” so these dismissals do not immediately indicate a problem with policing (e.g. “unnecessary” arrests).
3. The fraction of Bike Unit arrests dropped due to insufficient evidence is much smaller than those dropped “in the interest of justice,” and proportionately smaller than the rest of BPD.
4. The rest of BPD has had a larger, and growing, fraction of arrests declined prosecution due to insufficient evidence.

I recommend that the Police Accountability Board continue its investigation to ascertain more completely the quality of BPD arrests from the viewpoint of the Alameda County District Attorney. This independent view of BPD performance would be, in my opinion, a valuable perspective for this Board to have.

Exhibit 1 – Alameda County District Attorney Disposition Codes, 02/03/2014

Exhibit 2 – Alameda County District Attorney Press Release, April 9, 2020

Exhibit 3 – Alameda County Health Officer, Shelter In Place Order, March 16, 2020

Exhibit 4 – Alameda County Superior Court Press Release, June 14, 2021

Exhibit 5 – Alameda County Superior Court Press Release, April 14, 2022

Exhibit 6 – Governor of State of California Proclamation Terminating State of Emergency, February 28, 2023

### **Erratum to August 18, 2023, Memorandum**

Footnote 28 (p. 10) misidentified the statute governing possession of drug paraphernalia and of methamphetamine. Those are governed by the *California Health and Safety Code*, specifically the Uniform Controlled Substances Act.

[https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=HSC&division=10.&title=&part=&chapter=&article=&nodetreepath=12](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=HSC&division=10.&title=&part=&chapter=&article=&nodetreepath=12)

The footnote should have read:

<sup>28</sup> Cal. H&S.C. §§ 11364(A), 11377(A), P.C. § 647(F)

# EXHIBIT 1

## T Series for Refusals: 02/03/2014

|                                       |                                                |                                                       |                                                   |
|---------------------------------------|------------------------------------------------|-------------------------------------------------------|---------------------------------------------------|
| <b>T1 - LACK OF CORPUS</b>            |                                                | <b>T7 - INTEREST OF JUSTICE</b>                       |                                                   |
| A                                     | Conduct lawful                                 | A                                                     | Civil remedy appropriate                          |
| B                                     | Insufficient proof of value                    | B                                                     | Defendant provided immunity                       |
| C                                     | No jurisdiction                                | C                                                     | Exonerating evidence/information revealed         |
| D                                     | Statute of limitations                         | D                                                     | Interest of Justice - Defendant                   |
| <b>T2 LACK OF SUFFICIENT EVIDENCE</b> |                                                | E                                                     | Interest of Justice - Other                       |
| A                                     | Aid/Abet evidence insufficient                 | F                                                     | Made restitution                                  |
| B                                     | Analysis report negative                       | G                                                     | Nature of offense/relationship of parties         |
| C                                     | Insufficient corroboration                     | H                                                     | No sentence advantage                             |
| D                                     | Insufficient evidence to connect suspect       | I                                                     | Other agency handling (e.g., CPS, Traffic)        |
| E                                     | Insufficient quantity of drugs                 | J                                                     | Plea to other jurisdiction                        |
| F                                     | Refusal/failure to locate/disclose informant   | K                                                     | Police request no prosecution                     |
|                                       |                                                | <b>T8 OTHER (INDICATE REASON IN REMARKS)</b>          |                                                   |
| <b>T3 ADMISSIBILITY FACTORS</b>       |                                                | A                                                     | Other jurisdictional consideration                |
| A                                     | Questionable consent                           | B                                                     | Refer to law enforcement administration           |
| B                                     | Questionable execution (search warrant)        | C                                                     | Referred to State Attorney General                |
| C                                     | Questionable ID admissibility                  | <b>T9 - PROSECUTOR PREFILING DEFERRAL</b>             |                                                   |
| D                                     | Questionable PC for arrest/officer not present | A                                                     | District Attorney Corrective Intervention Program |
| E                                     | Questionable search and seizure problem        | <b>U2 - REFERRED TO NON-CALIF. JURIS</b>              |                                                   |
| F                                     | Questionable statement by defendant            | A                                                     | Referred to military authority                    |
| <b>T4 - VICTIM FACTORS</b>            |                                                | B                                                     | Referred to another jurisdiction                  |
| A                                     | Other victim considerations                    | C                                                     | Referred to U.S. Attorney General                 |
| B                                     | Victim credibility issues                      | <b>U3 - REFERRED TO PROBATION (CORPUS Entry only)</b> |                                                   |
| C                                     | Victim requests no prosecutions                | <b>U4 - REFERRED TO PAROLE (DALITE Entry only)</b>    |                                                   |
| D                                     | Victim unable to qualify                       | <b>V1A- SENT BACK FI (indicate one DALITE only)</b>   |                                                   |
| E                                     | Victim unavailable                             | 1                                                     | Inadequate ID                                     |
| F                                     | Victim uncooperative                           | 2                                                     | Insufficient proof of intent                      |
| <b>T5 - WITNESS FACTORS</b>           |                                                | 3                                                     | Check Alibi                                       |
| A                                     | Necessary witness credibility issues           | 4                                                     | Inadequate search evidence                        |
| B                                     | Necessary witness not available                | 5                                                     | Need corroboration                                |
| C                                     | Other witness considerations                   | 6                                                     | Insufficient proof of value                       |
| D                                     | Witness privilege                              | 7                                                     | Physical evidence - Chain                         |
| <b>T6 - OTHER CASES AND/OR COUNTS</b> |                                                | 8                                                     | Physical evidence - Need expert                   |
| A                                     | Declined in favor of other counts/case         | 9                                                     | Need statement                                    |
| B                                     | Def. plead/found guilty of other charges/case  | 10                                                    | Police Investigation requested (see notes)        |
| C                                     | Other charges filed in different county        | 11                                                    | Lab results pending                               |
|                                       |                                                | 12                                                    | CALICO                                            |

# EXHIBIT 2

[Meet District Attorney Nancy E. O'Malley](#)

# Office of the Alameda County District Attorney

Nancy E. O'Malley, District Attorney

HOME ABOUT THE MEET NEWSROOM VICTIM-WITNESS COMMUNITY OUTREACH CONSUMER, ENVIRONMENTAL  
OFFICE YOUR DA SERVICES & YOUTH PROGRAMS & WORKER PROTECTION  
RESOURCES & PUBLICATIONS

- Press Releases
- In the News
- Events
- Felony Verdicts
- Misdemeanor Verdicts
- Videos
- Newsletter
- Past Events
- Archives**

## **DA O'Malley Makes Statement on Release of Individuals from Santa Rita Jail**

Since the COVID-19 crisis began, this office has worked together with all justice partners to take dramatic steps to reduce the number of individuals detained in custody at Santa Rita Jail. The District Attorney has been working diligently for weeks with the public defender, defense attorneys and the justice partners to systematically release individuals who do not pose a risk of harm to the community or to a victim of crime. We have met at least twice a week, if not more, and remain in constant contact with staff at the Public Defender's Office.

Ultimately, regardless of the actions of the DA or defense, it is the Judge who makes the final decision whether someone will be released.

"The District Attorney's Office is doing everything we can, and should do to address this pandemic. However, we also have the obligation to protect the community from serious and violent offenders," says DA O'Malley "we cannot and will not agree to everyone being released from Santa Rita Jail, as we must also protect the safety of the public. I will also note that it is the constitutional obligation of the District Attorney, which we accept freely, to notify victims of crime if there is a change in circumstances, such as early release. We do all we possibly can to ensure that every victim of a charged crime understands the changes being made and why."

- 2020**
- January
- February
- March
- April**
- May
- June
- 2019
- 2018
- 2017
- 2016
- 2015

2014 “This Office takes very seriously the duty to balance a defendant’s  
2013 rights with public safety. It is very disappointing that the Public  
2012 Defender has chosen this time of crisis to grandstand and to make  
2011 politically divisive and disingenuous statements when what the  
2010 circumstances demand of all public officials is unity and collaboration.”

2009 Efforts to minimize the jail population are being made on multiple  
fronts:

Press Contact

The DA’s Office is only filing cases that involve serious or violent felony crimes. In fact, our average week’s filings since the Shelter in Place Order was given are down nearly 70% from an average week’s filing of new cases a year ago. The Court is only open two days a week (Tuesday and Friday) to arraign defendants on new cases. Last Friday, we filed three (3) new serious felony crimes. All other crimes presented to us we filed and set dates 60 days out so the defendants could be released from custody.

Efforts also encompass the setting of bail and the negotiation of sentences, which we are doing with an eye on minimizing the jail population. On April 2, 2020 by agreement with Presiding Judge Tara Desautels of the Alameda County Superior Court, all requests for “release on one’s own recognizance” for individuals with pending criminal matters, and all requests for “early release” for individuals who were already serving jail sentences issued by Alameda County Superior Court Judges, would receive “judicial review” by a designated judge before releases would be made. Since that time, Supervising Deputy District Attorneys have worked with the defense bar and agreed with defense requests for “O.R” releases and early sentence releases on appropriate cases, always balancing public safety in this time of “Shelter in Place”.

The DA’s Office is also agreeing to early release of people who are serving a previously imposed sentence.

On March 19, 2020 the Alameda County District Attorney’s Office agreed to the early release of 247 individuals already sentenced by the Alameda County Superior Court with scheduled release dates all the way up to April 30, 2020. By doing so, office effectively agreed to take off up to 80 days of an individual’s previous court ordered sentence.

On March 20 and March 27, 2020 the office further agreed to the early release of another 9 individuals deemed by Santa Rita Jail as having “vulnerable health conditions”. The office is reviewing a list of people

containing individuals whose sentence would end by the end of May. While the release of “Medically Fragile” individuals is also taking place. Due to HIPAA, the DA cannot know which individuals in the jail are of vulnerable health or compromised immune system. However, without giving any information, on our request ACSO provided a list of individuals who may fall in that category. We agreed to most of those people. However, we did not agree to everyone on the list being released. For example, we did not agree with the release of a woman who repeatedly tortured her 5 year old child.

As of today, April 9, 2020, with the latest information from Santa Rita Jail, the jail population of individuals that are serving out their court ordered sentences is currently at 115 – less than half the number of individuals who have already been released by District Attorney agreement these past three weeks.

Regardless of whether or not a defense attorney makes a request, the District Attorney’s Office continues to look at individuals with less than 60 days left on their sentence and are making recommendations to the reviewing judge that we do not oppose early release in appropriate cases.

The District Attorney has set up a system whereby any defense attorney can contact one of four attorneys in the DA’s Office to ask us to look at a specific case for release, and we are doing that every day. The court has assigned two judges to whom we take cases for consideration of early release.

Review of the cases is vital for public safety; cannot jeopardize the safety of victims or the community by abandoning this duty. We must take the necessary care and precaution to ensure the health of those incarcerated and the staff working at the jail without sacrificing the security of victims or well-being of the county. To do otherwise would be irresponsible.

This office has and will continue to work with all justice partners, including the Superior Court, the Alameda County Sheriff, the Probation Department, the defense bar and the Public Defender’s Office to make effective and smart decisions.

Posted on Apr 9, 2020

1225 Fallon St.  
Oakland, CA 94612

Tagalog

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# EXHIBIT 3

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF ALAMEDA DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR  
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO  
PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR  
ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR  
ESSENTIAL BUSINESSES AND GOVERNMENTAL SERVICES;  
EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM  
THE SHELTER IN PLACE ORDER BUT URGING THEM TO FIND  
SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT;  
DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO  
CEASE NON-ESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN  
THE COUNTY; PROHIBITING ALL NON-ESSENTIAL GATHERINGS  
OF ANY NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF  
ALL NON-ESSENTIAL TRAVEL**

**DATE OF ORDER: MARCH 16, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA (“HEALTH OFFICER”) ORDERS:

1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.
2. All individuals currently living within the County of Alameda (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals

Order of the County Health Officer  
to Shelter in Place

experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to utilize Social Distancing Requirements in their operation).

3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By

Order of the County Health Officer  
to Shelter in Place

reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the County.

7. This Order also is issued in light of the existence of 15 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing this Order, as of 5 p.m. on March 15, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the Declarations of Local Health Emergency issued by the Health Officer on March 1 and 5, the March 10, 2020 Resolution of the Board of Supervisors of the County of Alameda Ratifying the Declarations of Local Health Emergency, and Governor Newsom's March 12, 2020 Executive Order N-25-20.
9. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including a variety of prior orders to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19.
10. Definitions and Exemptions.
  - a. For purposes of this Order, individuals may leave their residence only to perform any of the following "Essential Activities." But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
    - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
    - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

Order of the County Health Officer  
to Shelter in Place

- iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
  - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
  - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions. Each governmental entity shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

- f. For the purposes of this Order, “Essential Businesses” means:
- i. Healthcare Operations and Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
  - iii. Food cultivation, including farming, livestock, and fishing;
  - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
  - v. Newspapers, television, radio, and other media services;
  - vi. Gas stations and auto-supply, auto-repair, and related facilities;
  - vii. Banks and related financial institutions;
  - viii. Hardware stores;
  - ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
  - x. Businesses providing mailing and shipping services, including post office boxes;
  - xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
  - xii. Laundromats, drycleaners, and laundry service providers;
  - xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
  - xiv. Businesses that supply products needed for people to work from home;
  - xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
  - xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;

- xvii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xviii. Home-based care for seniors, adults, or children;
  - xix. Residential facilities and shelters for seniors, adults, and children;
  - xx. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
  - xxi. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:
    - 1. Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).
    - 2. Children shall not change from one group to another.
    - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    - 4. Childcare providers shall remain solely with one group of children.
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
  - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section below.
- i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the jurisdiction.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.

- i. For purposes of this Order, residences include hotels, motels, shared rental units and similar facilities.
  - j. For purposes of this Order, “Social Distancing Requirements” includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.
11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.
12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
13. Copies of this Order shall promptly be: (1) made available at the County Administration Building at 1225 Oak Street, Oakland, California 94612; (2) posted on the County Public Health Department’s website (acphd.org); and (3) provided to any member of the public requesting a copy of this Order.
14. If any provision of this Order to the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**



Erica Pan, MD, MPH, FAAP

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Dr. Erica Pan  
Interim Health Officer of the County of Alameda

Dated: March 16, 2020

Order of the County Health Officer  
to Shelter in Place

# EXHIBIT 4

Superior Court of California  
COUNTY OF ALAMEDA



Tara M. Desautels, Presiding Judge  
Charles Smiley, Assistant Presiding Judge  
Chad Finke, Executive Officer

René C. Davidson Courthouse  
1225 Fallon Street  
Oakland, California 94612

 @AlamedaSuperior  
www.alameda.courts.ca.gov

**For more information about this news  
release, please contact:**

Executive Office  
pcomments@alameda.courts.ca.gov  
510-891-6012

## FOR IMMEDIATE RELEASE

Monday, June 14, 2021

OAKLAND, CALIFORNIA: Superior Court of Alameda County announces the physical reopening of all courthouses and restoration of additional in-person services beginning June 15, 2021.

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Consistent with Governor Newsom's "[Beyond the Blueprint](#)" plan, the Superior Court of Alameda County (Court) announced today that it will reopen all courthouses to the public and restore additional in-person services beginning June 15, 2021.

On March 17, 2020, the start of the COVID-19 pandemic and related shelter-in-place orders required the Court to close its courthouses to the public. Since that date, Court services have been provided almost exclusively through remote access. However, in recent months, improving COVID-19 conditions in Alameda County have enabled the Court to gradually restore in-person services.

On June 8, 2021, for the first time since the establishment of the tier system, Alameda County moved to the "[Yellow Tier](#)," easing some COVID restrictions. On Friday, June 11, the California Department of Public Health (CDPH) issued an [order](#) that, among other things, mandated [new face covering requirements](#) effective June 15. In addition, the tier system will be eliminated. As an employer, however, the Court is required to comply with regulations issued by Cal/OSHA. Thus, all who enter court facilities will be required to wear a face covering at all times and maintain social distancing until such time as the current regulations are modified by Cal/OSHA or through executive action.

Just as court operations have consistently followed public health guidance, on June 15, with the greatly improved health conditions in Alameda County and throughout the State, the Court will continue and significantly expand its in-person reopening efforts.

Specifically, starting on June 15, 2021, the following clerk's offices will physically re-open to the public for in-person services from 8:30 a.m. to 3:00 p.m., Monday through Friday (with the exception of Friday, June 25):

- Rene C. Davidson Courthouse (RCD), 1225 Fallon Street, Oakland (Criminal).
- Wiley W. Manuel Courthouse, 661 Washington Street, Oakland (Criminal and Traffic).
- East County Hall of Justice, 5151 Gleason Drive, Dublin (Criminal and Traffic).

- Fremont Hall of Justice, 39439 Paseo Padre Parkway, Fremont (Criminal, Traffic).
- Juvenile Justice Center, 2500 Fairmont Drive, San Leandro (Juvenile).

Telephone services will continue to be offered during those business hours, and drop boxes will be available at each of the above locations from 3:00 to 4:00 p.m. every day.

Then, starting June 21, the following services will be offered at the Berkeley Courthouse (Probate), RCD (Civil and Appeals), George E. McDonald Hall of Justice (Records) and Hayward Hall of Justice (Civil, Family), with the exception of Friday, June 25:

- In-person clerk's office hours: 8:30 a.m. – 2:30 p.m.
- Drop box hours: 2:30 p.m. – 4:00 p.m.
- Telephone hours: 10:00 a.m. – 2:00 p.m.

The Court asks all who visit court facilities not to enter if they have been diagnosed with COVID within the last 10 days, if they live or have had "close contact" with a COVID-positive person within the last 14 days, or if they have any symptoms of COVID. Litigants and members of the public can continue to access the Court's services remotely, as explained on the Court's dedicated [COVID-19 web page](#).

The Court looks forward to continuing to expand its in-person court offerings while also maintaining remote access to our Court to the extent permitted by public health and safety guidelines and other applicable authorities. Please continue to check our [website](#) and follow [@AlamedaSuperior](#) on Twitter for the most current information.

# EXHIBIT 5

Superior Court of California  
COUNTY OF ALAMEDA



Charles A. Smiley III, Presiding Judge

Thomas Nixon, Assistant Presiding Judge

Chad Finke, Executive Officer

René C. Davidson Courthouse

1225 Fallon Street

Oakland, California 94612



@AlamedaSuperior

www.alameda.courts.ca.gov

**For more information about this news  
release, please contact:**

Executive Office

pcomments@alameda.courts.ca.gov

510-891-6012

## FOR IMMEDIATE RELEASE

Thursday, April 14, 2022

OAKLAND, CALIFORNIA: Superior Court of Alameda County announces reopening of courtrooms to the public and expansion of clerk's office hours.

The Superior Court of Alameda County (Court) announced today that, effective April 25, 2022, it will begin reopening courtrooms to the public. For the duration of the COVID pandemic, the public has been unable to observe court proceedings in person, although access has been available through [live audio streaming](#). While the live streaming option will remain, the public also will now be able to be physically present in the courtroom for proceedings that are open to the public generally.

The process of reopening courtrooms will occur on a rolling basis, driven by resource availability. The Court will maintain an up-to-date list of which courtrooms are open to the public on its dedicated [COVID-19 web page](#). Please note that courtrooms will only be open during times when court is in session. In some courthouses, lists of the daily proceedings are printed and posted, and litigants, attorneys, and members of the public may also check the appropriate case management system online to determine the date, time, and location of hearings:

- [Odyssey](#) (Criminal)
- [TCMS](#) (Traffic)
- [eCourt](#) (Civil/Small Claims)
- [DomainWeb](#) (Family/Probate)

The Court continues to require face coverings in all courthouses at all times under [General Directive 2022-03A](#). And while the Court does not currently have any social distancing mandate, it requests that courtroom spectators attempt to maintain a safe distance from each other, including leaving empty seats if possible. Judicial officers will have the authority to limit the number of persons in a courtroom if necessary for the health and safety of the public or Court personnel.

In addition, beginning April 25, Civil, Family, Probate, Records, and Appeals clerk's offices will once again open at 8:30 a.m. for in-person and telephone services, and will close at 2:00 p.m. Criminal clerk's offices will continue to open at 8:30 a.m. and close at 3:00 p.m., while Traffic clerk's offices will open at 8:00 a.m. and close at 3:00 p.m. Drop boxes will be available from when each office closes until 4:00 p.m. every day.

[Civil e-filing](#) will still be available 24 hours per day, 7 days a week, along with [Criminal and Juvenile e-filing](#). [Fax filing](#) also remains available for Family and Probate filings.

The Court's Self-Help Center will remain closed for in-person service at this time, although assistance is still available by [telephone and LiveChat](#). The Court is planning to resume in-person Self-Help services by appointment only within the coming weeks.

For additional information related to the Court's COVID response, please see our dedicated [COVID-19 page](#), and please follow [@AlamedaSuperior](#) on Twitter for immediate updates.

# EXHIBIT 6

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

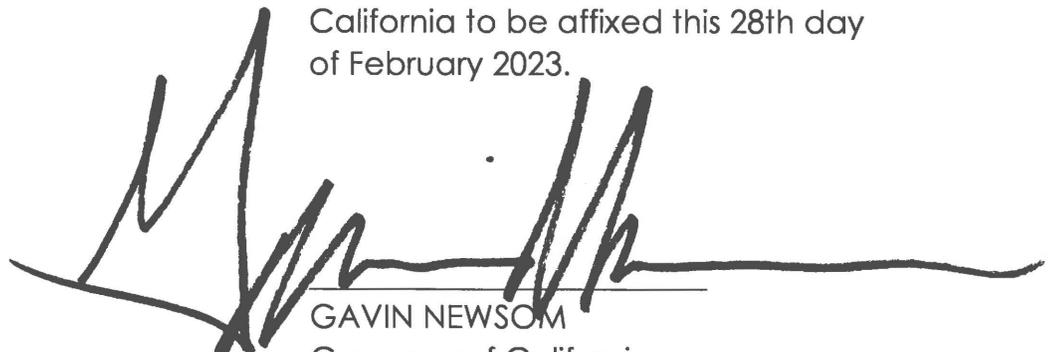
A PROCLAMATION  
BY THE GOVERNOR OF THE STATE OF CALIFORNIA  
TERMINATING STATE OF EMERGENCY

I, **GAVIN NEWSOM**, Governor of the State of California, having found pursuant to Government Code section 8629 that the conditions of extreme peril to the safety of persons and property declared in the State of Emergency proclamation listed below no longer exist, therefore proclaim that the State of Emergency proclaimed on the following date and in the following jurisdiction no longer exists, effective at 11:59 p.m. on February 28, 2023. Accordingly, any Executive Orders related to the terminated State of Emergency will also no longer be in effect as of 11:59 p.m. on February 28, 2023.

| PROCLAMATION |                 |              |
|--------------|-----------------|--------------|
| Emergency    | Date Proclaimed | Jurisdiction |
| COVID-19     | March 4, 2020   | Statewide    |

**I FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of February 2023.



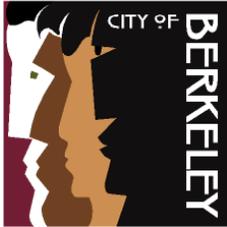
GAVIN NEWSOM  
Governor of California

**ATTEST:**

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SHIRLEY WEBER, PH.D.  
Secretary of State





Brent Blackaby  
Councilmember District 6

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
From: Councilmember Blackaby (Author)  
Subject: Resolution: Affirming Support for Berkeley Police Department, Police Accountability Board, and Office of the Director of Police Accountability in Response to Downtown Task Force Texting Offenses Investigation

### RECOMMENDATION

Adopt a Resolution affirming our community's support for the Berkeley Police Department (BPD) and acknowledging the work of the Police Accountability Board (PAB) & the Office of the Director of Police Accountability (ODPA) in investigating BPD's Downtown Task Force texting offenses, ultimately making recommendations to increase trust, transparency, and accountability. Additionally, the Resolution condemns any and all racism and misconduct, affirms the City Council's opposition to arrest quotas, and asks the California Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code.

### FINANCIAL IMPLICATIONS

None

### CURRENT SITUATION AND ITS EFFECTS

Council's Public Safety Policy Committee reviewed Item #3: *Berkeley Police Department Texting Offenses: An Independent Investigation by the Police Accountability Board* at its February 25, 2025 meeting and voted to return it to Council with a negative recommendation.

Instead, this resolution serves to acknowledge the importance of the Police Accountability Board and the Director of Police Accountability and the critical role they play in ensuring the Berkeley Police Department's accountability to the community as well as identifying & resolving policy or personnel issues as they occur. Berkeley has been a leader in police accountability, and that is a history to honor. The resolution also affirms our confidence in BPD, PAB, and ODPA.

The City of Berkeley condemns any and all racism and misconduct. Misconduct of any kind—whether on-duty or off-duty—is unacceptable behavior from anyone in our community, particularly from those who are sworn to protect vulnerable populations. This is especially true regarding racial, economic, or other types of bias.

BACKGROUND

The Police Accountability Board (PAB) submitted a report on the Downtown Task Force Texting Offenses Investigation for the City Council's October 1, 2024 agenda, which the Agenda Committee referred to the Public Safety Policy Committee (PSPC). The item was withdrawn from the PSPC as requested by a PAB vote during their September 25, 2024 meeting. The Office of the Director of Police Accountability and the Police Accountability Board submitted a new report for the January 21, 2025 Council Meeting. The Agenda and Rules Policy Committee referred the item to the Public Safety Policy Committee. The PSPC heard the item on February 25, 2025.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None

CONTACT PERSON

Councilmember Brent Blackaby    Council District 6    510-981-7160

Attachments:

1: Resolution

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

AFFIRMING SUPPORT FOR BERKELEY POLICE DEPARTMENT, POLICE  
ACCOUNTABILITY BOARD, AND OFFICE OF THE DIRECTOR OF POLICE  
ACCOUNTABILITY IN RESPONSE TO DOWNTOWN TASK FORCE TEXTING  
OFFENSES INVESTIGATION

WHEREAS, community safety is best served when the Berkeley Police Department (BPD), the Police Accountability Board (PAB), and the Office of the Director of Police Accountability (ODPA) are all operating at their best; and

WHEREAS, we have full confidence in the Berkeley Police Department and Chief Louis and are proud of the work of our Department and its dedication to keeping the community safe; and

WHEREAS, citizen oversight plays a critical role in ensuring BPD's accountability to the community and identifying & resolving policy or personnel issues as they occur. Through the PAB, ODPA, and previously the Police Review Commission (PRC), Berkeley has long been a leader in police accountability; and

WHEREAS, the PAB and ODPA contributed countless hours of work to the investigation of texting offenses in BPD's Downtown Task Force that occurred between 2019 and 2020 and became public in November 2022, making thoughtful recommendations to mitigate future instances of potential misconduct. Reading the text messages identified instances of racial insensitivity and poor judgment, highlighting the need for increased awareness and sensitivity to issues of race and inclusion; and

WHEREAS, whether on-duty or off-duty, misconduct of any kind is unacceptable behavior for our Police Officers. This is especially true with regard to racial, economic, or other types of bias; and

WHEREAS, we are grateful that BPD and PAB are working together with the Berkeley Police Association (BPA) to implement an Early Intervention System that will help identify personnel concerns, stresses, or challenges much earlier, before they materialize into misconduct or other problems in our community; and

WHEREAS, the City encourages BPD and PAB to work together through their existing collaborative process to make any needed changes to existing BPD policies on the use of personal communications devices, off-duty conduct, traffic function and responsibility and other important areas.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that we encourage the Berkeley Police Department, the Police Accountability Board, and the Office of the Director of Police Accountability to continue to work together in good faith in order to keep our community safe. The successful missions of each of these organizations are essential to maintaining the trust of all Berkeley residents.

BE IT FURTHER RESOLVED that the Berkeley City Council has full confidence in Berkeley's Police Accountability Board, the Office of the Director of Police Accountability, and the Berkeley Police Department.

BE IT FURTHER RESOLVED that the Berkeley City Council affirms the PAB's ability to access relevant information to conduct specific investigations, under authority granted by the Charter. The particular types of documents that should be accessible during different types of investigations (i.e., personnel misconduct, policy reviews, policy & practice reviews) are necessarily limited by state law and due process considerations. Therefore, we urge the PAB, OPDA, and BPD to adopt their final regulations as expeditiously as possible, after completing the "meet and confer" process with the BPA, to clarify how investigations will be conducted with appropriate information provided by BPD.

BE IT FURTHER RESOLVED that the Berkeley City Council condemns any and all racism and misconduct.

BE IT FURTHER RESOLVED that the Berkeley City Council affirms its strong opposition to arrest quotas and supports BPD's existing practice against using arrest quotas.

BE IT FURTHER RESOLVED that the Berkeley City Council urges the California State Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code (Section 41600-41603) to all types of arrests in California.



CONSENT CALENDAR

April 15, 2025

To: Honorable Members of the City Council

From: Mayor Adena Ishii (Author), Councilmember Brent Blackaby (Co-Sponsor), Councilmember Cecilia Lunaparra (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor)

Subject: Referral to City Attorney for Sanctuary City Ordinance

RECOMMENDATION

Referral to the City Attorney to return to City Council in June with an analysis and recommendation regarding the codification of Berkeley's Sanctuary policies and protections through a city ordinance.

BACKGROUND

On January 21, 2025, the Berkeley City Council adopted a Resolution Reaffirming Berkeley As a Sanctuary City<sup>1</sup> and asking the City Clerk to send a copy to each City Department Director, requesting they inform their staff of the City's Sanctuary City standing and the City's policies and procedures regarding staff interaction with U.S. Immigration and Customs Enforcement (ICE) related to enforcement of federal immigration law. Additionally, the item gave a referral to the City Attorney to explore the possibility of pledging the City's legal support to help "sensitive sites"<sup>2</sup> defend themselves against civil litigation. The resolution called for the Mayor to create a taskforce of Councilmembers, Community Based Organizations (CBOs), immigration and civil rights organizations, faith leaders, legal experts, school and university officials, and community activists to continually assess threats to Berkeley's immigrant communities and participate in the process to codify Berkeley's Sanctuary protections through a city ordinance.

Several cities across California are moving beyond resolutions and adopting Sanctuary City ordinances to provide greater protection to the immigration community in their jurisdiction. For example, on March 11, 2025, the Richmond City Council passed the first reading of a Sanctuary City Ordinance<sup>3</sup> "An Ordinance of the City Council of the City of Richmond Limiting the Use of City Resources for Federal Immigration Enforcement."<sup>4</sup> and on November 19, 2024,<sup>5</sup> the Los Angeles City Council

<sup>1</sup> See Resolution No. 71,658-N.S. "Reaffirming Berkeley As a Sanctuary City"

<sup>2</sup> Sensitive areas such as schools, after-school programs, hospitals, community health centers, and places of worship.

<sup>3</sup> See: <https://pub-richmond.escribemeetings.com/filestream.ashx?DocumentId=56701>

<sup>4</sup> See: <https://pub-richmond.escribemeetings.com/filestream.ashx?DocumentId=56704>

<sup>5</sup> See: [https://clkrep.lacity.org/onlinedocs/2023/23-0243\\_CAF\\_11-19-24.pdf](https://clkrep.lacity.org/onlinedocs/2023/23-0243_CAF_11-19-24.pdf)

unanimously passed a City Ordinance to “Prohibit the Use of City Resources for Federal Immigration Enforcement”,<sup>6</sup> codifying their Sanctuary policies into law.

Per the January 21, 2025, resolution, Mayor Ishii convened the first Sanctuary City Task Force meeting on February 20th. Over 30 representatives attended where they shared what work is currently happening in Berkeley to support the immigrant community and identified gaps and areas for increased coordination. The Task Force meets again on March 26<sup>th</sup>. The frequency of subsequent meetings will be determined then.

RATIONALE FOR RECOMMENDATION

Per the resolution, members of the Task Force have expressed a sense of urgency and interest in establishing a Berkeley Sanctuary City Ordinance that could provide additional protections to Berkeley’s immigrant community. The Berkeley City Attorney has a critical role in ensuring the research and development of a Sanctuary City Ordinance that aligns with the City’s existing ordinances, resolutions, and policies and provides substantive protections for Berkeley’s immigrant community. An ordinance would exceed the action of a resolution because an ordinance would codify the City’s position into the City’s municipal code, thus creating a permanent law<sup>7</sup> regulating conduct and procedure.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects from taking this action.

CONTACT PERSON

|                   |                       |
|-------------------|-----------------------|
| Mayor Adena Ishii | 510-981-7100          |
| Julie Sinai       | jsinai@berkeleyca.gov |

Attachments:

1. Resolution No. 71,658-N.S. “Reaffirming Berkeley As a Sanctuary City” dated January 21, 2025

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<sup>6</sup> See City of Los Angeles Ordinance No. 188441 ([https://clkrep.lacity.org/onlinedocs/2023/23-0243\\_ord\\_%20188441\\_12-19-24.pdf](https://clkrep.lacity.org/onlinedocs/2023/23-0243_ord_%20188441_12-19-24.pdf))

<sup>7</sup> Until another law changes.

RESOLUTION NO. 71,658-N.S.

REAFFIRMING BERKELEY AS A SANCTUARY CITY

WHEREAS, the residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile; and

WHEREAS, the Berkeley community believes in protecting all of our residents and letting them know they are safe, regardless of their immigration status; and

WHEREAS, the City of Berkeley was the first City in the Nation to declare itself a City of Refuge in 1971 (Resolution 44,784-N.S.) and the first City to support the “New Border Vision”, in 2020, to encourage Congress to expand public safety, protect human rights, and welcome people to our communities; and

WHEREAS, Berkeley reaffirmed its City of Refuge status in 1986 (Resolution No. 52,596-N.S.), 2007 (Resolution No. 63,711-N.S.), 2015 (Resolution No. 67,325-N.S.), 2016 (Resolution No. 67,598-N.S. & No. 67,763-N.S.) and 2017 (Resolution No. 68,131-N.S.); and

WHEREAS, as of 2023, 21.3% of Berkeley’s population are immigrants of varying statuses, with undocumented, DACA, and TPS holders most vulnerable to the incoming administration’s threats of discrimination and deportation; and

WHEREAS, multiple studies have proven that jurisdictions that provide sanctuaries are safer and economically more prosperous compared to other jurisdictions – including a 2017 report by the Center for American Progress that shows on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower; and

WHEREAS, in the interest of promoting public safety, it is important to create an environment in which people feel comfortable interacting with local law enforcement, not eroding that trust by permitting local police officers to assist federal immigration enforcement; and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigration and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refuge policy, as well as support our undocumented community members; and

WHEREAS, the Task Force and working groups developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of U.S. Immigration & Customs Enforcement (ICE) enforcement activity; and

WHEREAS, the Task Force created procedures to help City Staff act in accordance with Berkeley’s Sanctuary City status, should ICE agents contact city officials or visit city

facilities or engage with city staff to collect information, or request assistance with arresting any undocumented or naturalized resident or visitor beyond what is required by federal law; and

WHEREAS, all City of Berkeley Departments and employees of the City of Berkeley, including the Berkeley Police Department, have committed to not comply with ICE officers lacking a valid judicial warrant; and

WHEREAS, the Berkeley School Board passed a similar sanctuary campus policy in December 2017 which articulated restrictions on information sharing, providing access to school facilities, and collaboration with Immigration officials; and

WHEREAS, the Berkeley School Board will soon consider at an upcoming meeting to reaffirm the 2017 Berkeley Unified School District Sanctuary Campus Policy (Resolution 17-050), which articulated restrictions on information sharing, providing access to school facilities, and collaborating with immigration officials; and

WHEREAS, Berkeley City College, UC Berkeley, and University Lutheran Chapel have adopted similar policies; and

WHEREAS, California State Superintendent of Instruction Tony Thurmond champions the bill introduced by Senate Majority Leader Lena Gonzalez SB 48 to Keep Immigration and Customs Enforcement Off of School Campuses, Protecting School Attendance and Funding Amid Deportation Threats; and

WHEREAS, hospitals, clinics, schools, and public transportation are key locations of direct services that immigrants rely on for basic needs and are vulnerable to deportation raids from federal immigration enforcement officers; and

WHEREAS, faith communities and other Community Based Organizations (CBOs) play a vital role by protecting essential human rights and offering support to refugees and undocumented immigrants, requiring commitments from local governments to stand with these institutions and protect them from federal deportation raids or other attacks; and

WHEREAS, the incoming Trump administration has campaigned on threats of mass deportation and has indicated its intent to rescind the longstanding federal policy restricting immigration enforcement activity at schools, after-school programs, hospitals, community health centers, and places of worship; and

WHEREAS, in light of the beginning of the Trump administration's term, the City of Berkeley must remind the community and City Staff of Berkeley's status as a Sanctuary City and a City of Refuge.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it reaffirms that the City of Berkeley is a City of Refuge and a Sanctuary City, and that the

following restrictions on the use of City funds and resources shall be applied relating to enforcement of federal immigration law:

1. No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the City of Berkeley unless required by federal law.
2. No department, agency, commission, officer or employee shall deny access to any city services or benefits to residents on the basis of their immigration status.
3. The prohibition set forth shall include but not be limited to:
  - a. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, including but not limited to any such procedures in schools, after-school programs, hospitals, health centers or places of worship, whether public or clandestine, relating to alleged violations of the civil provision of federal immigration law, except as required by federal law.
  - b. Requesting information about, or disseminating information regarding, the citizenship, immigration status, or birth country of any individual, except as required by federal law.
  - c. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley, any question regarding immigration status, except as required by federal law.
4. It is the policy of the City of Berkeley to not allow any individual or organization to enter city facilities if their presence would disrupt city operations. Because the City Council believes that ICE activities in city facilities would constitute a severe disruption to the provision of city services, any request by ICE to any City officer or employee shall be immediately assessed for legality through the City Attorney to ensure the safety of city employees and residents accessing city services and compliance with applicable state and federal laws.
5. Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the City Manager and City Attorney, city departments, agencies, commissions, officers or employees are **not required to**:
  - Cooperate with ICE agents
  - Answer ICE agents' questions or provide any protected data
  - Comply with an ICE Administrative Warrant
  - Immediately comply with a subpoena served by ICE agents
  - Speak with ICE agents at all

6. City officers or employees shall not consent to a search by ICE agents of a non-public area or non-public city records, without a valid judicial warrant.

7. If any person asks questions regarding their immigration status to City staff (while working in their official capacity), City staff shall not refer them to ICE or any other government agency. Instead, City staff shall refer such individuals to local non-profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing deportation or other adverse immigration actions.

8. All requests for documents or protected data by ICE to City personnel shall be immediately forwarded to the City Manager for review and consultation with the City Attorney to ensure the safety of city employees and residents, and compliance with applicable state and federal laws.

BE IT FURTHER RESOLVED that the City of Berkeley stands in solidarity with the Berkeley School Board, Berkeley City College, UC Berkeley, University Lutheran Chapel, and other schools, medical institutions, or places of worship that have committed to similar sanctuary policies to protect the residents of Berkeley, regardless of their immigration status.

BE IT FURTHER RESOLVED that the City of Berkeley offers its support and protection to local CBOs and faith communities offering safety and protection to immigrants in the face of direct threats from federal agencies.

BE IT FURTHER RESOLVED that the Council shall refer to the City Attorney to explore the possibility of pledging the City's legal support to help local CBOs and other "sensitive sites", such as schools, after-school programs, hospitals, community health centers, and places of worship, defend themselves against civil litigation.

BE IT FURTHER RESOLVED that the City Council will collaborate with the boards of BART, AC Transit, East Bay Regional Parks District, UC and CSU systems, Peralta Community College District, and county hospital systems to ensure that the Right to Sanctuary is protected on a regional level.

BE IT FURTHER RESOLVED that the City of Berkeley calls on other Bay Area and California cities to reaffirm their commitments to sanctuary and pass legislation that protects all California residents.

BE IT FURTHER RESOLVED that the City of Berkeley calls on the California legislature to pass SB 48 to Keep Immigration and Customs Enforcement Off of School Campuses, Protecting School Attendance and Funding Amid Deportation Threats.

BE IT FURTHER RESOLVED that copies of this resolution, including any future amendments thereto, shall be transmitted to every department, agency and commission, and employee of the City of Berkeley; to our Alameda County, California, and Congressional representatives; and to the mayors of the rest of the Bay Area cities.

BE IT FURTHER RESOLVED that the City of Berkeley will continue to seek additional ways to enact protections for undocumented immigrants in our community.

The foregoing Resolution was adopted by the Berkeley City Council on January 21, 2025 by the following vote:

Ayes: Blackaby, Humbert, Kesarwani, Lunaparra, O’Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: Bartlett.

  
\_\_\_\_\_  
Adena Ishii, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk





Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
April 15, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Budget Referral: Ohlone Greenway Safety Improvements  
Project Unfunded Balance

**RECOMMENDATION**

Refer to the fiscal year 2025-26 budget process \$150,000 to fund the outstanding balance for consultant costs to finalize the design concepts to complete the Ohlone Greenway Safety Improvements Project, which has already been awarded \$5.3 million in construction funds to complete the project.

**CURRENT SITUATION AND ITS EFFECTS**

***Ohlone Greenway Safety Improvements Project to Enhance Pedestrian and Bicycle Safety by Improving Street Crossings, Widening Path, and Enhancing Lighting . . .***

The Ohlone Greenway is a high volume shared-use pathway for pedestrians and cyclists that offers an off-street connection between the North Berkeley and El Cerrito Plaza BART stations. The city has been planning improvements along part of the Ohlone Greenway from Virginia Gardens (southern end) to the Santa Fe Avenue intersection (northern end) to better accommodate the needs of all users and improve safety particularly at roadway intersections. Planned upgrades will include:

- Improving safety of pathway/roadway intersections, including more clear sightlines, at seven intersections—Virginia Gardens, Cedar Street, Rose Street, Hopkins Street, Peralta Avenue, Gilman Street, and Santa Fe Avenue.
- Widening the pathway to a minimum of 12 feet where feasible to better separate users of different speeds (e.g., pedestrians and bicyclists).
- Improved connection at pathway gap on Peralta Avenue, including wayfinding (signage) and traffic calming features.

- Enhanced pathway lighting to improve safety and security of pathway users at intersection approaches, benches, and other locations where potential security issues exist.
- Landscaping to trim back and/or remove vegetation to increase effectiveness of lighting and to improve visibility and security.

**... Yet a Relatively Small Budget Shortfall Keeps Ohlone Safety**

**Enhancements from Moving Forward.** Despite receiving grants from various county and BART funds, the project's budget still falls short of covering all design costs due to additional community outreach efforts to ensure broad participation and greater input and the re-evaluation of some design elements as a result of internal and external stakeholder coordination. These technical elements include adjustments to the intersection treatments at Gilman/Curtis, updates to the Peralta Avenue connection, and adjustments to electrical elements to comply with latest practices.

**Exhibit 1: Planning Project Area for Ohlone Safety Improvements Project**



Source: Ohlone Greenway Safety Improvements Project - Project Information Sheet, Dec. 8, 2023<sup>1</sup>

## **BACKGROUND**

<sup>1</sup> Ohlone Greenway Safety Improvements Project - Project Information Sheet, Dec. 8, 2023: [https://berkeleyca.gov/sites/default/files/documents/20231208-Project%20Information%20Sheet\\_rev2.1.pdf](https://berkeleyca.gov/sites/default/files/documents/20231208-Project%20Information%20Sheet_rev2.1.pdf)

**Several Berkeley Plans Identify the Ohlone Greenway as a Key High-Volume Pathway in Need of Safety Improvements.** The Ohlone Greenway Safety Improvements Project is designed to implement Berkeley's 2017 Bicycle Plan Tier 1 priority recommendations for pathway and intersection improvements to the Ohlone Greenway as this pathway is highly used by pedestrians and cyclists.<sup>2</sup> The project also addresses the City's 2020 Vision Zero Action Plan as the pathway crosses two high-injury segments at Cedar and Rose Streets and recommends improvements identified in that plan.<sup>3</sup> The proposed pathway improvements are also included in the 2016 Berkeley Strategic Transportation (BeST) Plan, which designates the improvement project as a priority within the city's multimodal program.<sup>4</sup>

**Pathway Widening Is Among Project Safety Improvements.** The portion of the pathway within the project area is considered a two-way shared-use pathway with all users sharing the same path that has no separate spaces for cyclists or pedestrians. Berkeley's 2017 Bicycle Plan recommends a shared pathway with a minimum total width of 12 feet for this project where feasible.<sup>5</sup> Currently, the width of the pathway varies by segment. The current widths of the segments as well as the proposed widths are shown in Exhibit 2 below.

**Exhibit 2: Current and Proposed Widths by Pathway Segment**

| Pathway Segment               | Current Width | Proposed Width |
|-------------------------------|---------------|----------------|
| Virginia Gardens to Cedar St. | 10'           | 14'            |
| Cedar Rose Park               | 8'            | 8'             |
| Rose St. to Hopkins St.       | 11'           | 12'            |
| Peralta St. to Gilman St.     | 10'           | 12'            |
| Gilman St. to Santa Fe Ave.*  | 12'           | 12'            |

Source: Ohlone Greenway Safety Improvements Project - Project Information Sheet, Dec. 8, 2023<sup>6</sup>

Save a 200-foot stretch of the pathway within Cedar Rose Park, the planned widening for the rest of the pathway would achieve the recommended 12 feet width for a standard two-way shared-use pathway. The additional width will allow for multiple users in both directions to travel more comfortably.

<sup>2</sup> Berkeley's 2017 Bicycle Plan Chapter 5: Proposed Bikeway Network [https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017\\_Ch5\\_ProposedBikewayNetwork.pdf](https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_Ch5_ProposedBikewayNetwork.pdf), pp 5-28 - 5-32.

<sup>3</sup> Berkeley's Vision Zero Action Plan: <https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>, p. 17

<sup>4</sup> Berkeley Strategic Transportation Plan Chapter 3: Achieving the Vision: <https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Strategic-Transportation-Plan-Chapter3.pdf>, p. 41

<sup>5</sup> Berkeley's 2017 Bicycle Plan Chapter 5: Proposed Bikeway Network [https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017\\_Ch5\\_ProposedBikewayNetwork.pdf](https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Bicycle-Plan-2017_Ch5_ProposedBikewayNetwork.pdf), p. 5-28

<sup>6</sup> Ohlone Greenway Safety Improvements Project Information Sheet, Dec. 8, 2023: [https://berkeleyca.gov/sites/default/files/documents/20231208-Project%20Information%20Sheet\\_rev2.1.pdf](https://berkeleyca.gov/sites/default/files/documents/20231208-Project%20Information%20Sheet_rev2.1.pdf)

### ***Improved Intersection Crossings are Among Project Safety Improvements.***

The crossings where the pathway intersects with Cedar, Rose and Gilman Streets are all identified as high injury corridors according to Berkeley's Vision Zero Action Plan.<sup>7</sup> Data from reported collisions over the last ten years (2015-2024) for each of the Ohlone Greenway crossings totaled six pedestrian-vehicle injuries, and seven injuries of bicyclists. Planned improvements for these crossings as well as the crossings for the remaining intersections include the following improvements<sup>8</sup>:

- Cedar: flashing beacons, raised crosswalk, concrete median, pavement markings
- Rose: bulbouts, raised crosswalk, pavement markings
- Hopkins: raised crosswalk, concrete median, pavement markings
- Peralta: raised crosswalk, pavement markings
- Gilman at Curtis: pavement markings
- Santa Fe: raised crosswalk, pavement crossings

### **FISCAL IMPACT**

The Public Works Department has provided an estimate of \$150,000 that would cover the remaining costs needed to fund the consultant to complete the designs for this project.

The total costs for this project, including design and construction, is estimated to be approximately \$5.3 million. The vast majority of the Ohlone Greenway Safety Improvement Project has already been funded by several different county and BART funds:

- Alameda County Vehicle Registration Fee Funds (fund 307): \$1,271,000
- Alameda County Measure BB Bike and Pedestrian discretionary funds (Fund 135): \$245,319
- Alameda County Measure BB Streets and Roads discretionary funds (Fund 134): \$458,000
- Alameda County Measure B Bike and Pedestrian discretionary funds (Fund 131): \$225,978
- Safe Route to BART funds (Fund 307): \$3,000,000

The remaining funds requested in this budget referral would constitute the only City funds being used for this project.

### **RATIONALE FOR RECOMMENDATION**

The Ohlone Greenway is a high volume shared-use pathway for pedestrians and cyclists that offers an off-street connection between the North Berkeley and El Cerrito Plaza BART stations. Various segments of the pathway are in great need of

<sup>7</sup> Berkeley Vision Zero Action Plan: <https://berkeleyca.gov/sites/default/files/2022-02/Berkeley-Vision-Zero-Action-Plan.pdf>, p. 17

<sup>8</sup> The Final Conceptual Plan for the Ohlone Greenway Safety Improvements Project: <https://berkeleyca.gov/sites/default/files/documents/20231115-Final%20Concepts.pdf>

safety improvements to enhance user experience and promote greater use. Currently, the project's budget falls short of the necessary funds. Funding of this budget referral would allow this project to move forward into the construction phase.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The Ohlone Greenway Safety Improvements Project will create a safer and more seamless low-stress connection for people accessing the North Berkeley BART Station using alternative modes of transportation including cycling and walking. This supports the city's transit goals of reducing vehicle miles traveled and greenhouse gas emissions.

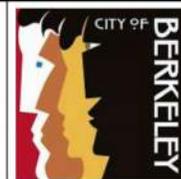
**CONTACT**

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

Attachments: Final Conceptual Plan for the Ohlone Greenway Safety Improvements Project, November 15, 2023

**FINAL CONCEPTUAL PLAN, DATED 11/15/23**  
FOR ILLUSTRATIVE PURPOSES. SUBJECT TO CHANGE AS A  
RESULT OF REFINEMENTS DURING DETAILED DESIGN AND/OR  
CONSTRUCTION PHASES.  
PATHWAY LIGHTING NOT COMPLETELY SHOWN; WILL BE  
ESTABLISHED DURING DETAILED DESIGN PHASE.



CEDAR ST

**LEGEND**

-  EXISTING LIGHT
-  NEW LIGHT
-  PROTECT TREE NEAR PATH
-  REMOVE TREE IN POOR CONDITION
-  EXISTING DRIVEWAY
-  RECONSTRUCT SIDEWALK
-  EXISTING RED CURB
-  NEW RED CURB
-  PAVEMENT MARKINGS



REMOVE MONTEREY PINE

EXISTING 10' PATH

RECONSTRUCTED WIDENED PATH

14'

OHLONE GREENWAY

16'

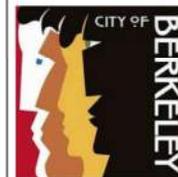
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VIRGINIA GARDENS

PROPOSED IMPROVEMENTS (BY BART)

CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT  
VIRGINIA GARDENS**



VG

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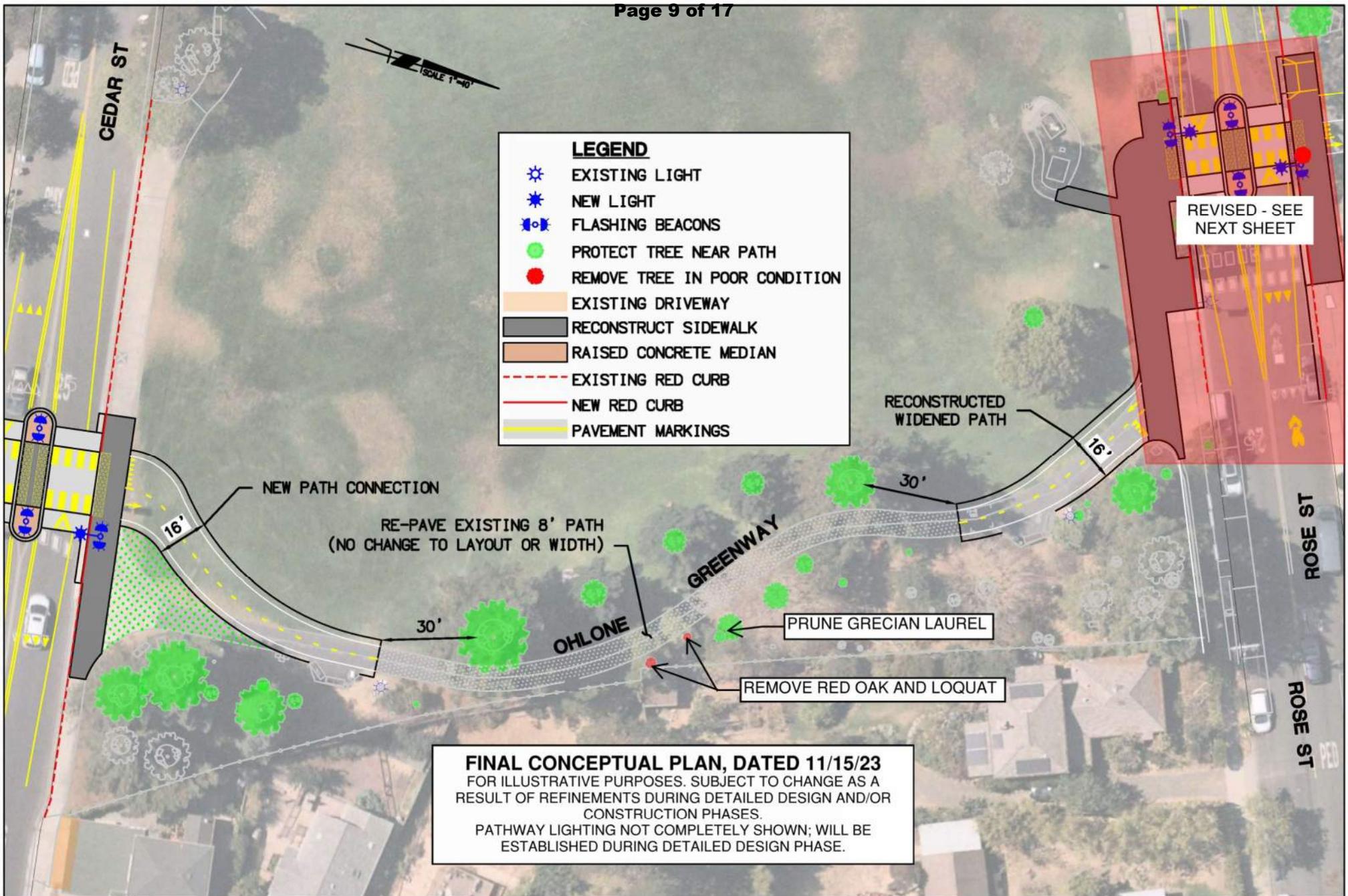
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**LEGEND**

- EXISTING LIGHT
- NEW LIGHT
- FLASHING BEACONS
- PROTECT TREE NEAR PATH
- REMOVE TREE IN POOR CONDITION
- EXISTING DRIVEWAY
- RECONSTRUCT SIDEWALK
- RAISED CONCRETE MEDIAN
- EXISTING RED CURB
- NEW RED CURB
- PAVEMENT MARKINGS

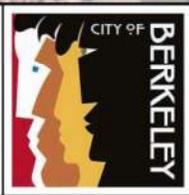


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CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**OHLONE GREENWAY - FROM CEDAR STREET TO ROSE STREET**



OG2

SHEET

**3**

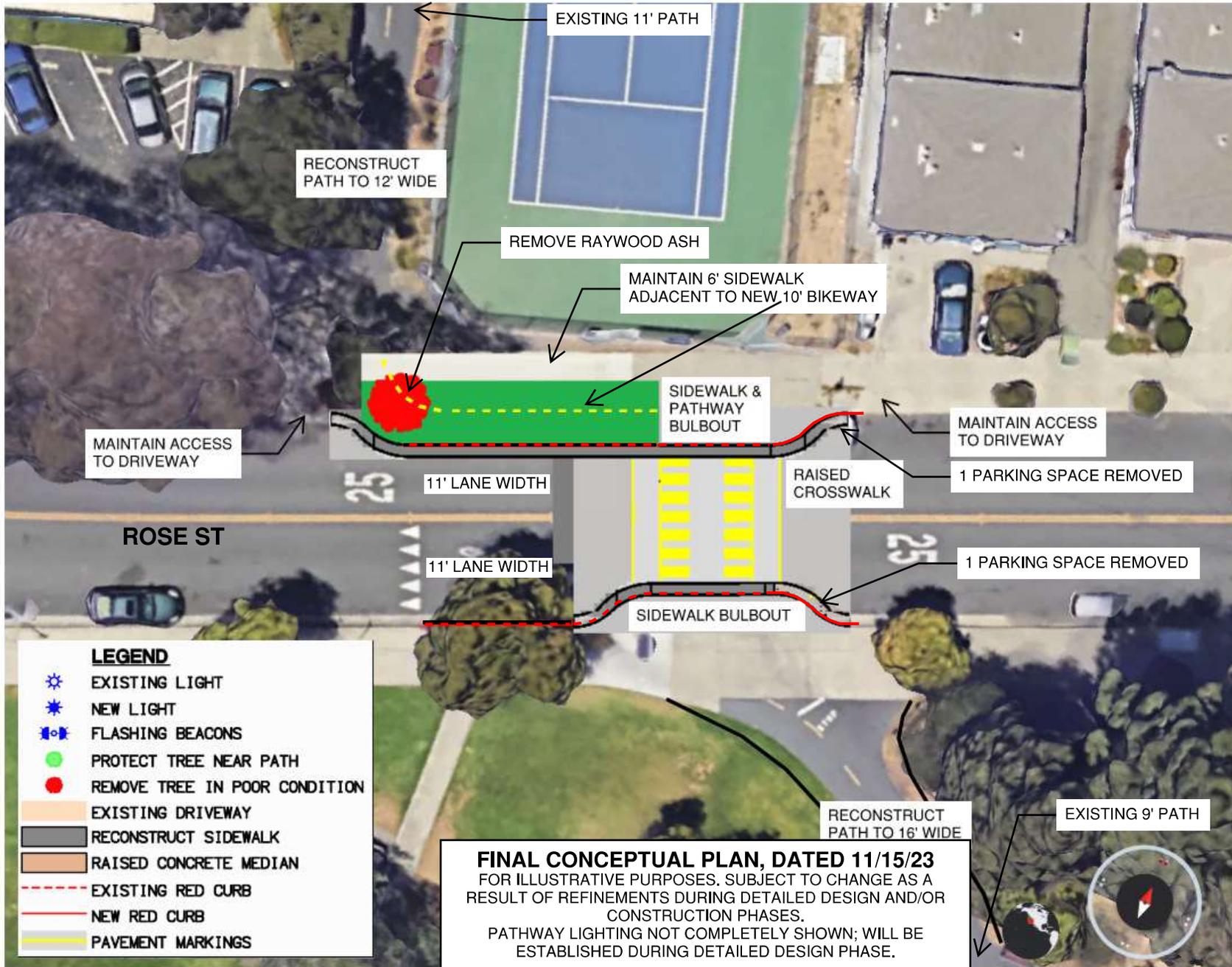
Page 393 of 11

OG2

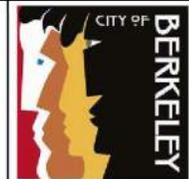
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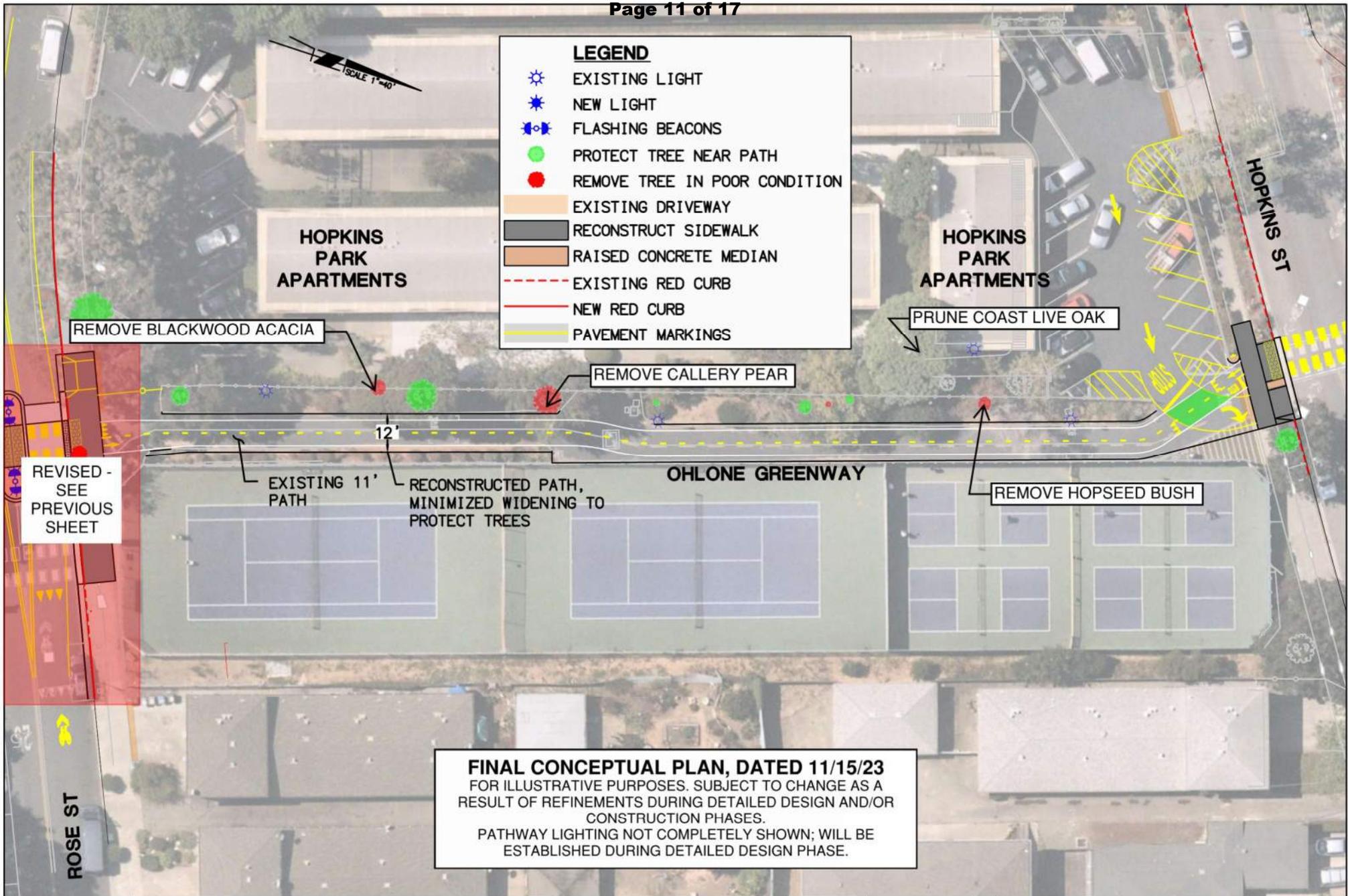
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Page 393 of 11



CITY OF BERKELEY  
**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**ROSE STREET**





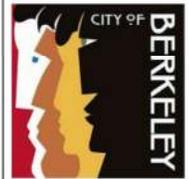
**LEGEND**

- EXISTING LIGHT
- NEW LIGHT
- FLASHING BEACONS
- PROTECT TREE NEAR PATH
- REMOVE TREE IN POOR CONDITION
- EXISTING DRIVEWAY
- RECONSTRUCT SIDEWALK
- RAISED CONCRETE MEDIAN
- EXISTING RED CURB
- NEW RED CURB
- PAVEMENT MARKINGS

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CITY OF BERKELEY

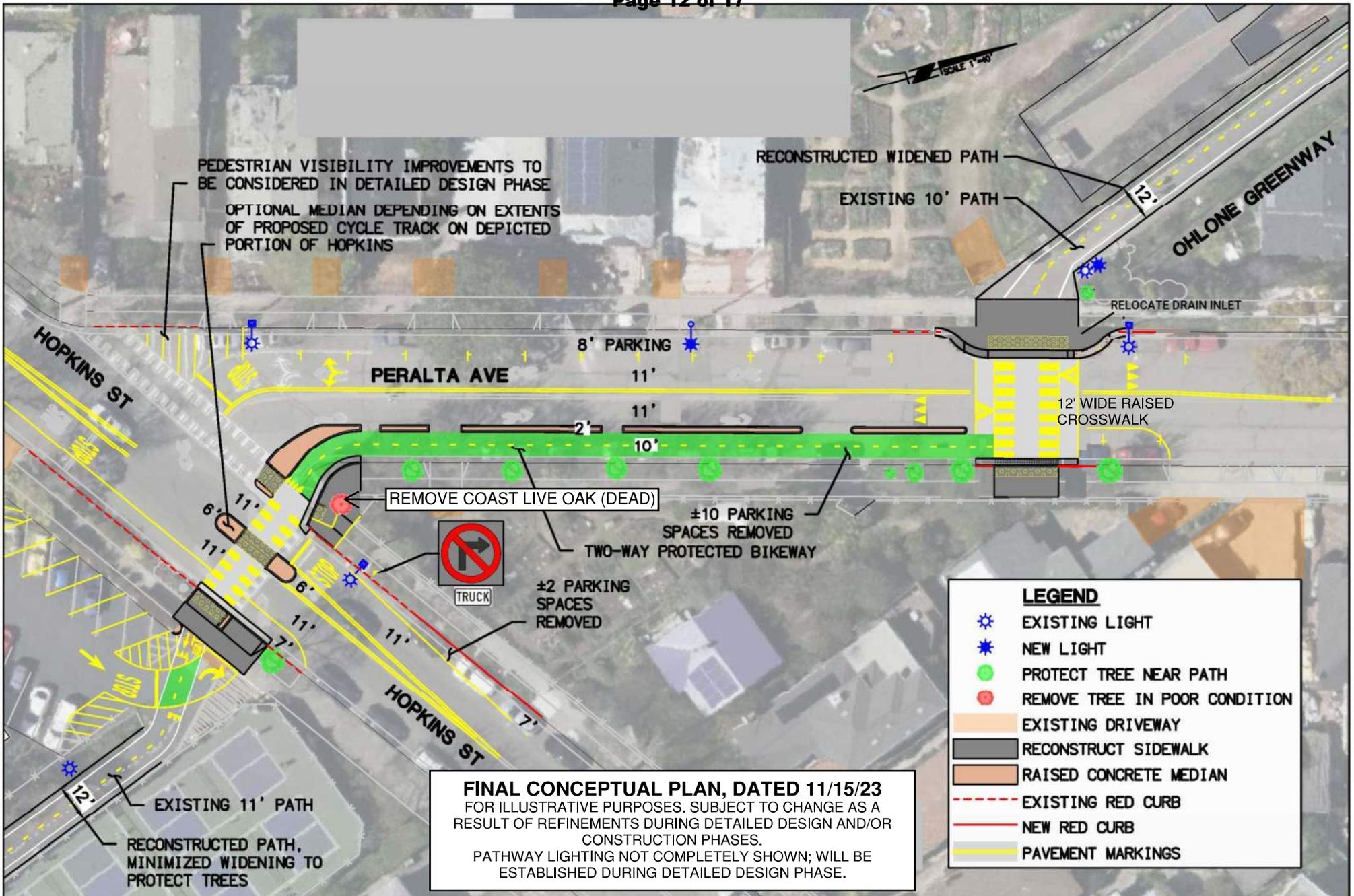
**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**OHLONE GREENWAY - FROM ROSE STREET TO HOPKINS STREET**



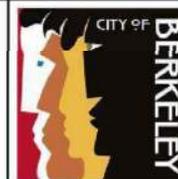
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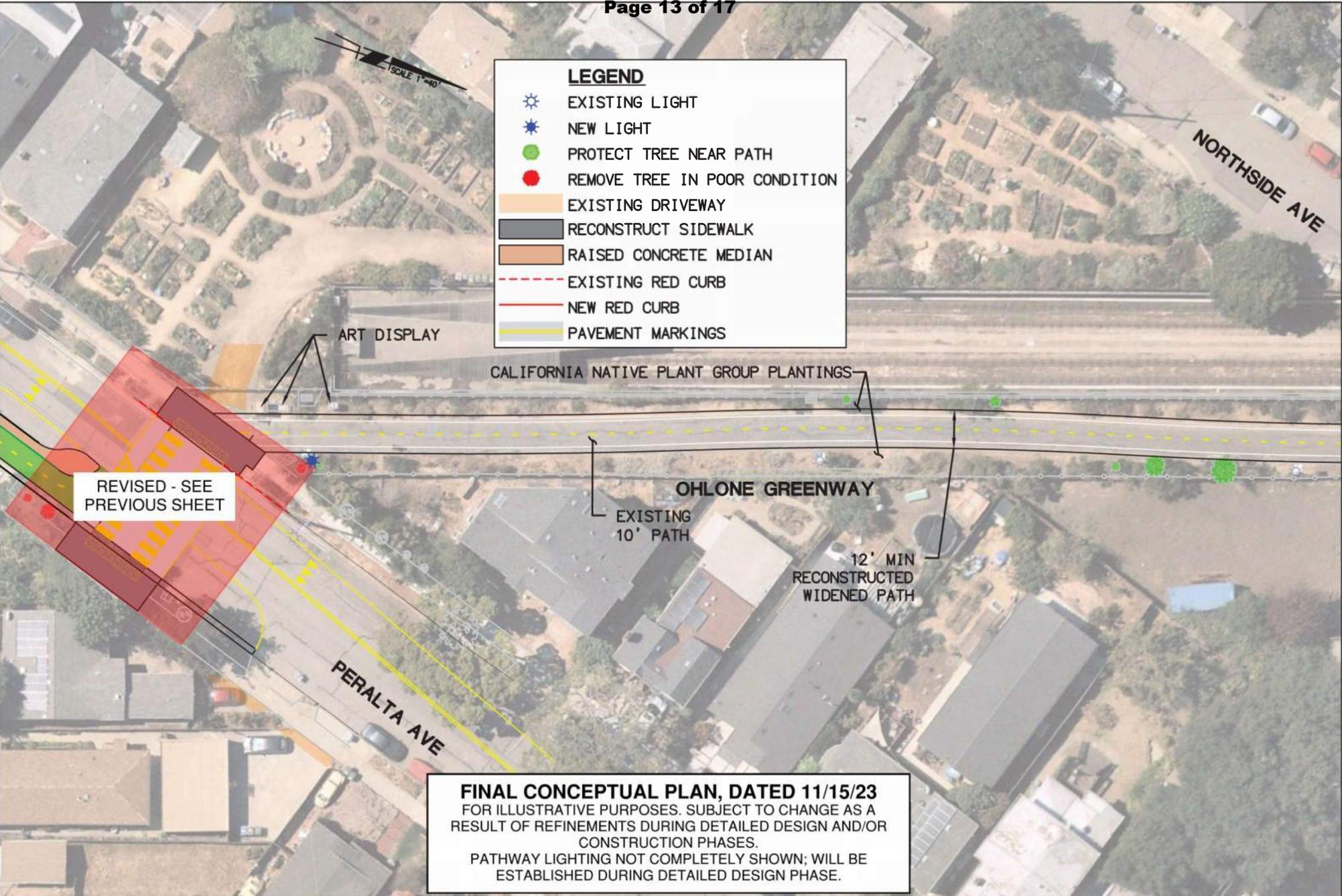
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CITY OF BERKELEY  
**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**PERALTA AVENUE AND HOPKINS STREET**  
**CONCEPT 3**



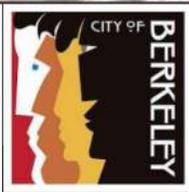


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CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**OHLONE GREENWAY - FROM PERALTA AVENUE TO GILMAN AVENUE**



OG4

SHEET

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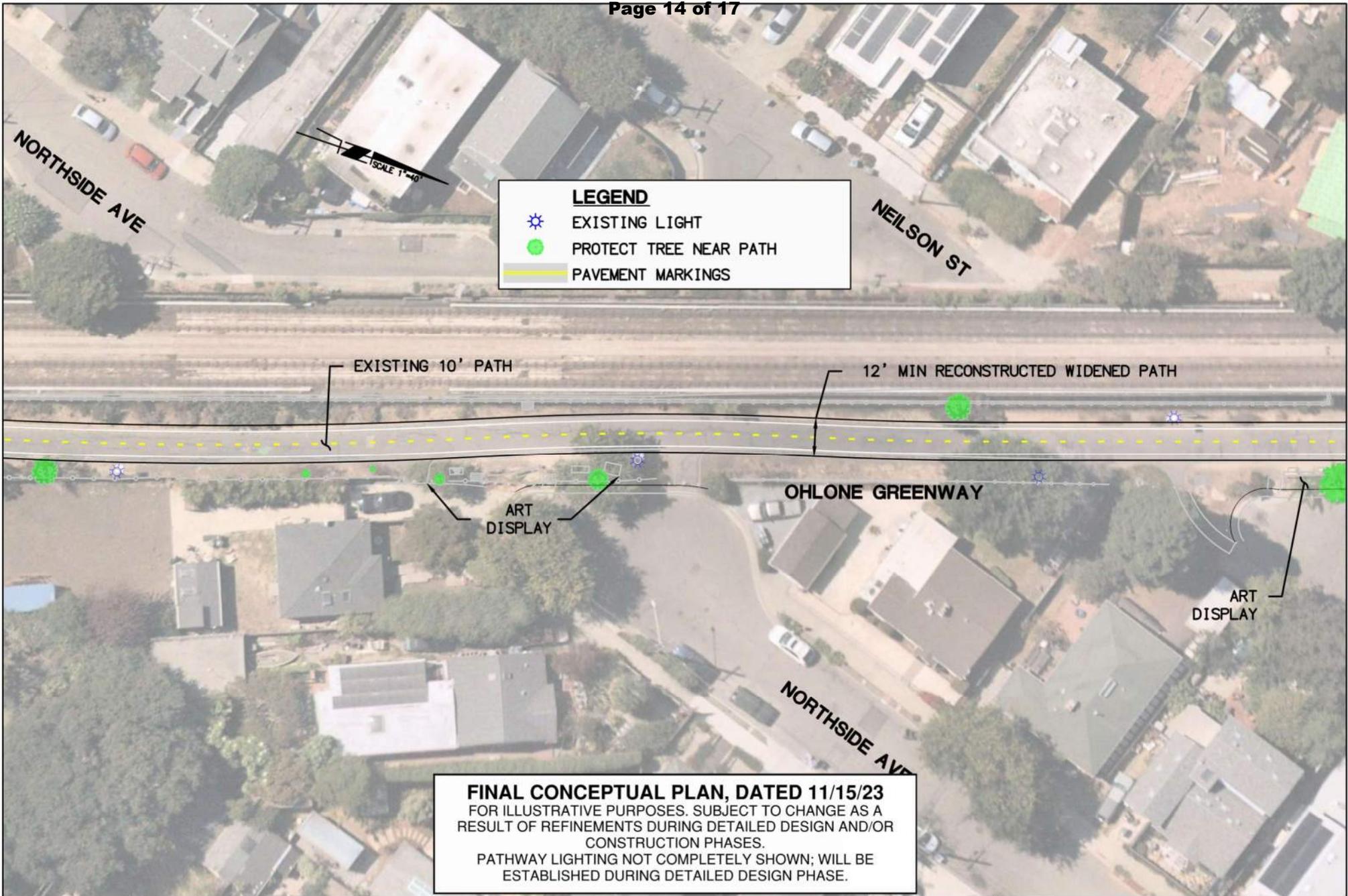
Page 397 of 11

OG4

SHEET

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Page 397 of 11

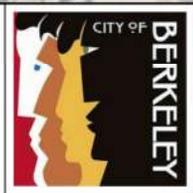


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CITY OF BERKELEY

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**OHLONE GREENWAY - FROM PERALTA AVENUE TO GILMAN AVENUE**

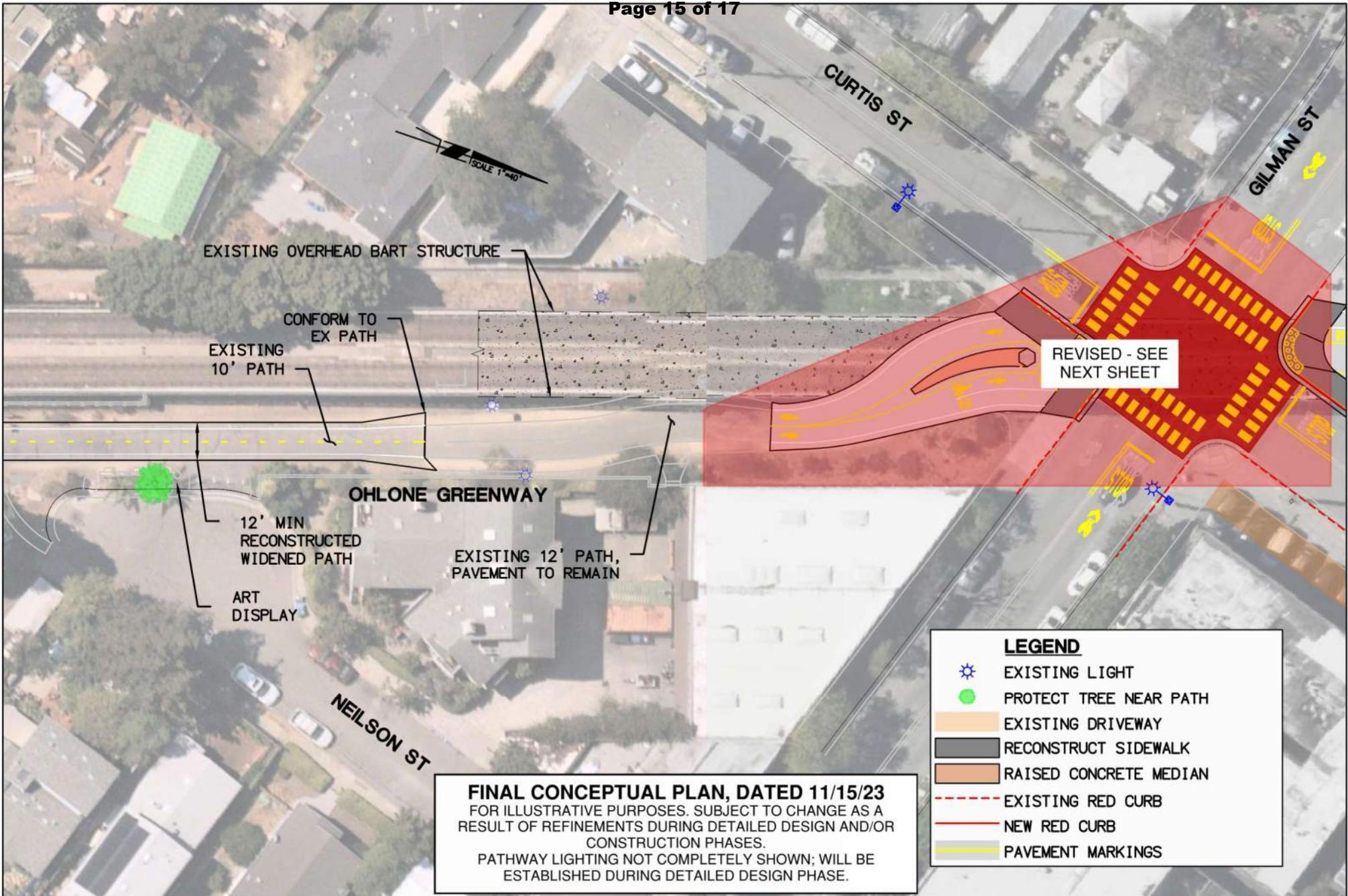


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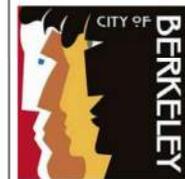
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CITY OF BERKELEY

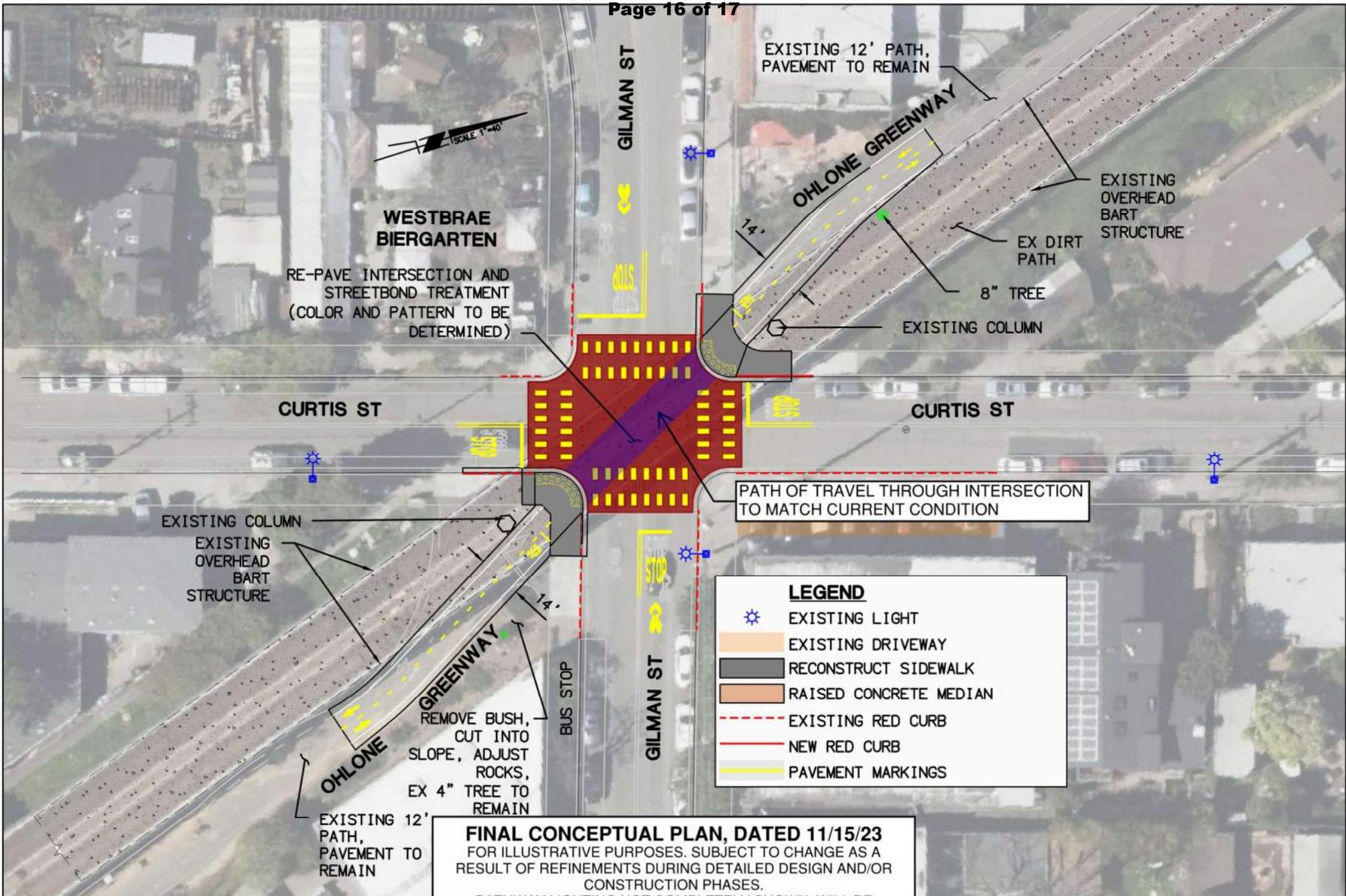
**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT**  
**OHLONE GREENWAY - FROM PERALTA AVENUE TO GILMAN AVENUE**



**OG6**

SHEET

9



**WESTBRAE  
BIERGARTEN**

RE-PAVE INTERSECTION AND  
STREETBOND TREATMENT  
(COLOR AND PATTERN TO BE  
DETERMINED)

EXISTING 12' PATH,  
PAVEMENT TO REMAIN

**OHLONE GREENWAY**

EXISTING  
OVERHEAD  
BART  
STRUCTURE

EX DIRT  
PATH

8" TREE

EXISTING COLUMN

**CURTIS ST**

**CURTIS ST**

EXISTING COLUMN  
EXISTING  
OVERHEAD  
BART  
STRUCTURE

PATH OF TRAVEL THROUGH INTERSECTION  
TO MATCH CURRENT CONDITION

**LEGEND**

-  EXISTING LIGHT
-  EXISTING DRIVEWAY
-  RECONSTRUCT SIDEWALK
-  RAISED CONCRETE MEDIAN
-  EXISTING RED CURB
-  NEW RED CURB
-  PAVEMENT MARKINGS

REMOVE BUSH,  
CUT INTO  
SLOPE, ADJUST  
ROCKS,  
EX 4" TREE TO  
REMAIN

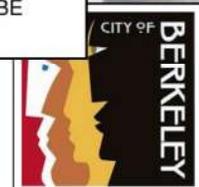
EXISTING 12'  
PATH,  
PAVEMENT TO  
REMAIN

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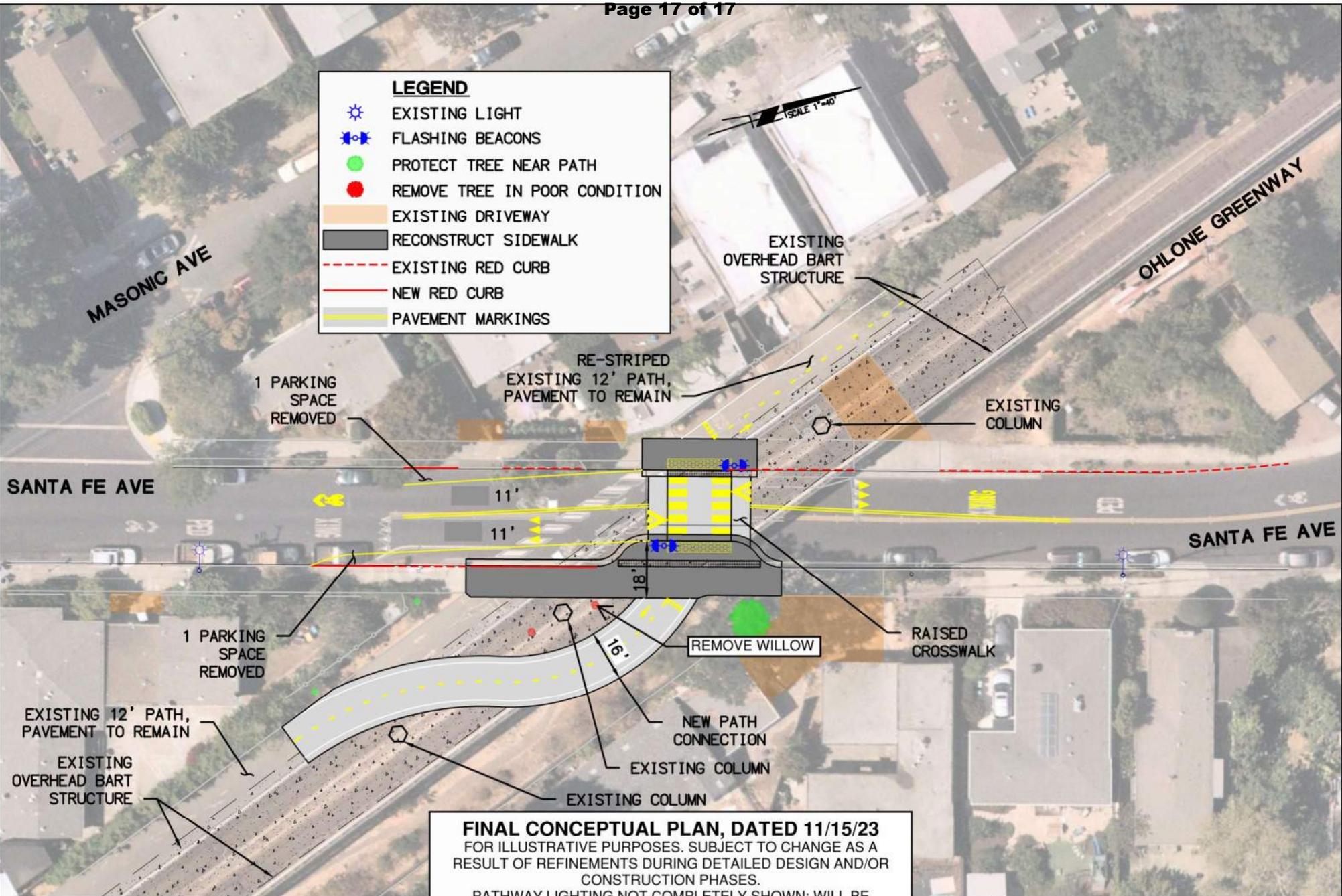
PATHWAY LIGHTING NOT COMPLETELY SHOWN; WILL BE  
ESTABLISHED DURING DETAILED DESIGN PHASE.

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT  
GILMAN STREET AND CURTIS STREET**



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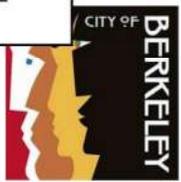


**LEGEND**

- EXISTING LIGHT
- FLASHING BEACONS
- PROTECT TREE NEAR PATH
- REMOVE TREE IN POOR CONDITION
- EXISTING DRIVEWAY
- RECONSTRUCT SIDEWALK
- EXISTING RED CURB
- NEW RED CURB
- PAVEMENT MARKINGS

**FINAL CONCEPTUAL PLAN, DATED 11/15/23**  
 FOR ILLUSTRATIVE PURPOSES. SUBJECT TO CHANGE AS A  
 RESULT OF REFINEMENTS DURING DETAILED DESIGN AND/OR  
 CONSTRUCTION PHASES.  
 PATHWAY LIGHTING NOT COMPLETELY SHOWN; WILL BE  
 ESTABLISHED DURING DETAILED DESIGN PHASE.

**OHLONE GREENWAY MODERNIZATION AND SAFETY PROJECT  
 SANTA FE AVENUE**



**SF-2**  
 SHEET  
 11  
 of 11





Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR

April 15, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Mayor Adena Ishii (Co-Sponsor)

SUBJECT: Establish Rules and Limits When Community-Based Organizations Receive City Funding Without Procurement to Promote Transparency, Fairness, and Stewardship of Public Funds

**RECOMMENDATION**

Approve the resolution and refer to the City Manager to establish an open and transparent process for community-based organizations seeking a grant of emergency funds outside of the City's existing request for proposal (RFP) or other procurement processes. The process to be established should include the following components:

- **Annual Funding Limit.** Establish a maximum amount of \$25,000 annually to be granted to a Berkeley-based non-profit or public organization, and a grand total of \$225,000 annually to up to nine community-based organizations operating in Berkeley.
- **“Declaration of Need” Form Available on a City Webpage.** A Declaration of Need application form should be made available on a dedicated City webpage to ensure all community-based organizations have an equal opportunity to learn about the availability of funds, including the deadline for submitting the completed form.
- **Declaration of Need Form Should Require Documentation of Financial Need and Non-Profit Status (When Appropriate).** The Declaration of Need form should be short to reduce the burden on community-based organizations but should include at a minimum a request to explain the purpose/need for the funds

and document the organization's financial need. In addition, the City should verify that the organization is a registered non-profit organization (if applicable).<sup>1</sup>

- **Selection Process.** The City Manager shall establish a process for selecting qualifying community-based organizations, including establishing a scoring criteria and submitting recommendations to Council as part of the annual budget development process. Pursuant to Budget and Finance Policy Committee discussion, to the extent practicable, consider awarding funds on a rolling basis to better support agencies who may be facing a fiscal emergency.
- **Financial Reporting Requirement for Selected Community-Based Organizations.** For organizations selected to receive emergency funding of up to \$25,000, the City shall enter into a contract that requests documentation at six months and 12 months to ensure that funds were used for the purpose for which they were requested. This financial reporting requirement should apply as soon as practicable to FY2024-25 budget allocations, and continue for future budget years.

### **POLICY COMMITTEE RECOMMENDATION**

On February 13, 2025 the Budget and Finance Policy Committee adopted the following action: M/S/C (Kesarwani/Blackaby) to send the item to Council with a positive recommendation. Vote: All Ayes. Pursuant to the discussion at that policy meeting the recommendation to consider awarding funds on a rolling basis to better support agencies who may be facing a fiscal emergency has also been added to this item, as noted above.

### **CURRENT SITUATION AND ITS EFFECTS**

#### ***Historically, Community-Based Organizations In the Know Have Approached a Member(s) of the Council to Sponsor a Budget Referral for an Award of Funds . . .***

Historically, organizations seeking one-time assistance for such needs as capital improvements to facilities, staffing support, and funding of special programs have appealed directly to individual Councilmembers. These requests have been considered by Council in the form of budget referrals during the annual June budget process and mid-year budget adjustment, with organizations receiving awards totalling as much as \$4.5 million in FY 2023-24. This process is not transparent to all organizations who may be in need of financial assistance, and therefore privileges certain organizations above others who may be equally or more deserving of financial support.

#### ***. . . However, Awarding Funds Without an Open and Transparent Procurement Does Not Treat All Organizations Fairly.*** Smaller and newer Berkeley-based non-profit

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<sup>1</sup> Generally, these awards should be granted to registered non-profit organizations; however, there are instances in which the Berkeley Unified School District or other similar publicly-funded organizations may receive funding. Only organizations that are registered non-profits (through the California Attorney General's Office) or are largely publicly-funded are eligible to receive funding.

organizations may not be familiar with the City’s budgeting process and the practice of Council budget referrals.

**Procurement Via a Request for Proposal or Other Competitive Process Is Considered a Best Practice in Government Contracting.**<sup>2</sup> The benefit of issuing a request for proposal (RFP) is that an open and transparent process treats all organizations fairly. The RFP clearly indicates the criteria by which organizations will be assessed. A scoring panel comprised of individuals without ties to any organization rates each RFP response based on the standard criteria. This process ensures that all organizations have an equal opportunity to receive funds and that all organizations are considered fairly. An RFP process ensures that public funding is awarded based on merit, rather than personal relationships or other subjective criteria. Further, an RFP process ensures that public funds are awarded to high-performing organizations.

**BACKGROUND**

Over the last five fiscal years, nearly \$8.8 million has been allocated to 25 different community-based organizations.<sup>3</sup> Cumulative year-over-year allocations to individual organizations range from \$10,000 to as much as \$5,050,000. The breakdown of funds allocated through a non-competitive process by fiscal year is noted in Exhibit 1 below.

**Exhibit 1: Over Last Five Fiscal Years, City Has Awarded \$8.8 Million Without Procurement Process**

| Fiscal Year  | Numbers of Community-Based Organizations Funded Per Year <sup>4</sup> | Amount Allocated   |
|--------------|-----------------------------------------------------------------------|--------------------|
| 2021-22      | 4                                                                     | \$245,000          |
| 2022-23      | 12                                                                    | \$2,542,000        |
| 2023-24      | 11                                                                    | \$4,516,000        |
| 2024-25      | 15                                                                    | \$1,133,665        |
| 2025-26      | 7                                                                     | \$349,665          |
| <b>TOTAL</b> | <b>49</b>                                                             | <b>\$8,786,330</b> |

Source: City of Berkeley data, with analysis conducted by the Office of Councilmember Kesarwani

**The City Already Has Request for Proposal (RFP) Processes Totalling \$15.5 Million Annually for Community Agencies.** The City’s Health, Housing and Community Services Department issues an RFP for community funding every four years. These

<sup>2</sup> International City/County Management Association, 2008.

[https://icma.org/sites/default/files/302081\\_RFP\\_bestpractices-1.pdf](https://icma.org/sites/default/files/302081_RFP_bestpractices-1.pdf)

<sup>3</sup> The total of 49 shown in Exhibit 1 is due to the same organizations receiving multiple awards.

<sup>4</sup> While the number of allocations to agencies between FY 2022 - 2026 total 49, only 25 different agencies received the funds. Several of the same agencies received funding several years in a row.

funds support a variety of programs and services, including childcare and youth services; housing and community facilities rehabilitation; services for people with disabilities; employment support; health care; homelessness services; as well as legal and senior services. The funding is primarily made up of a variety of local funds (89 percent), various federal funds (11 percent), and to a lesser extent state funding (less than 1 percent) to approximately 35-40 community-based organizations.

***Two Additional Request for Proposal (RFP) Processes Have Been Established Recently at the Request of Councilmember Kesarwani to Meet Unmet Needs.***

Councilmember Kesarwani has introduced items requesting the creation of an RFP process to (1) support arts and cultural organizations in need of one-time capital funds, and (2) provide funding to augment services provided by food insecurity providers. In both cases, the intent is to ensure that all qualified organizations have a fair opportunity to seek funds, thereby ensuring that public funds are awarded to the most qualified organization(s). In October 2019, Councilmember Kesarwani's Council item, "Referral to the Civic Arts Commission to develop a grant program available for arts and cultural organizations to support retaining and improving creative spaces for artists" was approved unanimously on consent, resulting in an annual allocation of \$300,000 to administer and fund an annual Capital Projects Grant Program.<sup>5</sup> Today, the Capital Projects Grant program is listed among the several other grant opportunities for artists, festivals and organizations on the City of Berkeley website, giving all arts organizations an equal opportunity to seek support.<sup>6</sup> In June 2024, Councilmember Kesarwani's Council item, "Referral for Development of Request for Proposal (RFP) to Support Berkeley-Based Non-Profit Food Assistance Providers Serving Food Insecure Households" was approved unanimously on consent.<sup>7</sup> This referral recommended that the City develop and fund an RFP process to support Berkeley-based non-profit food assistance providers to address capacity needs such as expanding services, purchasing equipment, and hiring staff. In August 2024, the City of Berkeley posted notice of a Berkeley-based Food Assistance RFP and funds were awarded.<sup>8</sup>

**RATIONALE FOR RECOMMENDATION**

This referral seeks to ensure that the City's financial resources are more broadly accessible to all community-based organizations while achieving greater transparency in

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<sup>5</sup> See: Referral Response: Grant Program for Retaining and Improving Creative Spaces, March 21, 2023 Berkeley City Council meeting: <https://berkeleyca.gov/sites/default/files/documents/2023-03-21%20Item%2018%20Grant%20Program%20for%20Retaining%20and%20Improving%20Creative%20Spaces.pdf>

<sup>6</sup> City of Berkeley's Civic Arts Grants webpage: <https://berkeleyca.gov/community-recreation/civic-arts/civic-arts-grants>

<sup>7</sup> Annotated Agenda for the June 25, 2024 Berkeley City Council meeting: <https://berkeleyca.gov/sites/default/files/city-council-meetings/2024-06-25%20Annotated%20Agenda%20-%20Council.pdf>, page 23

<sup>8</sup> City of Berkeley: Request for Proposals (RFP) Specification No. 25-11675-C for Berkeley-based Food Assistance Proposals: [https://berkeleyca.gov/sites/default/files/documents/25-11675-C%20-%20Berkeley%20Based%20Food%20Assistance\\_0.pdf](https://berkeleyca.gov/sites/default/files/documents/25-11675-C%20-%20Berkeley%20Based%20Food%20Assistance_0.pdf)

funding allocations. It will also provide greater predictability of the fiscal impacts on the City's budget.

**FISCAL IMPACT**

The fiscal impacts of this referral are minimal outside of staff time to develop a well-defined process for addressing the allocation of emergency funds to community-based organizations.

**CONTACT**

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

**ATTACHMENT**

Resolution No ##,###-N.S. ESTABLISHING RULES AND LIMITS FOR COMMUNITY-BASED ORGANIZATIONS RECEIVING CITY FUNDING OUTSIDE PROCUREMENT TO PROMOTE TRANSPARENCY, FAIRNESS, AND ACCOUNTABILITY

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

ESTABLISHING RULES AND LIMITS FOR COMMUNITY-BASED ORGANIZATIONS  
RECEIVING CITY FUNDING OUTSIDE PROCUREMENT TO PROMOTE  
TRANSPARENCY, FAIRNESS, AND ACCOUNTABILITY

WHEREAS, the use of a Request for Proposal (RFP) or other open and transparent procurement process is widely recognized as a government best practice that aligns with principles of good governance; and

WHEREAS, the City of Berkeley has allocated \$8.8 million over the past five fiscal years to community-based organizations outside of a procurement process, with individual awards ranging from \$10,000 to \$5,050,000; and

WHEREAS, some community-based organizations have historically bypassed established procurement processes by directly appealing to Councilmembers for a grant of public funds; and

WHEREAS, the City of Berkeley currently administers a number of transparent and competitive RFP processes for community-based organizations, one of which totals \$15.5 million annually to fund vital services such as youth programs, housing rehabilitation, disability services, employment support, healthcare, homelessness services, legal assistance, and senior care; and

THEREFORE, BE IT RESOLVED, that the City of Berkeley will establish an open and transparent process for community-based organizations seeking emergency funding outside the RFP or other standard procurement mechanisms; and

BE IT FURTHER RESOLVED, that the City of Berkeley will cap emergency funding allocations at a maximum of \$25,000 annually per Berkeley-based nonprofit or public organization, with a total budget of \$225,000 annually for up to nine community-based organizations serving Berkeley residents; and

BE IT FURTHER RESOLVED, that any budget referrals for Berkeley-based nonprofit or public organizations exceeding \$25,000 must be accompanied by a formal Request for Proposal (RFP) process to ensure fair and equal access for all Berkeley organizations providing similar services; and

BE IT FURTHER RESOLVED, that the City shall create and maintain a dedicated webpage hosting a "Declaration of Need" application form to ensure equitable access to information about emergency funding opportunities, including submission deadlines; and

BE IT FURTHER RESOLVED, that the "Declaration of Need" form shall be concise to minimize the administrative burden on applicants but must include a clear explanation of the purpose and justification for the emergency funding request; and

BE IT FURTHER RESOLVED, that funding will only be allocated to organizations that are registered nonprofits and have filed an Internal Revenue Service Form 990, or equivalent financial documentation, to demonstrate accountability; and

BE IT FURTHER RESOLVED, that all organizations receiving emergency funding must submit progress documentation at six months and a final report at 12 months to verify that funds were used for their stated purposes; and

BE IT FURTHER RESOLVED, that these requirements shall apply retroactively to any undisbursed funds previously approved in FY 2024-25 and to all future grants and allocations beginning in January 2025, ensuring the responsible stewardship of public funds and adherence to principles of fairness, equity, transparency, and accountability.





**BEN BARTLETT**  
VICE MAYOR

15

CONSENT CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Celebración Cultural Sylvia Mendez (Spring Cultural Celebration) by the Sylvia Mendez School PTA: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of funds, including \$1,500 from the discretionary council office budget of Councilmember Ben Bartlett, to the Sylvia Mendez Elementary School PTA to host a Spring Cultural Celebration event on April 27, 2025, on campus. The funds will be relinquished to the City's General Fund from the discretionary council office budget of Councilmember Ben Bartlett and the discretionary council office budgets of any other City Councilmembers who would like to contribute.

BACKGROUND

This year, the Berkeley Unified School District's (BUSD) only Two-Way Immersion school, Sylvia Mendez Elementary (Sylvia Mendez), will host a Cultural Celebration to celebrate the global heritage, various nationalities, and other cultures important to its community. Community members are creating teams to determine the information, tastes, crafts, dress, music, and performances they want to share at the event.

This is the third year of the event. In previous years, teams were formed to represent the following cultures: Eritrea, Mexico, Chile, Cuba, Canada, African American, Croatia, Farm & Garden, Rainbow Families, and Venezuela. Meals were catered by different local ethnic restaurants and supplemented by some of the teams with homemade foods. In addition, the tables shared cultural music in a community playlist, and there was live music. In all, the participants shaped the events, which were well received by the community.

With such great success, the Sylvia Mendez PTA is hosting this event for the third consecutive time, maintaining the same goal of contextualizing our students' cultural influences, backgrounds, and much more. The funds requested are intended to offset some costs associated with the event. Therefore, they should be sent to the Sylvia Mendez PTA organization to distribute accordingly.

This parent-led committee is already funding most of the event's costs, which has been a reliable resource to offset budget shortfalls. The donations ultimately support the program guidelines laid out by BUSD (on the [Sylvia Mendez Elementary website](https://www.berkeleyschools.net/schools/elementary-schools/sylviamendez-elementary/)<sup>1</sup>), which is to "develop

<sup>1</sup> <https://www.berkeleyschools.net/schools/elementary-schools/sylviamendez-elementary/>

long-lasting relationships and cultural appreciation for peers who are often separated by race and language.” This is further defined as the [school's vision on its website](#)<sup>2</sup> “to seek to honor and understand families.”

Since the pandemic restrictions were lifted in 2022, Sylvia Mendez Elementary has hosted well-attended Spring Events. Scheduled late in the school year, they have proven crucial for the community. Facing heightened challenges this year due to on-site construction that began last summer and will continue at least through next school year, fostering relationships by building a greater understanding of families within and the development of our community is fundamental in uplifting morale.

#### ENVIRONMENTAL SUSTAINABILITY

No negative impact.

#### FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$1,500 is available from the discretionary council office budget of Councilmember Ben Bartlett.

The cost is Sylvia Mendez School PTA: Celebración Cultural (Spring Cultural Celebration).

#### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang

bbartlett@cityofberkeley.info  
jchang@cityofberkeley.info

#### ATTACHMENT

1. Resolution

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<sup>2</sup> <https://www.sylviamendezschool.org/en/welcome-eng>

Attachment 1

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A DONATION TO THE SYLVIA MENDEZ SCHOOL PTA TO PROVIDE SUPPORT FOR A SPRING CULTURAL CELEBRATION EVENT.

**WHEREAS**, Councilmember Ben Bartlett has surplus funds in his office expenditure account; and

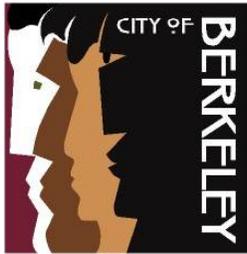
**WHEREAS**, Sylvia Mendez School PTA, a California non-profit organization, will receive funds in the amount of \$1,500 from Councilmember Ben Bartlett's office expenditure account; and

**WHEREAS**, the Sylvia Mendez School PTA supports equitable public education for students, families, and our community through grants and volunteer programs; and

**WHEREAS**, the provisions of such services would fulfill the municipal public purpose of providing students and the youth with opportunities through educational programs and activities to encourage them to learn and embrace cultural diversity;

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their office budgets, of an amount to be determined by each Councilmember, shall be granted to Sylvia Mendez School PTA for this purpose of supporting students and the youth in highlighting cultural heritage that forms the community of the student body.





**Igor Tregub**, Councilmember District 4

**Shoshana O’Keefe**, Councilmember District 5

**Mark Humbert**, Councilmember District 8

**Adena Ishii**, Mayor

To: Honorable Mayor and Members of the City Council

From: Councilmembers Igor Tregub (Co-Author), Shoshana O’Keefe (Co-Author), and Mark Humbert (Co-Author), and Mayor Adena Ishii (Co-Sponsor)

Subject: Resolution Commemorating April 24, 2025, as Berkeley Holocaust Remembrance Day

**RECOMMENDATION**

Adopt a Resolution proclaiming April 24, 2025, as Holocaust Remembrance Day in the City of Berkeley, in memory of those who were murdered and in honor of the survivors as well as the rescuers and liberators; and committing to never forgetting the events of the Holocaust, actively working to combat antisemitism, racism, bigotry, and hatred in all forms, and promote human rights and dignity for all.

**BACKGROUND**

This year, the City of Berkeley will hold its 22nd Annual Holocaust Remembrance Day. The program will take place virtually on April 24, 2025.

The Holocaust was a crime of unimaginable inhumanity, in which six million Jews were targeted for persecution and death—alongside the Roma and Sinti peoples, individuals with mental illness and physical disabilities, members of the queer community, Slavs, Poles, and those who were part of anti-Nazi resistance networks across Europe.

Berkeley’s Annual Holocaust Remembrance Day honors the memory of those who were murdered and those who survived. It gives voice to survivors and their families and invites the broader Bay Area community to reflect on this horrific chapter in human history—so that we may learn from it and choose differently.

As false information about the Holocaust spreads, and as antisemitism<sup>1,2,3</sup>, racism, and violence against historically targeted and oppressed communities continue to rise<sup>4</sup>, the importance of remembering becomes ever more urgent. Holocaust Remembrance Day offers a vital space to stand against antisemitism, bigotry, and hatred in all forms, to uphold human rights and dignity and reaffirm our resolve to never forget.

**FISCAL IMPACTS**

None.

**CONTACT**

Councilmember Tregub, 510-981-7140, [itregub@berkeleyca.gov](mailto:itregub@berkeleyca.gov)

Councilmember O’Keefe, 510-981-7150, [sokeefe@berkeleyca.gov](mailto:sokeefe@berkeleyca.gov)

Councilmember Humbert, 510-981-7180, [mhumbert@berkeleyca.gov](mailto:mhumbert@berkeleyca.gov)

**Attachments:**

1. Resolution

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<sup>1</sup> <https://www.adl.org/resources/press-release/us-antisemitic-incidents-skyrocketed-360-aftermath-attack-israel-according>

<sup>2</sup> <https://oag.ca.gov/news/press-releases/attorney-general-bonta-releases-2023-hate-crime-report-highlights-continued>

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-03-18%20Special%20Item%2001%202024%20Berkeley%20Police%20Department.pdf>; <https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/pages/current-trends>

<sup>4</sup> <https://abcnews.go.com/US/hate-crimes-lgbtq-community-rise-fbi-data/story?id=113962673>

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

**COMMEMORATING APRIL 24, 2025, AS BERKELEY HOLOCAUST REMEMBRANCE DAY**

**WHEREAS**, the Holocaust was a crime of shocking inhumanity, targeting for persecution and death, six million Jews as well as the Roma and Sinti people, those with mental illness and physical disabilities, members of the Queer community, Slavs, Poles, and members of anti-Nazi networks from throughout Europe; and

**WHEREAS**, Holocaust Remembrance Day serves as an imperative reminder of the appalling crimes and atrocities of the Holocaust so that we may keep them in our memory and continue to condemn them for generations to come; and

**WHEREAS**, false information on the Holocaust continues to distort, deny, and trivialize the horrendous truth about what took place during the Nazi regimes; and

**WHEREAS**, in January 2024, the Anti-Defamation League reported skyrocketing antisemitic incidents in the U.S., having recorded a total of 3,291 antisemitic incidents in the prior three months, a 361-percent increase compared to the same period one year prior<sup>5</sup>; and

**WHEREAS**, anti-Jewish bias events in California rose from 189 in 2022 to 289 in 2023, an increase of 52.9%, according to the California Attorney General<sup>6</sup>; and

**WHEREAS**, the Berkeley Police Department reports that, since October of 2023, there has been an increase overall in the number of anti-Jewish hate incidents and that, in 2024, Anti-Jewish hate crimes made up 18.6% of overall hate crimes, the third-highest category and one of only three categories that are in the double digits<sup>7</sup>; and

**WHEREAS**, prejudice, violence and crimes against other communities that historically have been targeted, oppressed or disadvantaged have been rising in recent years<sup>8</sup>; and

**WHEREAS**, the purpose of Berkeley's Holocaust Remembrance Day is to come together as a community to remember the Holocaust, to honor survivors who chose to rebuild their lives in Berkeley and the Bay Area, and to reflect on the need to respect all people

**NOW THEREFORE, BE IT RESOLVED** that the Berkeley City Council does hereby proclaim April 24, 2025, as Holocaust Remembrance Day in the City of Berkeley, in memory of those who were murdered and in honor of the survivors as well as the rescuers and liberators; and

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<sup>5</sup> <https://www.adl.org/resources/press-release/us-antisemitic-incidents-skyrocketed-360-aftermath-attack-israel-according>

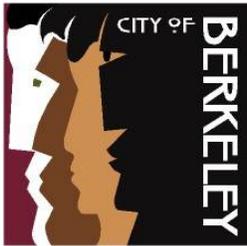
<sup>6</sup> <https://oag.ca.gov/news/press-releases/attorney-general-bonta-releases-2023-hate-crime-report-highlights-continued>

<sup>7</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-03-18%20Special%20Item%2001%202024%20Berkeley%20Police%20Department.pdf>; <https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/pages/current-trends>

<sup>8</sup> <https://abcnews.go.com/US/hate-crimes-lgbtq-community-rise-fbi-data/story?id=113962673>

**BE IT FURTHER RESOLVED** that the City of Berkeley is committed to never forgetting the events of the Holocaust, actively working to combat antisemitism, racism, bigotry, and hatred in all forms, and promote human rights and dignity for all.

DRAFT



**Igor Tregub**, Councilmember District 4  
**Shoshana O’Keefe**, Councilmember District 5  
**Mark Humbert**, Councilmember District 8  
**Adena Ishii**, Mayor

CONSENT CALENDAR  
 April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Igor Tregub (Co-Author), Shoshana O’Keefe (Co-Author), Mark Humbert (Co-Author), and Mayor Adena Ishii (Co-Sponsor)  
 Subject: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds to 2025 Virtual Holocaust Remembrance Day Program

### **RECOMMENDATION**

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember from the D13 Discretionary Accounts of members of the Berkeley City Council, including \$500 from Councilmember O’Keefe, \$500 from Councilmember Tregub, \$500 from Councilmember Humbert, and \$500 from Mayor Ishii to support the City’s Annual Holocaust Remembrance Day program with funds relinquished to the City’s general fund.

The relinquishment of funds from Councilmembers O’Keefe, Tregub, Humbert and Mayor Ishii’s respective discretionary Council Office Budgets as well as any other members of the Berkeley City Council who would like to contribute, allows the City of Berkeley to invite the community to its 22nd Annual Holocaust Remembrance Day virtual program, created by the community with City Council support.

This year’s program will be held virtually on April 24, 2025.

### **BACKGROUND**

The City of Berkeley’s Annual Holocaust Remembrance Day program has been supported by the City Council since its inception in 2002. The program has occurred annually, except in the year 2020 when the COVID-19 pandemic was declared without enough time to pivot to a virtual program. Berkeley’s Holocaust Remembrance Day has become a treasured event for Holocaust survivors, family members and the Bay Area community as the only secular, city-sponsored program in the region. The community program invites attendees to honor those who were

murdered in the Holocaust as well as those who survived. With the dramatic rise of antisemitic and other hate incidents and hate crimes in our region and nation-wide, it is critical that we hear the firsthand stories of survivors of the Holocaust and reaffirm our resolve to never forget.

**FISCAL IMPACTS**

No General Fund impact. Up to \$500 is available from contributing Councilmembers' Council Office Budget discretionary accounts.

**CONTACT**

Councilmember Tregub, 510-981-7140, [itregub@berkeleyca.gov](mailto:itregub@berkeleyca.gov)

Councilmember O'Keefe, 510-981-7150, [sokeefe@berkeleyca.gov](mailto:sokeefe@berkeleyca.gov)

Councilmember Humbert, 510-981-7180, [mhumbert@berkeleyca.gov](mailto:mhumbert@berkeleyca.gov)

Mayor Ishii, 510-981-7100, [aishii@berkeleyca.gov](mailto:aishii@berkeleyca.gov)

Attachments:

1. Resolution

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

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

**WHEREAS**, Councilmembers O’Keefe, Tregub and Humbert have surplus funds in their D13 discretionary office expenditure account and will contribute \$500, and invite the Mayor and other Councilmembers to join in contributing; and

**WHEREAS**, a California nonprofit tax-exempt corporation, The Jewish Community Center of the East Bay, serves as the fiscal sponsor of the Holocaust Remembrance Day program and will receive funds in an amount up to \$500 per contributing Councilmember’s discretionary account; and

**WHEREAS**, the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust and unity among Berkeley residents;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$500 per office, shall be granted to the Jewish Community Center of the East Bay to fund the City of Berkeley’s virtual 22nd Annual Holocaust Remembrance Day program on April 24, 2025.





Igor Tregub  
Councilmember, District 4

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub (Author), Councilmember Brent Blackaby (Co-Sponsor), Councilmember Cecilia Lunaparra (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor)

Subject: Resolution in Support of California Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974.

**RECOMMENDATION**

Adopt a resolution in support of California State Senate Bill 42 (Umberg, Allen) California Fair Elections Act of 2026 to Amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974, which is moving through the legislature to appear on the California general election ballot on November 3<sup>rd</sup>, 2026; and distribute copies to the California Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, California Senate President pro Tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.

**CURRENT SITUATION AND ITS EFFECTS**

The Political Reform Act, 2025 Edition, states that a public officer or candidate is generally prohibited from using public funds to seek elective office, unless a dedicated fund is established by the state or local government, and the fund is available to all

qualified candidates regardless of incumbency or party, with established criteria for determining eligibility.<sup>1</sup>

Senate Bill 42 seeks to amend Sections 85300 and 85320 of the Government Code, relating to the Political Reform Act of 1974 to allow public officers or candidates to use public funds for seeking office with strict criteria and expenditure limits, prohibit the use of funds for legal defense or personal loans, establish more robust penalties for foreign interference in elections, and require voter approval in the 2026 general election.<sup>2</sup>

Senate Bill 42 will not establish public financing for campaigns or mandate that any government provide it. Instead, it more readily gives local and state governments the option to create laws that establish public campaign financing programs, while ensuring basic protections for fairness, accountability, and source of funds.

Berkeley is one of only five cities, alongside Long Beach, Los Angeles, Oakland, and San Francisco, that has passed a statute, ordinance, resolution, or charter to create a dedicated fund to extend public funds to candidates seeking elective office.<sup>3</sup> Nearly 65% of Berkeley Voters in 2016 passed Measure X1 to establish a \$500,000 annual fund to pay for the city's public campaign funding program for city council members and the mayor who follow certain restrictions and rules in gathering their campaign funding.<sup>4</sup> In 2020, the City Council extended these funds to School Board Director, Rent Board Commissioner, and City Auditor candidates.<sup>5</sup>

## **FISCAL IMPACTS OF RECOMMENDATION**

Limited staff time is required to communicate the City position to the State representatives.

## **ENVIRONMENTAL SUSTAINABILITY**

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

## **CONTACT PERSON**

Councilmember Igor Tregub, Council District 4, 510-981-7140  
[ltregub@berkeleyca.gov](mailto:ltregub@berkeleyca.gov)

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<sup>1</sup> [https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/The%20Political%20Reform%20Act/2025/2025\\_Act.pdf](https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/The%20Political%20Reform%20Act/2025/2025_Act.pdf)

<sup>2</sup> Senate Bill 42 <https://legiscan.com/CA/text/SB42/id/3103934>

<sup>3</sup> Senate Bill 42 Fact Sheet, Senator Umberg

<sup>4</sup>

[https://ballotpedia.org/Berkeley, California, Funding for Public Campaign Finance Program, Measure X1 \(November 2016\)](https://ballotpedia.org/Berkeley,_California,_Funding_for_Public_Campaign_Finance_Program,_Measure_X1_(November_2016))

<https://berkeleyca.gov/sites/default/files/documents/FCPC%20Filing%20Manual%202024%20-%20FINAL.pdf>

Amy Johnson, Legislative Aide, Council District 4  
[amjohnson@berkeleyca.gov](mailto:amjohnson@berkeleyca.gov)

Attachments:

1. Resolution
2. Fact Sheet

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

**RESOLUTION IN SUPPORT OF CALIFORNIA SENATE BILL 42 CALIFORNIA FAIR ELECTIONS ACT OF 2026 TO AMEND SECTIONS 85300 AND 85320 OF THE GOVERNMENT CODE, RELATING TO THE POLITICAL REFORM ACT OF 1974**

**WHEREAS**, Senate Bill 42 seeks to provide voters with the opportunity to decide, on the November 2026 ballot, whether to amend current restrictions on public financing of campaigns in California, while establishing basic requirements for public financing systems to ensure fairness, accountability, and transparency; and

**WHEREAS**, Senate Bill 42 is supported by a broad coalition of civil rights organizations, voters, and legal experts, who recognize it as a critical step in addressing the influence of money in politics, and is sponsored by the California Clean Money Campaign and cosponsored by California Common Cause and the League of Women Voters of California, all dedicated to promoting transparency, accountability, and fairness in elections; and

**WHEREAS**, the current ban on public financing restricts local governments and the state from creating systems that amplify the voices of everyday voters, reduce the influence of wealthy donors, and empower diverse candidates to run for office and better represent their communities; and

**WHEREAS**, Senate Bill 42 would repeal the ban on public campaign financing, ensuring that no public funds would be used for education, transportation, or public safety purposes, while setting strict criteria for candidates, including restrictions on using funds for legal defense, fines, or repayment of personal loans; and

**WHEREAS**, Senate Bill 42 does not mandate public financing, but gives local governments and the state the option to create such programs with necessary safeguards, promoting a fairer, more inclusive electoral process; and

**WHEREAS**, Senate Bill 42 aligns with the growing desire among voters for changes to campaign finance systems, with significant support for public financing in charter cities and a strong push for reform across the state; and

**WHEREAS**, the passage of Senate Bill 42 would help strengthen California's democratic processes by providing greater access to candidates from all backgrounds, ensuring public trust in the electoral system; and

**WHEREAS**, the City of Berkeley is one of the five municipalities that has established a public fund for more equitable elections; and

**WHEREAS**, 65% of Berkeley Voters in 2016 passed Measure X1 to establish a \$500,000 annual fund to pay for the city's public campaign funding program for city

council members and the mayor who follow certain restrictions and rules in gathering their campaign funding; and

**WHEREAS**, in September of 2021, the City Council extended these funds to School Board Director, Rent Board Commissioner, and City Auditor candidates.

**NOW, THEREFORE, BE IT RESOLVED**, that the Berkeley City Council hereby declares its support for California State Senate Bill 42, which would allow voters to decide on repealing the ban on public financing of campaigns and provide a fair, accountable framework for future public financing programs; and

**BE IT FURTHER RESOLVED**, that the Berkeley City Council directs the City Manager to distribute copies to the California Governor Gavin Newsom, Senator Jesse Arreguín, Assemblymember Buffy Wicks, California Senate President pro Tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.

**PASSED AND ADOPTED** by the City Council of Berkeley on this 15 day of April 2025, by the following vote:



## SUMMARY

SB 42 will provide voters the opportunity to decide on a measure on the November 2026 ballot to remove the current prohibition of public financing of campaigns in California while establishing basic requirements that public financing systems and candidates using public funding must follow to protect taxpayers and maximize the benefit to voters.

## BACKGROUND

In 2010, a 5-4 majority of the US Supreme Court ruled in *Citizens United v. FEC* that corporations and outside groups can spend unlimited funds on elections, reversing longstanding federal campaign finance regulations that limited the influence of big money in elections.

Five charter cities have active public financing systems that amplify the voices of everyday voters and provide candidates with an alternative fundraising system to relying on wealthy donors: Berkeley, Long Beach, Los Angeles, Oakland, and San Francisco.

Unfortunately, such programs are prohibited in California jurisdictions other than charter cities by the Political Reform Act of 1974 due to a provision enacted by [Proposition 73](#) in 1988. In 2016, the legislature passed, and Governor Jerry Brown signed, [SB 1107](#) (Allen) that would have removed the ban, but the courts ruled the question must be put before the voters.

## NEED FOR THE BILL

Voters are increasingly concerned about the problem of money in politics, with only 20% in a [recent poll](#) saying they were satisfied with the nation's campaign finance laws. In a [June 2024 poll](#) conducted by the California Clean Money Campaign, 84% of likely voters said we need to change the way we finance election campaigns, with 56% saying we need to make major changes.

Public campaign financing measures to address such concerns are extremely popular and have been approved overwhelmingly by voters in charter cities. 75% of

voters voted for Los Angeles' Measure H in 2011, 65% voted for Berkeley's Measure X1 in 2016, and 74% voted for Oakland's Measure W in 2022. But voters and candidates in counties, districts, general law cities, and the state currently cannot be given the same opportunity.

Public financing of campaigns would reduce the barriers of entry to run for public office – empowering everyday Californians to represent their communities and diversifying the candidate pool.

## SOLUTION

SB 42 will give voters the chance to address these issues and restore control to local governments and the state by placing the California Fair Elections Act on the 2026 ballot to repeal the ban on campaign public financing while requiring that no public moneys be used that are earmarked for education, transportation, or public safety.

The measure will require that voluntarily participating public funding candidates must abide by expenditure limits and meet strict criteria to qualify such as requiring that candidates must receive small dollar contributions or vouchers from a specified number of adult residents. It will bar the use of public funds to pay for legal defense, fines, or repayments of personal loans to candidates' campaigns, and will specify that public funding systems shall not discriminate based on party or according to whether a candidate is a challenger or an incumbent.

SB 42 will not create public financing of campaigns or require any government to offer public financing. It will simply remove the ban and allow local governments and the state the option to enact laws that create programs for public financing of campaigns while requiring basic protections for fairness, accountability, and where the money can come from.

## SUPPORT

California Clean Money Campaign (sponsor)  
California Common Cause (cosponsor)  
League of Women Voters of California (cosponsor)

**FOR MORE INFORMATION**

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CONSENT CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Shoshana O'Keefe (Author) and Councilmember Mark Humbert (Co-Sponsor)  
 Subject: Budget Referral for Thousand Oaks Park Playground Update

RECOMMENDATION

Refer \$80,000 to the June budget process (FY26 Mid-Biennial Update) for the completion of a new airplane themed play structure at Thousand Oaks Park, located at 1700-1780 Tacoma Avenue.

SUMMARY

On October 16, 2024, Berkeley resident Michael Seltzer - known to his friends and family as "Mikey" – passed away after a heroic battle with cancer. Mikey likely contracted cancer as a result of exposure to toxic chemicals while deployed, and was specifically recognized for his courage and sacrifice by Speaker Nancy Pelosi during the signing of the PACT Act.

A longtime resident of North Berkeley, Mikey graduated from Martin Luther King Jr. Middle School (then known as King Jr. High), Berkeley High, and UC Berkeley. Throughout his life, he stayed connected to his roots and community, raising his own family in Berkeley. His three children attended Thousand Oaks Elementary.

City of Berkeley (City) staff was recently approached by a former Berkeley resident and Michael's best friend, Peter Kaes, who expressed interest in working with the Parks, Recreation and Waterfront (PRW) Department on a donation in his honor. An accomplished and decorated pilot, Mikey's friends and family have proposed a fitting project in his honor – the creation of a new airplane themed play structure at Thousand Oaks Park.

BACKGROUND

Thousand Oaks Park is a community space that provides a safe and welcoming environment for students and families to enjoy outdoor activities. The park hosts a play structure for 5-12 year olds, sports fields, and picnic areas. The park area is owned by Berkeley Unified School District (BUSD) and operated and maintained by the City per the 2020 Joint Use Agreement. This 25 year agreement provides year round public access to the Park. Originally developed by BUSD in 1950, the current play structure was redesigned in the late 1990s by a group of volunteers from the Thousand Oaks Parks Society (TOPS) and improved by using City Measure Y Funds.

This item would help fund approximately one-third of the creation of a new play structure modeled after an airplane that would be publicly accessible, serving students, families, and the greater Berkeley community.

Studies routinely show that play and playgrounds provide a wide range of benefits to children, and are an integral part of a child's development. According to the International Journal of Behavior Nutrition and Physical Activity, "play is considered fundamental for a child's development as play helps children develop social, academic, and personal competencies."<sup>1</sup> Parks like Thousand Oaks can support play-based learning, promote socialization, fuel creativity, and more. The addition of a less conventional play structure, such as an airplane, could lead to more imaginative play while also honoring a member of the Berkeley community.



Figure 1 by Groundworks Office (Pro bono)

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<sup>1</sup> Schipperijn, J., Madsen, C.D., Toftager, M. *et al.* The role of playgrounds in promoting children's health – a scoping review. *Int J Behav Nutr Phys Act* 21, 72 (2024). <https://doi.org/10.1186/s12966-024-01618-2>



Figure 2 by Groundworks Office (Pro bono)

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

The City of Berkeley's General Plan's Open Space and Recreational Element outlines policy priorities for the City as it relates to open spaces and recreation, and states: "give highest priority to maintaining and improving the City's existing network of open space and recreation facilities."<sup>2</sup>

#### CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Councilmember Shoshana O'Keefe discussed the project with PRW Director, Scott Ferris, and Park, Recreation and Waterfront Commissioner, Brennan Cox. The PRW Director expressed interest in completing such a project given that a significant donation will be possible.

#### FISCAL IMPACTS

The complete project, including planning, design and construction, is estimated to cost approximately \$240,000. It is anticipated that the funding for this project will include this \$80,000 referral, a donation of a similar dollar amount and FY26 Parks Tax Minor Maintenance allocation of \$75,000.

#### CONTACT

Councilmember Shoshana O'Keefe, 510-981-7150

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<sup>2</sup> City of Berkeley. Open Space and Recreation Element - Introduction. April 23, 2002. [https://berkeleyca.gov/sites/default/files/documents/08\\_Open%20Space%20and%20Recreation%20Element-FINAL.pdf](https://berkeleyca.gov/sites/default/files/documents/08_Open%20Space%20and%20Recreation%20Element-FINAL.pdf)





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CONSENT CALENDAR  
 April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Sophie Hahn (Author)  
 Subject: Study: Sabbatical Leave for City of Berkeley Employees

### RECOMMENDATION

Refer to the City Manager study of a potential Sabbatical Leave policy for all City of Berkeley employees, modeled after the City's existing agreements with several bargaining units.

Consult with labor partners and City employees to explore a variety of terms and options, and the costs/benefits of unpaid, partially paid, and paid Sabbatical Leaves. Report findings to Council, outlining possible options and their financial impacts as well as potential benefits to recruitment, morale, longevity of tenure, and wellbeing.

### POLICY COMMITTEE RECOMMENDATION

On February 27, 2025, the Budget & Finance Policy Committee adopted the following action: M/S/C (Ishii/Kesarwani) to send the item to Council with a negative recommendation. Vote: All Ayes.

### SUMMARY STATEMENT

A nationwide municipal worker shortage threatens the ability of local governments to address the needs of their constituents and deliver services to the community. To address this shortage, exacerbated by a wave of Baby Boomer retirements, and the pandemic's "great resignation," the City of Berkeley is working to both retain long-time employees and attract new talent.

In an increasingly competitive job market, and with neighboring cities also vying for skilled workers, Berkeley must consider new and innovative approaches. While the City already utilizes traditional strategies such as digital marketing and recruitment campaigns, expanding the benefits available to employees can increase the City's overall competitiveness and demonstrate appreciation for long-term employees.

Sabbatical leave is already included in Memorandums of Understanding (MOUs) between the City of Berkeley and SEIU Local 1021, representing Community Services and Part-Time Recreation Activity Leaders, and Local One, the Public Employees Union.

This item refers to the City Manager to evaluate options and consider the benefits and costs of adopting a Sabbatical Leave policy across the organization, including possible paid and partially paid sabbatical leaves, enabling long-term employees to enjoy periodic "work breaks" to pursue outside interests, spend time with family, travel, gain skills, or simply rest, recharge and refresh.

## BACKGROUND

Sabbaticals are periods of extended leave – paid or unpaid – traditionally granted to university professors and more recently to other workers for study, travel, or personal growth. Employees take their leaves with a commitment to return to work. The modern sabbatical originated in academia – Harvard University in 1880 became the first to offer its professors time off from teaching duties to conduct academic research. Since then, the sabbatical has become more commonplace in the modern work environment, with companies like Microsoft, Intel, Deloitte, McDonalds, AARP, and many more now offering sabbaticals to their employees.

Sabbaticals offer many benefits and can be an important asset in attracting labor, reducing burnout – a major driver of high turnover – and increasing productivity. They allow employees to recharge while offering opportunities for both personal and professional growth. A rigorous study of professionals across private, public, and nonprofit sectors who took sabbaticals, conducted by the Harvard Business Review, found that “people largely experienced significant, positive changes in their work and life” and that sabbaticals could be viewed as “relatively easy-to-implement, preventative investments.”<sup>1</sup>

According to a survey by the Society for Human Resource management, in 2019 only 11% of companies offered sabbaticals, and even less – just 5% offered paid sabbaticals.<sup>2</sup> The rarity of sabbaticals makes it a competitive benefit and a way for companies – and cities – to be ahead of the curve. The Harvard Business Review found that sabbaticals, as a benefit, are growing exponentially and Adecco, the world’s largest Human Resources company, identified them as one of the top five workplace trends.<sup>3</sup> Experts say this trend is driven by a shift in how work fits into our lives, with workers increasingly prioritizing work-life balance, and wellbeing.

According to the National League of Cities, between March 2020 and March 2022, local government employment declined by more than 300,000 workers – threatening municipalities’ abilities to perform essential functions and deliver critical services to residents.<sup>4</sup> Action is needed to address this shortage and ensure appropriate levels of staff are secured, and talented staff with unique skills and experiences are retained.

While the City of Berkeley has employed many different strategies to attract new employees, it has struggled to fill vacancies in multiple agencies and departments. According to 2024 presentations before the Budget Committee, Berkeley’s Finance Department had a 25%

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<sup>1</sup> Schabram, K., Bloom, M., & DiDonna, D. (2023, February 23). Research: The Transformative Power of Sabbaticals. Harvard Business Review. <https://hbr.org/2023/02/research-the-transformative-power-of-sabbaticals>

<sup>2</sup> Sammer, J. (2023, December 21). Sabbaticals could be the solution to employee burnout. SHRM. <https://www.shrm.org/topics-tools/news/benefits-compensation/sabbaticals-solution-to-employee-burnout>

<sup>3</sup> Hall, R. (2024, August 27). Workers prioritising employers that offer sabbaticals in work-life balance shift. The Guardian. <https://www.theguardian.com/money/article/2024/aug/27/workers-prioritising-employers-that-offer-sabbaticals-in-work-life-balance-shift>

<sup>4</sup> Municipal Workforce Labor Shortage. National League of Cities. (2023, January 26). <https://www.nlc.org/resource/improving-opportunities-and-boosting-economic-mobility/challenges/municipal-workforce-labor-shortage/>

vacancy rate.<sup>5</sup> IT had an 18% vacancy rate.<sup>6</sup> Health, Housing, and Community Service had an 18% vacancy rate.<sup>7</sup> Many departments have utilized traditional means of recruitment including digital campaigns, landing page ads, and social media outreach. However, traditional methods have fallen short. To fill these vacancies, the City must become a more attractive employer to workers – and workers are changing.

Younger generations work differently, and they are more likely to value work-life balance and mental health. In a survey conducted by Handshake, 80% of undergrads expressed concern about burnout and almost 9 in 10 said work-life balance, mental health, and overall well-being are “very important” to them at work.<sup>8</sup>

In addition to appealing to young people, sabbaticals are a means of fostering talent, and workers who took sabbaticals “reported greater self-clarity and confidence in their managerial skills” and “those who filled in during the sabbatical-taker’s absence had their own experiences of self-discovery and were able to showcase hidden talents.”<sup>9</sup>

The Sabbatical Project, an organization researching the transformative power of sabbaticals, has found that sabbaticals can be a “peak-life experience,” providing a space for “transitions, healing, discovery, and growth.”<sup>10</sup> Testimonials collected from sabbatical takers detail stories of spending time with loved ones, reconnecting with one’s culture and the natural world, taking up cooking, learning a new language and skill, healing one’s body and mind, and more. A full collection of testimonials from the Sabbatical Project can be found at [thesabbaticalproject.org/stories](https://thesabbaticalproject.org/stories).

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, two city employee unions have bargained for sabbatical leave – SEIU Local 1021 representing Community Services and Part-Time Recreation Activity Leaders as well as Local One, the Public Employees Union.

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<sup>5</sup> Finance Department. (2024, May 8). Proposed Budget Fiscal Years 2025 & 2026: Finance. [PowerPoint slides]. City of Berkeley. <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003f%20Finance%20FY25-26%20Department%20Budget%20Presentation.pdf>

<sup>6</sup> Information Technology Department. (2024, May 8). Proposed Budget Fiscal Years 2025 & 2026: Information Technology. [PowerPoint slides]. City of Berkeley. [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003e%20IT%20FY25-26\\_Department%20Budget%20Presentation.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003e%20IT%20FY25-26_Department%20Budget%20Presentation.pdf)

<sup>7</sup> Department of Health, Housing, and Community Services. (2024, May 8). Proposed Budget Fiscal Years 2025 & 2026: Health, Housing and Community Services. [PowerPoint slides]. City of Berkeley. <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/Item%2003b%20HHCS%20FY25-26%20Department%20Budget%20Presentation.pdf>

<sup>8</sup> *How gen Z is changing the conversation around mental health at work*. Handshake. (2024, May 21). <https://joinhandshake.com/blog/network-trends/gen-z-mental-health-at-work/>

<sup>9</sup> Schabram, K., Bloom, M., & DiDonna, D. (2023, February 23). Research: The Transformative Power of Sabbaticals. Harvard Business Review. <https://hbr.org/2023/02/research-the-transformative-power-of-sabbaticals>

<sup>10</sup> Schabram, K., Bloom, M., & DiDonna, D. *Our research*. The Sabbatical Project. (n.d.). <https://thesabbaticalproject.org/research/>

PEU 24.10:<sup>11</sup>

After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay for up to six (6) months. Such leave may be granted by the appropriate authority upon the recommendation of the employee's department head but such leave shall not be unreasonably denied. There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurances shall be paid by the City for the duration of an approved Sabbatical Leave.

Every Sabbatical Leave shall require an employee commitment of two (2) years service following return from leave. In the event the full two year service commitment is not performed, the employee shall repay a pro rata amount of the life and health insurance premium paid by the City during the sabbatical leave based on the percentage of the two year service commitment not performed.

SEIU/CSU 1021 24.4:<sup>12</sup>

After eight (8) consecutive years of employment with the City, an employee may apply for a sabbatical leave without pay of up to six (6) months. Sabbatical leave is not intended to be used for the six-month period immediately prior to retirement. . . . There shall be no requirement that the employee exhaust paid leave balances prior to such sabbatical leave. Life and Health insurance shall be paid by the City for the duration of an approved Sabbatical Leave. For employees who fail to return to work at the expiration of the approved Sabbatical Leave or fail to return for the equivalent amount of time he or she was approved for Sabbatical Leave, such employee shall reimburse the City or the City may deduct the cost of the Health and Life Insurance premiums paid by the City on behalf of the employee from the employee's payout of their accrued leave balance due at termination.

Berkeley's Strategic Plan identifies the long-term goals and short-term priorities that the City government will focus on to benefit the Berkeley community. One of these key priorities includes attracting and retaining a talented and diverse City government workforce.<sup>13</sup> The recommendations in this item support that key strategic goal.

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<sup>11</sup> City of Berkeley, Public Employees Union - Local One. (29 July, 2021). Memorandum of Understanding between City of Berkeley and Public Employees Union - Local One. <https://berkeleyca.gov/sites/default/files/documents/PEULocal1MOU.pdf>

<sup>12</sup> City of Berkeley, Service Employees International Union Local 1021. (29 July, 2021). Memorandum Agreement between City of Berkeley and Service Employees International Union Local 1021. <https://berkeleyca.gov/sites/default/files/documents/SEIU-CSU-Local1021-MOU.pdf>

<sup>13</sup> *Strategic plan*. City of Berkeley. (n.d.). <https://berkeleyca.gov/your-government/our-work/strategic-plan>

ACTIONS/ALTERNATIVES CONSIDERED

The City has employed various traditional tactics to attract new talent. However, despite some success, most City departments continue to struggle with high vacancy rates. With fewer dedicated employees, the City will struggle to achieve its strategic goals, administer forward-thinking programs and initiatives, and serve the community.

RATIONALE FOR RECOMMENDATION

Our staff are the City of Berkeley's greatest assets. Many employees are experts in their field and provide indispensable services. A report from the City Auditor titled "Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring," recommended the City take additional steps to address employee dissatisfaction and detailed several key findings including:<sup>14</sup>

- ***Berkeley's staff shortages constrained city services***, but the City did not have a clear strategy to improve retention during our audit period. ***More employees left the City than were hired in each year*** of the audit period, contributing to the staff shortage.
- Employee dissatisfaction made it harder for the City to retain staff. Surveyed employees reported dissatisfaction with workloads, professional development opportunities, pay, and communication and support from city leadership.

IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT

The City Manager should review studies and expert opinions about sabbatical policies and their potential structures, review the City's two existing sabbatical leave policies, consult with labor and employees, and return to the City Council a report including the costs/benefits of adopting a policy for all City of Berkeley employees. Evaluation of satisfaction with the two existing policies can provide additional information. Additionally, before official adoption of any policy, the City Manager should study the fiscal impacts and feasibility of providing paid or partially paid sabbatical leave.

Because this referral is for a study, and no implementation will take place until further Council action, this referral does not include discussion of how a potential Sabbatical Leave policy could be implemented and administered.

ENVIRONMENTAL SUSTAINABILITY

N/A

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<sup>14</sup> Wong, J., Palmer, C., Mullin, E., Kuechle, K., & Miller, P. (2023, June 22). Staff Shortages: City Services Constrained by Staff Retention Challenges and Delayed Hiring. Berkeley City Auditor. [https://berkeleyca.gov/sites/default/files/documents/Staff%20Shortages%20--%20City%20Services%20Constrained%20by%20Staff%20Retention%20Challenges%20and%20Delayed%20Hiring\\_0.pdf](https://berkeleyca.gov/sites/default/files/documents/Staff%20Shortages%20--%20City%20Services%20Constrained%20by%20Staff%20Retention%20Challenges%20and%20Delayed%20Hiring_0.pdf)

FISCAL IMPACTS

Currently, the limited sabbatical leave options offered to certain City employees are partially benefitted, but unpaid. There are costs to the organization even when an unpaid Sabbatical Leave is taken, including extra work for colleagues, and the potential need for short term fill-in labor. This item asks the City Manager to evaluate the costs of adopting a city-wide paid, partially paid or unpaid sabbatical leave policy, and return to Council to report on the benefits and costs of such a policy

OUTCOMES AND EVALUATION

The City Manager should periodically consult with labor partners to learn why employees have or have not taken/considered taking advantage of the City's Sabbatical Leave policy. A study of employees who have taken Sabbatical Leave should consider whether employees are reporting higher levels of satisfaction following their leave, and how it impacts their interest in staying with the City for the long term. The City Manager's report should include some metrics to evaluate whether a policy that may be adopted successfully meets the policy's goals.

CONTACT

Councilmember Sophie Hahn, (510) 981-7150



**Berkeley City Councilmember**  
**Mark Humbert, District 8**  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
mhumbert@berkeleyca.gov

CONSENT CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
From: Councilmember Humbert (Author)  
Subject: Music in the Elmwood Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$1,000 from Councilmember Humbert to the Elmwood Business Association for the Music in the Elmwood Festival on Sunday, May 4, 2025 with funds relinquished to the City’s General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Humbert and any other Councilmembers who would like to contribute.

BACKGROUND

People are increasingly taking note of the Music in the Elmwood Festival, which is now in its second year and continues to grow in scale. Music festivals help build a strong economic base for our business districts, and we hope to see a sharp increase in attendance. It’s hard to beat a free music event that’s fun for the whole family, and we want to support the Elmwood Business Association’s instrumental role in this event. Neighborhood festivals like this are a symbol of our community’s vitality. These funds will drum up financial support and ensure that Music in the Elmwood crescendos for years to come.

FINANCIAL IMPLICATIONS

No General Fund impact. \$1,000 is available from Councilmember Humbert’s office budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

CONTACT PERSON

Councilmember Mark Humbert    Council District 8    510-981-7180

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

MUSIC IN THE ELMWOOD FESTIVAL 2025

WHEREAS, people are increasingly taking note of the Music in the Elmwood Festival, which is now in its second year and continues to grow in scale; and

WHEREAS, music festivals help build a strong economic bass for our business districts, and we hope to see a sharp increase in attendance; and

WHEREAS, it's hard to beat a free music event that's fun for the whole family, and we want to support the Elmwood Business Association's instrumental role in this event; and

WHEREAS, neighborhood festivals like this are a cymbal of our community's vitality; and

WHEREAS, These funds will drum up financial support and ensure that Music in the Elmwood crescendos for years to come; and

WHEREAS, Councilmember has surplus funds in his office expenditure account, which would be key to the event; and

WHEREAS, the Elmwood Business Association is making a play for funds in the amount of \$1,000 to help cover the costs of the festivities; and

WHEREAS, working in concert for this event would serve the civic interests of community-building, supporting musicians, and trumpeting Berkeley's cultural influence;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Councilmembers from their Council Office Budgets up to \$1,000 per office shall be granted to the Elmwood Business Association for helping cover the costs of the Music in the Elmwood Festival.



Office of the City Manager

## INFORMATION CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing, and Community Services Department

Subject: Age-Friendly Berkeley Update

### INTRODUCTION

This report provides an update on the implementation of the City of Berkeley's Age-Friendly Action Plan, and proposed budget increases to support the activities.

### CURRENT SITUATION AND ITS EFFECTS

This report is in response to Action Item 21b from the October 29, 2024 regular City Council meeting, requesting Health, Housing and Community Service Aging Services submit a budget proposal for increased funding to support the implementation of the Age-Friendly Action Plan. The Age-Friendly Action Plan identified the following four (4) priority areas and goals<sup>1</sup>:

1. Housing and Economic Security: Develop a continuum of affordable, accessible housing options for older adults to age in their community regardless of their health or financial status.
2. Transportation and Mobility: Advance a network of public and private transportation (including transit, assistive devices, e-bikes and e-scooters and bicycling and walking) that equitably serves residents and connects them to services, social activities, and employment opportunities.
3. Health and Wellness: Develop a more integrated system of services and supports that is person-centered and ensures that all residents have the opportunity to engage in health promoting activities.
4. Social Participation and Civic Engagement: Enhance neighborhood cohesion and social connectedness of all Berkeley residents with community events and activities that are inclusive, affordable, and accessible.

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<sup>1</sup> <https://berkeleyca.gov/your-government/our-work/adopted-plans/age-friendly-berkeley-action-plan>

In requesting the additional annual ongoing increase in staffing and operating costs, the Aging Services Division in the Health, Housing, and Community Services Department aims to address priority areas 3 and 4. As outlined in Attachment 1, HHCS has developed a budget proposal that consists of 7.9 FTE and approximately \$1.3 million in annual ongoing costs for both staffing and operating costs. If the resources to fund this budget proposal were available, the Aging Services Division would be able to further enhance the well-being and independence of our older adults through the following programs and services:

- Increase the number of days that meals are served at both Senior Centers: meals are currently served 2 days a week at the North Berkeley Senior Center, and 3 days a week at the Judge Henry Ramsey Jr. South Berkeley Senior Center. The increase would total 300 additional meals per week.
- Expand Meals on Wheels capacity to reach additional clients, including those who require special diets (vegetarian, renal, and texture modified). According to the City's 2023 annual survey, 14 out of 77 clients stated that they would prefer a full vegetarian and/or texture modified diet.
- Increase outreach to reach seniors throughout the City by hosting community health fairs, tabling at various senior housing locations, health clinics and senior focus events.
- Improve access to information about the options for social engagement through data collection and follow up.
- Strengthen and support senior's independence so that they can prolong their life and navigate the transitions of aging. By building strength within the communities, we are building independence and enhancing the quality of life for our seniors.

### BACKGROUND

The City of Berkeley was accepted into the World Health Organization and AARP's network of Age-Friendly Communities in November 2016. To become a member of the network, the City was required to complete an application that demonstrated Berkeley's commitment to older adults. Through the City's dedicated services to older adults, its robust non-profit sector, and innovative planning, the City demonstrated Berkeley's commitment to the older adult community.

The City of Berkeley Age-Friendly Action Plan was finalized in 2018 through a collaborative public-private partnership that includes representatives from City of Berkeley Aging Services Division, Ashby Village, Center for Independent Living, and Lifelong Medical partner agencies. The aforementioned four priority areas were identified after compiling findings from a community survey, forum, focus groups, and interviews to inform the Action Plan.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In consideration for the environment, electronic copies of Berkeley's Age-Friendly Action Plan are viewable and available for download online.

### POSSIBLE FUTURE ACTION

Council may decide to identify and support new, innovative and/or expanded projects with Age-Friendly elements, in Berkeley, in the coming months and years.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The City's Aging Services Division is a division in the Health, Housing, and Community Services Department, with 24 FTE staff and a budget of approximately \$6 million (which includes a mix of federal, county, and City General Fund resources). In its current state, the Aging Services Division does not have the resources to address the needs of the City's growing older adult population, which is expected to double within the next decade. Seniors between the ages of 65 to 74 are the fastest growing age group in the Berkeley, and now comprise 9.2% of the population, compared to 6.5% in 2010.<sup>2</sup> Currently, the senior centers have a total of 14,000 registered members. Additional resources to support this budget proposal would ensure that older adults are able to continue to benefit from the services and programs that are currently available to them, and that contribute to their quality of life in the Berkeley community. The General Fund does not have the capacity to support the budget proposal outlined in this staff report without having to make tradeoffs and reallocate resources from existing programs and services. Because of this, the Health, Housing and Community Services Department is committed to identifying and applying for grants, when feasible.

### CONTACT PERSON

Oanh Guise, Interim Aging Services Manager, HHCS, 510-981-5113

### Attachments:

1: Age-Friendly Budget Proposal

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<sup>2</sup> City of Berkeley. City of Berkeley 2023-2031 Housing Element Update. Revised Draft, October 17, 2022. Pg. 24.

## Age-Friendly Budget Proposal

5 Years Projection

| Category                     | FY26             | FY27             | FY28             | FY29             | FY30             |
|------------------------------|------------------|------------------|------------------|------------------|------------------|
| Salary                       | 571,444          | 594,301          | 618,073          | 642,796          | 668,508          |
| Benefits                     | 393,751          | 409,502          | 425,882          | 442,917          | 460,634          |
| <b>Total Personnel</b>       | <b>965,195</b>   | <b>1,003,803</b> | <b>1,043,955</b> | <b>1,085,713</b> | <b>1,129,142</b> |
| Operating - Ongoing          | 200,329          | 206,339          | 212,529          | 218,905          | 225,472          |
| Operating - One Time         | 135,000          |                  |                  |                  |                  |
| <b>Total Operating</b>       | <b>335,329</b>   | <b>206,339</b>   | <b>212,529</b>   | <b>218,905</b>   | <b>225,472</b>   |
| <b>Total Budget Proposal</b> | <b>1,300,524</b> | <b>1,210,142</b> | <b>1,256,484</b> | <b>1,304,618</b> | <b>1,354,614</b> |

\*Total Personnel cost based on negotiated COLA increase for FY26 & FY27 with 4% COLA increase for remaining years. Total ongoing operating cost based on projected 3% inflation per fiscal year.

**Budget Proposal Goals:** In requesting the additional increase in staffing and operating costs, we will be able to 1) increase the number of days meals to be served at both Senior Centers; 2) expand Meals on Wheels capacity to reach additional clients, expansion of special diets, including vegetarian, renal, and texture modified; and 3) increase outreach to reach seniors throughout all of the City of Berkeley and improve access to information about the options for social engagement. We aim to strengthen and support seniors' independence so that they can prolong their life and navigate the transitions of aging. By building strength within the communities, we are building independence and enhancing the quality of life for our seniors. Aging Services Division has challenges in acquiring the resources to be able to move forward and would need support to achieve this.

# Age-Friendly Budget Proposal

\*Filled positions = Salary & benefit calculated at current costs

\*New positions - Salary (step 3) & benefit rate calculated at suggested 60%

| Position                 | Position Type | Description                                    | Justification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Unit | Current FTE | Requested FTE | Additional Funding Request |          |         |
|--------------------------|---------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------------|---------------|----------------------------|----------|---------|
|                          |               |                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |      |             |               | Salary                     | Benefits | Total   |
| Meal Site Coordinator    | Filled        | Increase current position from .5FTE to 1.0FTE | To increase the number of meal service days from 2 to 4, addressing food insecurity among seniors. This allows for better oversight of meal preparation and service, ensuring higher standards and safety.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | NBSC | 0.50        | 1.00          | 30,343                     | 24,972   | 55,315  |
| Senior Service Assistant | New           | New 1.0 FTE                                    | Increase in workload to coordinate services and resources for the older adult community. The work of Senior Service Assistants could aid in making activities more accessible; and when widely advertised, would help residents, particularly isolated seniors, participate. Additionally, the work of Senior Service Assistants also enhances social connectedness of Center participants with events and activities that are engaging, health promoting, inclusive, affordable, and accessible.                                                                                                                                                                                               | NBSC | -           | 1.00          | 74,762                     | 44,857   | 119,620 |
| Senior Service Assistant | Filled        | Increase current position from .8FTE to 1.0FTE | Increase in workload to coordinate services and resources for the older adult community. The work of Senior Service Assistants could aid in making activities more accessible; and when widely advertised, would help residents, particularly isolated seniors, participate. Additionally, the work of Senior Service Assistants also enhances social connectedness of Center participants with events and activities that are engaging, health promoting, inclusive, affordable, and accessible.                                                                                                                                                                                               | SBSC | 0.80        | 1.00          | 14,952                     | 17,276   | 32,228  |
| Senior Service Assistant | New           | New 1.0 FTE                                    | Increase in workload to coordinate services and resources for the older adult community. The work of Senior Service Assistants could aid in making activities more accessible; and when widely advertised, would help residents, particularly isolated seniors, participate. Additionally, the work of Senior Service Assistants also enhances social connectedness of Center participants with events and activities that are engaging, health promoting, inclusive, affordable, and accessible.                                                                                                                                                                                               | SBSC | -           | 1.00          | 74,762                     | 44,857   | 119,620 |
| Meal Site Coordinator    | Filled        | Increase current position from .5FTE to 1.0FTE | To increase the number of meal service days from 3 to 4, addressing food insecurity among seniors. This allows for better oversight of meal preparation and service, ensuring higher standards and safety.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | SBSC | 0.50        | 1.00          | 33,836                     | 27,847   | 61,682  |
| Senior Service Assistant | New           | New 1.0 FTE                                    | To provide administrative support for SSU. This position will monitor the SSU main phone line and email box to assist in the growing population need for information, assistance, and referrals. This position will also assist the division with data collection for various programs. They also perform localized outreach to identify senior center members in need of programs and services. There is a need to increase resources to maintains on-going follow-up with older adults by establishing an information and referral system; providing basic supportive counseling; faciliating navigation between agencies serving older adults; and assessing service programs for the aging. | SSU  | -           | 1.00          | 74,762                     | 44,857   | 119,620 |

# Age-Friendly Budget Proposal

\*Filled positions = Salary & benefit calculated at current costs

\*New positions - Salary (step 3) & benefit rate calculated at suggested 60%

|                                      |        |                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                 |             |              |                |                |                |
|--------------------------------------|--------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------|--------------|----------------|----------------|----------------|
| Senior Service Assistant             | New    | New 1.0 FTE                                    | To meet the growing need for transportation services in the City of Berkeley by providing a level of administrative and customer service support that is required to manage an expanding program. This position will also support additional outreach efforts to inform more seniors about available resources, plan and execute community engagement events and workshops, and coordinate field trips that promote socialization and active living among seniors. This position will also take on duties pertaining to the taxi windows and BRSD applications. Some of these duties are currently being taken on by other staff for immediate support. | Transportation  | -           | 1.00         | 74,762         | 44,857         | 119,620        |
| Mini Bus Driver                      | New    | New 1.0 FTE                                    | Focus on providing fixed bus route to local senior residences so that more seniors can come to the centers and engage in center activities. This would also help to provide coverage for field trips when other mini bus drivers are on leave or call out, reducing cancellation.                                                                                                                                                                                                                                                                                                                                                                       | Transportation  | -           | 1.00         | 65,281         | 39,169         | 104,450        |
| Seniors Nutrition Program Supervisor | Filled | Increase current position from .8FTE to 1.0FTE | To maintain pandemic growth and accommodate further growth of the home-delivered meals program requires additional client management, including successfully maintaining contract requirements of direct client encounters.                                                                                                                                                                                                                                                                                                                                                                                                                             | Meals on Wheels | 0.80        | 1.00         | 24,126         | 21,556         | 45,682         |
| Senior Service Assistant             | Filled | Increase from .75FTE to 1.0FTE                 | To support client intakes, communications, home visits and phone checks, and added staff and volunteer communication regarding clients.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Meals on Wheels | 0.75        | 1.00         | 19,642         | 22,485         | 42,126         |
| Mealsite Coordinator                 | New    | Hourly NTE 19 to .75FTE                        | Currently this position is staffed using an hourly staff NTE 19 which provides challenges with retention and taking on additional duties. Having a permanent .75FTE Mealsite Coordinator would support client intakes, communications, home visits and phone checks, and added staff and volunteer communication regarding clients.                                                                                                                                                                                                                                                                                                                     | Meals on Wheels | -           | 0.75         | 37,177         | 22,306         | 59,483         |
| Nutritionist                         | Filled | Increase current position from .5FTE to 1.0FTE | To ensure all training, education, client data entry, and contract compliance requirements are met for both home-delivered and congregate meal programs. Expansion of special diets, including vegetarian, renal, and texture modified requires more menu planning and interaction with the caterer.                                                                                                                                                                                                                                                                                                                                                    | Meals on Wheels | 0.50        | 1.00         | 47,038         | 38,712         | 85,750         |
| <b>TOTAL PERSONNEL</b>               |        |                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                 | <b>3.85</b> | <b>11.75</b> | <b>571,444</b> | <b>393,751</b> | <b>965,195</b> |

# Age-Friendly Budget Proposal

\*Filled positions = Salary & benefit calculated at current costs

\*New positions - Salary (step 3) & benefit rate calculated at suggested 60%

## Operating

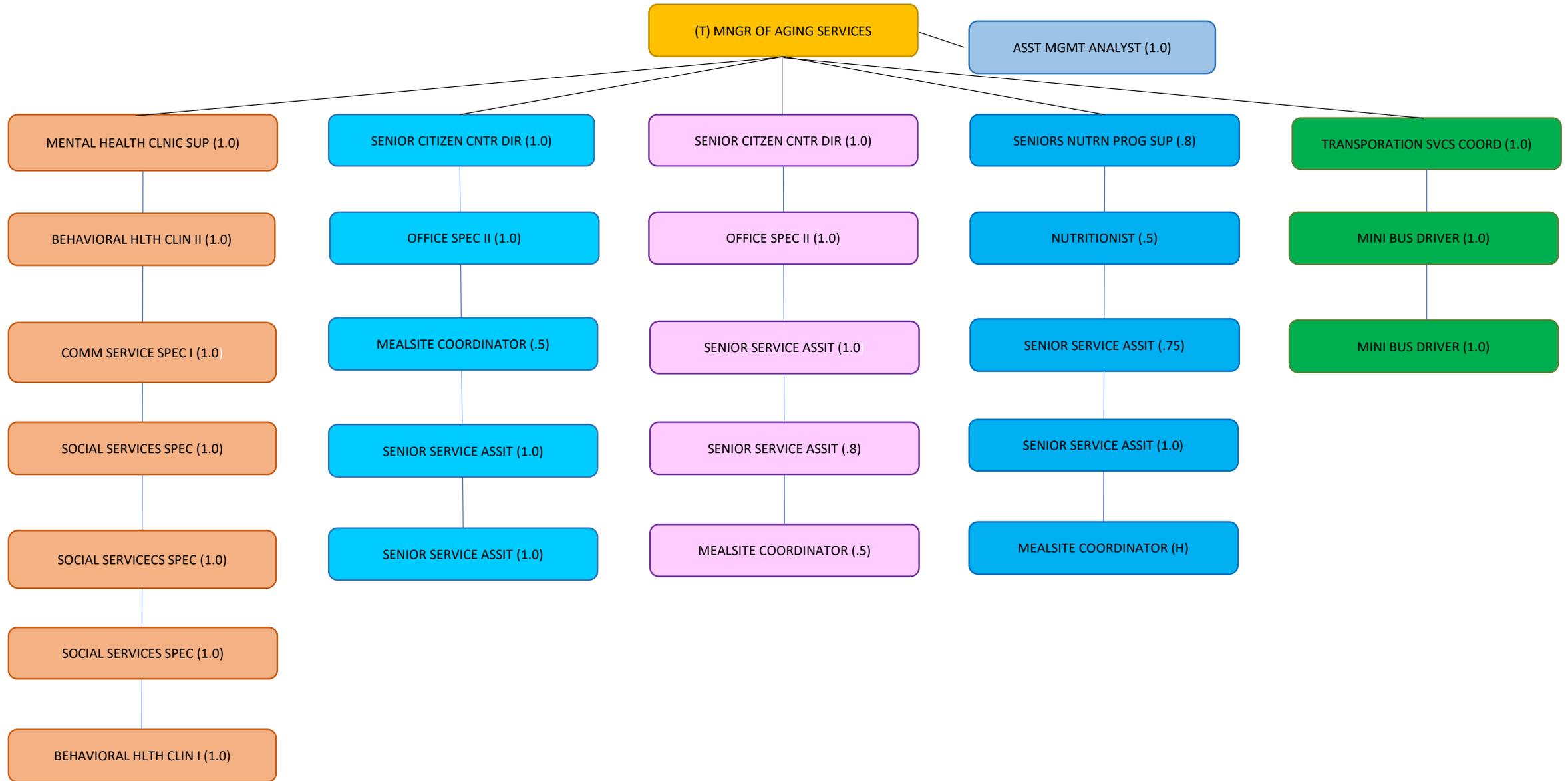
| Budget Category                 | Amount  | Location | Description                                                                                                                                                                                                                                                                                           | Request Type |
|---------------------------------|---------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Hourly Wages                    | 110,144 | Admin    | \$27.87 (step 3, NTE 19)/annually = \$27,536 x 4 = \$110,144; additional aides to support service delivery given increased planned number of days meals are to be served.                                                                                                                             | Ongoing      |
| Contractor: Nutrition Solutions | 79,185  | Admin    | Supplemental amount to increase current contract with Nutrition Solutions to provide additional days of meals at both senior centers and Meals on Wheels.<br>NBSC: \$8.46/meal x 60/day x 2 additional days/week = \$52,790/annually<br>SBSC: \$8.46/meal x 60/day x 1 additional day/week = \$26,395 | Ongoing      |
| Field Supplies                  | 8,000   | Admin    | Purchase of outreach promotional materials to be used for outreach activities.                                                                                                                                                                                                                        | Ongoing      |
| Printing                        | 2,000   | Admin    | Printing of outreach materials (pamphlets, flyers, etc.)                                                                                                                                                                                                                                              | Ongoing      |
| Software                        | 1,000   | Admin    | Two Canva annual subscriptions to create outreach materials for SSA to share.                                                                                                                                                                                                                         | Ongoing      |

**Total Operating (ongoing) 200,329**

|                                   |                |                |                                                                                                                                                                                        |          |
|-----------------------------------|----------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Equipment                         | 10,000         | Admin          | Computer Monitors upgrade for both SBSC & NBSC locations (\$200/each x 50)                                                                                                             | One-time |
| Consultant: Media                 | 25,000         | Admin          | Outreach Materials: Hiring a consultant to redesign logo, pamphlet, and update outreach materials to better promote current services and share of information                          | One-time |
| Mini Shuttle Bus                  | 100,000        | Transportation | Aging Services currently has two mini buses. With an addition of a new mini bus driver, another purchase of a mini bus is needed to provide additional transportation and field trips. | One-time |
| <b>Total Operating (One Time)</b> | <b>135,000</b> |                |                                                                                                                                                                                        |          |

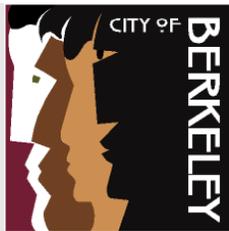
**Total Operating 335,329**

|                                                   |                  |
|---------------------------------------------------|------------------|
| <b>Total Age-Friendly Budget Proposal Request</b> | <b>1,300,524</b> |
|---------------------------------------------------|------------------|









Office of the City Manager

INFORMATION CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

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

Subject: Climate Action Plan and Resilience Update

SUMMARY

The annual Climate Action Plan and Resilience Update is an opportunity to recognize Berkeley's local action and accomplishments, and renew commitments towards reaching its ambitious climate goals. This update coincides with Earth Day, a national celebration to raise awareness and encourage continued action to protect the environment and combat climate change, a cause particularly in need of local leadership in the face of reduced federal support.

The City of Berkeley is a long-time climate leader and must remain steadfast to reach its net zero carbon and Fossil Fuel Free City commitments by 2045, despite setbacks like the repeal of Berkeley's Prohibition of Natural Gas Infrastructure in New Buildings (2024). Berkeley was one of the first cities to adopt a Climate Action Plan (2009), followed by the Resilience Strategy (2016) to advance preparedness and equity to adapt to a changing climate. After declaring a Climate Emergency in 2018, the City Council adopted its current climate goals and created the Climate Equity Fund and Just Transition Pilot program, to provide building and transportation electrification opportunities for income-qualified residents.

The Berkeley Existing Buildings Electrification Strategy (2021) and Berkeley Electric Mobility Roadmap (2020) guide implementation of some of the recent climate action and resilience program efforts highlighted in this report. The work profiled occurs across city divisions, and in collaboration with the community, to reduce greenhouse gas (GHG) emissions and advance equity. These actions help to create healthier, safer and more resilient homes, infrastructure, parks, and other community assets for current residents and future generations. Based on the best currently available data from 2023, the Berkeley community has reduced overall GHG emissions by 41% since 2000, despite a population increase of 16%.

Climate action and resilience program efforts are divided into these five sections of this report:

- Buildings & Infrastructure
- Transportation
- Waste
- Community Engagement
- Adaptation & Resilience

Work is ongoing, as part of the Prepared, Safe, and Healthy Berkeley project<sup>1</sup>, to develop new equitable, community-identified metrics to measure and report Berkeley's progress in advancing climate resilience strategies. GHG emission reductions remain critical and urgent; this report highlights key existing and planned efforts designed to continue reductions in GHG emissions and advance preparedness for climate change impacts, developed in partnership with community and centered on its needs.

Continued advancement in meeting climate goals will require additional resources to fund projects and programs, particularly for low income and other marginalized communities. Given the federal landscape and uncertainty for both climate and equity support, opportunities for local, regional, state, and philanthropic funding will be key.

#### CURRENT SITUATION AND ITS EFFECTS

Berkeley's progress on climate action and the annual community-wide greenhouse gas (GHG) emissions inventory advance the City's Strategic Plan goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

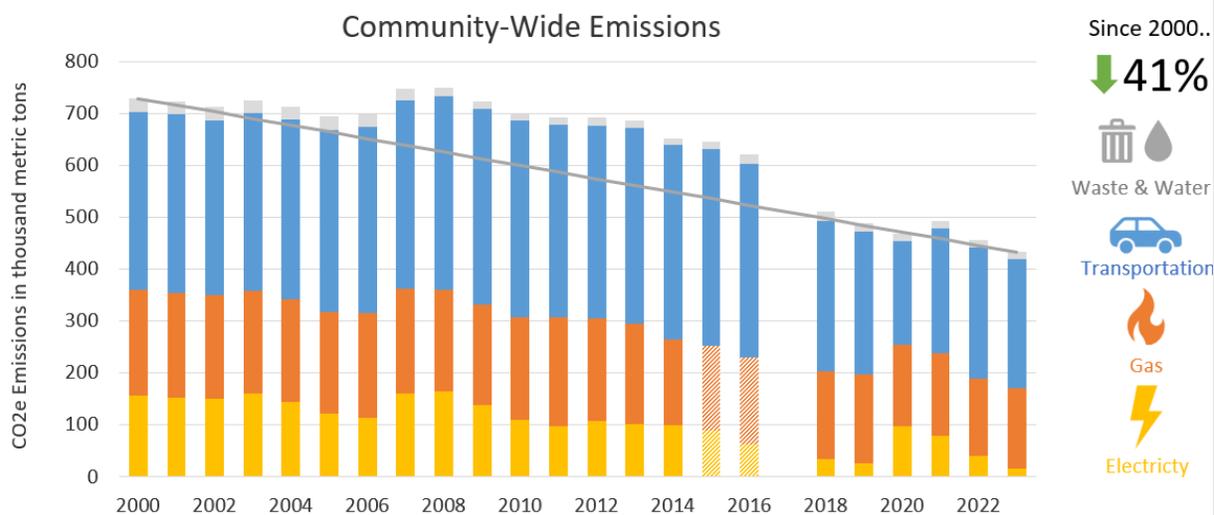
Using the most recently available data, City staff annually calculate community GHG emissions to understand which sectors and fuels contribute the most emissions in Berkeley, track progress toward climate goals, provide data that can be used for prioritizing programs and policies, and meet Berkeley's commitment to the Global Covenant of Mayors. Based on 2023 data, GHG emissions declined 41%<sup>2</sup> since the 2000 baseline and 12% since the 2021 data provided in the last report to City Council. See Figure 1 for more information.

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<sup>1</sup>City of Berkeley Prepared, Safe, and Healthy Berkeley project: <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/prepared-safe-and-healthy>

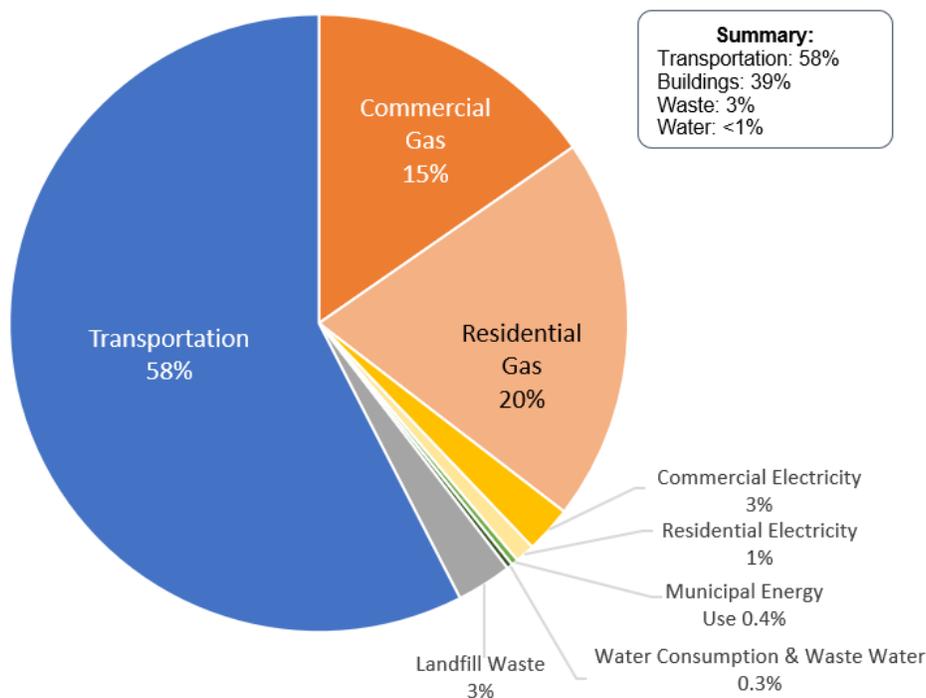
<sup>2</sup> GHG inventory methodology for the transportation sector changed in 2018 so it is challenging to definitively state the decrease in emissions. For more information on methodology, please see Attachment 1: 2023 Annual Greenhouse Gas Inventory

**Figure 1: Berkeley GHG Emissions Inventories including Sectors (2000-2023)**



As Figure 2 illustrates, transportation was the largest source of 2023 GHG emissions, accounting for 58% (249,028 mtCO<sub>2</sub>e), followed by the building sector, accounting for 39% (168,453 mtCO<sub>2</sub>e).

**Figure 2: 2023 Berkeley GHG Emissions Inventory, by Sector and Fuel**



For more information on the inventory, see **Attachment 1: 2023 Annual Greenhouse Gas Inventory**.

Key accomplishments and examples of recent climate action and resilience program implementation efforts, particularly since December 2023 when this report was last updated for City Council, are described below. Equitable climate action and resilience efforts elevate voices and priorities of communities who have been marginalized to ensure that policies and programs benefit those most impacted by climate change.

## **BUILDINGS & INFRASTRUCTURE**



The City is working with the Berkeley community to reduce energy use, promote cleaner energy, and equitably transition all buildings and infrastructure to clean electricity, in order to meet the goals of becoming a net zero carbon and Fossil Fuel Free City by 2045. Program implementation includes new building and equitable community decarbonization initiatives, and municipal decarbonization projects to reduce GHG emissions from buildings while improving safety, comfort and health.

### ***NEW BUILDING DECARBONIZATION***

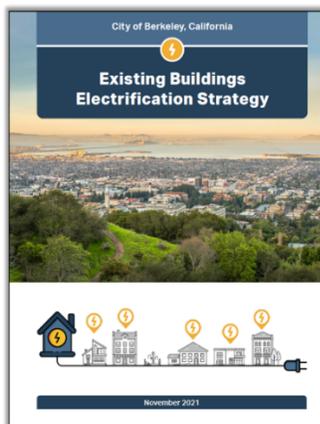
In July 2019, the City Council adopted the first ordinance in the nation to prohibit the installation of natural gas infrastructure in newly constructed buildings. Berkeley's Natural Gas Prohibition was in place from January 2020 to January 2024. The ordinance was repealed on June 4, 2024 following a Ninth Circuit Court of Appeals ruling that the ordinance was preempted by the federal Energy Policy and Conservation Act.

Since January 2024, new construction in Berkeley has been subject to the energy use and appliance requirements of the State's 2022 Energy and Green Building (CALGreen) Codes, which allow for the use of natural gas. Some new developments have continued to pursue all-electric designs, potentially to qualify for CA Environmental Quality Act (CEQA) GHG streamlining under the Bay Area Air District's 2022 CEQA Air Quality Guidelines, to save money on utility connection expenses or insurance costs, or for other project objectives. Building without natural gas appliances improves indoor air quality and safety by removing the potential for natural gas leaks and the harmful pollutants that arise from burning gas in stoves and other appliances. Removing natural gas from buildings will ultimately allow for the strategic decommissioning of natural gas distribution infrastructure and the associated leakage of methane, the main component of natural gas, a potent GHG.

The City should continue to evaluate and consider new opportunities for electrification in new buildings. In addition, the City has adopted local amendments to CALGreen that require low carbon concrete as well as EV charging and Construction & Demolition debris diversion requirements which exceed the State’s requirements.

**EQUITABLE BUILDING DECARBONIZATION**

Highlights from programs to equitably decarbonize and upgrade existing homes of lower income residents include the Climate Equity Fund, Bay Area Residential Decarbonization High Road Training Partnership, Just Transition Pilot, Home Electrification Equity Project, and Air District Indoor Appliances Implementation Working Group.



**Equity Guardrails**

The City’s equitable building decarbonization work is guided by the Berkeley’s Existing Buildings Electrification Strategy<sup>3</sup> (2021), that includes a set of “Equity Guardrails” which serve as minimum requirements that must be met in order to advance a policy, program or project. These guardrails were developed from targeted outreach with resilient communities that have been marginalized, to better understand and elevate their priorities and needs. While the guardrails were developed in the context of building decarbonization, the Planning & Development Department’s Office of Energy and Sustainable Development (OESD) applies these guardrails to all of its work. They include:

- Maximize Access to Health, Safety & Mobility Benefits
- Maximize Access to Economic Benefits
- Maximize Ease of Participation
- Promote Housing Affordability & Anti-Displacement



**MAXIMIZE ACCESS TO HEALTH, SAFETY & MOBILITY BENEFITS**



**MAXIMIZE ACCESS TO ECONOMIC BENEFITS**



**MAXIMIZE EASE OF PARTICIPATION**



**PROMOTE HOUSING AFFORDABILITY & ANTI-DISPLACEMENT**

<sup>3</sup> City of Berkeley Existing Buildings Electrification Strategy: <https://berkeleyca.gov/your-government/our-work/adopted-plans/berkeley-existing-buildings-electrification-strategy>

**Climate Equity Fund – Homes**

In 2021, City Council provided funding for building decarbonization improvements for low-to-moderate income residents' homes. Three agencies were awarded a total of \$250,000 to provide building electrification upgrades to increase resilience, support occupant health and reduce GHG emissions. As of February 2025, this ongoing project has supported the following building electrification upgrades:

- *Casa Joaquin Murrieta*: Greenlining Institute's student housing, for 40 low-income, first-generation UC Berkeley students of color. Upgrades include a ducted heat pump system with new high efficiency air handlers and a new central heat pump water heater.
- *Walnut House Cooperative*: 22-unit limited-equity cooperative multifamily building. Upgrades include a new central heat pump water heater to replace an old, gas boiler.
- *Single-family, income-qualified home*: Upgrades include heat pump HVAC system and smart thermostats.



*Casa Joaquin Murrieta heat pumps*

**Bay Area High Road Training Partnership for Good, Green Jobs**

The City of Berkeley is a partner in Rising Sun Center for Opportunity's Bay Area Residential Building Decarbonization High Road Training Partnership (H RTP). The H RTP is working to create high-quality, clean energy jobs in the residential building decarbonization sector that are accessible to women, people of color and other underrepresented groups. The partnership comprises local governments, workforce and training nonprofits, labor unions, contractors and regional agencies from across the Bay

Area. Together the H RTP developed labor standards and policy recommendations for public agencies that promote equity, job quality, and job access, and published several papers and guides in 2024 available on Rising Sun's website<sup>4</sup>.



### Bay Area Residential Decarbonization High Road Training Partnership

#### Mission

The H RTP seeks to increase job quality and equitable access for all workers in the residential decarbonization market, starting in the 9-Bay Area County region

#### Vision

A residential building decarbonization industry that supports quality jobs, engages a qualified workforce, and provides stable career pathways for disadvantaged workers while simultaneously reducing GHG emissions and building more resilient communities

### Just Transition Pilot Program

To ensure that income qualified residents and construction workers benefit from the transition off fossil fuels, City Council approved a resolution to develop a Just Transition Pilot Program (2022) with a budget of \$1,500,000. This program aggregates electrification and resilience installations for low-to-moderate income households (at or below 120% of the Area Median Income) and requires that upgrades be completed by pre-qualified contractors who meet minimum labor standards, to ensure that residential electrification construction work also provides equitable benefits to workers. Through a competitive process the City selected Rebuilding Together East Bay Network as the program implementor. Building on the work of the H RTP, the team is working to finalize the labor standards, develop a pipeline of income-qualified homes, provide support and training to contractors, and release a request for proposals for contractors to participate. The program is slated to complete implementation by the end of 2025.

### Home Electrification Equity Project

Berkeley participated in a two-year grant program awarded by ICLEI and funded by Google.org to advance electrification in income-qualified homes. The team was led by Habitat for Humanity East Bay/Silicon Valley and also included the cities of Fremont, Hayward and Oakland, as well as partners GRID Alternatives, Rebuilding Together East Bay Network, and Cal State East Bay. The project team created tools to assist cities in

<sup>4</sup> Rising Sun Center for Opportunity High Roads Training Partnership: <https://risingsunopp.org/policy/>

scaling electrification for low-income residents, conducted contractor trainings, and installed direct improvements in three Berkeley income-qualified homes which received one or more of the following: energy audits, solar + storage installation, electrical upgrades, and new electric appliances.



*Berkeley home that received electrification upgrades through the Home Electrification Equity Project*

### **Bay Area Air District Indoor Appliances Implementation Working Group**

To improve indoor air quality, the Bay Area Air District adopted amendments to Rule 9-4 and Rule 9-6 in March 2023 which establish zero-nitrogen oxide (NOx) emissions standards for gas furnaces and water heaters.<sup>5</sup> These rules phase in requirements, beginning in 2027, that will ultimately only allow zero NOx appliances, such as heat pumps, to be sold and installed in the Bay Area for new water heaters and furnaces. City staff are participating in the Bay Area Air District Indoor Appliances Working Group to identify and address implementation issues including technical and workforce readiness of the market and equitable transition to compliant appliances.

### ***BUILDING EMISSIONS SAVING ORDINANCE***

The goal of Berkeley's Building Emissions Saving Ordinance (BESO) is to reduce both energy costs and GHG emissions in Berkeley's existing buildings. BESO consists of a Time of Sale Program and a Large Building Program.

<sup>5</sup> Bay Area Air District Zero NOx rules: <https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances>

### **BESO Time of Sale Program Highlights**

The BESO Time of Sale Program (for buildings under 25,000 square feet) requires building owners to complete and publicly report comprehensive assessments of their building's energy performance and opportunities for improvement prior to listing a building for sale.

Successes of the BESO Time of Sale Program include:

- 96% compliance in 2024, an increase of 24 percentage points from the 2020 compliance rate (72%)
- Launched a Home Energy Score assessment focused on electrification
- 4,356 energy assessments completed as of February 2025
- 3,519 Home Energy Scores<sup>6</sup> completed as of February 2025, with an average score of 4.5 out of 10
- 87 homes completed qualifying energy efficiency or electrification upgrades in lieu of energy assessments to satisfy BESO requirements as of February 2025

### **New BESO Time of Sale Energy Upgrade Requirements**

In December 2020, Berkeley City Council amended BESO to further align the program with the City's electrification and community resilience goals. The amendment included direction to staff to develop energy upgrade requirements for future Council consideration. In early 2023, staff assembled a Technical Advisory Committee (TAC) of building decarbonization experts from local, state, and federal organizations, including PG&E, Ava, California Energy Commission, the Berkeley Lab, Building Decarbonization Coalition, and contractors and architects, to advise on potential requirements at time of sale. Throughout 2023 and 2024, staff worked with the TAC, Bridge Association of Realtors, the Berkeley Rent Board, the Environment and Climate Commission, and the City Council Land Use, Housing, and Economic Development Policy Committee to develop a policy proposal. In February 2025, Council adopted the proposed amendments to BESO, including flexible energy upgrade requirements for small residential buildings, which will go into effect in 2026.

### **BESO Large Building Program**

The BESO Large Building Program (buildings over 25,000 square feet) requires annual energy benchmarking reports and energy assessments on a five-year recurring cycle for large multifamily and commercial buildings.

Successes of the BESO Large Building Program include:

- 342 energy benchmarks submitted in 2024, achieving 62% compliance

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<sup>6</sup> Developed by the US Department of Energy and its national laboratories, the Home Energy Score provides home owners, buyers, and renters directly comparable and credible information about a home's energy use. Each Home Energy Score is shown on a simple one-to-ten scale, where a ten represents the most efficient homes. More information can be found at: <https://www.energy.gov/eere/buildings/articles/home-energy-score>.

- 130 large building energy assessments completed as of February 2025
- Launched a benchmark scorecard to help building owners understand their buildings' energy performance, with 312 scorecards distributed as of February 2025

### **Building Performance Standards Large Building Program**

Building performance standards (BPS) establish building-level requirements, such as minimum GHG emissions reduction standards, by a specified date. These standards are generally applied to larger buildings, including multi-family residential and commercial buildings, to have the highest impact on the largest energy users. The size and type of building covered could expand over time. The U.S. Department of Energy awarded Berkeley and San Francisco a \$19.9 million grant in 2024 – approximately \$5.7 million of which will go to Berkeley – to develop BPS requirements that lead to the emissions reductions in the cities' large buildings. Pending release of funds by the federal administration, this grant will allow the first stage of BPS development to begin in 2025.

### ***BUILDING DECARBONIZATION INCENTIVE PROGRAMS***

Berkeley property owners have started transitioning their gas, water, and HVAC systems to electric heat pumps. Heat pumps utilize clean electricity, are highly efficient compared to their gas counterparts, reduce building GHG emissions, and provide a variety of other benefits including increased comfort and better indoor air quality. Property owners have taken advantage of several incentive programs<sup>7</sup> for heat pump water heaters (HPWH) and heat pump HVAC systems (HP HVAC), including TECH Clean California and BayREN.

- **TECH Clean California** is a statewide initiative, funded by California taxpayers and utility ratepayers, to accelerate the adoption of clean space and water heating technology across California in order to help meet the state goal of being carbon-neutral by 2045. Since its launch in 2022 through November 2024:
  - 93 Berkeley homes installed HPWHs qualifying for TECH Clean California rebates totaling \$291,300 in savings
  - 371 Berkeley homes installed HP HVACs qualifying for TECH Clean California rebates totaling \$689,000 in savings

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<sup>7</sup> For more information on rebates and incentives for electrification, please see *The Switch Is On* (<https://switchison.org/>) and the City of Berkeley's *Building Electrification* (<https://berkeleyca.gov/construction-development/green-building/building-electrification>) and *Financing Green Building Improvements* (<https://berkeleyca.gov/construction-development/green-building/financing-green-building-improvements>) webpages.

- **BayREN Home+** offered a variety of rebates for single family homes for heat pumps, insulation, duct sealing and replacement, and induction cooking appliances. Between 2019 and the conclusion of the BayREN Home+ program on October 18, 2024, a total of 1,751 of these measures were completed.
- **BayREN Multifamily:** Between 2014-2024, a total of 1,195 Berkeley units received a variety of energy and water saving upgrades, including electrification measures. This program now includes additional incentives for buildings that are located in communities experiencing health, heat or housing burdens.

The federal Inflation Reduction Act (IRA) of 2022 created programs to support clean energy retrofits. The California Energy Commission (CEC) was awarded \$590 million from the U.S. Department of Energy to launch three IRA programs: Home Efficiency Rebates (HOMES), Home Electrification and Appliance Rebates (HEERA), and Training for Residential Energy Contractors (CA-TREC).<sup>8</sup> These programs will provide rebates for whole home energy upgrades, reduce the cost of replacing old appliances in income-qualified homes, and support the training of contractors to install and maintain energy equipment.

### **CLEAN ENERGY TRANSITION**

As more buildings transition off fossil fuels, the City is ensuring that its electricity comes from clean, renewable sources through participation in Ava Community Energy (Ava; formerly known by the name East Bay Community Energy or EBCE).

In 2016, Berkeley City Council voted to join Ava. In 2019, Berkeley City Council voted to switch municipal facilities to Ava’s Renewable 100 (R100) electricity service, sourced from 100% wind and solar facilities. In 2021, City Council then voted to set R100 as the default service for residential (starting in March 2022) and commercial (starting in October 2022) customers. As of February 2025, 88% of Berkeley accounts are receiving R100 electricity service.

| <b>Berkeley Customers by Sector</b> | <b>Total Accounts</b> | <b>Renewable 100</b> | <b>Bright Choice</b> |
|-------------------------------------|-----------------------|----------------------|----------------------|
| <b>Residential (excluding CARE)</b> | 43,633                | 93%                  | 7%                   |
| <b>Residential (CARE)</b>           | 5,719                 | 41%                  | 59%                  |
| <b>Non-Residential</b>              | 4,986                 | 95%                  | 5%                   |
| <b>All Accounts</b>                 | 54,338                | 88%                  | 12%                  |

<sup>8</sup> For more information on the California Energy Commission’s IRA programs, please see <https://www.energy.ca.gov/programs-and-topics/programs/inflation-reduction-act-residential-energy-rebate-programs>

**MUNICIPAL BUILDING DECARBONIZATION**

City staff are working on energy efficient upgrades to municipal facilities and infrastructure including park and street lighting, traffic signals, pools, and irrigation pumps. Facility and infrastructure upgrades, in particular street light conversions (from high pressure sodium to LEDs) and building lighting conversions (first to fluorescents and more recently to LEDs), have significantly reduced electricity consumption and utility bill costs for the City. In 2024, the City began using a new software platform, Energy Manager, and started receiving PG&E bills for municipal facilities electronically. This now allows for review and detailed analysis, and when completed later in 2025, will also link to the City’s ERMA system for payment.

Recently completed municipal energy projects include:

- **Building Lighting Upgrades to LED:** The following sites have had high-efficiency lighting installed to reduce energy costs and ensure lighting quality for building occupants:

| Site                         | Year Upgraded | Annual kWh Saved |
|------------------------------|---------------|------------------|
| Fire Station #4              | 2022          | 9,500            |
| Fire Station #7              | 2022          | 26,000           |
| Emergency Services Warehouse | 2023          | 8,800            |
| Telegraph/Channing Garage    | 2023          | 67,000           |
| Oxford Garage                | 2023          | 27,800           |
| 1947 Center St.              | 2024          | 164,500          |
| Main Library Phase I         | 2024          | 150,000          |
|                              | <b>Total</b>  | <b>453,600</b>   |

The energy savings from these lighting upgrades result in about \$185,000 in annual cost savings for the City. Additional lighting upgrades are planned for Fire Stations #2, #5, and #6, Civic Center, and South Berkeley Senior Center, as well as Main Library, Phase II.

Most of these lighting upgrades are financed using PG&E’s On-Bill Financing program, with no up-front cost to the City. PG&E’s On-Bill Financing pays the contractor directly and allows the City to repay the loan through monthly utility bill savings.

- **Heat Pump Water Heaters:** Installed in 2023 at no cost to the City through the ratepayer funded PG&E Government & K-12 Energy Efficiency Program:
  - Main Library
  - North Branch Library

- o South Branch Library
  - o Corporation Yard Green Room
  - o Corporation Yard Ratcliff Building
  - o Fire Station #3
  - o Fire Station #6
  - o Marina Restroom
  - o Harrison House
  - o Women's Daytime Drop-In Center
- **Kitchen Electrification:**
    - o South Berkeley Senior Center (2023)
    - o North Berkeley Senior Center<sup>9</sup> (2025)
  - **Building Envelope Improvements:**
    - o North Berkeley Senior Center: insulated windows and doors, roof insulation, draft sealing (completed in 2023)

### **Rising Utility Costs & Electrification**

In recent years, both commercial and residential PG&E electricity rates have increased significantly. In 2024, households experienced almost a 13% bill increase<sup>10</sup>. The high cost of electricity underscores the importance of energy efficiency and building envelope upgrades to reduce overall energy usage, as well as solar and battery installations to offset grid electricity and higher time-of-use pricing. While replacing gas systems with efficient all-electric heat pump HVAC and water heaters shifts the utility cost from gas to electricity, these additional energy efficiency upgrades can minimize electricity bill costs. Additionally, all-electric equipment improves indoor air quality and comfort, reduces GHG emissions, and increases safety.

Staff is working with member organizations such as the Local Government Sustainability Energy Coalition and Green Cities California to understand the causes and potential opportunities for issues such as electricity affordability and interconnection timelines.

### **Municipal Solar + Storage**

The City, alongside several other cities, is partnering with Ava to procure and install solar + storage systems at critical municipal facilities to provide increased energy resilience and clean back-up power. The proposed solar and battery installations are planned for the Corporation Yard and Live Oak Recreation Center. Construction is

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<sup>9</sup> Completion of the North Berkeley Senior Center kitchen electrification project is anticipated in 2025, combined with major wiring upgrades to the site.

<sup>10</sup> Ava Community Energy: <https://avaenergy.org/insight/pg-e-rate-increases-explained/>

expected to start in 2025, but may also be impacted by the federal pause on funding and new tariffs.

## **TRANSPORTATION**



The City strives to advance opportunities for people to safely walk, bike, take public transit, and electrify mobility options. As transportation is the largest source of Berkeley's GHG emissions, this work advances City climate goals. Additionally, it also improves public health and helps achieve Vision Zero to eliminate traffic deaths and serious injuries.

The City has taken a leadership role in facilitating transit-oriented development, including zoning reform as well as the Ashby and North Berkeley BART Station development projects, to create housing opportunities in proximity to transit, jobs, and other amenities. This provision of new housing for Berkeley's growing population near transit hubs and corridors minimizes private automobile travel and its associated GHG emissions and other air pollutants.

### ***ACTIVE TRANSPORTATION***

The Public Works Transportation Division leads the City's efforts to increase access and improve safety to a variety of mobility options beyond the automobile. In 2023, 34% of the trips taken within Berkeley utilized sustainable modes of transportation (walking, biking, and public transit). Highlights of recent efforts include improving pedestrian safety and bus accessibility.

#### **Southside Complete Streets**

In 2024, Public Works finished building the Southside Complete Streets project, a transformative project that makes the neighborhood south of the UC Berkeley campus a more walkable, bikeable, scooter-friendly, and bus accessible area. The project included:

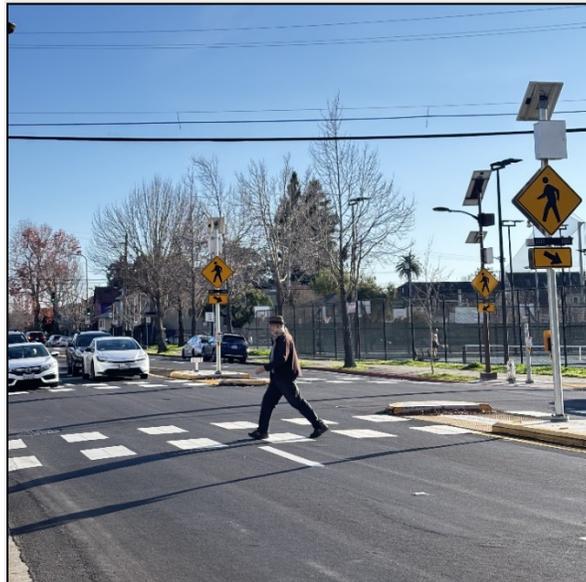
- Pedestrian safety improvements: wider sidewalks, corner curb extensions (bulb outs), pedestrian refuges and safer signals
- Bicycle safety improvements: two-way protected bike lanes (cycle tracks); bike boxes at intersections, and dedicated bike traffic signals
- AC Transit support: dedicated bus lines with upgraded bus stops with boarding islands



*Southside improvements make it safer to walk, bike, scooter and bus*

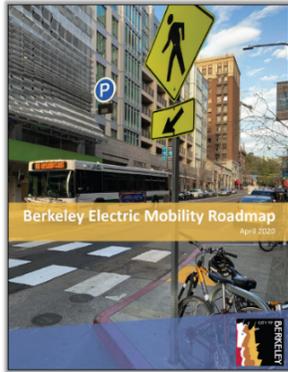
**Martin Luther King Jr. Way Vision Zero Quick Build**

In 2024, Public Works completed the Quick Build project on Martin Luther King Jr. Way (MLK Way), from Dwight Way to Russell Street, adding longer pedestrian street crossings and improvements to slow drivers, making walking safer in an area that sees thousands of walking trips every day. This half mile stretch of MLK Way serves community destinations like Berkeley High School, Washington Elementary School, Tim Moellering Field, Grove Park, the Berkeley Public Library's south branch and Ashby BART.



*MLK Vision Zero Quick Build crosswalk improvements*

## ***ELECTRIC MOBILITY***



The Berkeley Electric Mobility Roadmap (2020)<sup>11</sup> identifies goals, strategies, and actions to create a fossil fuel free transportation system. The Roadmap supports the City's ongoing efforts to increase walking, biking, and public transportation, and helps to ensure equitable access to the benefits of clean transportation. In March 2023, the City hired an Electric Mobility Coordinator to support Roadmap implementation; the Coordinator convenes an interdepartmental Electric Mobility Working Group that meets biweekly.

The projects highlighted below reflect progress in achieving the four Electric Mobility Roadmap Goals:

1. Ensure Equity in Access to Electric Mobility
2. Improve Alternatives to Driving
3. Achieve Zero Net Carbon
4. Demonstrate City Leadership

**Ensure Equity in Access to Electric Mobility** — *Maximize electric mobility benefits in underserved communities:*

- **Berkeley Electric Bike Equity Project (BEEP):** Local non-profit Waterside Workshops, with assistance from GRID Alternatives, developed and implemented BEEP using \$250,000 from the Climate Equity Fund. This electric bike (e-bike) program for income-qualified Berkeley households also included a youth education and workforce development program to service e-bikes and provide job training opportunities. With additional support from a UC Berkeley Chancellor's Grant, BEEP provided safety training and distributed 56 e-bikes to program recipients. Unlike other incentive programs that primarily seek to reduce the cost of e-bike ownership, BEEP employed a unique model that provided significant, ongoing support to participants throughout the one-year pilot (BEEP concluded in September 2024). Some program highlights include:
  - **134 Berkeley residents benefited** from the program including 114 residents using the e-bikes in the 56 BEEP households and 20 Waterside Workshops interns who assembled and maintained the e-bikes.

<sup>11</sup> City of Berkeley Electric Mobility Roadmap: <https://berkeleyca.gov/your-government/our-work/adopted-plans/berkeley-electric-mobility-roadmap>

- o E-bike access led to **transportation mode shifts** for the majority of BEEP participants. 77% reported a decrease in use of a car or motor vehicle and 51% reported a decrease in use of ride hailing (i.e., Lyft, Uber, etc.).
- o **69% of participants reported budget savings** on transportation costs. Participants saved an average of \$150 per year on fuel alone when replacing car miles with e-bike miles and avoided nearly \$900 in total car ownership costs on average.

*“I hope this pilot continues – to say it has been life changing to receive access to something I would not have been otherwise able to afford and that has been so transformative is an understatement.”* (LeeAnn, BEEP participant)

Please see the BEEP Final Report for more information<sup>12</sup>.



*“I now ride my e-bike. I even will take longer routes just to get more riding in and enjoy the outdoors.”* – Sherry



*“I no longer depend on public transportation or ride sharing. I use the e-bike for all of my travels.”* – Julio

<sup>12</sup> City of Berkeley, Berkeley Electric Bike Equity Project Final Report: <https://berkeleyca.gov/sites/default/files/documents/BEEP%20Data%20Analysis%20Summary%20Report%20February%202025-reduced.pdf>

**Improve Alternatives to Driving** — *Shift trips to walking, biking, and shared electric modes:*

- **Electric Micromobility:** City Council adopted a resolution (2021) to establish a shared electric micromobility permit program for operators (currently Veoride and Lime) to provide Berkeley residents and visitors with sustainable commute options using electric scooters and e-bikes. To ensure equitable access to the electric scooters and e-bikes, at least 50% must be deployed in designated equity priority areas, and operators are required to provide both income-qualified programs and accessible options, such as sit scooters. In May 2023, the City approved two shared mobility operators to provide 400 stand-scooters and 400 seated-scooters in Berkeley.
  - In 2024 a total of 241,508 trips, representing 210,265 total miles, were ridden on shared electric scooters and bicycles, an increase of 8% more trips than in 2023.
  - Since the program launched in 2022 a total of 655,762 trips, representing 602,590 total miles, were taken on shared electric scooters and bicycles.
- **Electric Bicycle Share Expansion:** In 2025, through a partnership with the Metropolitan Transportation Commission (MTC), the Bay Wheels<sup>13</sup> bike share program (operated by Lyft) will be adding 221 e-bikes and 11 new docking stations to the existing fleet of 200 e-bikes in Berkeley. Supporting the City's transportation equity goals, the Bay Wheels Bike Share<sup>14</sup> for All program provides discounted memberships for income qualified residents.
- **Berkeley Pier-Ferry Project:** The City has been working with the Water Emergency Transportation Authority (WETA) on a plan to reconstruct the currently closed Berkeley Pier at the Berkeley Marina and add ferry service, specifically all-electric ferry service for travel between Berkeley and San Francisco. WETA has more than \$150 million in local, state and federal funding to begin working on their rapid-electric emission-free ferry program. Identification of more funds, needed for the pier-ferry construction phase, as well as public process and drafting of the CEQA document are planned for 2025.

**Achieve Zero Net Carbon** — *Eliminate emissions from private vehicles:*

- **Electric Vehicle Charging:** The City continues to promote the use of electric vehicles (EVs) and facilitate the installation of EV charging stations by offering streamlined permitting, educating property owners about EV charging and grant opportunities, and providing EV charging on municipal property. Based on field

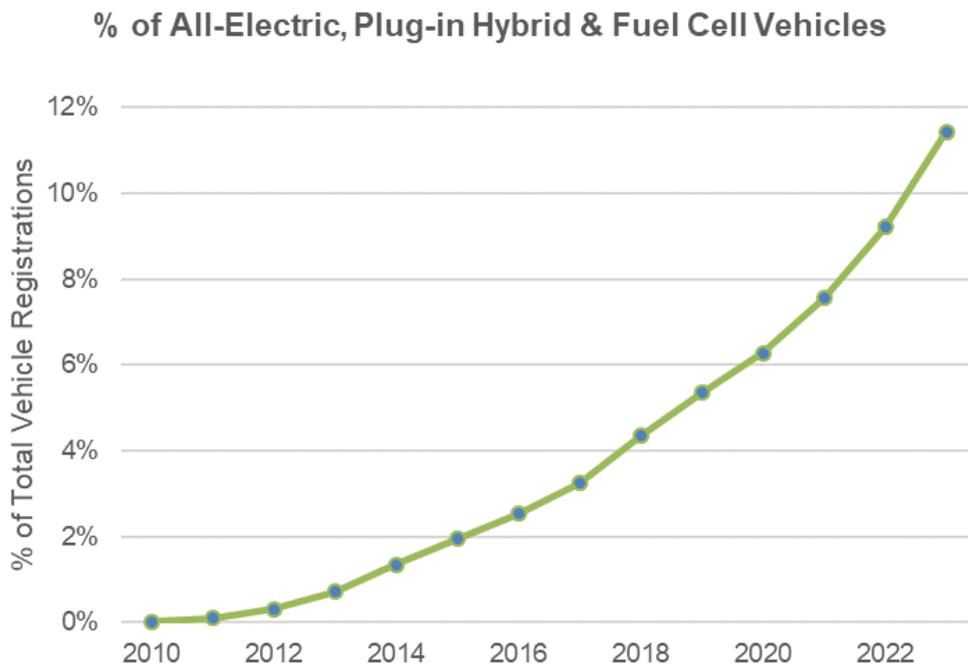
<sup>13</sup> Metropolitan Transportation Commission Bay Wheels: <https://mtc.ca.gov/operations/traveler-services/bay-wheels-bike-share-program>

<sup>14</sup> Lyft Bay Wheels Bikeshare for All: <https://www.lyft.com/bikes/bay-wheels/bike-share-for-all>

verification in October 2023, there are currently 129 publicly available EV charging ports in Berkeley (Level 2 and Direct Current Fast Chargers, or DCFC) in addition to at least 75 EV charging ports installed by businesses for their employees, or at multifamily apartment buildings. The City is partnering with Ava to develop public DCFC Hubs at two locations in Berkeley. In addition, local amendments to the 2022 CALGreen require levels of EV charging in new buildings in Berkeley which exceed state requirements.

- **Clean Vehicle Adoption Rate:** Berkeley has a high all-electric and plug-in hybrid vehicle adoption rate. In 2023, 11.4% of all vehicles registered in Berkeley were all-electric, plug-in hybrid, and fuel cell vehicles compared to 5.2% statewide. See Figure 3 for a year-to-year comparison of Berkeley’s clean vehicle registrations.

**Figure 3: Clean Vehicle Adoption Rate by Year**



**Demonstrate City Leadership** — *Lead by example and guide the electric mobility transition:*

- **Electrification of City Fleet:** Staff worked with Ava to conduct a municipal fleet electrification assessment, including a plan for EV deployment and associated charging infrastructure through 2030. The City is currently working to add EV charging for fleet vehicles at the Corporation Yard and has continued to increase

the number of EVs in the municipal fleet to meet City goals and comply with the State of California’s Advanced Clean Fleets regulation. As of March 5, 2025, the City’s municipal fleet has 578 total vehicles, including heavy equipment and bicycles, with these electric models:

| Electric Vehicle Type     | Number in Fleet |
|---------------------------|-----------------|
| Sedan                     | 34              |
| Pickup Truck              | 10              |
| SUV                       | 8               |
| Low-speed Utility Vehicle | 5               |
| Three-wheeled Scooter     | 2               |
| Electric Bicycle          | 10              |
| <b>Total</b>              | <b>69</b>       |

| Electric Equipment Type | Number in Fleet |
|-------------------------|-----------------|
| Tractor                 | 1               |
| Forklift                | 1               |
| Lift                    | 2               |
| Electric Harbor Boat    | 1               |
| <b>Total</b>            | <b>5</b>        |

**WASTE**



The City of Berkeley’s Public Works Zero Waste Division leads multiple cross-departmental efforts to reduce waste, increase recycling and composting, and support food recovery at City facilities and in the community. Highlights include:

**Zero Waste Strategic Plan**

The Zero Waste Strategic Plan, currently being finalized, will establish a framework and roadmap for reaching Berkeley’s goal of sending zero waste to landfills. It will provide recommendations for policies, programs, and infrastructure with an implementation timeline and estimated expenses.

This Plan will integrate with the Transfer Station Replacement. The two concepts in the Transfer Station Replacement Feasibility Study are currently being assessed for feasibility of construction while continuously operating the Transfer Station, including necessary CEQA review. Ultimately, the replacement facility will serve as a state-of-the-art zero waste facility to transfer garbage, sorted recyclables, compost, and other materials, to help achieve the City’s goal of zero landfilled waste.

**Senate Bill 1383**

California State Senate Bill 1383 (2016) is designed to reduce short-lived climate pollutants and requires 75% organic waste reduction by 2025 and a 20% increase in

recovery of edible food that is currently disposed by 2025. Local jurisdictions have significant, new requirements to implement additional waste reduction programs and enhanced reporting and enforcement protocols to comply with the state legislation. SB 1383 implementation started January 1, 2022. Key highlights include:

- Berkeley has 153 Edible Food Generators (i.e., restaurants and grocery stores) to donate excess edible food and eight food recovery organizations
- In 2023 (most recent available data), 425,286 pounds of edible food was recovered by food recovery organizations

### **Single Use Disposable (SUDs)**

The City's Single Use Foodware and Litter Reduction Ordinance, also known as SUDs, (Berkeley Municipal Code, Chapter 11.64) requires businesses selling prepared food for both on-site dining and take out to follow guidelines to reduce their usage of single-use disposables, including providing reusable foodware, color coded recycling and compost bins, and compostable take-out containers. Key highlights include:

- In fiscal year 2024, staff inspected 648 restaurants, and found that 175 or 27% were in compliance, providing reusables for on-site dining.
- The City is hosting three California Climate Action Corps fellows who are conducting outreach to local food-serving businesses, offering free technical assistance and up to \$300 to purchase reusable foodware containers or up to \$2,500 toward the rental or purchase of a dishwasher.

### **Construction & Demolition Debris Diversion**

The City requires all nonresidential construction projects and residential projects over a certain value to reuse or recycle construction and demolition debris at a rate that exceeds State requirements (Berkeley Municipal Code, Chapter 19.37). Through increased collaboration between Zero Waste and the Planning and Development Department, Zero Waste staff now participate in the New Construction Plan Check process to help architects and contractors understand and comply with Zero Waste requirements before breaking ground on new developments and renovations.

### **2025 and Beyond**

The Zero Waste Division is currently utilizing Cal Recycle grant funding, and seeking additional support through BayREN, to renovate the teaching kitchen at 1007 University (currently occupied by Berkeley Fire Department Emergency Medical Services) in order to increase capacity to recover and distribute excess food as well as provide shared capacity for dishwashing reusable foodware.

## **COMMUNITY ENGAGEMENT**



Community engagement and outreach, including programs, training and events, provides resources to residents, businesses and municipal employees to advance the City's climate and resilience goals. The City strives to engage a broad cross section of the community, and through equitable programs focuses on resilient communities who that have been marginalized and are most impacted by climate change. Various community engagement efforts are highlighted below.

### **Climate Equity Fund – Community Engagement**

Through the Council-funded Climate Equity Pilot (2021), the Ecology Center was awarded \$100,000 to develop and convene a Climate Equity Collaborative (CEC) of about a dozen community organizations serving Berkeley's marginalized communities. Working with the CEC partners, the Ecology Center provided climate change education at community events and distributed resilience measures such as Clipper cards, induction cooktops and air filters to income-qualified residents. The Ecology Center also provided stipends to community ambassadors to support program implementation. Work will conclude in 2025.



*Chef Camille demonstrating induction cooking at Climate Equity funded Healthy Black Families Induction Giveaway*

### California Climate Action Corps

The City is hosting four full-time California Climate Action Corps fellows for the 2024-25 program year, at no cost to the City. The California Climate Action Corps is an AmeriCorps program specifically focused on community engagement in the areas of urban greening, wildfire resilience, and organic waste and edible food recovery. One fellow is serving in the Urban Forestry Division to support tree planting efforts, with a focus on increasing tree canopy more equitably throughout the City. Three fellows are serving in the Zero Waste Division to support SB 1383 implementation, including training City staff on proper sorting, hosting information tables at community events, and conducting outreach to Berkeley restaurants to increase food waste collection and food recovery efforts. Additionally, the Zero Waste climate fellows are providing technical support to restaurants to ensure compliance with Berkeley's Single Use Disposables ordinance.

### East Bay Green Home Tours

Since 2021, the City has hosted virtual *East Bay Green Home Tours*<sup>15</sup> showcasing various efforts of local residents to save water and energy, increase resilience to drought and heat, electrify their appliances, and reduce the carbon footprint of their homes. Hundreds of people attend the event each year, and the online videos of the event continue to receive thousands of views. In 2024, in addition to a virtual tour, the event added in-person tours at 13 homes, with 853 home visits.

*"I loved being able to visit these homes and see what others have done to make their homes better. I learned a ton and was so inspired."* (2024 East Bay Green Home Tour attendee)



OECD staff greet visitors at a Berkeley home on the 2024 East Bay Green Home Tour



Berkeley Climate Action Coalition volunteer and OECD staff offer resources at the 2024 East Bay Green Home Tour

<sup>15</sup> East Bay Green Home Tour: <https://www.eastbaygreenhome.com/>

### Ride Electric

On October 19, 2024, OESD hosted the 7<sup>th</sup> Annual *Ride Electric* in conjunction with the City's Harvest Festival. The event offers electric bike and scooter test rides through the City's shared electric mobility providers and local bicycle retailers, a municipal fleet electric vehicle showcase, and multiple resources to income-qualified residents to help electrify their ride. Adaptive vehicles were added to the lineup this year.



*Families test riding electric bikes at Ride Electric*

### Business Outreach



The Office of Economic Development (OED) leads efforts to help businesses reduce their carbon footprint. Through its quarterly newsletters, presentations, one-to-one meetings with business owners, and outreach to local Business Districts, OED promotes grants, programs and other resources that help businesses upgrade their buildings, operate with environmental responsibility, and comply with City sustainability policies. OED also has a partnership with the

Alameda County Green Business program which has enrolled 141 Berkeley businesses in the program and has supported 79 Berkeley businesses to achieve the statewide recognized green business certification.

### Municipal Employee Sustainability & Zero Waste Training

Starting in 2024, OESD, in partnership with the Zero Waste Division, began delivering bi-weekly training to new employees presenting on Berkeley's climate and environmental leadership and resources to green the office. The training also includes an interactive activity to increase recycling and composting at City facilities. Additionally, staff delivered sustainability and zero waste trainings to current employees during staff meetings and special department events. As of February 2025, 712 employees have participated in these trainings.

**Kala Art Institute Municipal Artist-In-Residence**

The Planning and Development Department participated in the Kala Art Institute’s Print Public Municipal Artist in Residence Program, an arts-integrated approach to urban planning and community activation. Through the program, artists worked with City departments as cultural strategists to help approach challenges such as climate justice and neighborhood revitalization in new ways that lift up voices that are less often heard. This past year, artist Cheryl Derricotte partnered on the Climate Equity Pilot and artist Marcel Pardo Ariza partnered on the San Pablo Area Plan. Their culminating art show, titled “Roadwork,” was on display at Kala from October 24, 2024 – February 14, 2025.



*Kala staff, City staff, and artists at “Roadwork” show by Cheryl Derricotte (third from left) and Marcel Pardo Ariza (fifth from left)*

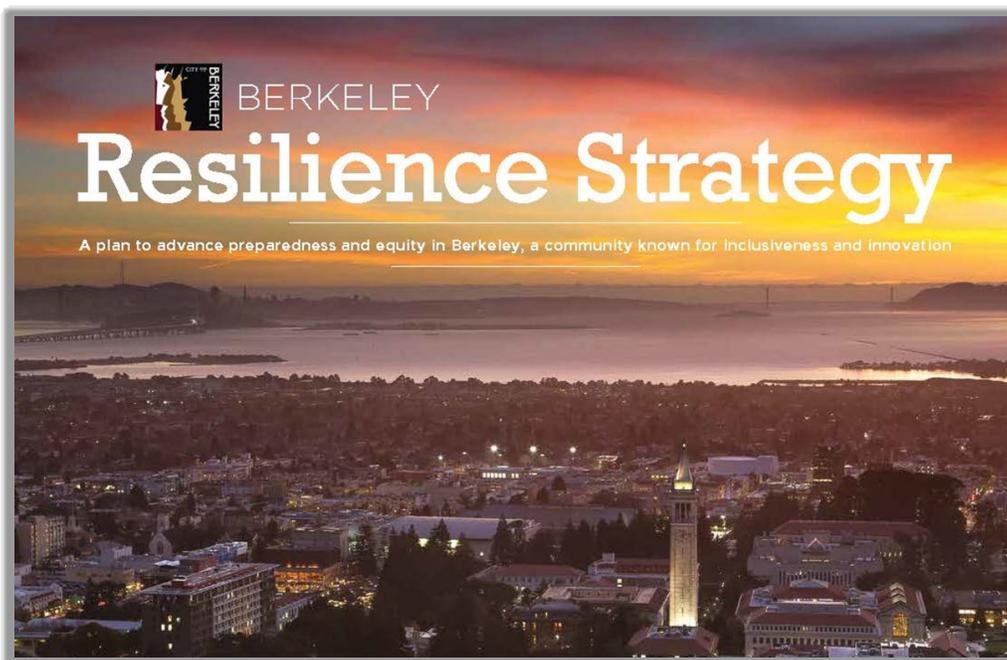


*Berkeley Electric Bike Equity Project (BEEP) participants engaging in Group Bookmaking Art with Cheryl Derricotte*

**ADAPTATION & RESILIENCE**

The City strives to strengthen and prepare the community for shocks and stresses, including adapting to the impacts of climate change. The City's resilience efforts, as outlined in the 2016 Resilience Strategy, include the following goals:

1. Build a connected and prepared community
2. Accelerate access to reliable and clean energy
3. Adapt to the changing climate
4. Advance racial equity
5. Excel at working together within City government to better serve the community
6. Build regional resilience



Many City departments are coordinating and leading efforts to enhance resilience and help Berkeley adapt to a changing climate, including Planning, Public Works, Parks Recreation and Waterfront, Health, Housing and Community Services, and Fire. A summary of programs is provided below.

**Prepared, Safe and Healthy Berkeley Project**

The City of Berkeley received \$497,042 in funding from the State of California's Adaptation Planning Grant Program to help update the General Plan Disaster Preparedness & Safety Element, create a new Environmental Justice Element, and develop community-driven climate and resilience metrics. The Ecology Center, the City's community partner in this project, is leading equity-driven engagement with a Community Advisory Committee comprised of organizations serving resilient communities that have been marginalized and impacted first and hardest by climate change. In February 2024, the project team began hosting community events to gather input and ideas on how the City can create policies that better prepare Berkeley for natural disasters and climate change and reduce exposure to pollution. The outreach and development of these General Plan updates are anticipated to be completed in 2026.

**Local Hazard Mitigation Plan (LHMP)**

The Local Hazard Mitigation Plan (LHMP) is the main document that houses the City's climate adaptation work. The LHMP outlines the natural disasters and hazards that can occur in Berkeley and the actions the City is taking to reduce risk. It also lists actions that residents can take to reduce personal risk and help the City's collective mitigation efforts. The 2024 LHMP was approved by the California Office of Emergency Services and Federal Emergency Management Agency. The LHMP was presented to the City Council at the March 18, 2025 City Council meeting.

**Extreme Heat Planning**

An extreme heat day is when temperatures reach the 98th percentile of historic maximum temperature. In Berkeley, an extreme heat day is a day above 88.3 degrees Fahrenheit. The City developed extreme heat protocols for municipal response operations and a page on the City website dedicated to heat wave safety<sup>16</sup>. Staff continue to evaluate city infrastructure and community needs and are integrating best practices from other jurisdictions. The City is also participating in a regional group coordinated with UC Berkeley, the Berkeley Lab, and several Bay Area jurisdictions, to share and plan around extreme heat.

**Wildfire Smoke**

The Bay Area has experienced multiple days and periods of unhealthy air quality due to wildfire smoke in recent years. These events can coincide with heat waves, high fire risks, and/or Public Safety Power Shutoffs. To better address the threat of wildfire smoke, in 2019 the City of Berkeley participated in a grant led by Alameda County to create a communications protocol for responding to wildfire smoke and other air quality conditions. In addition, in 2023 the Office of Emergency Services secured 28 air cleaners from a Bay Area Air District grant. These air cleaners were distributed to public

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<sup>16</sup> City of Berkeley Heat Wave Safety: <https://berkeleyca.gov/safety-health/disaster-preparedness/heat-wave-safety>

facing sites including libraries and community centers for use when air quality is poor. The City is also working to advance emergency and resilience planning for extreme heat and high air quality index (AQI) events, including coordination with cities around North America, and local collaboration and outreach with community partners serving communities who have been marginalized.

### **Sea Level Rise**

In 2019 the City initiated the Waterfront Specific Plan project to develop a long-term vision for achieving a financially self-sustainable publicly owned Waterfront. The team conducted an extensive community outreach process and a draft Sea Level Rise Study for the Berkeley Waterfront. Preliminary findings indicate that three locations at the Berkeley Waterfront may experience periodic flooding by 2050 during a 100-year storm and King tide.

### **Groundwater Rise**

Shallow groundwater in coastal communities will rise as sea levels rise, increasing the risk of flooding communities from below. The City participated in a project funded by a 2020–2022 California Resilience Challenge grant, led by the San Francisco Estuary Institute Aquatic Science Center. The final report<sup>17</sup> provides groundwater mapping for existing and future conditions, suggestions on how to use this dataset for planning purposes, recommendations for additional modeling and assessments, and potential next steps. The City built upon this work by evaluating the impact of shallow groundwater rise and sea level rise on toxic materials stored underground, through an analysis conducted as part of the Prepared, Safe & Healthy Berkeley Project.

### **Tree Canopy Equity**

The City of Berkeley has a vibrant urban forest made up of approximately 38,000 street, park and median trees, managed and maintained by the Urban Forestry Division of the Parks, Recreation & Waterfront Department. Current tree inventories and canopy coverage data illustrate fewer trees are located in the West and South Berkeley, neighborhoods which also have higher populations of lower-income and historically marginalized communities. To address tree equity, over 1,000 trees were planted in Aquatic Park in 2024. In addition, the City plans to plant another 1,000 trees in West and South Berkeley neighborhoods over the next year. Funds have been secured through the California Natural Resources Agency's Urban Greening Grant (\$726,000) and an Environmental Enhancement and Mitigation Grant (\$576,000).

In addition, the City was awarded a federal Urban and Community Forestry grant from the Inflation Reduction Act for \$1,000,000 to hire staff and continue tree planting work over the next three years. This project aims to eliminate the past barriers to growing new street trees by promoting tree planting opportunities, engaging with communities

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<sup>17</sup> San Francisco Estuary Institute: Shallow Groundwater Response to Sea Level Rise: <https://www.sfei.org/projects/shallow-groundwater-response-sea-level-rise>

and gathering specific tree planting requests in areas with low tree counts, purchasing and planting drought tolerant trees and then providing the three years of watering investment to establish these trees. These new trees will help to provide shade, cooling, storm water benefits, and beautification in neighborhoods that have been historically underserved.

**Pollinator Gardens**

Pollinator gardens support bees and other insects and provide habitat and food for birds, reptiles and amphibians. Pollinator gardens also conserve water and sequester carbon from the atmosphere, while providing access to natural spaces in urban environments. Since 2020 several Berkeley parks and medians have been renovated in collaboration with the community to create space for native pollinator gardens and corridors. Pollinator gardens have been installed in the following locations:

- Cesar Chavez Park
- Charlie Dorr Mini Park
- Cragmont Park
- George Florence Park
- Haskell Mable Park
- James Kenney Park (2)
- John Hinkle Park
- King School Park
- Ohlone Park
- Prince Street Mini Park
- Remillard Park
- Strawberry Creek Park
- 63<sup>rd</sup> St Community Garden
- University Ave & Marina Blvd roundabout
- Berkeley Marina Sportsman Bait Shop (225 University) planter beds



*Volunteers installing the pollinator garden at San Pablo Park in 2021*



*Thriving pollinator garden at San Pablo Park today*

Below is a list of recent pollinator garden installations:

- Grove Park Pollinator Garden (2024)
- Grove Park Collaborative Garden (Food, Faith, & Justice, McGee Baptist Church) (2024)

- Aquatic Park: 8,413 new native plants and grasses installed on Bolivar Dr. between Addison and Bancroft (2024)
- University Avenue median: added 76 new native plants and grasses to replace contractor damage and beautify new *Berkeley Waterfront* median sign (2025)

### **Bay Area Climate Adaptation Network (BayCAN)**

Berkeley is a founding member and participates in the Executive Committee of the Bay Area Climate Adaptation Network (BayCAN), a network of local government staff helping coordinate an effective and equitable response to the impacts of climate change. BayCAN works to share best practices, develop opportunities for collaboration and program implementation, and secure funding and resources for equitable climate adaptation.

### BACKGROUND

The City of Berkeley is a long-time climate leader. Berkeley was one of the first cities to adopt a Climate Action Plan (2009), followed by the Resilience Strategy (2016) to advance preparedness and equity to adapt to a changing climate.

In recognition of the climate crisis, the City adopted additional climate goals to bolster the Climate Action Plan target of reducing greenhouse gas emissions 80% below 2000 levels by 2050. Berkeley's recent goals include:

- **Fossil Fuel Free Berkeley (2018):** City Council adopted a Climate Emergency Declaration and a goal of becoming a Fossil Fuel Free City
- **Race to Zero (2021):** City Council adopted a resolution for the Cities Race to Zero Campaign to establish a 2030 emission reduction target that reflects Berkeley's fair share of the 50% global reduction in carbon dioxide equivalent CO<sub>2</sub>e, committing to reduce emissions 60.5% from 2018 levels by 2030. This resolution also committed Berkeley to achieving zero net carbon emissions by 2045.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City's Climate Action Plan, Resilience Strategy, Local Hazard Mitigation Plan, and Strategic Plan all contribute to advancing the community towards a clean and resilient energy future that successfully meets Berkeley's climate goals. The City is actively working to advance a just transition to becoming a fossil fuel free City, through projects such as the \$1.5 million Just Transition Pilot Program and the Bay Area High Road Training Partnership.

### POSSIBLE FUTURE ACTION

This report provides the City Council an overview of climate implementation efforts across multiple City departments and highlights projects that are in collaboration with the community, and an update on GHG emission trends. The Climate Equity Fund and

Just Transition Program are examples of pilot programs that could be expanded, with additional funding, to increase equitable GHG emissions reductions. In the face of federal uncertainties, some funded programs, such as BESO's Building Performance Standards Large Building Program, may need new sources of support.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Mitigation of Berkeley's GHG emissions and adapting to the impacts of climate change are interrelated. Current investment to reduce community-wide emissions and enhance equitable climate adaptation and resilience, such as the Climate Equity Fund Pilot projects and the Just Transition Pilot, will help reduce the costs of addressing the impacts of climate change in the future.

Staff are closely monitoring the applicability and availability of regional, state, federal, and foundation funding to support the transition away from fossil fuels and other opportunities to advance clean energy and climate resilience goals. However, while Berkeley does have communities who have been marginalized, the City often does not qualify for state and federal funding that prioritizes disproportionately burdened communities as defined by CalEnviroScreen.<sup>18</sup> Moreover, the federal administration is freezing clean energy, equity, and climate related funding and programs, placing the onus of funding on municipalities and regional agencies. Continued advancement to meet climate goals will require additional resources to fund projects and programs, particularly for low income and other marginalized communities.

#### CONTACT PERSON

Sarah Moore, Manager, Office of Energy & Sustainable Development, 510-981-7494

Rebecca Milliken, Community Services Specialist II, Office of Energy & Sustainable Development, 510-981-7021

Ammon Reagan, Community Services Specialist II, Office of Energy & Sustainable Development, 510-981-7416

#### Attachment:

1: Berkeley Greenhouse Gas Inventory (2022 and 2023)

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<sup>18</sup> CalEnviroScreen 4.0: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>

## ATTACHMENT 1: BERKELEY GREENHOUSE GAS INVENTORY (2022 and 2023)

Based on the best currently available data from 2023, the Berkeley community has reduced overall greenhouse gas (GHG) emissions by 41% since 2000. There are three important considerations:

- Berkeley's emission reduction and fossil fuel free goals were set in the context of a growing population, so the 2023 emissions reductions were achieved with a 16% increase in population from the 2000 baseline.
- UC Berkeley and the Berkeley Lab are not included in Berkeley's GHG emissions inventory because their campuses are outside of the City's jurisdiction. However, both institutions track their own emissions reduction goals and are engaged community partners in addressing climate change. Learn more about these efforts online.<sup>19</sup>
- The transportation emissions methodology changed starting in 2018. Prior to 2018, the Bay Area's Metropolitan Transportation Commission (MTC), Travel Model One, was used to calculate transportation sector emissions; but that model could not account for changes to yearly commuting patterns or impacts from events like the COVID-19 pandemic. Starting in 2018, transportation data emissions are calculated through Google's Environmental Insights Explorer (EIE) which estimates vehicle miles based on aggregated and anonymized location history data.

To note, the last greenhouse gas inventory reported to Council in 2023 utilized Google EIE data and used national data to estimate the total miles traveled and fuel efficiency by each fuel category (gasoline, diesel, electricity, etc.). This year, staff was able to use local data for Alameda County for the fuel category breakdown. Alameda County data can account for local fuel efficiencies and electric vehicle adoption rates which are above the national average. Due to the change to local data for the fuel category breakdown, the updated emissions inventories for 2018-2021 are lower than what was reported to Council in 2023.

Since the last update to Council in 2023, staff completed the 2022 and 2023 greenhouse gas inventories. Berkeley's community-wide GHG emissions totaled 455,412 metric tons of carbon dioxide equivalent (mtCO<sub>2</sub>e) in 2022 and 432,806 mtCO<sub>2</sub>e in 2023.

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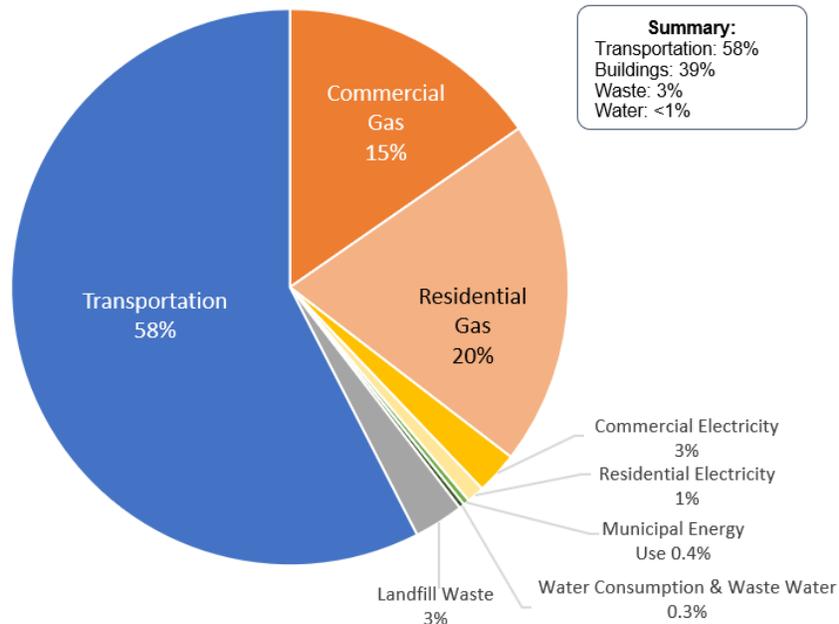
<sup>19</sup> UC Berkeley 2024 Sustainability Report <https://sustainabilityreport.ucop.edu/2024/locations/uc-berkeley/> and the Berkeley Lab 2024 Sustainability Report <https://sustainabilityreport.ucop.edu/2024/locations/lawrence-berkeley-national-lab/>

**Figure 1** is a pie chart of the 2023 community-wide GHG emissions inventory broken down by sector and fuel. The majority of Berkeley’s GHG emissions continue to come from the transportation and building sectors.

The transportation sector was the largest source of 2023 GHG emissions, accounting for 58% (249,028 mtCO<sub>2</sub>e)<sup>20</sup> and includes vehicles, BART, AC Transit, Amtrak and maritime vessels. The building sector was the second largest source of emissions in 2023 and accounted for 39% (168,453 mtCO<sub>2</sub>e)<sup>21</sup> of community-wide emissions. Energy usage data for Berkeley buildings, provided by Ava and PG&E, is broken down into residential and commercial (including industrial) buildings — for both electricity use and natural gas (gas) combustion.

Emissions from municipal energy use accounts for 0.4% (1,516 mtCO<sub>2</sub>e)<sup>22</sup> of the 2023 community-wide GHG emissions. Municipal energy consumption includes city buildings and other uses like streetlights and traffic signals. The remaining 3% (13,808 mtCO<sub>2</sub>e)<sup>23</sup> of Berkeley’s community-wide GHG emissions come from landfilled solid waste, water consumption, and wastewater treatment.

**Figure 1: 2023 Berkeley GHG Emissions Inventory, by Sector and Fuel**



<sup>20</sup> The transportation sector accounted for 55% (252,377 mtCO<sub>2</sub>e) in 2022

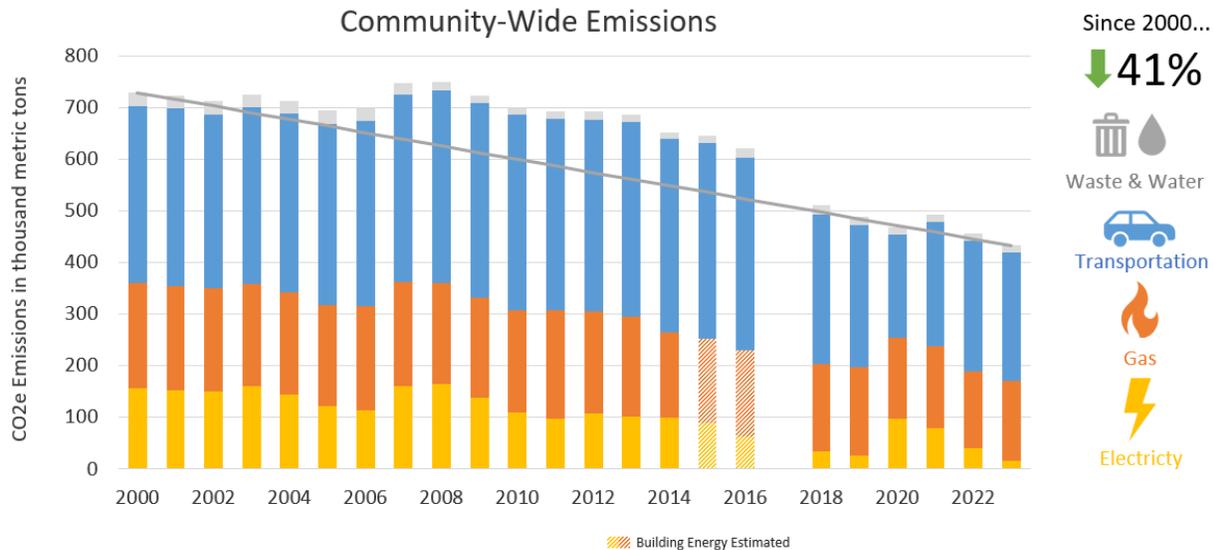
<sup>21</sup> The building sector accounted for 41% (187,662 mtCO<sub>2</sub>e) in 2022.

<sup>22</sup> Emissions from municipal energy use accounted for 0.3% (1,293 mtCO<sub>2</sub>e) in 2022.

<sup>23</sup> Landfilled solid waste, water consumption, and wastewater treatment accounted for 3% (14,080 mtCO<sub>2</sub>e) in 2022.

To identify and quantify reductions achieved, the most current community emissions from 2023 are compared to the Climate Action Plan (CAP) baseline year of 2000. A historic summary of Berkeley’s annual emissions inventories from 2000 to 2023 is provided in **Figure 2<sup>24</sup>**.

**Figure 2: Berkeley GHG Emissions Inventories including Sectors (2000-2023)**



Community-wide GHG emissions in 2023 decreased 41% from the 2000 baseline. As mentioned, due to the change in methodology in calculating transportation sector emissions there is a significant drop in emissions in 2018. From 2018 to 2023, community-wide emissions decreased by 15%. Berkeley’s original CAP goal of reducing GHG emissions by 80% from 2000 levels by 2050 was superseded by a commitment by the Berkeley City Council on May 11, 2021, to become net zero carbon emissions by 2045 or sooner, requiring an additional 59% reduction of GHG emissions over the next 20 years.

### Building Sector Emissions

Overall GHG emissions from Berkeley’s building sector decreased by 10% from 2022 to 2023 and are 53% below 2000 levels. Total community-wide electricity usage has decreased by 36% since 2000. Total community-wide natural gas usage decreased by 6% from 2021 to 2022 and increased by 4% from 2022 to 2023. Community-wide natural gas usage remains 24% below 2000 levels.

<sup>24</sup> Due to data access issues, the City was not provided with energy use data in 2015 and 2016, so building energy usage was estimated using assumptions and is represented with shaded coloring. No inventory was calculated for 2017, so that year of data is omitted.

### Impacts to Berkeley's Building sector emissions:

- **Transition to Ava Renewable 100** – Starting in 2022, all Berkeley customers were automatically opted-up into Ava's Renewable 100. This transition yielded a 62% decrease in emissions from city-wide electricity usage in 2023 from 2022 as many residents and businesses transitioned to Ava's Renewable 100 plan.
- **Ava Bright Choice Electricity Emission Factor** – The emission factor for Ava's default electricity product, Bright Choice, remains significantly higher than PG&E's base product, but has decreased 37% since 2020. The Bright Choice product accounts for 12% of Berkeley's 2023 community-wide electricity consumption. Ava is committed to providing 100% emissions-free Bright Choice by 2030.

### Transportation Sector Emissions

Overall GHG emissions from Berkeley's transportation decreased 14% from 2018, the most recent GHG inventory using the new methodology for on-road vehicles. Emissions from on-road vehicles are calculated using total miles traveled provided by Google Environmental Insights Explorer<sup>25</sup>. While total miles traveled by on-road vehicles decreased by approximately 37 million miles (roughly 6%) in 2023 compared to 2018, emissions from on-road vehicles decreased by approximately 40,000 metric tons of CO<sub>2</sub>e (roughly 14%). The decrease in emissions outpaced the reduction in miles traveled due to the increase of plug-in hybrid and electric vehicles.

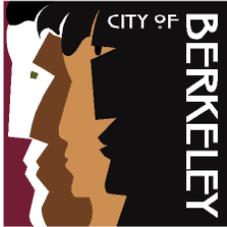
### Landfill Solid Waste Emissions

Total community-wide landfill solid waste and overall emissions from the waste sector decreased by 2% in 2023 compared to 2022, placing current waste sector emissions 47% below the 2000 baseline.

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<sup>25</sup> Google Environmental Insights Explorer: <https://insights.sustainability.google/>





Office of the City Manager

INFORMATION CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

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

Subject: Notice of Decision: 21 Mosswood Road/#LMIN2024-0007

INTRODUCTION

The attached Notice of Decision (NOD) for the Landmarks Designation is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance Section 3.24.160, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has designated the subject property as a City Landmark.

BACKGROUND

Berkeley Municipal Code Section 3.24.300 provides that the City Council is the hearing body for any appeal to review any action of the Commission in granting or denying designation status. The code also provides that the City Council may file its own appeal to review the decision on its merits. An individual Council member may file such an appeal, without prejudice, by providing a written statement clearly and concisely setting forth the grounds upon which the appeal is based. Alternatively, the Council as a whole may vote to appeal the decision; to do so, this Information Item must be moved to the Action calendar and a motion must pass to appeal the LPC decision. Either form of Council appeal or a public appeal must be presented to the City Clerk within 15 days from the mailing of the NOD, i.e. by April 15, 2025. Council review of any appeal by any party stays all proceedings in the matter until the appeal is resolved.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to certify or appeal the decision to grant designation status, setting the matter for public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this designation action.

CONTACT PERSON

Anne Hersch, Land Use Planning Manager, Planning and Development, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN2024-0007/21 Mosswood Road



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

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N o t i c e o f D e c i s i o n

**DATE OF BOARD DECISION: March 6, 2025**  
**DATE NOTICE MAILED: March 31, 2025**  
**APPEAL PERIOD EXPIRATION: April 15, 2025**  
**EFFECTIVE DATE (Barring Appeal or Certification): April 16, 2025<sup>1</sup>**

## 21 Mosswood Road – The Mouser-Parsons House

**Landmark application #LMIN2024-0007 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in ca. 1888 (APN 055-1862-005-00)**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the granted the following designation: **City Landmark**

- **Applicant/Property Owners:** Laura Veit and Isaac Warshauer  
21 Mosswood Road  
Berkeley, CA

**ZONING DISTRICT:** Environmental Safety-Residential District (ES-R)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15061.(b)(3) Review for Exemptions.

**The application materials for this project is available online at:**

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects> or  
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

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<sup>1</sup> Pursuant to BMC Chapter 3.24, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0007**  
**21 Mosswood Road**  
March 31, 2025  
Page 2 of 4

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**FINDINGS AND CONDITIONS OF APPROVAL AND APPLICATION MATERIALS ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 8-0-0-0** *(Note: one vacancy)*

**YES:** CRANDALL, ENCHILL, FINACOM, LEUSCHNER, MONTGOMERY, ORBUCH, PLESE, SCHWARTZ

**NO:** NONE

**ABSTAIN:** NONE

**ABSENT:** NONE

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$1,500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less. Signatures collected per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$6,000.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0007**  
**21 Mosswood Road**

March 31, 2025

Page 3 of 4

If no appeal is received, the landmark permit will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0007**  
**21 Mosswood Road**  
March 31, 2025  
Page 4 of 4

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

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Questions about the project should be directed to the Commission Secretary at (510) 981-7410 or [lpc@berkeleyca.gov](mailto:lpc@berkeleyca.gov). All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3<sup>rd</sup> Fl., during regular business hours.

**ATTACHMENTS:**

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1. Findings for Approval
2. Application Materials



**ATTEST:** \_\_\_\_\_  
Fatema Crane, Secretary  
Landmarks Preservation Commission

cc: City Clerk  
Laura Veit and Isaac Warshauer, 21 Mosswood Road, Berkeley, CA

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# FINDINGS FOR DESIGNATION

MARCH 06, 2025

## 21 Mosswood Road – The Mouser-Parsons Residence

**Landmark application #LMIN2024-0007 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1888 (055-1862-005-00)**

### PROJECT DESCRIPTION

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City Landmark designation of the property at 21 Mosswood Road

### CEQA FINDINGS

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1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

### LANDMARK PRESERVATION ORDINANCE FINDINGS

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1. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A.2 of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the property at 21 Mosswood Road meets the architectural value criterion for City Landmark as a good example of the First Bay Tradition style of architecture. The residence was originally constructed in 1888 as a clapboard farmhouse, on what is now Panoramic Hill, and in 1910 relocated to a nearby site, before it was remodeled in the First Bay Tradition style by architect John Hudson Thomas. The period of significance begins with the remodeling of the residence in 1910 and ends circa the 1920s, when the period of popularity of the First Bay Tradition style concluded. Features that convey its historic significance include, but are not limited to, the residence's integration into its steep hillside setting, asymmetrical wing-and-gable form, unpainted wood-shingle exterior cladding, original casement windows, and hexagonal bay and oriel windows. The existing detached garage, including but not limited to its unpainted wood shingle exterior and perforated tile gable vents, also contributes to the property's significance.
2. Pursuant to BMC Section 3.24.110.A.5, the Commission finds that the subject property is eligible for local register listing because it satisfies the provision that properties which are listed in the National Register of Historic Places are eligible for local listing. The property at 21 Mosswood Road is a contributing resource to the National Register-listed Panoramic Hill historic district.

FEATURES TO BE PRESERVED

This designation shall apply to the subject property and the following distinguishing features of the shall be preserved, and missing features shall be restored to the extent possible:

## Property

- Setting on a wooded hillside among shingled structures of a similar scale
- Concrete retaining wall and concrete steps along Mosswood Road
- Brick patio at south entrance
- Giant sequoia (*Sequoiadendron giganteum*) at southeast corner of property – only as feasible

## Main Residence

- General Architectural Features
  - Steeply gabled roofline with minimal roof overhang
  - 2-3 story massing completely clad in unpainted wood shingles
  - Distinctive “doubled” arrangement of shingles, resulting in a larger shingle exposure
  - Asymmetrical/informal arrangement of windows based on interior needs.
  - Wood casement windows (generally with undivided lites) painted at exterior with no jamb and head trim.
  - Painted trim at roof rake at gable ends
- South Elevation
  - Hipped front porch, including: a. Metal roof with integrated gutter., b. Attenuated ogee cornice, c. Widely spaced dentils, d. Heavy arched brackets.
  - Painted wood front door with full height glazing. Glazing consists of nine lites of unequal size separated with wood muntins
  - Fixed window at front porch flanked by casements. Casement glazing consists of six lites separated with wood muntins (Figure 25).
  - Bay window on second floor, including a. Metal roof, b. Redwood gutter, c. Four-lite painted wood casements with wood muntins,
  - Mulled French casements with bow pediment header at first floor study.
  - Muller French casements with undivided lites at the second story 12
  - 1/1 sash windows at first floor kitchen
  - Redwood gutter.
- West Elevation
  - Muller French casements with undivided lights
  - Corner bay window at the first floor living room, including: a. metal roof with integrated gutter, b. Large fixed window flanked by 21-lite leaded glass casements
- North Elevation
  - Interlocking arrangement of projecting architectural elements
  - Cantilevered roof deck/former sleeping porch, including: a. Shingled parapet, b. Wood soffit, c. Glazed French doors, each with glazing of 9 unequal lites
  - Corner bay window at the living room tucked under the roof deck

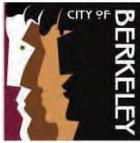
cantilever, including: a. Large fixed window flanked by 21-lite leaded glass casements, b. Angled casement with undivided lite

- Large fixed window at living room
- Bay window at first floor dining room: including: a. Metal roof with integrated gutter, b. Large fixed window at the central face, c. Flanking casement with undivided light, d. Flanking half-glazed door (to adjacent balcony)
- Balcony spanning between dining room and living room bay windows, including the shingled parapet,
- Wood casement windows at second floor
- Redwood gutter
- East Elevation
  - Large fixed window at first floor dining room
  - Wood casement windows at second floor
  - 1/1 sash windows at first floor kitchen
  - Fully glazed door with 9 unequal lites at laundry addition (Figure 12).
  - Redwood gutter

#### Detached Garage

- Rectangular plan
- Unpainted wood shingles throughout exterior walls
- Green glazed perforated Chinese tiles at gable vents
- Wood supporting piers

21 Mosswood Road Landmark Application



Planning and Development Department  
Land Use Planning Division

**City of Berkeley**  
**Ordinance #4694 N.S.**  
**LANDMARK APPLICATION**

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1. **Street Address**            21 Mosswood Road  
**City**                                Berkeley  
**County**                           Alameda  
**Zip**                                    94704
  
2. **Assessor's Parcel Number:** 55-1862-5  
**Block and Lot:** 1862/5  
**Tract:** University Terrace  
  
**Dimensions:** 166.93' to 190.67' wide x 57.68' to 75.17' deep  
  
**Cross Streets:** Mosswood Lane, Panoramic Way
  
3. **Is property on the State Historic Resource Inventory?** Yes.  
**Form #** House OTIS ID: 415295; Garage OTIS ID: 540372  
  
**Is property on the Berkeley Urban Conservation Survey?** Yes.  
**Form #** 17732
  
4. **Application for Landmark includes:**  
**a. Building:** Dwelling    **Garden:** Brick patio and concrete retaining wall  
and steps. Giant Sequoia at southeast corner of the lot.
  
5. **Historic Name:** Mouser-Parsons House
  
6. **Commonly Known Name:** 21 Mosswood Road

21 Mosswood Road Landmark Application

**7. Date of Construction:**

- 1888: Dwelling constructed.<sup>1</sup>
- 1910: Dwelling moved and remodeled.<sup>2</sup>
- Before 1921 (during Marion Parsons' tenure, see Figure 6): Retaining wall and steps constructed.
- Before 1921: *Sequoiadendron giganteum* planted.<sup>3</sup>
- 1924: Garage constructed.<sup>4</sup>

**Source of Information:** Berkeley Urban Conservation Survey, BAHA, and City of Berkeley Permit Records.

**8. Architect:** John Hudson Thomas<sup>5</sup>

**9. Builder:** John Bell<sup>6</sup>

**10. Style:** First Bay Tradition

**11. Original Owners:** Dr. Silas Mercer Mouser (1888); Edward Taylor Parsons and Marion Randall Parsons (1910)

**Original Use:** Residential, single family.

**12. Present Owners:** Laura Veit and Isaac Warshauer

**13. Present Use:** Residential, single family.

**Current Zoning:** ES-R

**Adjacent Property Zoning:** ES-R

**14. Present Condition of Property:**

**Exterior:** Good  
**Interior:** Excellent  
**Grounds:** Fair

**Has the property's exterior been altered? Yes.**

- 1910: Moved to present location, rebuilt, preserving the original roof and structure, but otherwise transforming the structure into a brown shingle house of the First Bay Tradition.<sup>7</sup>
- Between 1910 and 1921: Wooden deck and shingled partial height walls removed at front porch and replaced with brick patio (see Figures 6 and 9).

<sup>1</sup> *Berkeley Herald*, November 5, 1888, transcription in Berkeley Urban Conservation Survey, Berkeley Architectural Heritage Association.

<sup>2</sup> City of Berkeley Building Permit 762, August 8, 1910.

<sup>3</sup> Daniella Thompson, "Sierra Club Pioneers Lived Near Pre-stadium Strawberry Canyon," *East Bay Then and Now*, Berkeley Architectural Heritage Association, January 23, 2007, [https://berkeleyheritage.com/eastbay\\_then-now/sierra\\_club\\_leaders.html](https://berkeleyheritage.com/eastbay_then-now/sierra_club_leaders.html).

<sup>4</sup> City of Berkeley Building Permit 16382, March, 1924.

<sup>5</sup> Permit 762, 1910.

<sup>6</sup> Permit 762, 1910.

<sup>7</sup> Permit 762, 1910.

## 21 Mosswood Road Landmark Application

- 1929: Window opening altered.<sup>8</sup> A permit application submitted this year indicates that a window was moved, in addition to interior alterations to plumbing and partitions at the upper floor. The window is not identified, but photographs indicate that the bathroom windows in the east elevation have been combined and replaced with outswing casements (see Figures 4 and 12). Weathering evident on the casements today seems to be consistent with a 1929 installation date.
- 1941: Small addition to the east side of the house.<sup>9</sup>
- Between 1921 and approx. 1959: A few of the second floor inswing casement windows were replaced with wood outswing casements in the same openings. These windows have now aged considerably and they match the style of the bathroom casements in the east elevation, which may have been installed in 1929 (see above).
- 1977: Kitchen remodeled and windows added at the southeast corner of the first floor.<sup>10</sup>
- Between 1959 and 1997: Sleeping porch converted to an open deck.<sup>11</sup> Bathroom window replaced at the upper floor of the north elevation.
- Between 2015 and 2023: Small windows at the lower level were altered and replaced and temporary shoring was added to the garage.<sup>12</sup>
- Likely after 2000: Garage door replaced.

**15. Description:**

The Mouser-Parsons House was originally constructed in 1888 near the present day location of 11 Mosswood Road.<sup>13</sup> It was a white clapboard farmhouse with an asymmetrical exterior (Figure 1). Two steep gables formed the roof, and an extension of the roof slope formed a porch facing west to Berkeley and the bay. A bay window and a dormer above the porch also addressed the view. The roof had almost no overhang. One large brick chimney was located at one gable end, and a smaller chimney emerged from the northern portion of the house, likely serving the kitchen. A small porch sheltered a door at the rear, which also featured a compact lean-to (Figure 2).

In 1910, the house was moved to the north side of Mosswood Road, just to the east of the junction of Mosswood Road and Mosswood Lane (see Figures 3 and 4). It is now on a steep slope and sits close to the street behind a concrete retaining wall added after the move (Figure 5). This retaining wall, which also incorporates curving stairs and a square post with a simple capital, appears in some of the earliest photographs of the relocated house (see Figure 6). It is similar to the improvements designed by Henry Atkins at Orchard Lane and

<sup>8</sup> City of Berkeley Building Permit 32108, January 4, 1929.

<sup>9</sup> City of Berkeley Building Permit 50678, April 24, 1941.

<sup>10</sup> City of Berkeley Building Permit 010777079, January 6, 1977.

<sup>11</sup> Shirley Kim, "The Mouser Farmhouse: A Lesson in Values and Continuity," (Term Paper, History of Art 184, Prof. Margaretta M. Lovell, University of California, Berkeley, May 1997), 13.

<sup>12</sup> Wei, Pei-Yuan, "Seller Property Questionnaire," August 18, 2022.

<sup>13</sup> Anthony Bruce, Lesley Emmington Jones, Janice Thomas, and Daniella Thompson, eds, *Panoramic Hill, House Tour Brochure* (Berkeley Architectural Heritage Association, May 2005), 3 and 25.

## 21 Mosswood Road Landmark Application

Arden Steps (Berkeley Landmark 174), and it is possible that it had the same builder. See Figure 7 for an image of the present condition of the steps and post.

After the move, the house was completely renovated to the design of John Hudson Thomas. Hudson transformed the house into a shingled home of the First Bay Tradition, removing almost everything but the roof and the structural frame.

The house has been very little altered since the 1910 renovation. The elevations of the residence are now informal and picturesque. Large unpainted shingles clad the exterior walls. Windows and doors are freely arranged to address light, air, and views. Most of the windows have no exterior trim, with shingles continuing over window jambs and heads. Original redwood gutters and cornices create a crisply-defined roof edge at the eave and rake.

The house is now approached from its uphill side, rather than from below, and the old rear elevation is now the front. On this, the south elevation, the entrance is emphasized with a porch on heavy brackets and a bay window above, which springs from the intersection of the gabled roofs (see Figure 8). In plan, the entry door is in the same location as the original rear door, although it is now a few feet higher to accommodate the sloping site. Originally, the porch had a wood deck enclosed with partial height shingled walls (see Figure 9). A photograph (Figure 6) by the first owners of the renovated house indicates that this was removed by 1921 and replaced with a brick patio. To the left of the porch, a first floor window has a header in the shape of a bowed pediment.

The rear (north) elevation contains a playful group of projections (see Figures 10 and 11). On the first floor, there is a corner bay window to the west and a bay window to the east. The eastern bay window is in the same location as the bay window of the original house. A balcony stretches between these two elements. Large picture windows form a nearly continuous strip of glazing, which addresses views of Strawberry Creek Canyon and the San Francisco Bay. On the second floor, a deck, formerly a sleeping porch,<sup>14</sup> cantilevers over the corner bay window.

At the east elevation, a small addition with a shallow pitched roof accommodates a laundry room (see Figure 12). This replaced a small porch over the original kitchen door in 1941.<sup>15</sup> The small sash windows at the upstairs bathroom (visible in Figure 4) have been replaced with casements in a single opening. Downstairs at the northeast corner of the house, the two first floor sash windows at the kitchen were replaced and paired with additional windows closer to the corner. This was likely done as part of a kitchen renovation in 1977.<sup>16</sup>

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<sup>14</sup> Kim, "Mouser Farmhouse," 13.

<sup>15</sup> Permit 50678, 1941.

<sup>16</sup> Permit 010777079, 1977.

## 21 Mosswood Road Landmark Application

The west elevation (visible in Figures 13 and 14) features the interlocking forms of the upstairs deck (former sleeping porch) and living room bay window to the north. To the south are the mulled casements over a window seat in the library. The upstairs casement windows have been replaced. The windows today are heavily weathered wood outswing casements with ogee sticking, much like the bathroom casements on the east elevation. They differ from the 1910 windows evident elsewhere, which are all inswing casements with square sticking. Given their design and apparent age, these windows (along with the upstairs casements at the southwest bedroom on the south elevation) may have been replaced in 1929 along with the east elevation bathroom windows.

The partially finished basement level, which features a wood floor balloon-framed to downhill stud walls, may have been added some time after the relocation of the house. The vinyl windows at the basement level are clearly new, but the age of the window and door openings is uncertain.

At the southeast corner of the property is a Giant Sequoia (*Sequoiadendron giganteum*) said to have been planted by Marion Parsons (see Figure 15).<sup>17</sup> The height appears consistent with a planting approximately a century ago.

At the southwest corner of the property is a small gabled two-car garage supported by wooden piers (Figures 31 and 32). The walls are completely clad in unpainted wood shingles, and the roof is asphalt shingle with minimal overhang. Green glazed perforated Chinese tiles serve as vent screens at the two gable ends (Figure 33). The garage door has been recently replaced. The wood supports have been compromised by rot and the building's structure is currently reinforced with treated wood shoring. An adjacent redwood tree is pressing against the west side of the structure and causing the south face of the garage to shear toward the east. A 2023 inspection by a geotechnical engineer revealed that the foundation and superstructure of the garage will likely need to be completely replaced. Unless the adjacent redwood is removed, the garage will need to be relocated further east.<sup>18</sup>

## 16. History:

### 1888-1910: Dr. Mouser and Atalaya

The house was originally constructed by Silas Mercer Mouser in 1888. A San Francisco doctor, Mouser had purchased a large property from Charles Bailey, the San Francisco developer who had cut Panoramic way into the hillside earlier that year. The house appeared in an album Bailey produced to advertise his Berkeley properties (Figure 2 and Figures 16 and 17). The structure is

<sup>17</sup> Thompson, "Sierra Club Pioneers."

<sup>18</sup> David Olnes, email message to authors, October 26, 2023,

## 21 Mosswood Road Landmark Application

considered the first home built on Panoramic Hill, and its construction was noted at the time as unusual.<sup>19</sup>

Dr. Mouser's House now being constructed on the hillside east of the town is visited by many who regard the situation as being extraordinary for the location of the dwelling. It will certainly open the eyes of many to the desirability of the hills as a handsome location for those who can afford to keep a horse and carriage and do not care for the frequent visits of their friends.

—*Berkeley Herald*, Nov. 5, 1888<sup>20</sup>

Mouser owned an extensive property around the house, which he named *Atalaya* (a Spanish word for "watchtower").<sup>21</sup>

After Dr. Mouser's death, his son, Dr. Benjamin Mouser, sold *Atalaya* to Warren Cheney in 1909.<sup>22</sup> Warren Cheney, a writer-editor-turned-developer, subdivided *Atalaya* and adjacent land under the name "University Hill" in 1910. As part of that subdivision, Cheney created Mosswood Road, Arden Road, Orchard Lane, Mosswood Lane, and Arden Path.<sup>23</sup> Based on early photographs, it appears that the Mouser house stood on or very close to the future Mosswood Road right-of-way (Figure 18). In June 1910, Warren Cheney sold the house to Edward Taylor Parsons and Marion Randall Parsons for \$250. They moved it about July 1910 to lots they purchased on the new Mosswood Road.<sup>24</sup> The Parsonses commissioned John Hudson Thomas to thoroughly renovate the Mouser dwelling into a brown shingle Arts and Crafts house.<sup>25</sup>

### John Hudson Thomas

John Hudson Thomas practiced architecture in Berkeley throughout the first half of the twentieth century. Born in Nevada in 1878 and raised partly in New York, he completed collegiate studies at Yale and obtained a graduate degree in architecture from the University of California, studying under John Galen Howard and Bernard Maybeck. He briefly worked for Howard before setting up a partnership in 1906 with George T. Plowman.<sup>26</sup>

<sup>19</sup> Bruce et al., *Panoramic Hill*, 25.

<sup>20</sup> *Berkeley Herald*, November 5, 1888.

<sup>21</sup> Bruce et al., *Panoramic Hill*, 25.

<sup>22</sup> Daniella Thompson, "U.C. Offers the American Turgenev's House for One Dollar," *Berkeley Landmarks*, Berkeley Architectural Heritage Association, October 29, 2009, [https://berkeleyheritage.com/berkeley\\_landmarks/cheney.html](https://berkeleyheritage.com/berkeley_landmarks/cheney.html).

<sup>23</sup> Warren Cheney Company, Inc., "University Hill, Berkeley, Cal.," Subdivision filed at the Alameda County Recorder, Oakland, California, August 13, 1910.

<sup>24</sup> Edward Parsons paid the Warren Cheney Company for the house on June 14, 1910. He issued two checks to W.P. Grant house mover on July 30, 1910. 1909-1912 Account Book of Edward T. Parsons, Carton 3: Folder 19, Parsons Family Papers, Bancroft Library, University Archives (BANC MSS C-B 478), University of California, Berkeley, 35 and 37.

<sup>25</sup> Bruce et al., *Panoramic Hill*, 25.

<sup>26</sup> Thomas Gordon Smith, "John Hudson Thomas," in *Toward a Simpler Life: The Arts and Crafts Architects of California*, ed. Robert Winter (University of California Press, 1997), 83.

Thomas and Plowman found rapid success designing residences in Oakland and Berkeley after the 1906 San Francisco Earthquake. For the next several years, the two architects designed shingled houses that largely conformed to the aesthetic tendencies of the national Arts and Crafts movement.<sup>27</sup> Thomas undertook the renovation of the Mouser house starting in the summer of 1910, the same year he ended his partnership with George Plowman.<sup>28</sup> The design, with a fully shingled exterior and redwood paneling on walls and ceilings, built-in cabinets, bay windows, and large brick hearths, includes many of the features that characterized the work of Thomas and Plowman. After ending his partnership with Plowman, Thomas began producing adventurous half timbered and stucco houses informed by English Tudor houses, Southwest Pueblos, and Viennese Secessionist designs.<sup>29</sup> His design for the Mouser-Parsons House is therefore one of his last in the woody and shingled mode advocated by the Hillside Club.

#### 1910-1921: Marion and Edward Parsons

Marion Randall Parsons (1880–1953) was born in San Francisco and grew up in Piedmont.<sup>30</sup> She was introduced to the Sierra Club by Wanda Muir, John Muir's eldest daughter.<sup>31</sup> Randall quickly became heavily involved with the fledgling organization, first contributing to the *Sierra Club Bulletin* in 1905.<sup>32</sup> Marion Randall met Edward T. Parsons on her first Club outing in 1903.<sup>33</sup> See Figure 19 for an image of the two on a later excursion.

Edward Parsons (1861-1914), originally of Rochester, NY, became interested in mountaineering while traveling the West for work (he sold building products, notably Sherwin-Williams paint). When he moved to San Francisco, about 1900, he promptly joined the Sierra Club. He quickly distinguished himself as a principal planner of the organization's annual outings, an outings photographer, an editor of Club publications, and a dedicated opponent of plans for the Hetch Hetchy reservoir. He was on the Board of Directors of the Sierra Club for nine years until his death on May 22, 1914.<sup>34</sup>

Parsons lost his home and many personal belongings in the San Francisco earthquake of April 1906.<sup>35</sup> Like many other earthquake refugees, he quickly

<sup>27</sup> Smith, "John Hudson Thomas," 83.

<sup>28</sup> Edward Parsons paid Thomas the first half of his design fee on June 17, 1909–1912 Account Book of Edward T. Parsons, 35; Smith, "John Hudson Thomas," 83.

<sup>29</sup> Leslie M. Freudenheim, *Building with Nature: Inspiration for the Arts and Crafts Home* (Gibbs Smith, 2005), 152–153 and 176–178.

<sup>30</sup> "Marion Randall Parsons, Noted Writer, Artist, Dies," *Oakland Tribune*, July 19, 1953.

<sup>31</sup> Dorcas S. Miller, *Adventurous Women: The Inspiring Lives of Nine Early Outdoorswomen* (Pruett, 2000), 154.

<sup>32</sup> "Marion Randall Parsons," *Sierra Club Bulletin* 38, no. 7 (September 1953): 3.

<sup>33</sup> Miller, *Adventurous Women*, 154.

<sup>34</sup> John Muir, "Edward Taylor Parsons," *Sierra Club Bulletin* 9, no. 4 (January 1915): 221.

<sup>35</sup> Edward Parsons to Fred Parsons (brother), May 9, 1906, Parsons Family Papers, Bancroft Library, University Archives (BANC MSS C-B 478), University of California, Berkeley.

## 21 Mosswood Road Landmark Application

moved to Berkeley, living at 2601 Channing Way beginning in May 1906.<sup>36</sup> This was only a few blocks from Marion Randall's residence at 2617 College Avenue.<sup>37</sup> We know few details about their courtship, but the two were married on March 7, 1907.<sup>38</sup>

The new couple was active in the affluent and bohemian Berkeley social circles of the time. Correspondence indicates that, for example, they received a painting from William Keith as a wedding present<sup>39</sup> and relayed a New Year's gift to Charles Keeler for John Muir.<sup>40</sup> These associations may have played a role in their decision to build an Arts and Crafts home on Panoramic Hill, but the most important reason was undoubtedly their affiliation with the Sierra Club.

The neighborhood was already host to a growing community of Sierra Club members, all living in shingled houses by Julia Morgan. William Colby, Secretary of the Sierra Club, was at 2901 Channing Way.<sup>41</sup> Joseph Nisbet Le Conte, later the second President of the Sierra Club, lived at 19 Hillside Court.<sup>42</sup> Lincoln Hutchinson, club member and UC professor, was at 9 Canyon Road.<sup>43</sup> In this context, the only unusual aspect of their decision to renovate the Mouser farmhouse on Mosswood Road was that they did not hire Morgan to design it. This community would continue to grow. Sierra Club members Willis Jepson<sup>44</sup> and James Hutchinson<sup>45</sup> joined Marion Parsons on Mosswood Road in 1925 and 1935, respectively.<sup>46</sup>

Soon after moving into their new home, the Parsons couple took formal photographs in the redwood paneled interior (Figures 20 and 21).

### The Parsons Family and John Muir

Marion Parsons already knew John Muir (1838-1914) from her acquaintance with Wanda Muir, but the Parsons continued to have a close association with Mr. Muir while on Mosswood Road.

<sup>36</sup> Edward Parsons to Fred Parsons, May 9, 1906.

<sup>37</sup> Edward Parsons to Marion Randall, undated, Parsons Family Papers, Bancroft Library, University Archives (BANC MSS C-B 478), University of California, Berkeley.

<sup>38</sup> Marriage Announcement of Marion Randall and Edward Taylor Parsons, March 7, 1907, Parsons Family Papers, Bancroft Library, University Archives (BANC MSS C-B 478), University of California, Berkeley.

<sup>39</sup> William Keith to Edward Parsons, May 24, 1907, Parsons Family Papers, Bancroft Library, University Archives (BANC MSS C-B 478), University of California, Berkeley.

<sup>40</sup> John Muir to Edward and Marion Parsons, December 22, 1912, Bancroft Library, University of California, Berkeley, <https://www.jstor.org/stable/community.36020737>.

<sup>41</sup> Susan Dinkelspiel Cerny, *Berkeley Landmarks: An Illustrated Guide to Berkeley, California's Architectural Heritage* (Berkeley Architectural Heritage Association, 2001), 204.

<sup>42</sup> Thompson, "Sierra Club Pioneers."

<sup>43</sup> Thompson, "Sierra Club Pioneers."

<sup>44</sup> Thompson, "Sierra Club Pioneers."

<sup>45</sup> Thompson, "Sierra Club Pioneers."

<sup>46</sup> Bruce et al., *Panoramic Hill*, 22, 36.

## 21 Mosswood Road Landmark Application

Together with Muir and William Colby, Edward Parsons was a key organizer of the Sierra Club's opposition to San Francisco's plan to dam the Hetch Hetchy Valley, a lesser known but remarkable neighbor to Yosemite Valley. The Club's Hetch Hetchy campaign failed and the dam was built, but the effort helped catalyze the nascent environmental movement in the United States.

Marion and Edward Parsons visited John Muir at his home in Martinez (see Figure 22), but archival evidence also indicates that John Muir visited the Mouser-Parsons house on at least three occasions. He signed the Parsons guest book on May 5 and December 6, 1912, and he recollected the second visit in a letter later that month: "I look back with pleasure at the happy weeks I spent at your hospitable high home."<sup>47</sup> Muir returned in 1914 to work on the manuscript of his last book, *Travels in Alaska*, with Marion Parsons.<sup>48</sup>

Marion Parsons served as a Director of the Sierra Club from her husband's death until 1938. When her physical health kept her from mountaineering, she took up painting and writing projects and published a book on Northern California history, *Old California Houses*, in 1952. She continued living at the Mouser-Parsons house until 1921, when she built a home on lots she owned up the street (now 29 Mosswood Road). As a widow, Parsons took in lodgers at the house. These included a mother and daughter, Mary and Elizabeth Ferguson. Elizabeth was the future wife of Walter Steilberg, an associate of Julia Morgan and designer of many neighborhood structures.<sup>49</sup> In 1921, years after the Fergusons moved to a home (designed by Steilberg) at 1 Orchard Lane, Steilberg and Elizabeth Ferguson apparently legalized their Quaker marriage at the Mouser-Parsons house. Earl Morse Wilbur, the new owner of the house, officiated.<sup>50</sup>

### 1921-1956 Earl Morse Wilbur and Dorothea Eliot Wilbur

Earl Morse Wilbur (1886-1956) was a prominent Unitarian minister and historian. He lived in the home with his wife Dorothea Eliot Wilbur until his death in 1956. Wilbur wrote many of his best known manuscripts in the study from an enormous ancient typewriter and filled the shelves with rare books now housed at the Starr King School for the Ministry in Berkeley.<sup>51</sup>

<sup>47</sup> John Muir to Edward and Marion Parsons, December 10, 1912, Bancroft Library, University of California, Berkeley, <https://www.jstor.org/stable/community.36020723>.

<sup>48</sup> Marion Randall Parsons, "John Muir and the Alaska Book," *Sierra Club Bulletin* 10, no. 1 (January 1916): 33–36.

<sup>49</sup> Bruce et al., *Panoramic Hill*, 8.

<sup>50</sup> Helena Steilberg Lawton, "Walter Steilberg, Architect: The Man, His Times, His Work" in *The Julia Morgan Architectural History Project, Vol. 1: The Work of Walter Steilberg and Julia Morgan*, ed. Suzanne B. Riess (Regional Oral History Office, Bancroft Library, 1976), 263.

<sup>51</sup> "Wilbur, Earl Morse (1886–1956)," Harvard Square Library, accessed April 28, 2024, <https://www.harvardsquarelibrary.org/biographies/earl-morse-wilbur/>.

## 21 Mosswood Road Landmark Application

The Wilburs built the garage in 1924<sup>52</sup> and the small eastern addition off the kitchen in 1941.<sup>53</sup> The garage, although a small utilitarian structure, was likely designed by Walter Steilberg, as indicated by the inclusion of Chinese green perforated tiles, a signature architectural feature of Steilberg.<sup>54</sup> The Wilburs also replaced a few windows at the exterior (see Description above). After Earl Wilbur's death in 1956, Dorothea Wilbur rented the house to student boarders<sup>55</sup> until her death in 1957.<sup>56</sup>

**1959-2013 Ernest and Yanka Sotelo and Family**

Ernest Sotelo was a mechanical engineer who, as a young man, purchased 21 Mosswood Road with an acquaintance.<sup>57</sup> In 1984, he was joined at 21 Mosswood by his wife Yanka (Yancich) Sotelo, a former Metropolitan Opera Ballet dancer and teacher.<sup>58</sup> During his long tenure, he converted the sleeping porch into a deck<sup>59</sup> and renovated the kitchen and bathrooms, adding windows at the southeast corner of the first floor in the process.<sup>60</sup>

**2013-2015 Andrew R. Maxwell and Jacqueline T. Fauteux****2015-2023 Wei Pei-Yuan (Perry Wei)**

Wei Pei-Yuan was an internet pioneer who developed the web browser ViolaWWW, which formed the basis of all major web browsers to follow.<sup>61</sup> Wei altered and replaced small windows at the lower level and made minor interior alterations.<sup>62</sup> Wei also added temporary shoring at the garage in 2016 or 2017.<sup>63</sup>

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<sup>52</sup> Permit 16382, 1924.

<sup>53</sup> Permit 50678, 1941.

<sup>54</sup> Bruce et al., *Panoramic Hill*, 8.

<sup>55</sup> Kim, "Mouser Farmhouse," 11.

<sup>56</sup> "Dorothea Dix Eliot Wilbur," Find a Grave,

<https://www.findagrave.com/memorial/153913112/dorothea-dix-wilbur>, accessed November 30, 2024.

<sup>57</sup> Kim, "Mouser Farmhouse," 11.

<sup>58</sup> "Sotelo, Yanka," obituary in *SFGate*, July 13, 2001, accessed November 30, 2024,

<https://www.sfgate.com/news/article/SOTELO-Yanka-2901110.php>

<sup>59</sup> Kim, "Mouser Farmhouse," 13.

<sup>60</sup> Permit 010777079, 1977.

<sup>61</sup> "We are very sorry to hear that Pei-Yuan "Perry" Wei, creator of the pioneering web browser Viola, has passed away..." Computer History Museum, LinkedIn Post, 2023, accessed April 30, 2024.

[https://www.linkedin.com/posts/computer-history-museum\\_we-are-very-sorry-to-hear-that-pei-yuan-activity-7057391732425920512-PIA-](https://www.linkedin.com/posts/computer-history-museum_we-are-very-sorry-to-hear-that-pei-yuan-activity-7057391732425920512-PIA-)

<sup>62</sup> Wei, "Seller Property Questionnaire," 2022.

<sup>63</sup> Wei, "Seller Property Questionnaire," 2022.

17. Significance:

**Architectural:**

- **First/Last/Only** The Mouser-Parsons House was the first residence built on Panoramic Hill. It is one of only a few remaining houses in Berkeley that were once part of an agricultural property. It is also one of the last shingled Arts and Crafts houses of John Hudson Thomas.
- **Exceptional Values as part of neighborhood fabric.** The home, as remodeled in 1910 in the First Bay Tradition, is an important contributor to the Panoramic Hill Historic District. It has a prominent location on Mosswood Road at the top of Mosswood Lane, and it is an important element of the architectural identity of the street for many passersby using the hiking and fire trails uphill.

**Cultural:** The Mouser-Parsons House is closely associated with the early Conservation movement. Its owners were directors of the Sierra Club, and Edward Parsons was an outspoken critic of the Hetch Hetchy Reservoir. Many early Sierra Club members made Berkeley their home, and the organization continues to have strong ties to the East Bay. The activism of early Sierra Club members helped to plant the seed of the environmentalism that is a defining legacy of Berkeley.

**Educational:** The Mouser-Parsons house has a unique architectural history that is still evident in the building today. The features of the house, to the trained eye, can be used to tell the history of the neighborhood, from its rural beginnings to its subsequent subdivision and settlement by Sierra Club and University affiliates. In fact, some features of the original Mouser interior remain beneath the floor of the study.

**Historical:** The Mouser-Parsons house is a much-altered country house of a San Francisco doctor that was moved and remodeled by early environmentalists: one a pioneering woman mountaineer and the other a refugee of the 1906 earthquake. This history, which has left its mark on the present form of the home, shares many elements with the history of the city as a whole. Moreover, the house is directly associated with John Muir, a figure of clear national historical importance.

**Historic Value:**

National
  State
  County
  City
  Neighborhood

**Architectural Value:**

National
  State
  County
  City
  Neighborhood

### List of Features to be Preserved

Based on the above significance, the following list identifies features of the subject property that should be preserved:

**Site** (See Drawing B-1 in *Attachment B: Drawings* for feature locations.)

1. Setting on a wooded hillside among shingled structures of a similar scale.
2. Concrete retaining wall and concrete steps along Mosswood Road (Figure 7).
3. Brick patio at south entrance (Figure 5).
4. Giant sequoia (*Sequoiadendron giganteum*) at southeast corner of property (Figure 15).

### General Architectural Features

1. Steeply gabled roofline with minimal roof overhang.
2. 2-3 story massing completely clad in unpainted wood shingles.
3. Distinctive “doubled” arrangement of shingles, resulting in a larger shingle exposure (Figure 23).
4. Asymmetrical/informal arrangement of windows based on interior needs.
5. Wood casement windows (generally with undivided lites) painted at exterior with no jamb and head trim. Typical jamb shown in Figure 23.
6. Painted trim at roof rake at gable ends.

**South Elevation** (See Drawing B-3 in *Attachment B: Drawings* for feature locations.)

1. Hipped front porch (Figure 8).
  - a. Metal roof with integrated gutter. See Figure 24 for typical gutter.
  - b. Attenuated ogee cornice.
  - c. Widely spaced dentils.
  - d. Heavy arched brackets.
2. Painted wood front door with full height glazing. Glazing consists of nine lites of unequal size separated with wood muntins (Figure 25).
3. Fixed window at front porch flanked by casements. Casement glazing consists of six lites separated with wood muntins (Figure 25).
4. Bay window on second floor (Figures 5 and 8).
  - a. Metal roof.
  - b. Redwood gutter.
  - c. Four-lite painted wood casements with wood muntins.
5. Mullled French casements with bow pediment header at first floor study (Figure 26).
6. Mullled French casements with undivided lites at the second story

(Figure 8).

7. 1/1 sash windows at first floor kitchen (Figure 12).
8. Redwood gutter.

**West Elevation** (See Drawing B-3 in *Attachment B: Drawings* for feature locations.)

1. Muller French casements with undivided lights (Figure 14).
2. Corner bay window at the first floor living room (Figures 11 and 14).
  - a. Metal roof with integrated gutter (Figure 24).
  - b. Large fixed window flanked by 21-lite leaded glass casements.

**North Elevation** (See Drawing B-3 in *Attachment B: Drawings* for feature locations.)

1. Interlocking arrangement of projecting architectural elements (Figure 11).
2. Cantilevered roof deck/former sleeping porch (Figure 10 and 11).
  - a. Shingled parapet (Figure 27).
  - b. Wood soffit (Figure 28).
  - c. Glazed French doors, each with glazing of 9 unequal lites (Figure 27).
3. Corner bay window at the living room tucked under the roof deck cantilever (Figures 10 and 11).
  - a. Large fixed window flanked by 21-lite leaded glass casements.
  - b. Angled casement with undivided lite (Figure 28).
4. Large fixed window at living room (Figure 29).
5. Bay window at first floor dining room (Figures 10 and 29).
  - a. Metal roof with integrated gutter.
  - b. Large fixed window at the central face.
  - c. Flanking casement with undivided light.
  - d. Flanking half-glazed door (to adjacent balcony) (Figure 29).
6. Balcony spanning between dining room and living room bay windows (Figure 10).
  - a. Shingled parapet (Figure 29).
7. Wood casement windows at second floor (Figure 10).
8. Redwood gutter.

**East Elevation** (See Drawing B-3 in *Attachment B: Drawings* for feature locations.)

1. Large fixed window at first floor dining room (Figure 30).
2. Wood casement windows at second floor (Figure 12).
3. 1/1 sash windows at first floor kitchen (Figure 12).
4. Fully glazed door with 9 unequal lites at laundry addition (Figure 12).
5. Redwood gutter.

**18. Is the property endangered?** No.

**19. Photographs:** see Attachment A: Figures.

**20. Bibliography:**

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- . John Muir to Edward and Marion Parsons, December 22, 1912. Bancroft Library, University of California, Berkeley. <https://www.jstor.org/stable/community.36020737>
- Parsons Family Papers. Bancroft Library, University Archives (BANC MSS C-B 478). University of California, Berkeley.
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**21. Recorder:** Isaac Warshauer and Laura Veit **Date:** 1/24/2025  
**Organization:** Owners

**List of Attachments:**

- A. Figures
  - B. Drawings
  - C. Marion Randall Parsons, "John Muir and the Alaska Book," *Sierra Club Bulletin* 10, no. 1 (January 1916): 33–36.
  - D. *Panoramic Hill*. House Tour Brochure. Berkeley Architectural Heritage Association, May 2005.
  - E. Panoramic Hill National Register of Historic Places Registration Form.
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21 Mosswood Road Landmark Application

**Attachment A: Figures**

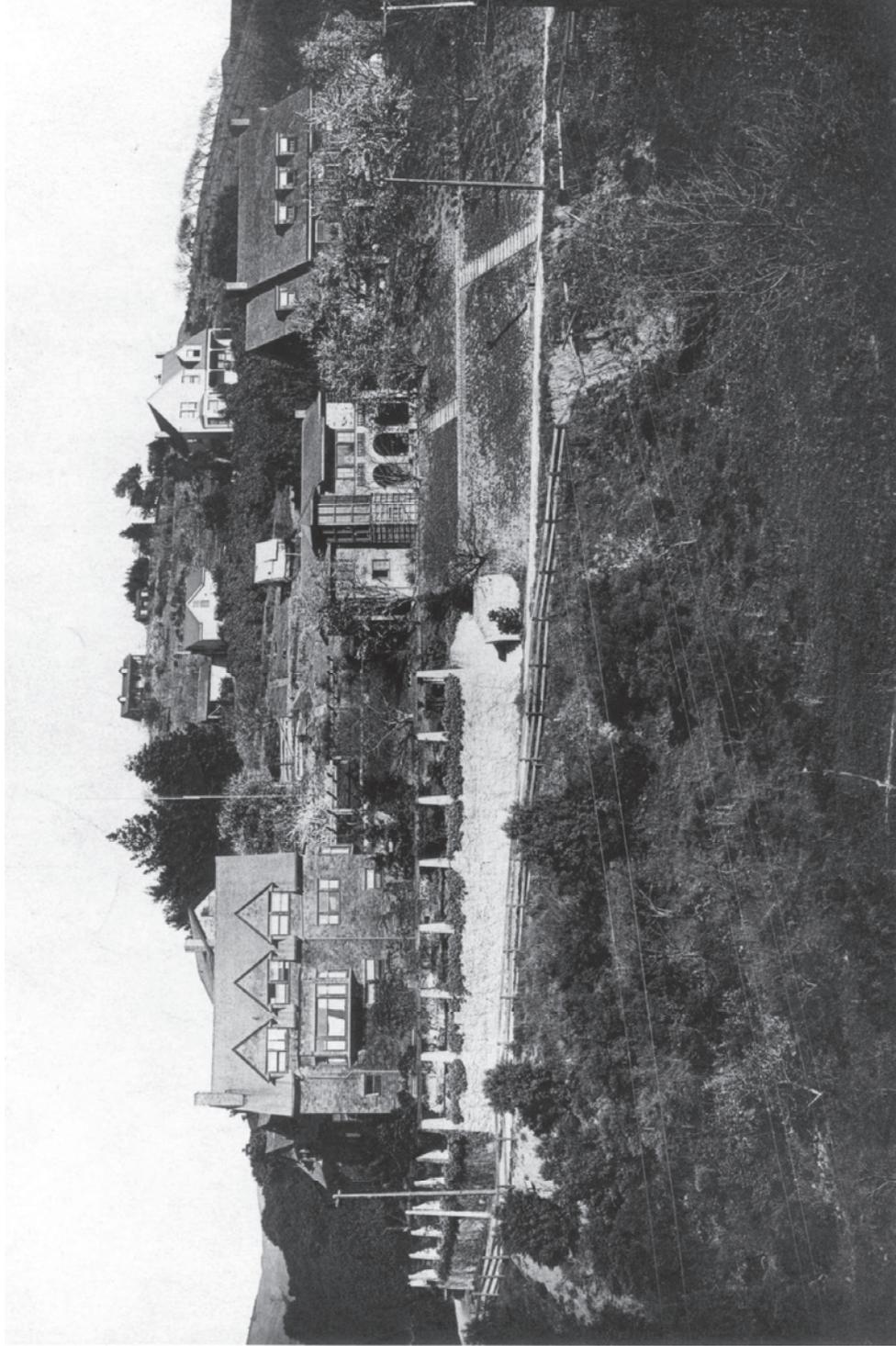


Figure 1: Mouser-Parsons House is in upper right of frame, with white clapboard siding and visible porch. The house is in its original location, near the current address of 11 Mosswood Road. Undated image courtesy of Berkeley Architectural Heritage Association.

A-1

21 Mosswood Road Landmark Application



Figure 2: An 1889 photograph taken from above the Mouser farmhouse and associated outbuildings. The rear elevation of the house visible here later became the front elevation when the house was moved up Mosswood Road in 1910. Image from Bailey, *Berkeley the Beautiful*. Courtesy of Bancroft Library, University of California at Berkeley.

A-2

21 Mosswood Road Landmark Application



Figure 3: An early photo of the relocated and renovated Mouser farmhouse taken by Edward Parsons. Note that Mosswood Road is still unpaved and that the concrete retaining wall is not yet constructed in front of the house. Digitally inverted silver nitrate negative. Undated image #nn23, Edward T. and Marion R. Parsons Photographs Collection (FIC-2020-001), William E. Colby Memorial Library, Sierra Club.



Figure 4: This panorama, taken uphill of the relocated house, was possibly taken the same day as Figure 6. (The same two boards are visible to the east of the front porch). The kitchen door is visible to the west with steeply pitched porch roof above. Undated image #nn22, Parsons Photographs Collection, Colby Memorial Library, Sierra Club.

A-3



Figure 6: This photograph, taken by Edward or Marion Parsons, shows the walls and wood deck removed at the front porch and replaced with a brick patio. Note the new concrete retaining wall. The curb of Mosswood Road, now paved, is visible in the background. Image #mm420, Parsons Photographs Collection, Colby Memorial Library, Sierra Club.



Figure 5: Brick patio and concrete retaining wall between the dwelling and Mosswood Road. These landscape features, largely unchanged, appear in a Parsons photograph (Figure 9). Photograph by Isaac Warshauer, January 27, 2024.

21 Mosswood Road Landmark Application



Figure 7: Concrete steps and pillar at the brick patio. These features bear a resemblance to the improvements at Orchard Lane designed by Henry Atkins. Photograph by Isaac Warshauer, October 6, 2024.

A-5

21 Mosswood Road Landmark Application



Figure 8: The south elevation of the Mouser-Parsons house. Photograph by Isaac Warshauer, October 6, 2024.

A-6



Figure 9: Marion Randall Parsons on the front porch of the newly renovated Mouser-Parsons house. Note the wood deck and shingled walls. "Marion Parsons on Porch," POR: Parsons, Marion Randall: 03, Bancroft Library Portrait Collection, University of California at Berkeley, ca. 1910.

21 Mosswood Road Landmark Application



Figure 10: The north elevation of the Mouser Parsons House. Photograph by Isaac Warshauer, October 6, 2024.

A-8

21 Mosswood Road Landmark Application



Figure 11: The interconnected forms of the bay windows and balconies at the northwest corner of the Mouser-Parsons House. Photograph by Isaac Warshauer, February 3, 2024.

A-9

21 Mosswood Road Landmark Application



Figure 12: The southeast corner of the Mouser-Parsons House. Note the alterations at the kitchen on the first floor, including sash windows at the corner and a lean-to addition. Photograph by Isaac Warshauer, October 9, 2024.

A-10

21 Mosswood Road Landmark Application



Figure 13: View of the southwest corner of the Mouser-Parsons House from Mosswood Road. Photograph by Isaac Warshauer, October 6, 2024.

A-11

21 Mosswood Road Landmark Application



Figure 14: West elevation of the house. Photograph by Laura Veit, December 11, 2024.

A-12

21 Mosswood Road Landmark Application



Figure 15: Giant Sequoia (*Sequoiadendron giganteum*) planted by Marion Parsons at the southeast corner of the lot at 21 Mosswood Road. Photograph by Isaac Warshauer, October 6, 2024.

A-13

21 Mosswood Road Landmark Application



Figure 16: An 1889 view of the Silas Mouser farmhouse (background left, behind the Samuel Perkins house, built 1886). The whole of Panoramie Hill is treeless ranch land, although the zig-zagging edge of Panoramie Way is visible to the right of the Mouser house. The Smyth-Fernwald house appears background right. Image from Charles A. Bailey, *Berkeley the Beautiful* (San Francisco: C.A. Bailey, 1889). Courtesy of Bancroft Library.

A-14

21 Mosswood Road Landmark Application



Figure 17: Two images from an 1889 panorama featuring the Mouser farmhouse. The photograph was taken on Panoramic Way, looking north from just above the second switchback. Image from Bailey, *Berkeley the Beautiful*. Courtesy of Bancroft Library.

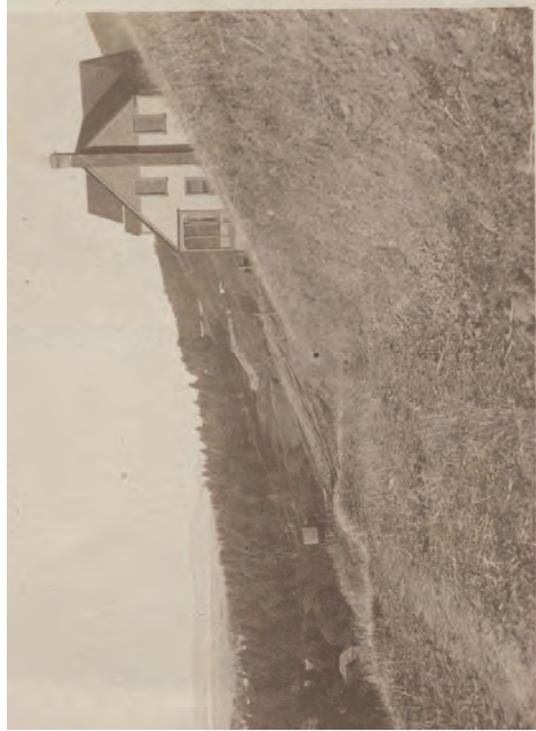


Figure 18: A comparison of conditions on Panoramic Way, in 1889 and today. The Mouser farmhouse appears to be in the future right-of-way of Mosswood Road. Image on the right is an enlargement of Figure 16, above. Photograph on right by Isaac Warshauer, March 7, 2024.



A-15

21 Mosswood Road Landmark Application



Figure 19: Edward (left) and Marion Parsons (center) on an unidentified excursion. POR: Parsons, Marion Randall: 24 Bancroft Library Portrait Collection, University of California at Berkeley.

A-16

21 Mosswood Road Landmark Application



Figure 20: An undated photograph of Marion Parsons in the redwood-paneled living room of the renovated Mouser-Parsons house. Photograph by Sidney Webb. POR: Parsons, Marion Randall:17, Bancroft Library Portrait Collection, University of California, Berkeley.

A-17

21 Mosswood Road Landmark Application



Figure 21: An undated photograph of Edward Parsons in the study of the renovated Mouser-Parsons house. Photograph by Sidney Webb. POR: Parsons; Edward Taylor: 5, Bancroft Library Portrait Collection, University of California, Berkeley.

A-18

21 Mosswood Road Landmark Application

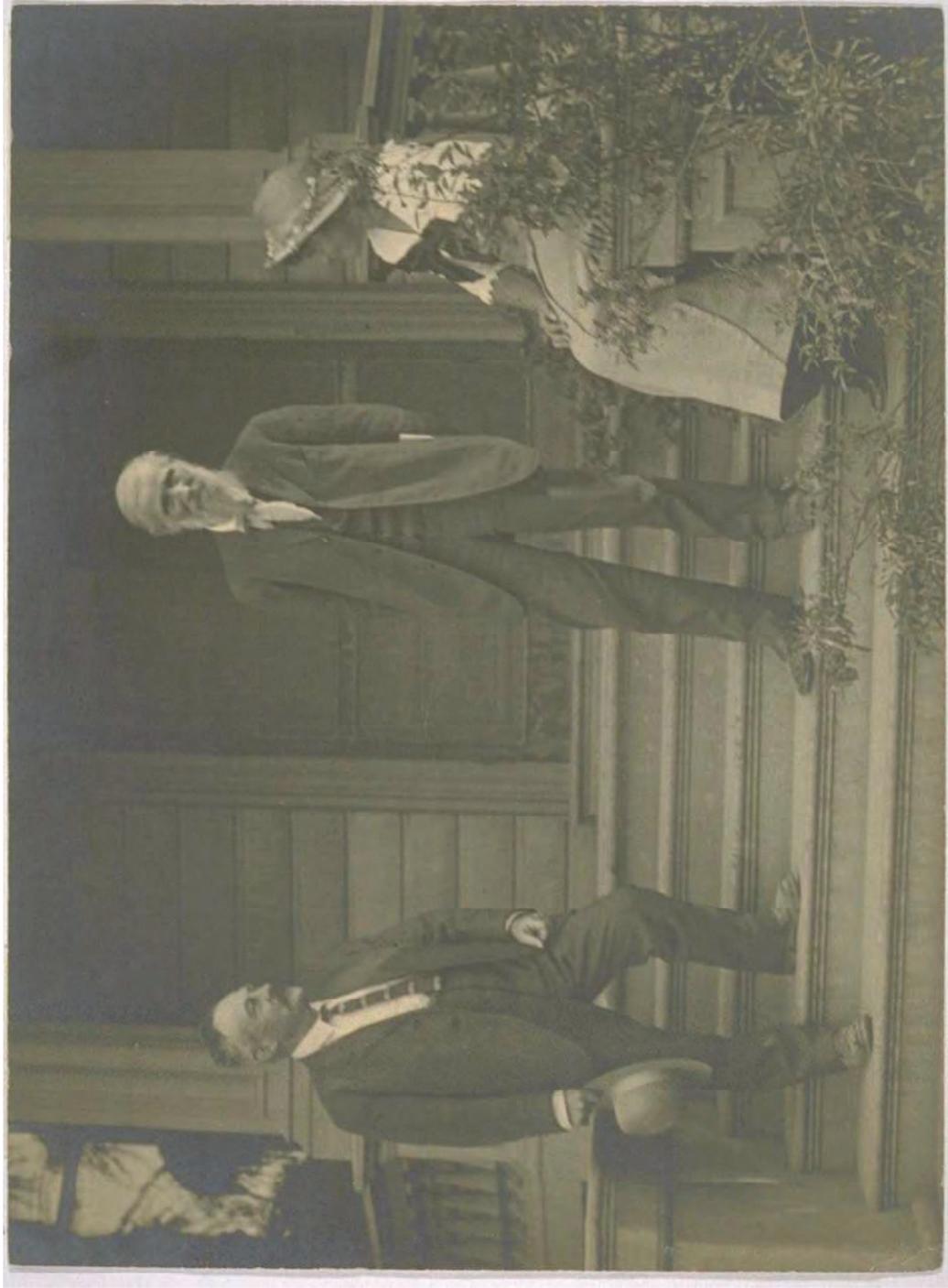


Figure 22: Edward and Marion Parsons on a visit with John Muir at his home in Martinez. Herbert Wendell Gleason, "[John] Muir with Edward Taylor Parsons and Marion Randall Parsons at Martinez." POR: Muir, John: 63. Bancroft Library Portrait Collection, University of California at Berkeley, October 13, 1913.

A-19

21 Mosswood Road Landmark Application



Figure 23: View of the "doubled" arrangement of shingles on the Mouser-Parsons House. This results in an unusually large shingle exposure and gives a distinctive texture to the cladding. Photograph by Isaac Warshauer, January 24, 2025.



Figure 24: Metal roof at living room corner bay window. The integrated gutter also appears at the dining room bay window and front porch. Photograph by Isaac Warshauer, January 23, 2025.

A-20

21 Mosswood Road Landmark Application



Figure 25: Front door and window at front porch. Photograph by Isaac Warshauer, January 23, 2025.

A-21

21 Mosswood Road Landmark Application



Figure 26: Mullioned French casement windows with bowed pediment header at the first floor study (south elevation). Photograph by Isaac Warshauer, January 24, 2025.

A-22

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Figure 27: Glazed French door, redwood gutter, and shingled parapet at the roof deck. Photograph by Isaac Warshauer, January 23, 2025.

A-23

21 Mosswood Road Landmark Application



Figure 29: Balcony and half glazed door at dining room bay window. Photograph by Isaac Warshauer, January 23, 2025.



Figure 28: Balcony and angled casement window at living room corner bay window. Photograph by Isaac Warshauer, January 23, 2025.

A-24

21 Mosswood Road Landmark Application



Figure 30: Fixed window at first floor dining room (east elevation).  
Photograph by Isaac Warshauer, January 24, 2025.

A-25

21 Mosswood Road Landmark Application



Figure 31: Garage, built 1924 at the southwest corner of the subject property. It is structurally unsound and being further compromised by an adjacent redwood tree. Photograph by Isaac Warshauer, January 24, 2025.

A-26

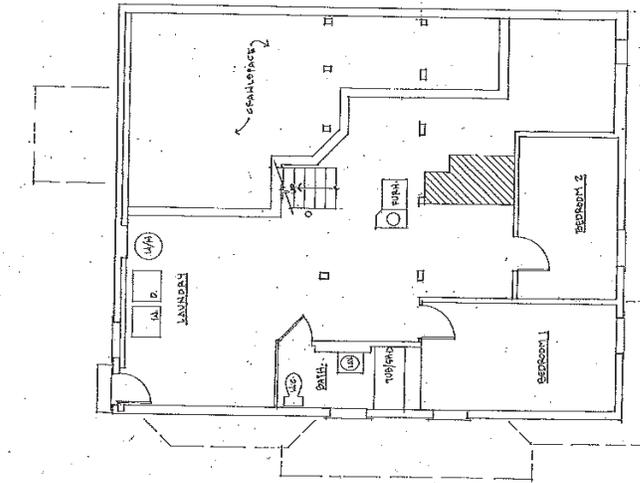


Figure 32: View of the garage from the northeast showing temporary shoring installed . Photograph by Isaac Warshauer, January 24, 2025.

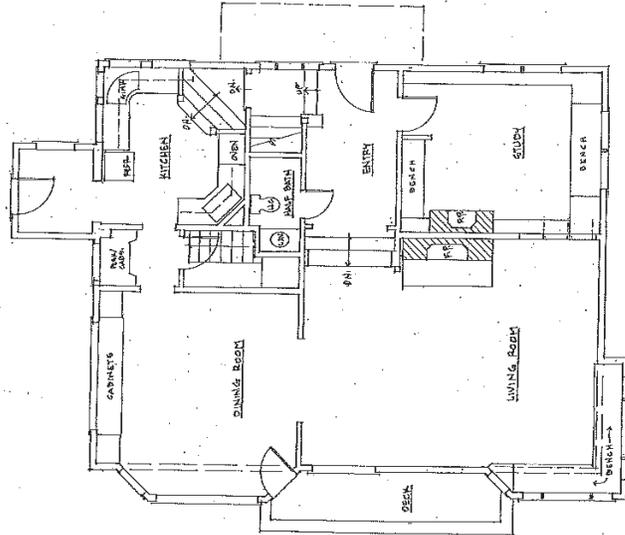


Figure 33: Detail view of east wall of the garage showing a Chinese perforated green glazed tile used as a vent screen. This is a signature architectural motif of Walter Steilberg. Photograph by Isaac Warshauer, January 24, 2025.

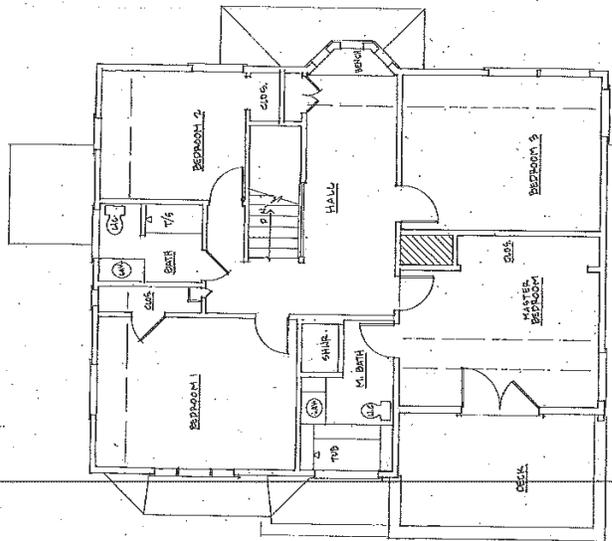




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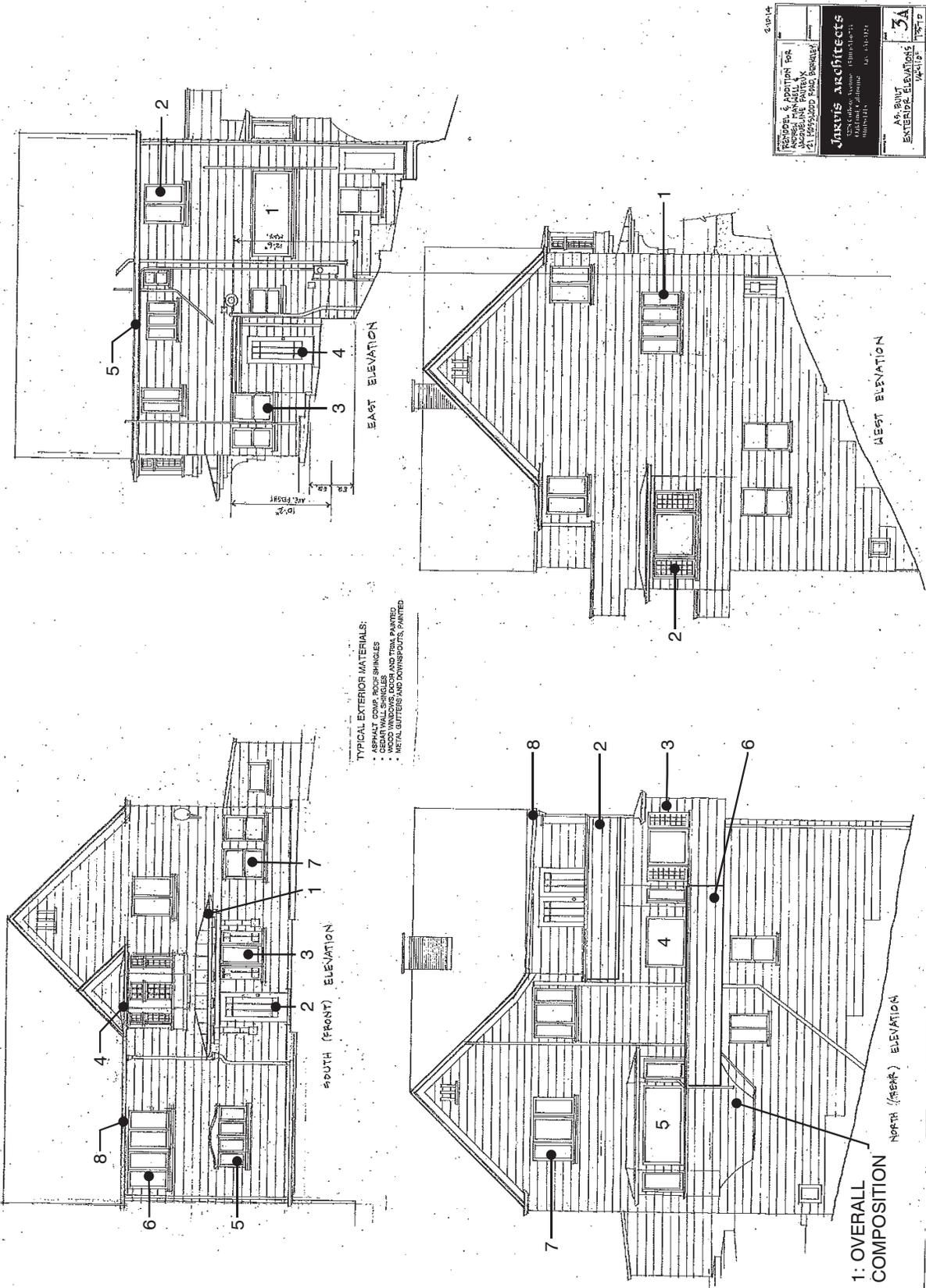
B-2

WORK OF JARVIS ARCHITECTS.  
INCLUDED FOR INFORMATION ONLY.

21 Mosswood Road Landmark Application

Supplemental Information

**B: Elevations Noting Locations of Features**



UNDERLYING DRAWINGS ARE THE WORK OF JARVIS ARCHITECTS.  
INCLUDED FOR INFORMATION ONLY.

B-3

Attachment C

## JOHN MUIR AND THE ALASKA BOOK

BY MARION RANDALL PARSONS



In November, 1912, not long after his return from his last long journey across South America and Africa, Mr. Muir came to Berkeley to begin work on his Alaska notes. For a month he worked at my home with a stenographer, getting an exact transcription of the journals. The travel-worn, weather-stained little books carried on those memorable exploring trips of nearly forty years before were crammed with sketches and voluminous notes, jotted down perhaps in the canoe, or around the camp-fire, but oftenest in the solitudes of the great glaciers in whose study he cheerfully underwent so much cold and hunger and hardship.

It was most amusing to watch Mr. Muir at work. His intense interest in his subject led him to make many a long digression as his notes brought this or that incident to mind. Time meant nothing to him. Household machinery might stop, food grow cold on the table, and the business members of the family miss their morning trains while Mr. Muir pursued the tranquil course of his subject to the end. And so for an hour or more he might discourse while the stenographer sat with her hands folded. Her stolidity and indifference exasperated him beyond measure. To have no curiosity about the "terrestrial manifestations of God," above all to have no interest in glaciers, was to him both incomprehensible and sinful.

Once started on a task Mr. Muir was a tireless worker. The book in hand might have lain fallow for thirty years, but when it began to take form and substance he was all afire with eagerness to see it finished. Long evenings he spent poring over the notebooks or drawing from them the texts of the monologues he delighted in. His mind, indeed, dwelt with such complete absorption on his work that his conversation nearly always indicated its trend. His speech had all the beauty of phrase, the force and vigor of style of his written word, but with an added spell of fire and enthusiasm and glowing vitality that made it

an inspiration and never-ending delight. Many a page of this Alaska book is for me a living record of our fireside hours of companionship.

Not until many months later, however, did I have any close acquaintance with *Travels in Alaska*. After working on it only a short time, Mr. Muir laid the book aside to take an active part in the fight for Hetch Hetchy. A few weeks after the final defeat a severe illness, from whose effects he never fully recovered, again interrupted the book. In his weakened condition the mere sifting out of the enormous mass of material was a task almost beyond his strength. Finding him one day utterly discouraged over it, I offered to go to him a day or two each week to help him until he could find the secretary to his mind. The arrangement proved unexpectedly happy and congenial to us both, and lasted until within a week of his death.

No one unacquainted with Mr. Muir's habits of work and living could appreciate the difficulty, nor, indeed, the humorous nature of the task. He was living alone in the dismantled old home, unused save for his study and sleeping porch. He went to his daughter's home for his meals, but neither she nor anyone else was allowed to touch the study, overflowing as it was with books and papers. Confusion was no word for the state of the manuscripts. He had been collecting material for over thirty years. In the interval that had elapsed since he began real work on it the two typewritten copies of the journals had become mixed, and in some cases both had been revised. Material from certain parts of the journals, moreover, had been used in newspaper letters and again in magazine articles, so as many as five different versions of some passages were in existence. Even had they been collected together and in order, to read and compare and reject would have been sufficiently hard, but fresh versions were constantly coming to light, or in my absence Mr. Muir would unearth a copy of some version already disposed of. He was in the habit of making notes on anything that came to hand—an opened envelope, a paper bag, the margin of a newspaper. No scrap of manuscript could ever be destroyed, and I could devise no system of putting the rejected material aside that served to keep him from "discovering" it at some later date. Finally I took to hiding copied and rejected sheets alike

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*John Muir and the Alaska Book*

35

inside a great roll of papers conspicuously tied with red ribbons and labeled in huge capitals "Copied!" and little by little the orange-box full of manuscript and the piles of scattered notes littering desk and table were reduced to a single working copy.

By seven o'clock each morning Mr. Muir had breakfasted and was ready for the day's work, usually lasting, with but the interruption of an hour at lunch and dinner and another at mail time, until ten at night. Composition was always slow and laborious for him. "This business of writing books," he would often say, "is a long, tiresome, endless job." To read his easy, flowing, forceful sentences, as rich in imagery and simple in diction as Bible English, no one would dream what infinite pains had been taken in their creation. Each sentence, each phrase, each word, underwent his critical scrutiny, not once but twenty times before he was satisfied to let it stand. His rare critical faculty was unimpaired to the end. So too was the freshness and vigor of his whole outlook on life. No trace of pessimism or despondency, even in the defeat of his most deeply cherished hopes, ever darkened his beautiful philosophy, and only in the intense physical fatigue brought on by his long working hours was there any hint of failing powers.

Mr. Muir himself, however, seemed to know that the end was near. Very touching were his attempts to rehabilitate the old house, whose forlorn emptiness and desolation were never allowed to weigh upon his own serene spirit, to put it in readiness for whomsoever should next live there. During the latter months of his life he often expressed the conviction that he would never live to write another book. His plan had long been to have his books tell the story of his life and travels, and in the early days of our work together he would often speak of the volumes of this wanderer's autobiography that he hoped yet to complete. But he was curiously untroubled about leaving his work unfinished. To a most unusual degree he seemed to feel that his had been a glorious life, wholly worth while. "Oh, I have had a *bully* life!" he said once. "I have done what I set out to do." And again: "To get these glorious works of God into yourself—that's the great thing; not to write about them." That nature's beauty had a deep and lasting influence on character was one of his most earnest beliefs. No impassable gulf between things ma-

terial and spiritual ever existed for him, and scientific study only served to deepen his natural reverence and faith. Throughout this book, as through all the others, rings his triumphant belief in the harmony and unity of our universe, its imperishable beauty, its divine conception, "reflecting the plans of God."

It was a rare privilege to work with him day by day, a man of the most original thought, of the very highest ideals, of simplicity and truth and kindness unsurpassed. He gave of his best in conversation. His genial, whimsical humor, his acute appraisal of character and motives, his wide knowledge of literature and intimate friendship with many of the leading men of his time, made him a wonderful companion. The memory of our long hours together will always remain a delight and an inspiration, for they brought me not only increased love and reverence for a beautiful spirit, but a new conception of the spiritual significance of the great world of nature he loved so well.

The work on this book was the chief pleasure and recreation of Mr. Muir's last days, for through it he lived again many of the most glorious experiences of his life. Always I shall remember the glow that would light his face whenever he paused in his work to tell in stirring words the story of some particularly inspiring day. Many years ago, after watching a sunrise in Glacier Bay, he wrote: "We turned and sailed away, joining the outgoing bergs . . . feeling that, whatever the future might have in store, the treasures we had gained this glorious morning would enrich our lives forever." How true this was, how vital a part of his life these treasures of memory were, no one who met him could fail to know. For him neither time nor age had power to dim the glory of that icy land, after the Sierra Nevada, the best loved of all his wilderness homes.

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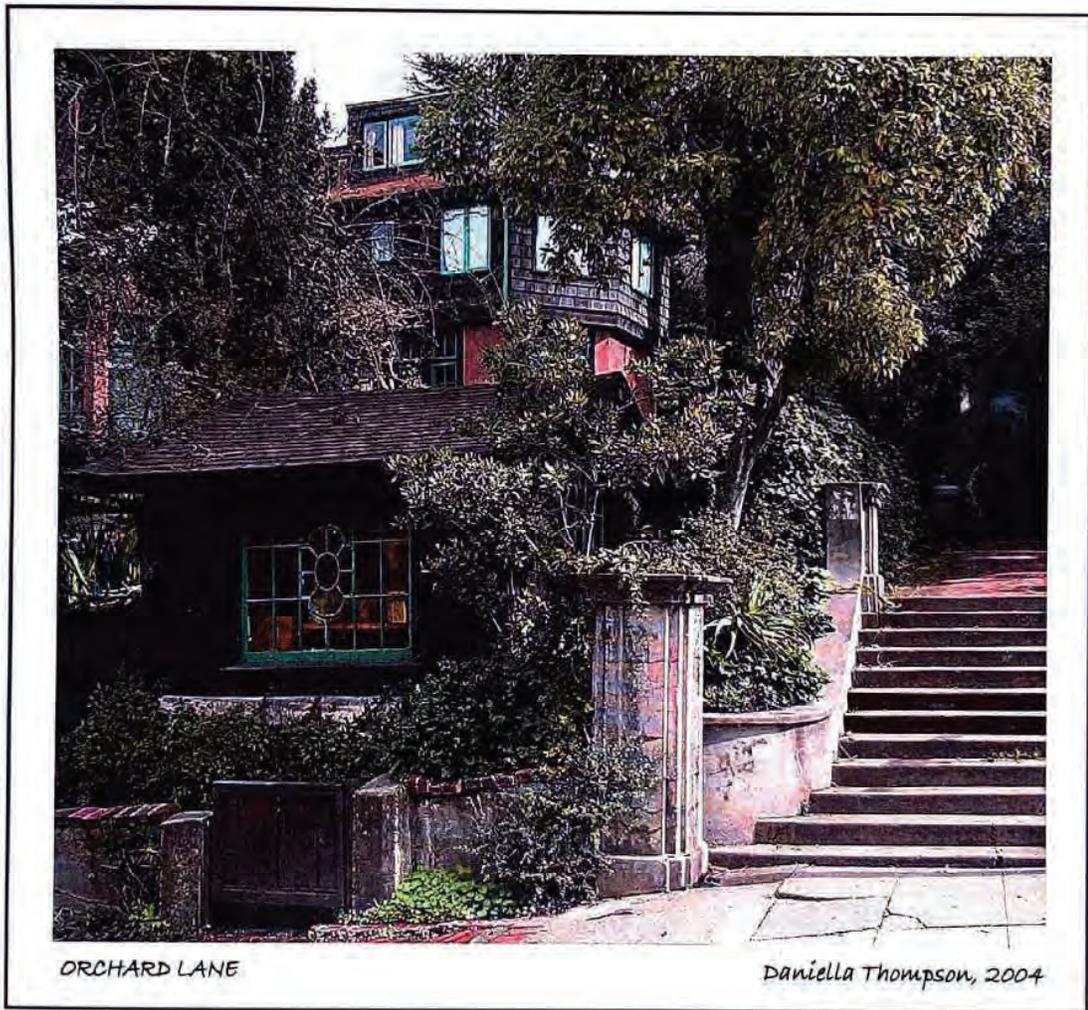
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FILE COPY



# PANORAMIC HILL

LIVING WITH NATURE & PATHS, STEPS, GARDENS, REDWOOD HILLSIDE HOUSES, AND BAY VIEWS & WOVEN TOGETHER INTO AN IDYLIC SYLVAN RETREAT & RIGHT IN THE MIDDLE OF TOWN



ORCHARD LANE

Daniella Thompson, 2004

BERKELEY ARCHITECTURAL HERITAGE ASSOCIATION

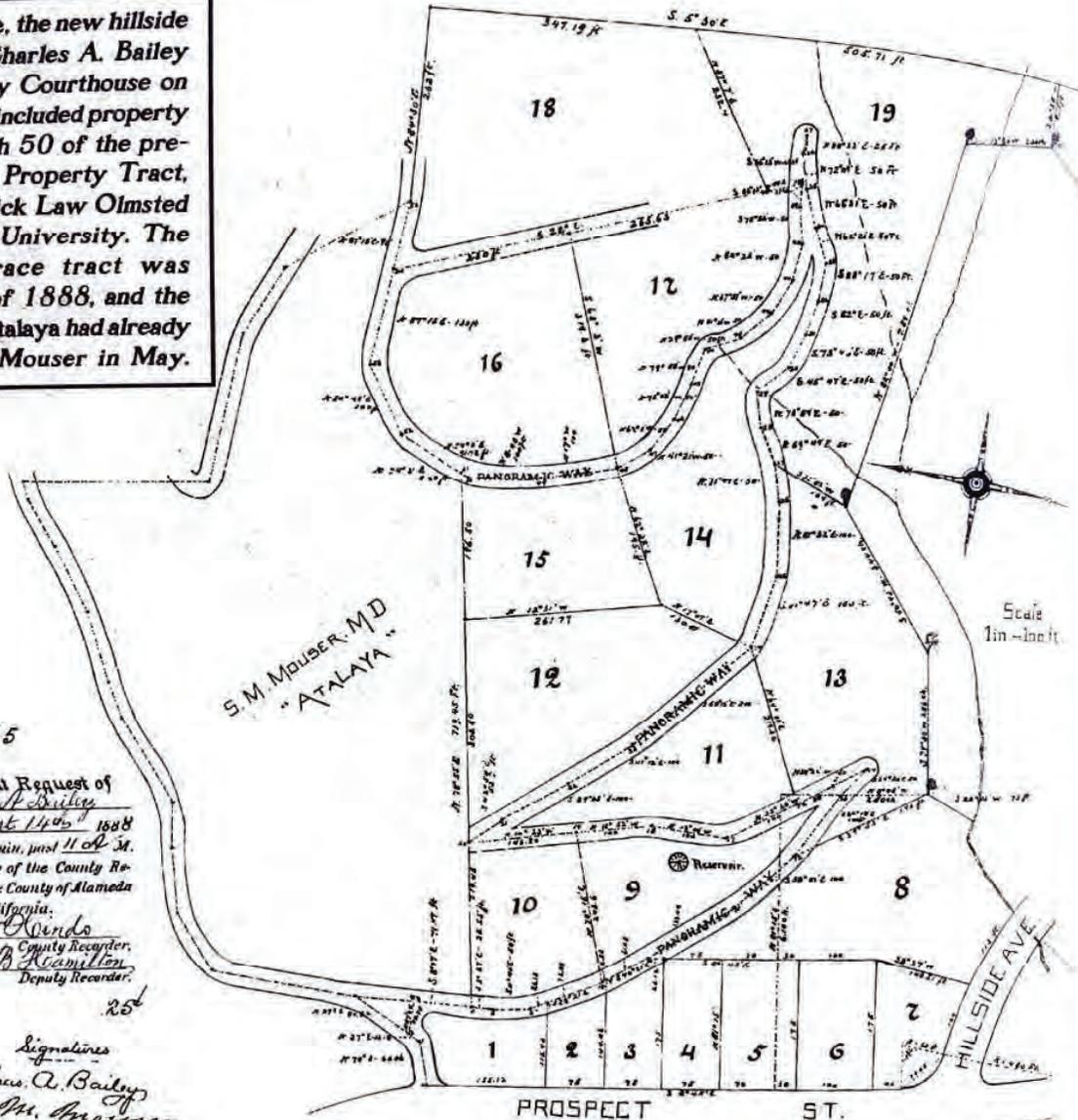


# UNIVERSITY TERRACE

subdivision map, 1888



University Terrace, the new hillside subdivision that Charles A. Bailey filed at the County Courthouse on August 18, 1888, included property in Lots 47 through 50 of the pre-existing Berkeley Property Tract, laid out by Frederick Law Olmsted in 1864 for the University. The University Terrace tract was surveyed in July of 1888, and the portion shown as Atalaya had already been sold to Dr. Mouser in May.



1/2045  
Filed at Request of  
Charles A. Bailey  
August 14<sup>th</sup> 1888  
at 4 1/2 min past 11 o'cl' A.M.  
in the office of the County Recorder  
of the County of Alameda  
State of California.  
By J. D. Woods  
County Recorder.  
By M. C. Hamilton  
Deputy Recorder.

Signatures  
Chas. A. Bailey  
J. M. Mouser

## UNIVERSITY TERRACE.

Berkeley, Cal.

Surveyed by - { F. H. Cassano  
R. E. Bush.  
Conceded  
R. E. Bush  
Aug 4/88  
July 1888.



*The renowned Berkeley Hills, verdant backdrop to the University town, are shown here in about 1922. Panoramic Hill is in the center of the picture, with Strawberry Canyon to the left. Camera Shop photo from Berkeley California, Looking through the Golden Gate, promotional brochure. BAHA Archives.*

## PANORAMIC HILL

*Just south, and adjoining the University grounds, a hill extends with graceful slopes, affording sunny exposure and superior views. A roadway has been built reaching the summit, winding back and forth, forming an easy grade and making available the most pleasing building sites. The result is gratifying.*

*Before the vision is a vast panorama, for beauty and variety perhaps unsurpassed. The Golden Gate, the Broad Pacific, the many waters, the moving crafts, the graceful mountains, the scattering islands, and the cities of the hillsides and plains are ever objects of untiring interest. To a lover of the beautiful it is an enchanting region.*

*—Charles A. Bailey, Berkeley the Beautiful, 1889.*

**P**ANORAMIC HILL is the quintessential Berkeley hillside neighborhood: narrow winding one-lane streets, pedestrian pathways that meander up the hillside, fabulous views. The neighborhood might also be, according to State Historian Maryln Bourne Lortie, “Berkeley’s best grouping of First Bay Tradition/Arts and Crafts residential architecture ... the work of a star-studded array of ‘master architects.’”

Since the Fire of 1923 destroyed a concentration of homes designed by many of the same architects, Panoramic Hill stands as emblematic of other early hillside neighborhoods in addition to being a neighborhood with its own unique identity. What is more, the neighborhood’s long history, from the 1880s until the present day, serves as an illuminating case study in evolving residential design and zoning liberties that have affected all Berkeley residents.

Panoramic Hill is defined by natural features which distinguish it as a particular place within the community of Berkeley’s many hillside neighborhoods. Being the westernmost spur of Skyline Ridge,

Panoramic Hill is articulated by Strawberry Canyon to the north and by Hamilton Gulch to the south. Isolated and remote, yet in the middle of University development, the neighborhood is surrounded on three sides by the natural environment, and on the fourth, western side, by the California Memorial Stadium and the bustling “Southside”.

It is the intention of the tour to tell the social and architectural history of this neighborhood’s emergence and its survival.

### A BEGINNING.

Although Indian burials were found during the excavation for the nearby stadium by Strawberry Creek, the story, as told here, begins long after the western world’s discovery of the area. Interwoven with the early history of the University of California, the history of the Arts and Crafts Movement, and the evolution of what would become known as the First, Second, and Third Bay Area Tradition of architecture, the neighborhood is a living reminder of our past.

*Panoramic Hill viewed from Piedmont Avenue in 1889. At the left is the Samuel Perkins House (Clinton Day, 1886) still standing, but altered, at 2421 Piedmont Ave. Behind on the hill, is the newly-completed Mouser House. At the far right, the Italianate-style house with landscaped grounds was called "Fernwald." Illustration from Charles A. Bailey, Berkeley the Beautiful, 1889. Courtesy of The Bancroft Library, University of California, Berkeley (xF869 BS B6 The Adeline Tract).*



Panoramic Hill is still served by the same road, Panoramic Way, which was cut in 1888 by Charles Bailey—an early San Francisco real estate developer who purchased this hillside section of the already-existing Berkeley Property Tract—in anticipation of his own re-subdivision of the land. Following principles that were first articulated in 1864 by Frederick Law Olmsted for the Berkeley Property Tract, the road followed the contour of the hill rather than the hill being cut and shaped to conform. Once a dirt road, and now macadamized, Panoramic Way is narrow and steep, and switches back and forth at sharp angles.

After construction of the road, Bailey sold one very large parcel of land to Silas M. Mouser, a San Francisco surgeon and physician. Dr. Mouser built a two-story house and planted an almond orchard, and called his new country retreat *Atalaya*, Spanish for “watchtower.” The locals, who mostly lived near the University and the steam train line on Shattuck Avenue, considered such a remote and high-up location “extraordinary.”

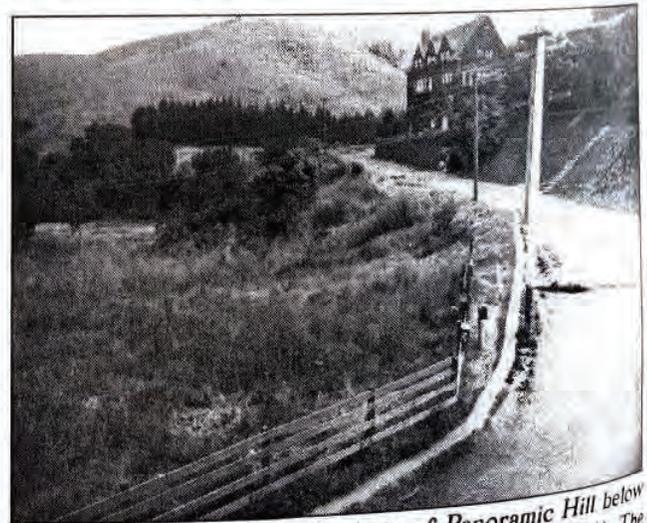
#### UNIVERSITY TERRACE OF 1888.

Bailey filed a subdivision map with the County for the remainder of his property and aptly named it University Terrace, due to its proximity to the University campus.

In Bailey’s promotional booklet for his many residential subdivisions, entitled *Berkeley, the Beautiful*, he described the hill’s “sunny exposure and superior views,” but may have exaggerated a bit when he described the road as “forming an easy grade.”

#### A NEW ERA.

Even with Mr. Bailey’s enthusiastic marketing, and even though the lots were located within walking distance of the campus, it took 13 years for someone with enough imagination and foresight to build a home in University Terrace. The first houses—two or three were built simultaneously in 1901—not only signaled the emergence of a hillside neighborhood, but also set the architectural tone for subsequent home-building. One of the houses, designed by Bernard Maybeck for Professor of Law George Boke, dared to expose its rafters, introduced Swiss chalet features, and fostered a livable L-shaped living and dining room arrangement demonstrating



*Canyon Road clings to the base of Panoramic Hill below the Rieber House (Coxhead & Coxhead, 1904). The meadow behind the fence in the left foreground is the site of the Stadium Parking Lot. Courtesy Ernest Sotelo.*

a conscious turn away from Victoriana. This rustic home became one of Maybeck's most famous designs and was not only twice reproduced with Mr. Maybeck's permission, but was the inspiration for several other Berkeley houses.

#### UNIVERSITY HILL OF 1909.

Warren Cheney, the former editor of the literary magazine, *The Californian*, built one of these "inspired" houses at the back of his own house on College Avenue north of Bancroft. He also turned to real estate and, in 1910, determined that the late Dr. Mouser's estate would be suitable land for development. Naming the new subdivision University Hill, in thematic harmony with neighboring University Terrace, Cheney made some necessary improvements to his hillside property.

First and foremost, he built Orchard Lane, a classical Beaux-Arts concrete staircase, which cut an arterial pedestrian corridor up the hillside. Designed by Henry Atkins, a partner in the prestigious San Francisco fine arts firm of Vickery, Atkins and Torrey, Orchard Lane was adorned with balustrades, benches, and corner piers. Architecturally linked to the Atkins-designed Bancroft Steps just downhill, Orchard Lane was ultimately a both practical and refined route to nearby Piedmont Way and the University.



The Boke House and, to the right and partially hidden, the Dean House, both completed in early 1902, and the Lewis House, visible farther to the right, were the first three houses built in the University Terrace Tract. Prof. Boke and his children can be seen at the left. Courtesy College of Environmental Design Documents Collection, University of California, Berkeley.



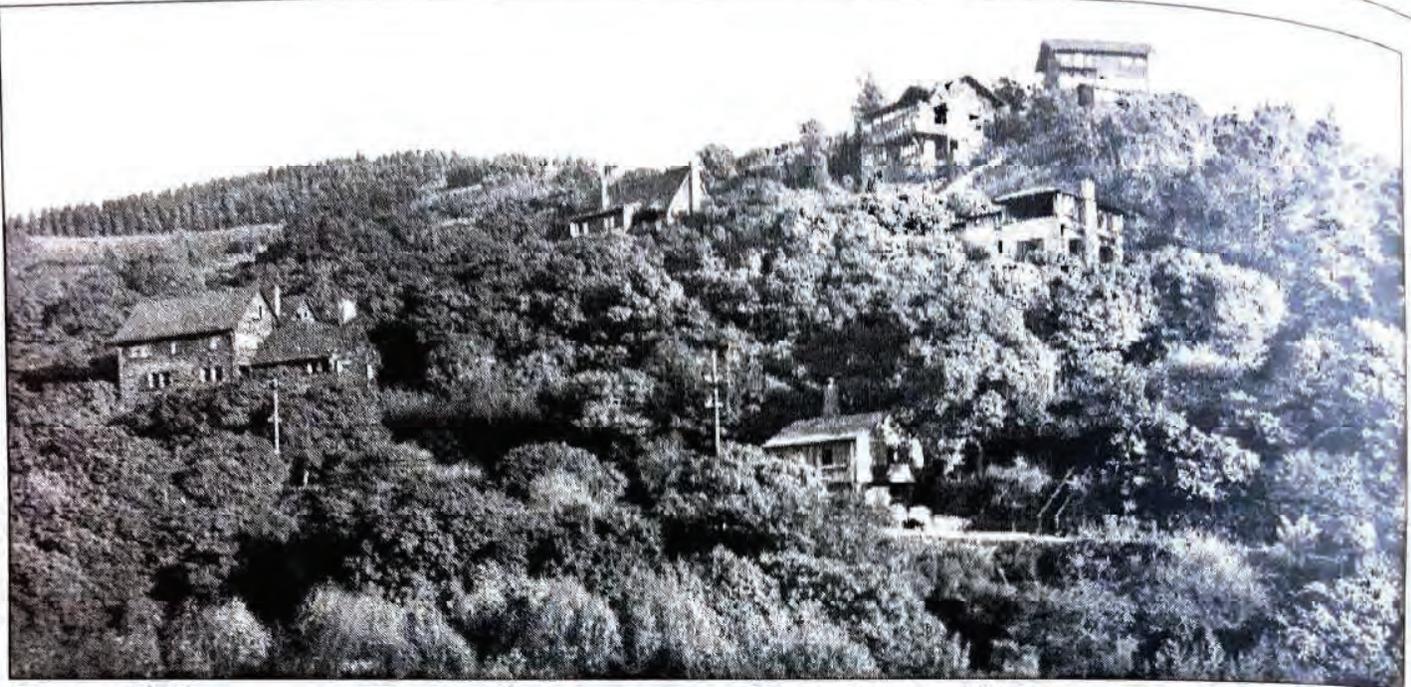
Orchard Lane, designed by Henry Atkins in 1910. City of Berkeley Landmark No. 168. Elizabeth Crews, 1974.

#### WARREN CHENEY ADDS NEW ROADS.

Cheney created three more roads, all of which now end in *cul-de-sacs*. Two bordered the University's undeveloped Strawberry Canyon, where "no shooting [was] allowed at any season." Known now as the University's Ecological Study Area, this canyon land was appreciated early in the University's history and recommended by Frederick Law Olmsted to be set aside as open space.

One of Cheney's roads was Cañon Road (now "Canyon"), a spelling that reflected the Peralta days, and a road which was already noted on County Surveyer William F. Boardman's 1868 map of the Berkeley Property Tract. Now superseded by Centennial Drive on the north side of Strawberry Canyon, Canyon Road once served several dairy farms high up in the canyon.

Above Canyon Road, Mosswood Road was built, also in close relation to the beautiful canyon. The first residents of Mosswood Road were Edward and Marion Parsons, who were both key figures in the Sierra Club's early history. After purchasing the old Mouser House, the Parsons' moved the house further into the canyon, remodeled the exterior and interior with redwood, and thereby manifested a domestic life at one with their calling. Near the end of Mosswood Road, Walter Ratcliff designed a brown shingle house for Professor of Classics James Turney Allen and his wife Amelia, who became an avid birdwatcher and published author while living in



*This circa 1922 view shows the University Hill tract, developed by Warren Cheney in 1910. At the far left, on Canyon Road, is the large, shingled Stratton House (1911) and to the right, one of the O'Connor cottages (Walter T. Steilberg, 1921). Above, from left to right on Mosswood Road, are the Allen House (Walter H. Ratcliff, Jr., 1911) and the Parsons House (Walter T. Steilberg, 1921). The Parker House (1915) is perched on Arden Steps, and at the top of Arden Road is the Hersam House, also from 1915. BAHA Archives.*

this live-oak forest. At the beginning of Mosswood Road, Julia Morgan designed a house for Professor of Botany Willis Jepson, who developed the first taxonomy of California native plants. The overlap and interplay between human subject, physical space, and habitat shows a pleasure in living with—and not just “building with”—nature.

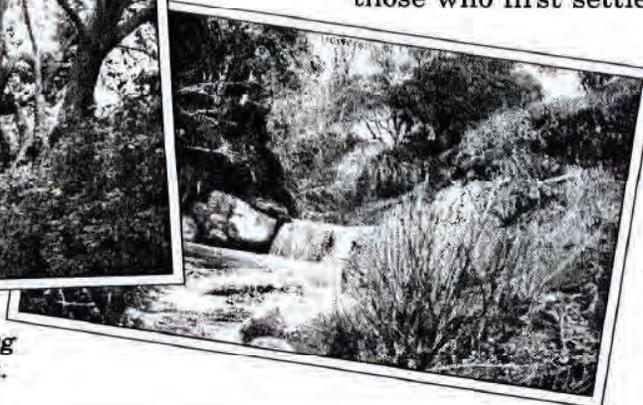
Even farther up is Arden Road. This third road was appropriately named, given the “dense grove of young live-oak trees” that was characteristic of the north side of the hill. Ernest Hersam, Professor

of Mining, was one of the first to build on Arden Road, and the remarkable clinker brick retaining wall at the entrance supports the house while enhancing the street with its color and texture.

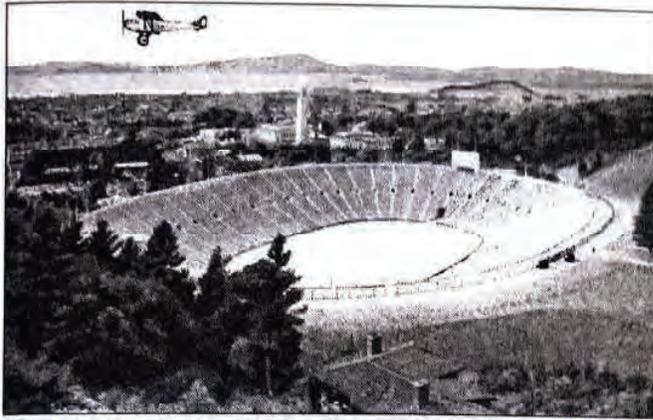
**A BEAUTIFUL NATURAL PLACE.**

Special geologic features of the area had created a ravine at the mouth of Strawberry Canyon where Strawberry Creek flowed in a series of waterfalls beneath a canopy of live oaks. At the time he laid out the Berkeley Property Tract, Frederick Law Olmsted referred to this spot as a “beautiful natural place,” and its proximity was an inducement for those who first settled here. Ernest Coxhead- and Julia Morgan- designed homes, once on the edge of this ravine, still stand as faithful reminders of the neighborhood’s early relationship between natural and built environments.

**MEMORIAL STADIUM IS BUILT.**  
But in January 1923, the scenic, ecological, and political landscape was funda-



*Two vintage postcards depicting scenes along Strawberry Creek.*



*This vintage postcard shows the proximity of the Memorial Stadium to Panoramic Hill. In the foreground is the roof of the Parsons House on Mosswood Road. From this view, one can see what a shock the new stadium would have been to residents who were accustomed to a sylvan outlook.*

mentally changed when the University began excavation for a stadium in the middle of the "beautiful natural place." Using 10,000 pounds of dynamite, 24,000 pounds of black powder, hydraulic machines, and horse-drawn wagons, the stadium was completed by that November. The destruction of this sylvan setting provoked controversy in the community, but the intrusion of such a mammoth structure was an especial shock to the immediate neighborhood. Dreams die hard, and in 1996, near the end of his life, David Brower wrote in an introduction to Galen Rowell's *Bay Area Wild*, "...let the Hayward Fault reclaim the segment of Strawberry's south fork that was buried in 1920 [sic] by what was then touted as the Million Dollar California Memorial Stadium."

Although many houses were designed so as to benefit from their close physical relationship to this

parklike ravine, the houses still stand as gracious reminders of the neighborhood's tight-knit bond between nature and culture, properly situated on each site, and in relation to each other. At the time of the stadium construction, some residents left, while others continued to find the few games a year an acceptable sacrifice for the otherwise substantial benefits of the neighborhood. Architect Walter Steilberg had already put in the foundation for his house at 1 Orchard Lane "when the stadium frenzy broke loose." He had designed a dining room plate glass window to look into the ravine from one direction and San Francisco from the other. But the construction of a sorority house across Panoramic Way, in combination with stadium construction, removed the anticipated views.

#### A SPECIAL DESIGN FEATURE ON THE HILL

In the early 1900s, Berkeleyans were quick to embrace the automobile, and as one promotional brochure proclaimed in 1912, "The proportion of automobiles to population in Berkeley is high." This situation had a positive design consequence for Pan-



oramic Hill: numerous hillside garages were designed with cottage-like apartments either underneath or above. For example, Miss Eleanor Gardner, of Arden Road, commissioned her friend archi-

*This is one of Panoramic Hill's many charming 2-story cottage-garage combinations (O'Connor Cottage, 1928, at 45 Canyon Road). Anthony Bruce, 2004.*



*Shot from almost the same perspective as the view above, this picture shows how extensively the ravine was re-shaped to accommodate the great bowl of the stadium. BAHA Archives, gift of Estate of Margo Gwinn.*



*"Cañon Road" as it curves around the base of Panoramic Hill and leads east into Strawberry Canyon, in about 1900. BAHA Archives, gift of Judith Palache Gregory.*

tect William Wurster to design a four-car garage with apartment above; businessman Charles Mel commissioned Steilberg to design a five-car garage with apartment on top. In general, design was not sacrificed for the mundane purpose of vehicle storage, but instead, the problem was a stimulus for design creativity, as the charming results clearly show.

#### **ARCHITECTURE ON THE HILL EVOLVES.**

The evolution to more modern architectural forms can be seen in the neighborhood by following the designs of Walter Steilberg alone. From traditional Arts and Crafts motifs seen in his own first home in the neighborhood (38 Panoramic Way), to invention of the patented Fabricrete material, to commissioned brown-shingles in still rustic but



*Late afternoon on Canyon Road in Strawberry Canyon, 1923. BAHA Archives, gift of Richard Wesell.*

more contemporary form (e.g. 29 Mosswood Road), the movement toward Modern is made visible.

When architect Robert Ratcliff, son of architect Walter Ratcliff, built his mid-century home in the challenging location on a spit of land within the second hairpin turn, he undoubtedly benefited from engineering solutions impossible 40 years earlier. Shattuck heir Weston Havens commissioned architect Harwell Hamilton Harris in 1939 to build a mechanically daring residence which was detached from the hillside. In these ways, design remained in close relation to nature, while evolving through expansion of what was mechanically feasible.

#### **PANORAMIC HILL'S SURVIVAL.**

Although the neighborhood had life after the stadium was built, near ruination appeared imminent when zoning was changed to allow increased density here. During a housing crisis and increase in student population in the 1960s, inappropriate development threatened the tranquil ambience. Citing the one road in and out of the neighborhood, and the fact that it was surrounded on three sides by wildlands, the neighbors lobbied the City in the mid-1970s, and succeeded in being downzoned to an Environmental Safety-Residential zone, the most restrictive zoning for a single-family neighborhood in Berkeley.

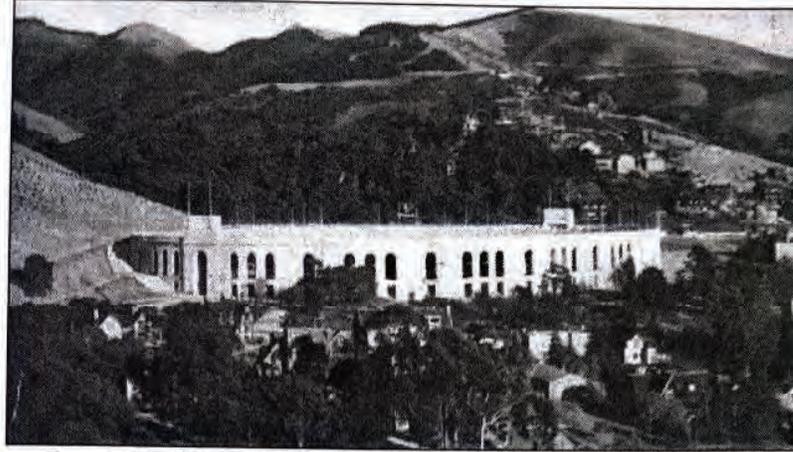
At this writing, part of Panoramic Hill has been nominated by the California Historical Resources Commission to be listed on the National Register of Historic Places as an historic district. The neighborhood awaits a decision from the Keeper of the National Register, and also waits anxiously to hear of proposed changes to the historic stadium. As new construction and intensified use of the stadium appear imminent, the struggle begins anew. The story repeats itself. For 82 years, the neighborhood and the stadium have co-existed in delicate balance. During this time, significant architecture on Panoramic Hill has not only been preserved, but new structures of significance have been added. A preservation perspective on this controversial issue would call for balancing competing interests in order to maintain the architectural heritage of this "star-studded" neighborhood for the education, enlightenment, and enjoyment of future generations of Californians.

*—Janice Thomas,  
Panoramic Hill, Easter 2005*

# MEMORIAL STADIUM

## *Controversial from the Start*

Where once Strawberry Creek turned its leisurely course to the bay, man has reared a great concrete bowl where more than seventy thousand people may gather



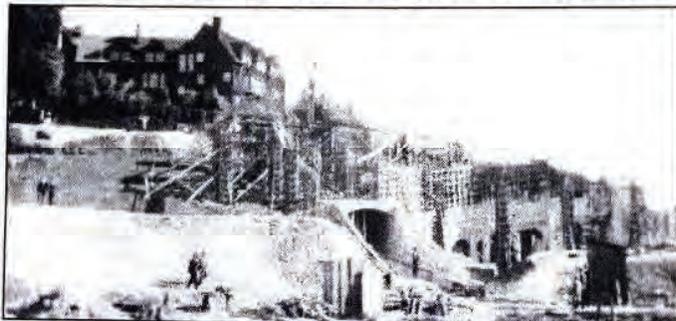
to watch athletic contests and to see their sons and daughters graduate from college walls.  
— Robert Sibley, *The Romance of the University of California, 1928.*

*Panoramic Hill can be seen behind the newly-completed Memorial Stadium (John Galen Howard, architect) in this vintage postcard.*

**B**EFORE Memorial Stadium was constructed, Strawberry Canyon was Berkeley's most popular place to experience nature. It was a place for contemplation, bird-watching, and walking in the woods. Completed in November of 1923 in time for the Big Game with Stanford, the stadium was built amid intense controversy.

When initially proposed and promoted in 1921, the stadium was planned for a two-block area located east of Oxford Street between Allston and Bancroft ways just south of Strawberry Creek, where today the Sports Facility stands.

Robert Gordon Sproul, Assistant Comptroller and a future University president, and President David Barrows were enthusiastic about the location in a promotional brochure produced to raise funds for the undertaking. But, the plans changed and



*Professor Rieber, whose house (in the upper left) was designed expressly to look out over a wilderness, was so upset by the Stadium construction, that he moved to Southern California. BAHA Archives, gift of Richard Wesell.*

Strawberry Canyon was chosen instead, inspiring opposition from not only the neighborhood, but also from a group of architects and a landscape architect who had worked on the initial stadium plan. The architects were prominent graduates of the School of Architecture at the University: William G. Corlett (class of 1910), Henry H. Gutterson (class of 1905), Walter T. Steilberg (class of 1909), and Walter H. Ratcliff, Jr. (class of 1903). The landscape architect was Bruce Porter.

The group wrote an open letter, published in the form of a pamphlet, to the "Students, Faculty, Alumni and Friends of the University of California" asking them to write the Regents to "reconsider their decision" pointing out that they had donated funds for a stadium on the Allston/Bancroft site and not in Strawberry Canyon. Further objections included:

- 1) "The location of the stadium in Strawberry Canyon would prevent its being the central unit of a large athletic establishment."
- 2) "Considerations of Transportation and Accessibility" pointed out the obvious, that it was far from existing transportation lines.
- 3) The development would forever destroy the natural beauty of the canyon and "the inspiration that nature has placed there."

The University decided on the Strawberry Canyon location because it already owned the land.

— Susan Dinkelspiel Cerny



999 No. 1 666

## THE FERGUSON-STEILBERG FAMILY COMPOUND

### *Panoramic Way at Orchard Lane*



**C**OMPRISED three charming homes designed in different styles, this family compound at the foot of Orchard Lane is the gateway to Panoramic Hill. It might even be said to represent the Hill on a miniature scale. The architect-owner, Walter T. Steilberg (1887–1974), studied architecture at the University of California, graduating in 1910 with a bachelor's degree in architecture and a minor in structural engineering. Steilberg worked with Julia Morgan for ten years before establishing his own office in 1920, and later continued to perform engineering work on Morgan commissions, including the Berkeley Women's City Club, Pasadena YWCA, and Hearst Castle, where he also designed two cottages.

In 1917, Steilberg built his first home at 38 Panoramic Way. A year later, his wife Rowena, their newborn second daughter, and his mother perished in the influenza epidemic. Steilberg's eldest daughter, the late Helena Lawton, recalled that "Losing himself in work was his panacea, and this was so for the rest of his life."

Steilberg soon became the resident architect of Panoramic Hill, designing homes and garage apartments for various neighbors. In 1920, he was asked to design a house for Mary V.E. Ferguson at 1 Orchard Lane. Ferguson was lodging with her daughter Elizabeth, a University research assistant, in Marion Parsons' house at 21 Mosswood Road. As it would happen, Steilberg and Elizabeth fell in love and married the following year—first in a Quaker ceremony, then, "to make it official," at 21 Mosswood, then the home of Unitarian minister Earl Morse Wilbur.

Over the next decade, Steilberg built three structures on the large sloping lot. He also planted the garden, maintained today by his granddaughter.

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### 1 Panoramic Way

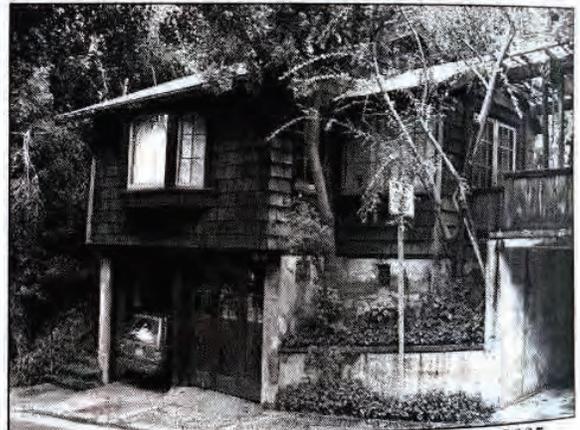
#### Walter T. Steilberg, architect

#### 1921

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The Steilbergs lived in this small brown-shingle cottage until the main house was constructed. The entrance door is discreetly positioned on the north side. Note the charming doorbell and the "Steilberg green" of the trim. The cottage is divided into two masses. The larger one includes a living room with exposed rafters, a small kitchen and bath. The smaller one consists entirely of a porchlike bedroom, connected to the living room via pocket French doors and to the pergola via Dutch doors. The all-redwood interiors are suffused with light from windows on all sides. Particularly graceful is the living-room bay window with the arched muntins. This window used to reveal panoramic bay views.

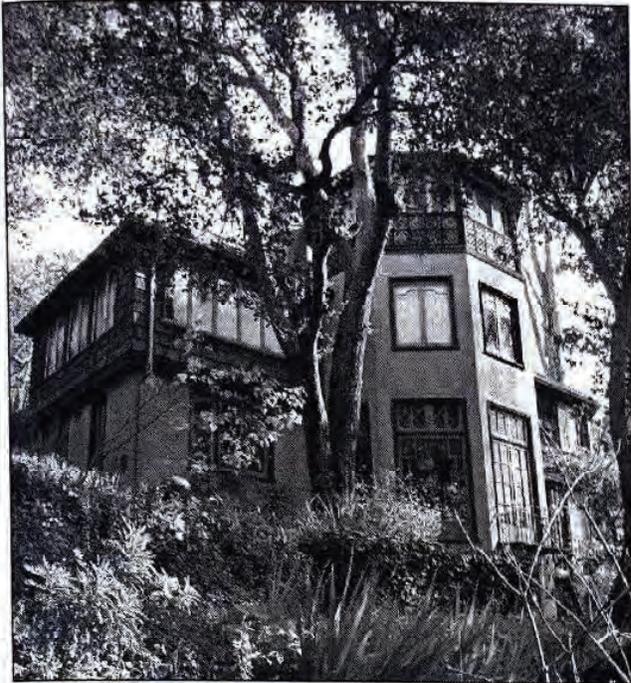
The cottage sits atop a two-car concrete garage whose redwood doors, embellished with decorative cutouts and glass panes, are hinged and roll along



*The cottage, as seen from the road. Daniella Thompson, 2005.*

a metal track inside the garage. Steilberg's signature Chinese perforated green tiles serve as air vents embedded in the concrete under the cottage.

Connected to the cottage is a brick-paved pergola that extends along the entire Panoramic Way frontage. At the southern end, the pergola terminates at a delightful brown-shingle playhouse with an oversized amber-glass window featuring a flower-like leaded-glass medallion.



*The Ferguson-Steilberg House. Daniella Thompson, 2005.*

windows and French doors featuring a variety of designs displays a recurring Chinese motif. The green-painted trim used to match the green of Silas Mouser's almond trees, long since gone, and the underside of the eaves was once sky blue.

The top floor of the tower, now glazed, was originally an open balcony, whose parapet is made up of Chinese perforated tiles. As you walk around the house, note the architect's penchant for exceedingly narrow stairs.

The entrance is tucked away in the rear. A spacious stair hall ushers the way through French doors to the large living room, which occupies the entire ground floor south of the tower. A long octagon, this room is lined with bookcases, cabinetry, and paneling made of lauan (Philippine mahogany), a wood also used in the beamed ceiling and the floor. Between the cabinets and the ceiling, the walls are plastered. The four blunt corners house casement windows or French doors with leaded-glass clerestories. A large window set in the west wall overlooks the front terrace and garden. Opposite from it, the large, ornamental brick fireplace features a high wooden mantel with dragon designs in relief. Noteworthy are the curved window seats, the perforated medallions with bird-, flower-, and fruit-motifs set in the cabinet on the south wall, and the amber glass in three of the windows.

The dining room occupies the ground floor of the tower and has a concave, pumpkin-shaped plaster ceiling with the remaining "pan" from the original Oriental-style light fixture at its center. All but one facet of the octagon are filled with windows or French doors. The only exception is the northeastern facet, where a tiled fireplace is set flush with the wall and surmounted by a china cabinet with leaded-glass doors. A decorative transom echoes the clerestories above the windows and doors. On the east facet, the doors leading to the pantry are glazed with mirrors.

Mirrored doors are also found on the east facet of the tower's top room, where all-around glazing reveals stunning city and bay view. A small galley kitchen, a bedroom, and a sleeping porch complete the third floor, which was converted to a separate apartment at the end of WWII.

**1 Orchard Lane**  
**Walter T. Steilberg, architect**  
**1922-23**

This 12-room residence is aligned along a north-south axis to maximize western views. The house is built on a slope, with each floor opening onto a terrace or a deck. Two 2-story wings flank a 3-story octagonal tower. The tower and the ground floors of the wings are clad in rose-colored stucco, while the projecting second floors on either side are covered with untreated redwood shingles. An abundance of



*The Steilberg children's playhouse at the south end of the pergola, opposite the cottage. Daniella Thompson, 2005.*



**4 Mosswood Lane**  
**Walter T. Steilberg, architect**  
**1930**

*It was the Berkeley conflagration of 1923 which impressed upon me the urgent need for a basic improvement in "small-scale" construction; and also suggested a possible solution of the problem. Of the six hundred houses which burned, little was left, save ashes and chimneys; but in a few instances the outer stucco shell was left standing, even after the rest of the house had been completely destroyed. This exhibition of strength suggested to me the possibility of constructing walls entirely of stucco; hollow walls, in which an exterior stucco shell would be united to an inner one by vertical webs of the same material.*

So wrote Steilberg in an article published by *The Architect and Engineer* in March 1931, introducing his patented Fabricrete. The architect used Fabricrete to construct this beguiling Mediterranean-style cottage at the rear of his property.



*The Fabricrete cottage viewed from Mosswood Lane; and a detail of the stairway to the roof patio. Daniella Thompson, 2005.*

The first thing you'll notice is the recessed entry door, which is set with triangles of leaded colored glass. The second will be the narrow curving stairway leading to the rooftop terrace.

The only wood in this house is found in the doors, kitchen cabinets, breakfast nook table, and built-in bookshelves. The steel casement windows have tile sills. The floors are concrete. The living room is an exercise in Art Deco, with its zigzag ceiling and Mayan motif above the bookshelves. The oversized fireplace is trimmed with the same green tile that lines the breakfast nook. Built-in light panels in the ceiling are made of capiz shells. The ubiquitous perforated green tiles make repeated appearances within and without.

Set at the top of the lot, this retiring house rewards the visitor with stunning bay views framed by foliage.

*From here, the paths and steps lead off in various directions, inviting you to, perhaps, continue on Mosswood Lane's soft carpet of redwood needles uphill into the canyon to House No. 6. Or, instead, to return to Orchard Lane and back down to Panoramic Way. Although Houses Nos. 2 and 3, on Canyon Road at the base of the hill are listed next, you may wish to visit them later.*



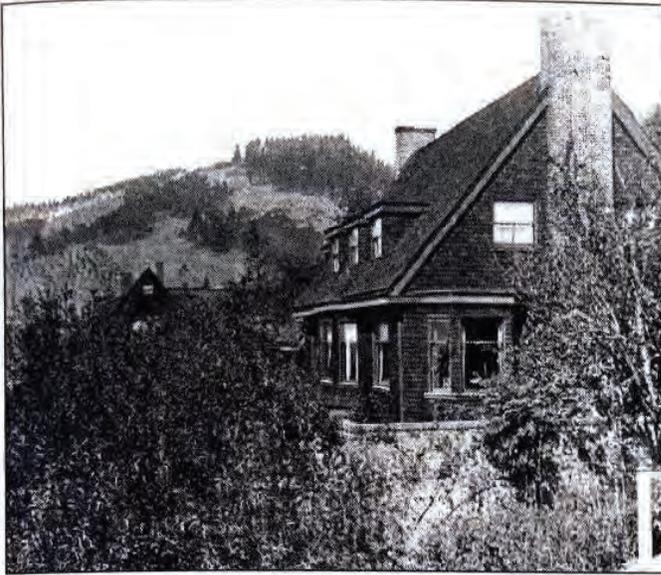
\*\*\* No. 2 \*\*\*

**THE FREDERIC TORREY HOUSE**  
**1 Canyon Road @ Coxhead & Coxhead, 1905-06**



**T**HE HOUSE was built for Frederic Torrey, a "very proper Bostonian", as his daughter described him, who came to California in the late 19th century and by 1900 was a partner in the prestigious San Francisco fine arts firm of

Vickery, Atkins and Torrey, which combined interior decoration and framing services with an art gallery. (Mr. Torrey helped to launch such artists as Imogen Cunningham and Maynard Dixon.) He chose to live in the quieter, more intellectually stimulat-



*The Torrey House in its hillside setting. The Rieber House is visible in the distance. 1920s photograph, courtesy the Torrey family.*

ing surrounds of Berkeley. Torrey was in Europe while the Canyon Road house was being built, and his wife and daughter moved into their new home after being shaken out of bed by the 1906 Earthquake, and spent the first three days watching San Francisco burn from their new hillside living room.

The house was built for \$7,500 and was one of Coxhead's essays in the English cottage style translated into brown shingles. The house is particularly notable for its dramatic siting, its roof echoing the steep slope of the hill and its "front" door at the back of the house admitting the visitor to a stunning view of the Bay through the living room. As in the best of Coxhead's work, the house nestles comfortably into the lush surrounding landscape, becoming part and parcel of wistaria, ivy, and redwood.

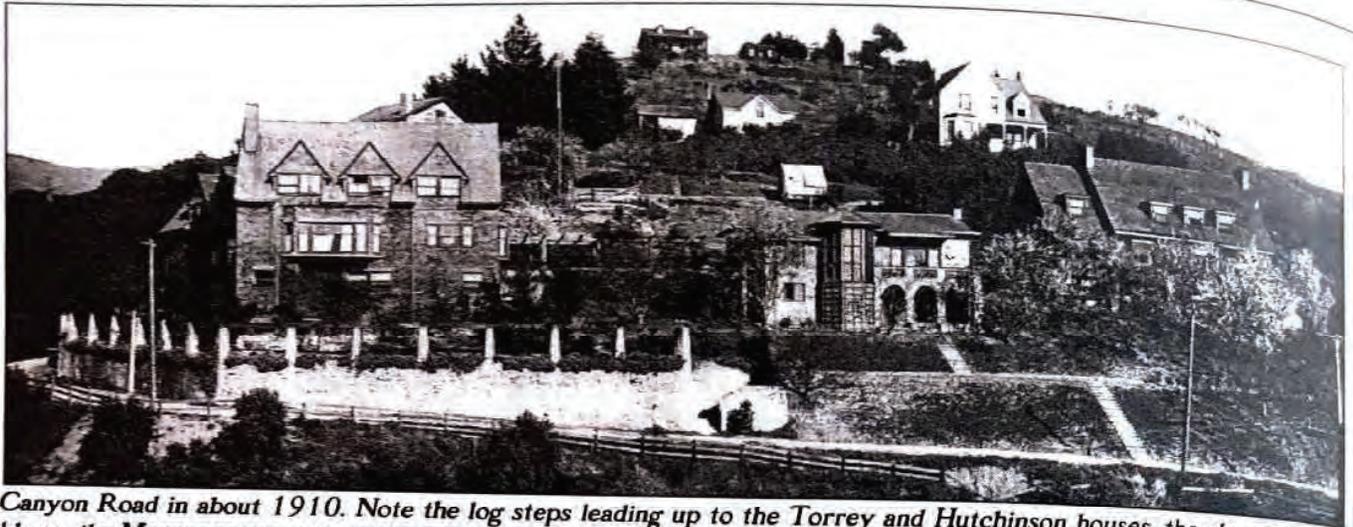
The Torrey, Rieber, and then-shingled Hutchinson house between them formed a prominent architectural gateway to the developing Panoramic Hill neighborhood at the turn of the century when an almond orchard still covered the hillslope and constituted a communal garden. The Torrey house was originally reached by log steps which were soon replaced by the complex and breathtaking stairs which now ascend the hillside. These stairs were designed by Henry Atkins, Torrey's partner, who also designed Bancroft Steps and the superb Orchard Lane just up Panoramic Way.

The house has fine redwood interiors, a remarkably open plan, and ample provision for outdoor living. In addition to the trellis-covered terrace to the south, a once-open loggia extended off the dining room to the north. The interiors offer a rare and largely intact example of the "artistic home" recommended by Torrey's friend Charles Keeler at the turn of the century. Walls are covered with grasscloth (which retains its original dark brown color only in the library) and with fine leather-bound editions, paintings and prints. Oriental carvings and prints in the dining room were collected in Chinatown. The rich wooden carvings were also designed by Henry Atkins; the bundled laurel wreath under the dining room mantelpiece is Atkins' trademark and is seen also on the bases of the trellis columns outside as well, and in fine buildings in downtown San Francisco. The firm also designed the splendid interiors and furniture for Doe Library and the President's House (now the Chancellor's dwelling) on campus.

For years, a reproduction of Marcel Duchamp's *Nude Descending the Staircase* appropriately hung at the base of the Torrey staircase where the original once hung, brought from the Armory Show by Mr. Torrey to scandalize the Berkeley artistic establishment as it had New York in 1913. Described by one contemporary critic as "an explosion in a shingle factory", it was perhaps a worthier guest for Berkeley than was then realized. The house has remained in the Torrey family for three generations.



*The Torrey House. David de Vries, 1976.*



*Canyon Road in about 1910. Note the log steps leading up to the Torrey and Hutchinson houses, the almond trees in bloom, the Mouser estate still intact, and the precipitous drop into the ravine from Canyon Road. Courtesy Torrey family.*

### Some Canyon Road Houses

#### **5 CANYON ROAD**

Torrey Cottage, 1935

Walter T. Steilberg

One of Steilberg's many cottage-over-garage combinations.

#### **9 CANYON ROAD**

Prof. Lincoln Hutchinson House, 1908

Morgan & Hoover

Designed for Prof. Lincoln Hutchinson by Julia Morgan during her brief partnership with Ira Hoover, the house was originally sheathed in shingles. After a fire in the 1920s, a third story was added by architect William C. Hays and the shingles replaced by stucco. Prof. Hutchinson and his brother Jim [see House No. 7] were founders of the Sierra Ski Club at Norden.

#### **15 CANYON ROAD**

Charles & Winifred Rieber House, 1904

Coxhead & Coxhead

Literally wrapping itself around the base of Panoramic Hill and following the curve of Canyon Road, this rambling shingled house is one of the most intriguingly sited hillside homes in Berkeley. Its picturesque appearance of high-peaked roofs and a profusion of gables is heightened by its woodsy setting. The back of the house faces the street and the entrance is reached by a winding path that leads up through a sheltered garden. The spacious interior is notable for its extensive use of redwood.

From the living room, instead of the impressive view of the Memorial Stadium, Rieber, Professor of Logic, looked down on the wooded area at the mouth of the Canyon, and each morning he walked through here to the University. Rieber was one who protested the destruction of the ravine, but to no avail. In response, he moved to Southern California. *City of Berkeley Landmark No. 216.*

#### **33 CANYON ROAD**

Albert Whitney House, c. 1905

owner-designed

This shingled house, designed by the original owner, University mathematics professor Albert Whitney, sits directly behind 15 Canyon Road and is best viewed from Mosswood Path. Early Panoramic Hill resident Florence Stratton Reinke recalled that Whitney made a model of his house and showed it to her by putting it on top of cushions which were plumped to resemble the slope of the hill.

#### **37 CANYON ROAD**

Raymond Mathis House, 1969

Raymond Mathis, architect

The two Mathis houses continue the brown-shingle tradition of Canyon Road.

#### **39 CANYON ROAD**

Raymond Mathis House No. 2, 1971

Raymond Mathis, architect

#### **45 CANYON ROAD**

Leonore O'Connor Cottage No. 4, 1928

Thomas S. Lossing, designer

The picturesque garage doors are an important part of the quaint rustic design of this cottage, the last of the four built by Nora O'Connor (*see photo in Introduction*).

#### **47 CANYON ROAD**

Leonore O'Connor Cottage No. 3, 1927

Thomas S. Lossing, designer

#### **51 CANYON ROAD**

Leonore O'Connor Cottage No. 2, 1921

Walter T. Steilberg, architect

Another intriguing cottage/garage combination with unusual garage doors and gently curving windows.

**53-57 CANYON ROAD**

Donald Johnson duplex, 1970  
Ashjian & Meier, architects

**61 CANYON ROAD**

Christopher Brown House, 1987  
Ronald Dean Senna, architect

**67 CANYON ROAD**

Prof. George Malcolm Stratton House, 1911  
owner-designed

The Strattons built two other houses in the neighborhood, the first being 2434 Hillside Ave. (Ernest Coxhead, 1901). Later, they decided to design their next brown-shingle house themselves. Florence Stratton Reinke recalled that her father designed the exterior and her mother, the interior. Stratton, Professor of Psychology at the University, loved the out-of-doors and every Sunday he would take his family on a ramble through the Berkeley hills, often ending at the Manchesters' house on Shasta Road for Sunday dinner.



*The Stratton House. Courtesy of the Stratton Family.*

*Beyond the Stratton House, Canyon Road becomes a dirt path leading through the University's Ecological Study Area.*



DDD No. 3 DDD

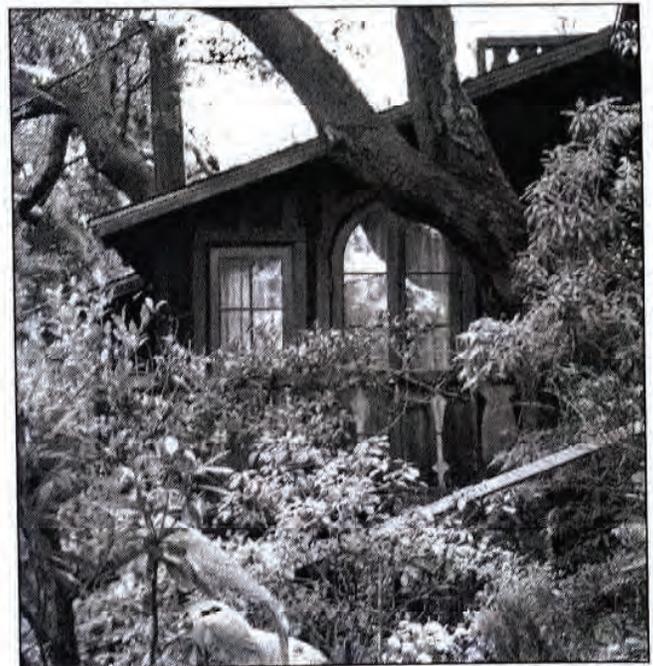
**THE LEONORE O'CONNOR COTTAGE**  
49 Canyon Road & designer unknown, c. 1908



**C** LIMBING UP, up, and up a wooded slope, along a narrow, angling brick walk, you will arrive at the veritable treehouse that is the O'Connor Cottage. The cottage is surrounded by and indeed growing out of trees—a magnificent spreading oak that comes up through the lower deck, and two more trees off to the side that emerge from the foundation!

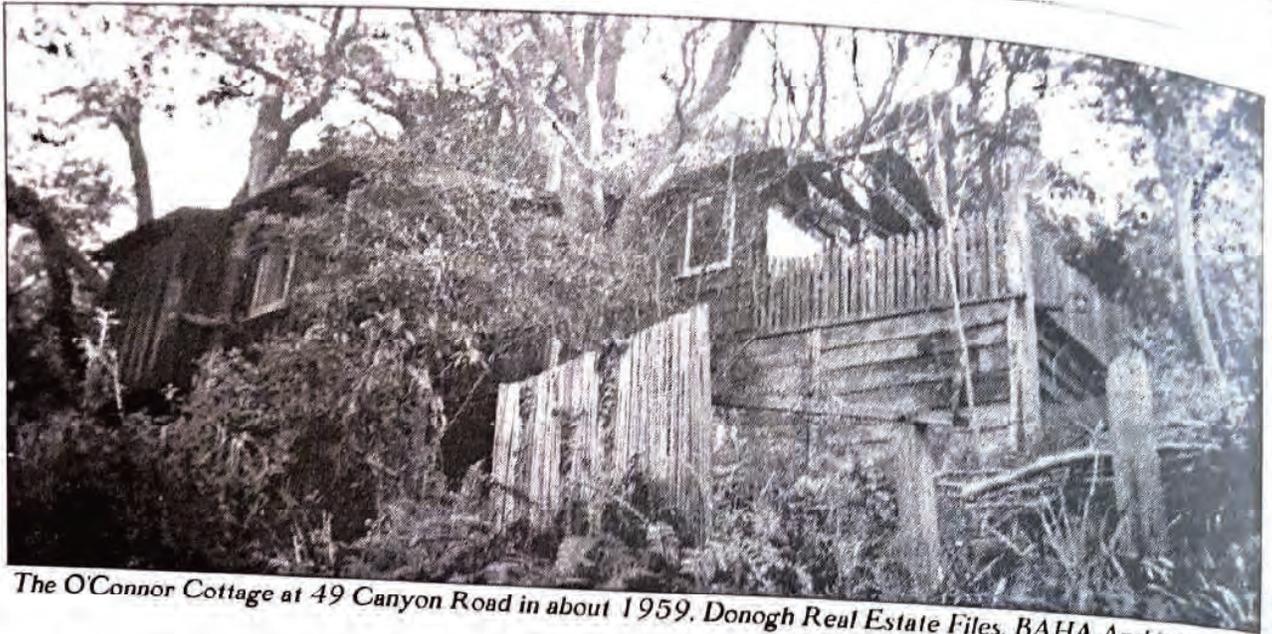
This was the first house that Berkeley resident Leonore (Nora) F. O'Connor built on this large hillside lot overlooking Strawberry Canyon—land that she purchased in 1906 from Dr. Mouser, four years before his estate, *Atalaya*, was subdivided by Warren Cheney as the "University Hill" tract. Eventually three more, numbers 45, 47, and 51, completed the complex, but not until the 1920s. Local folklore has it that Nora lived out her life in number 49, and ownership of the entire complex remained in the family of her brother Charles until 1960, when all four houses were sold. They are now condominiums.

Thomas F. Lossing designed numbers 45 and 47 (He's probably best known as husband of the country's first policewoman!), but the designer of number 49 is yet unknown. The original date and size of the house may always remain a mystery.



*The O'Connor Cottage today. Daniella Thompson, 2005.*

Margo Gwinn, a tenant of Miss O'Connor, remembered hearing that the house was built in about 1908, and the fact that Charles is listed at 49 Canyon Road in the 1909 city directory seems to sub-



*The O'Connor Cottage at 49 Canyon Road in about 1959. Donogh Real Estate Files. BAHA Archives.*

stantiate this date. The 1910 Census indicates that by then, both brother and sister were at this address. Undated city records show a complex plan with many, many walls and three decks. Notes read, "All rooms on different levels none above or below any other." And that's certainly the case! But, whatever the cottage's beginnings—whether as a single room dating from 1908 that now serves as the kitchen (as some of the lore has it), or as a real house with multiple rooms on multiple levels, number 49 is today an exceptionally homelike and cozy tree-top cottage. The various parts of the house, dating from different eras, form a marvelously integrated and welcoming whole. A small sleeping loft high above the trees, part of a major 1980s remodel by Tom Larsen, is visible from the walkway to the house. Look for it as you leave.

In the kitchen, tongue-and-groove paneling and flat-panel cupboard fronts are giveaway signs of age, as is the peculiar, asymmetrically angled east wall. There's a mystery bulge over the sink, with no clue anywhere, even from the roof, as to what its function was. The painted softwood steps leading down into the living area also are recognizable as old.

The City's sketchplan outlines the area of the living room, bedroom, kitchen, and three decks, as well as undetermined spaces jutting eastward. These spaces are now incorporated into the remodeling and addition that was completed in the 1980s. Notes on the City document specify as rooms, "1

living room, 2 bedrooms, 1 bath, 1 shower, 1 furnace"; and as fixtures, "1 bath, 1 shower, 2 water closets, 2 lavatories, 1 sink, 1 auto heater, 20 gal.," plus "1 fireplace, 1 chimney." The living room and bedroom floors are specified as "pine," with redwood trim and walls and paneled ceiling for the living room. Today the intimate brick fireplace and the massive central ceiling beam recall the early construction.

Beyond the living room is the 1980s addition that considerably enlarged the cottage. There is now a good-sized room used as dining room, a sleeping loft with view (further suggestion of being in a treehouse!), a half bath, and—down the steps and around to the right—a cleverly designed two-part full bathroom and a bedroom that is now used as a study. Just a year ago, the steps were redone so that they look contemporaneous in both material and design with the older sections of the house.

As you leave the O'Connor Cottage to go back down the walkways of this lovely complex of cottages, take pleasure in the simple and peaceful wooded gardens that the condominium owners work together to maintain. And don't forget to look back to number 49 with its loft rising high above the trees.

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*From here, the booklet returns to the Panoramic Way tour houses. You will find a complete listing of all Panoramic Way houses in the Appendix.*

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No. 4



## THE GEORGE BOKE HOUSE

23 Panoramic Way © Bernard Maybeck, architect, 1901



*The Boke House then. Illustration from Charles Keeler, The Simple Home, 1904.*

### **Swiss Chalets for Hillside Homes.**

*Frederick H. Clark, secretary of the Homestead Loan Association of Berkeley and three kindred associations in San Francisco, is improving the property recently purchased by him in the University Terrace tract. This scenic plat is situated at the head of Channing way on a gentle declivity and is very beautifully located.*

*Mr. Clark will build for Prof. G. H. Boke, and Margaret Deane [sic], handsome Swiss chalets which are the creation of Architect Meybeck [sic], A.H. Broad, the contractor, will begin work at once.*

*Berkeley Daily Gazette, November 14, 1901.*

**I**N FACT, only one of the two so-called "Swiss chalets" was designed by Maybeck. It was the one built for George H. Boke, a law instructor at the University of California, who resided with his wife and three children nearby, at 2630 Channing Way. Frederick H. Clark was apparently the deed holder on both "chalets," since Boke was never listed in the assessor's records, and Margaret A. Dean did not appear there until 1908. Both houses were completed on February 14, 1902.

Boke (1869–1929) was an up-and-coming figure at the University. A graduate of the 1894 class alongside Julia Morgan and Frank Norris, his trajectory can be traced through city directory listings that show his rise from instructor to assistant professor, associate professor, and professor in the course of four years. An idealist reformer, Boke was active in



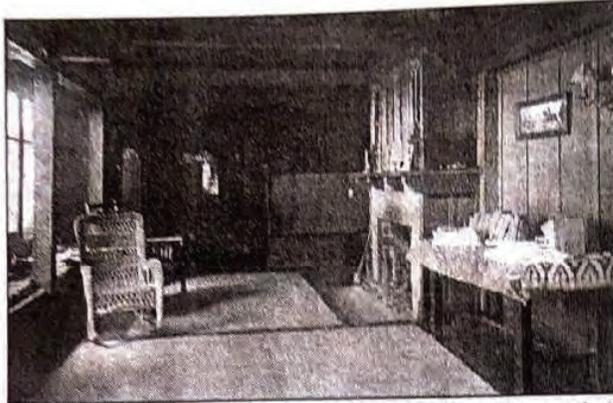
*The Boke House now. Daniella Thompson, 2005.*

the San Francisco graft prosecutions of 1906–1909. Writer Lincoln Steffens (1866–1936), a muckraker himself, would write:

*George Boke was the handsomest, the gayest, the clearest teacher of law at the University of California when, years ago, Fremont Older [editor of the San Francisco Bulletin], Rudolph Spreckles [sic], and Francis J. Henry set out to clean up San Francisco. Boke came to them, all blond and smiling brave, to offer his services and Spreckles gladly took him in.*

It didn't take long for the reformers' efforts to implicate members of the University's Board of Regents. Although the Regents couldn't fire Boke, his career at the University was over. In 1907, he taught at Stanford. The next year he began publishing the short-lived San Francisco weekly *Liberator*.

Boke's tenure at 23 Panoramic Way was brief. In 1904, he was listed in the directory without an address; in '05, at 2329 Dana Street; and in '06 and '07, at 2516 Le Conte Avenue. By 1908, he was gone from Berkeley. Through his son Richard, we know that in 1906 Boke built a "modern" redwood house in Carmel. This house, wrote the son, "shows somewhat the Maybeck influence." Steffens, rather dramatically, suggests that Boke came to Carmel a broken man, paralyzed in an invalid chair, speechless and motionless—all as a result of his bitter struggle against the forces of evil. In fact, Boke continued to work for a number of years, and in 1915 he published the book *Cases in equit: selected from decisions of English and American courts*.



*The Boke House living room, looking north to the stairhall. Illustration from Louis J. Stellmann, "The Swiss Chalet Type for America." House & Garden, November 1911. To the right is the same view of the Elston House living room in Aberdeen. Note the similarities and differences in its execution. BAHA Archives, Dimitri Shipounoff Collection.*

Boke was succeeded at 23 Panoramic by Clifton Price (1867–1942), a professor of Latin who later added to his holdings the Jerome C. Ford apartment house at 77 Panoramic (A.H. Broad, 1904) and commissioned Julia Morgan in 1912 to build the apartment house at 5–11 Panoramic. The 1920 U.S. Census records him as sharing the 4-bedroom house with his wife, three children, a brother-in-law, two cousins, and a servant. But the arrangement was short-lived, as Price regularly moved his residence from one property to another. In 1924, Price married his second wife, Wilson Holden (1895–1979), who lived in the house for the rest of her life. The current owners bought it from her estate in 1980.

Maybeck's design for the Boke house is both traditional and advanced for its time. The upper story, clad in vertical redwood boards, extends two feet beyond the first floor, where the boards are horizontal. Two wings of a broadly overhanging roof part to admit a central gable with a pair of double casement windows. A trio of casements appears just below, in a square bay projecting from the first floor façade. On the north side, an open sleeping balcony is a reminder of hardier generations.

Exterior decorative touches include diagonal bracing on the second-floor; cutout apple shapes in the front-porch and sleeping-balcony parapets; fake "log cabin" ends at the southwestern corner; and "cuckoo clock" frames on the two small stairwell windows. In his book *Bernard Maybeck*, Kenneth Cardwell orients the visitor:

*The house, on a sloping site, is entered on a half-level below the main floor. Its stairhall is built outside of the main rectangular form of the house, and is used as entry, circulation, and stairway for the principal living areas.*

*The first landing of the stairway forms a vestibule for the living room. Double bolster blocks have been used on the columns between the stairhall and the living room to form a decorative entrance. A doorway at the second landing provides access to a large sleeping balcony [...]. The stairway then turns ninety degrees and leads to second-floor sleeping accommodations.*

The living and dining rooms are arranged in an open "L" with no separating doors. Both are paneled in board-and-batten redwood, with exposed posts and beams and more decorative bolster blocks. Atypically for Maybeck, the fireplace is small, with a simple bracketed wooden mantel and tile surround. Two small cabinets above the mantel have leaded-glass doors in the same pattern as the stairwell windows. Note the cutouts in the wallboards between them. The reclining ceramic cat was made by the architect's daughter-in-law, Jacomena Maybeck.

The bedrooms (not open today) are also finished in redwood board-and-batten. Originally stained a mossy green, they were later painted in Easter-egg colors. The current owners meticulously replaced the upstairs walls and ceilings with clear redwood, and also restored the living-room casement windows, which had been converted to a picture window.

The Boke House had repercussions in Berkeley and beyond. An exact copy of it was built in Oakland. Maybeck's office records indicate that duplicate plans were sent to Mr. J. B. Elston in Aberdeen, Washington in 1906 for his house (still standing). Berkeley houses that appear to bear the Boke stamp are the neighboring Dean House; the Warren Cheney Cottage (Carl Ericsson, 1902); the de Neiman House, 21 Hillside Court (A.H. Broad, 1906); and Carl Ericsson's own house at 1625 Jaynes St. (1909).



☞ No. 5 ☞



## THE MARGARET DEAN HOUSE

25 Panoramic Way & A.H. Broad, designer, 1901

**T**HE DEAN HOUSE was built simultaneously with the neighboring Boke house. The designer and builder was prominent Berkeley contractor, pioneer civic figure, and amateur artist Alphonso Herman Broad (1851–1930). In Berkeley since 1877, Broad was a member of the city's first Board of Trustees in 1881. Later he became Town Marshal. In 1880, Broad went into business as a building contractor and designer, and within five years was well-known throughout Berkeley and Oakland for his "Eastlake cottages."

The oldest surviving building designed by A.H. Broad is a house built in 1886 for George Edwards at 2530 Dwight Way. In 1892, Broad built the Whittier, Le Conte, and Columbus schools. In 1906, he became "superintendent of reconstruction of Berkeley Schools injured by the earthquake." It was at this time that he gained the distinction of being the first city official ever to seek a reduction in salary.

A.H. Broad kept up with the changing styles in home design, and his work ranges from the Stick-Eastlake to the rustic Brown Shingle of the early 1900s. The Dean House is a good example of the latter, as is the apartment house at 77 Panoramic.

In his later years, Broad gave in to a long-cherished desire to paint. He was a self-taught artist who often painted with a characteristic apple-green color. His landscapes are reminiscent of the Barbizon school, though they are never as dark and moody as those of the later style of William Keith, of whom Broad was a close friend. The two made many sketching trips together to the Sierra. Broad was known for the "signature" painting he left in many of the houses he built. His paintings are prized in Berkeley homes, and some are included in the Oakland Museum collection of California Art.

The 3-bedroom Dean House was commissioned by banker Frederick H. Clark for Margaret A. Dean (1856–1939), daughter of Judge Jacob Hardy of Hawaii.



*The Dean House. Daniella Thompson, 2005.*

In the late 1870s, she met the English ship's purser Daniel Dean. Their marriage was short-lived, as Daniel died in 1885. Seven years later, Margaret came to Berkeley with her two children, Alice (1882–1971) and Daniel William (1885–1972). The latter was the father of Dan Dean, retired Berkeley High School counselor and husband of former Berkeley mayor Shirley Dean. Alice studied at the University and went on to become a gym teacher at Willard Jr. High School. She married Thomas Hoskins and had three sons. When the couple separated, Alice and the boys moved back into her mother's house. Meanwhile, Daniel was engaged in sheep ranching. In 1921, Margaret had a house built for her daughter at 2736 Shasta Road. Five years later, she had a

second dwelling built for herself next door, at 2734 Shasta. Daniel and his family moved in with her at the onset of the Depression.

Beginning in 1927, the Panoramic Hill house was rented, and in 1933 Oras and Claudine Black moved in. Their daughter Nancy Noyes, mother of the current owner, recalls that bats had taken up residence and some windows were broken. The Blacks bought the house in



*Margaret Dean with her children, Alice and Daniel. Courtesy of the Dean Family.*

1937. They were friendly with the Deans, who would visit them at their Inverness house.

The Dean House bears some resemblance to the neighboring Boke residence. In both, the entrance is situated on the left, and the front steps are parallel to the façade. In the Dean House, the solid shingled stair parapet recalls A.H. Broad's Bentley House at 2683 Le Conte Ave. (1900).

The interior layout, too, evokes the Boke House. The stairwell is to the left, the living room to the right, the dining room behind the living room, and the kitchen to the left of the dining room. All the rooms except the renovated kitchen and baths are clad in board-and-batten clear heart redwood, and the ceiling beams are exposed 2x8" joists.

Many houses on Panoramic Hill embody the principles of Charles Keeler's *The Simple Home*, but the Dean House may be the supreme example. Note the pure simplicity of the stair balustrade and the piano niche created by the staircase soffit in the living room—the sole ornament is the soffit bracket, which echoes Maybeck's brackets in the sleeping balcony next door. Originally, this niche contained an L-shaped bench with storage beneath.

Although arranged in an "L", the living and dining rooms aren't as openly fluid as in the Boke House. A.H. Broad separated the two rooms with a door and placed back-to-back fireplaces next to it. These fireplaces are a model of simple elegance: clin-

ker-brick surrounds and starkly modern-looking redwood mantels. So are the picture moldings and plain friezes found in each room.

The house was renovated twice. In the 1950s, the dining room was remodeled by Robert Ratcliff, a friend of the family who lived at 74 Panoramic Way. Ratcliff brought in more light by replacing the eastern window with French doors and eliminating the door leading to the living room. He also added bookshelves and removed a built-in china cupboard that resembled the one at the Boke House. In the living room, the bench under the stairs was removed to create the piano niche.

A second renovation was done in 2000 by the owner's cousin (Nick Noyes Architecture). Great attention was given to preserving period feel and original materials. New double-hung sash windows match the old ones. The kitchen and adjoining pantry and laundry—converted from a rear porch in the '50s—were combined into a large kitchen-family room. The owner lovingly oiled all the paneling, which radiates a rich red glow. "It took me four months," he says, "but it was worth it."

*Mosswood Road was aptly named, as it suggests a shady spot, and here on the north side of Panoramic Hill, the houses are built in a forest of live oak, redwood, and pine. The steep slope descends into the canyon where Strawberry Creek directs its course.*

### Some Mosswood Road Houses

#### **6 MOSSWOOD ROAD**

Charles Mel House, 1924  
Walter T. Steilberg

A Fabricrete cottage-over-garage; canvas curtains in arched openings.

#### **8 MOSSWOOD ROAD**

The Merrill Co. speculative house,  
1919-20

Harris Allen, architect

#### **10 MOSSWOOD ROAD**

The Merrill Co. speculative house,  
1919-20

Harris Allen, architect

#### **20 MOSSWOOD ROAD**

Ben White & Sharon Landes  
House, c. 2000

architect unknown

The newest addition to Mosswood Road's sylvan setting.

#### **38 MOSSWOOD ROAD**

Parker House, 1915  
Junk-Riddell Co., designer

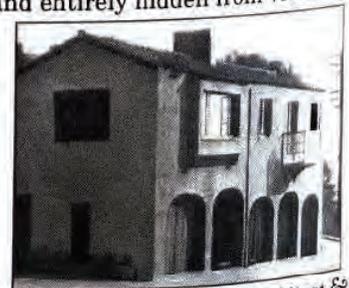
Built for Prof. Carleton H. and Cornelia Stratton Parker on the east side of Arden Steps. Mrs. Parker, a cousin of the nearby Stratton family, described the house and the Hill in her bestseller *An American Idyll* (Boston, 1919): "That spring we began building our very own home in Berkeley...we bought high up on the Berkeley hills, where we could realize as much privacy as was possible, and yet where our friends could reach us—if they could stand the climb...There, around the redwood table in the living-room, by the window overlooking the Golden Gate, we had the suppers that meant much joy to us and I hope to the friends we gathered around us. There, on the porches overhanging the very Canyon itself we had our Sunday teaparties..."

#### **44 MOSSWOOD ROAD**

Chandra & Soma Chaudhury  
House, 1991

#### **48 MOSSWOOD ROAD**

Richmond Strong House, c. 1928  
[Thomas S. Lossing, designer?]  
Located at the end of the *cul-de-sac*,  
and entirely hidden from view.



6 Mosswood Road, from Architect & Engineer, March 1931.

999 No. 6 666



## THE HILARY & JOE FELDMAN HOUSE

13 Mosswood Road & Frank Lloyd Wright, architect, 1939-1974



**I**N THE LATE 1930s, Lewis N. Bell engaged Frank Lloyd Wright to design a house in the Hollywood Hills near Mulholland Drive. Wright created for Bell one of his early Usonian houses—an 800-sq.-ft., one-story structure in wood, glass, brick, and concrete. The prevailing theme was hexagonal—first seen in Wright’s 1936 Hanna “Honeycomb” House (on the Stanford University campus).

The Bell plans were completed in 1939, but owing to the high cost of construction, they weren’t executed. Wright kept the original drawings. In 1941, he built a very similar residence—the Carlton David Wall “Snowflake” House—in Plymouth, Michigan.

In 1974, attorney Joe Feldman approached the Frank Lloyd Wright Foundation at Taliesin and asked for a Frank Lloyd Wright plan that could be used to build a house on his Panoramic Hill lot. Wright’s widow Olgivanna, senior architect and structural engineer Kamal Amin, and FLW Archives head Bruce Brooks Pfeiffer searched the archives and selected the Bell House plans as the most appropriate for the site. Recalled Kamal Amin in a January 2005 letter:

*Mr. Wright had done more study on that house than he had on others he had sketched before his passing. So there was no ambiguity about his intent aesthetically.*

*I was able to engineer the building by inserting reinforcing members of rolled steel sections in the appropriate places so as not to alter any feature of the building. Joe’s lot was markedly steeper than the one the house was designed for. So, the back wall is by necessity somewhat higher than the one in the Bell House. This is the only difference between the two designs.*

According to the Frank Lloyd Wright Building Conservancy, the original layout was flipped in order

*The hexagonal lines of the house and terrace are apparent in this view looking north. Daniella Thompson, 2005.*

to fit the present site, and the retaining wall was constructed in brick instead of board and batten. Ronald L. Scherubel, Executive Director of the Conservancy, wrote:

*The Feldman House is extremely significant in that it fills a gap in the record of Wright’s actual built works, allowing architectural historians and students to see an important early step in Wright’s development of the Usonian house, following so closely its introduction with the Jacobs I House in 1936, albeit through the eyes and talents of the Taliesin Architects’ later adaptation. The house exhibits Wright’s early genius for making a very small space seem so large and open. It was his first use of the hexagonal modular design in a smaller house, after its successful introduction in the much larger Hanna House in 1936. The hexagon form which almost eliminates corners, coupled with the expansive windows, allows the living space to flow out onto the deck, making the interior space appear much larger than its square footage suggests.*

*Like the original sighting in Los Angeles, hills and trees—redwoods, native oaks and towering pines—also surround the Feldman House. From the veranda, one has a 200-degree view of the Bay Area that sweeps east from Oakland to San Francisco, the Bay Bridge, Alcatraz and*



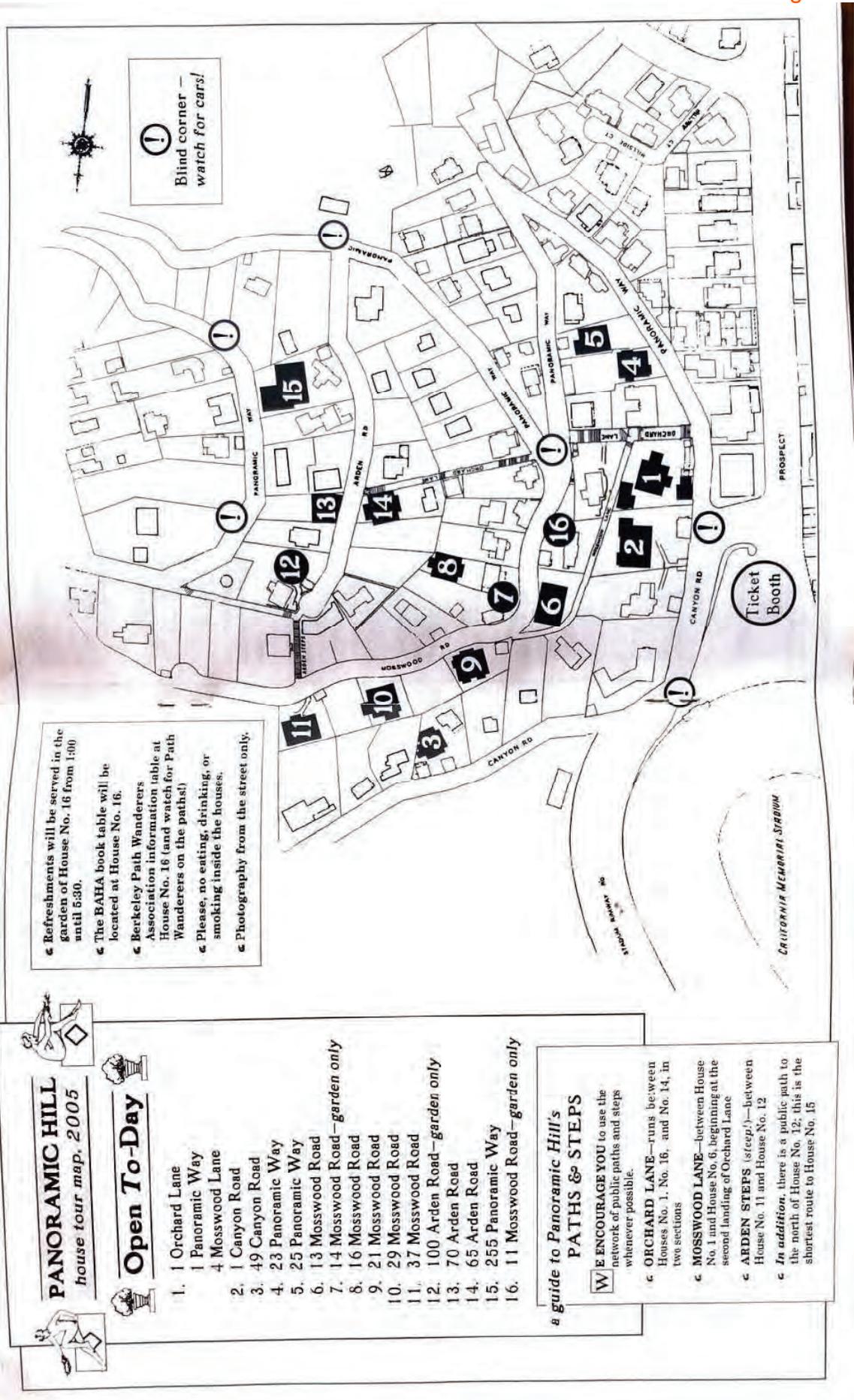
## PANORAMIC HILL

*house tour msp, 2005*



### Open To-Day

1. 1 Orchard Lane
- 1 Panoramic Way
- 4 Mosswood Lane
2. 1 Canyon Road
3. 49 Canyon Road
4. 23 Panoramic Way
5. 25 Panoramic Way
6. 13 Mosswood Road
7. 14 Mosswood Road—garden only
8. 16 Mosswood Road
9. 21 Mosswood Road
10. 29 Mosswood Road
11. 37 Mosswood Road
12. 100 Arden Road—garden only
13. 70 Arden Road
14. 65 Arden Road
15. 255 Panoramic Way
16. 11 Mosswood Road—garden only



**WE ENCOURAGE YOU** to use the network of public paths and steps whenever possible.

- **ORCHARD LANE**—runs between Houses No. 1, No. 16, and No. 14, in two sections
- **MOSSWOOD LANE**—between House No. 1 and House No. 6, beginning at the second landing of Orchard Lane
- **ARDEN STEPS** (*steep!*)—between House No. 11 and House No. 12
- *In addition*, there is a public path to the north of House No. 12; this is the shortest route to House No. 15

• Refreshments will be served in the garden of House No. 16 from 1:00 until 6:30.

• The BAHÁ book table will be located at House No. 16.

• Berkeley Path Wanderers Association information table at House No. 16 (and watch for Path Wanderers on the paths!)

• Please, no eating, drinking, or smoking inside the houses.

• Photography from the street only.

! Blind corner — watch for cars!

*Angel Islands, the Golden Gate Bridge, Sausalito, Marin County to the Richmond Bridge in the west.*

As in many Wright houses, the street façade is unassuming, revealing only a flat roofline, a plain redwood wall on the left, and another of reddish custom-made brick on the right. All the excitement is reserved for the interior, where the single large public space is oriented toward the vistas. Floor-to-ceiling glass walls divided by horizontal redwood frames surround the living-dining area, and perpendicular pairs of glass doors are mitered into the corners to maximize the views. Terraces sheltered by the cantilevered roof form a natural extension of the indoor space.

A core of brick, comprising the hexagonal kitchen and the fireplace, separates the public space from the private ones. Throughout the house (even in the bathroom), board-and-batten redwood walls are surmounted by clerestory windows with a cutout de-

sign, which reappears in window shutters, folding closet doors, and a screen between living room and kitchen. Note the angular pattern in the redwood ceilings, the triangular ceiling lights, and the light column embedded in the chimney (bulbs are changed from above).

Wright did not believe in large bedrooms, and the two in this house are characteristically small. But contrary to the belief that "bedrooms are for sleeping," these are equipped with ample bookshelves conforming to the hexagonal scheme.

The house originally came with Wright-designed furniture. The current owners, who bought it from the Feldmans in 1978, donated the furniture to the Victoria and Albert Museum in London (no American museum would accept it) and have since created their own enchanting interpretation of this small jewel.

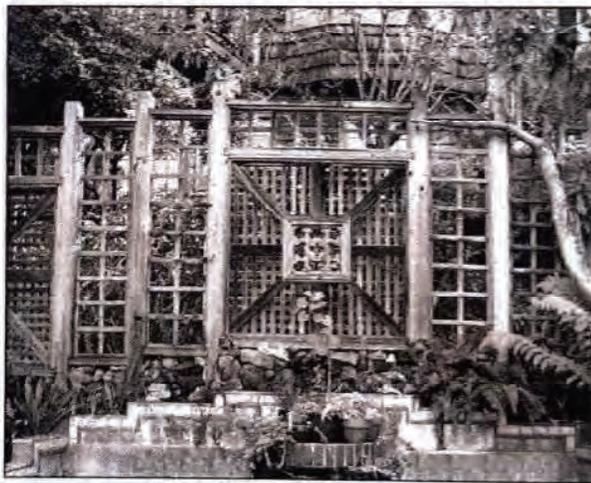
000 No. 7 000

THE ANNIE & ROBERT BAIRD HOUSE  
14 Mosswood Road & Mabel Baird, designer, 1919

— garden only —



**A**S YOU ASCEND the stairs at 14 Mosswood Road, you are invited to meander through the hillside garden of the Baird House in order to reach 16 Mosswood situated further up the hillside on an adjacent lot. Take time to notice the stone terraces of uncut local rock lazily defining the hillside and setting the stage for native ferns, live oaks, hazelnut, and buckeye. Rising out of this bucolic setting is the two-story brown-shingle home designed by Mabel Baird in 1919 for Robert H. and Annie P. Baird, its residents until 1928. Originally, the house was a simple rectangle with a gabled roof and overhanging eaves. A subsequent owner, James Sather Hutchinson, an attorney and accomplished carpenter, made alterations after pur-



*A garden fence. Daniella Thompson, 2005.*

chasing the property in 1935. That same year, Hutchinson hired a landscape architect to draw up elaborate garden plans. The design included two fountains and extensive terracing on the adjacent uphill lots, which Hutchinson also owned.

Hutchinson and his brothers, Edward and Lincoln, were avid mountaineers and early founders of the Sierra Club, along with Edward and Marion Parsons (see House No. 9). Lincoln lived in his Julia Morgan-designed home at 9 Canyon Road for many years. A love of nature is reflected in the structures Hutchinson added to the property, which include a studio/garage, a loom cottage, and a summer house, all woven into the hillside as though occurring naturally.

Follow the brick pathway north into the garden and you'll come upon a shingled Studio with gabled roof, exposed rafter tails, multiple bay windows, and a breezeway running the length of its south side. This north facing Studio sits cleverly atop a 3-car garage, and was designed by Walter Steilberg in 1936. It served as meeting place for the Sunday Strollers Club, a group of Sierra mountaineers including the Hutchinson brothers and conservationist and real estate developer Duncan McDuffie. Be sure to take note of the simple Art Deco-inspired motifs in the concrete on the street side of the garage.



Loom Cottage. Daniella Thompson, 2005.

The north eastern edge of the property is defined by the small (approximately 9x14'), one-room "Loom" Cottage built by Hutchinson for his adopted daughter Marjorie, a weaver. Note the decorative side-lights flanking the entry door. Follow the gently curving brick pathway up beside the cottage, past the azaleas, ferns, wild iris, and Japanese maples, all living in harmony beneath a canopy of mature live oaks.

A third, charming outbuilding, the "Summer House", is tucked into the hillside. The open-air structure is composed of three sides of lattice work punctuated by 6x6' green-glazed, perforated Oriental tiles, once again exhibiting Steilberg's influence. Pause to enjoy filtered views of the bay and Strawberry Canyon before investigating the gardens nearer the house, on level with the second story, where you'll find the only fountain executed from the 1935 plans. While the fountain is not currently in working order, its design is complemented in the latticework fence, inset with perforated tiles, running along the south and east perimeter of the property from the terrace. (The fence is a sympathetic addition by the current and fourth owner.) The second story tiled patio adjacent to the master bedroom is a clever use of the flat roof top of the servant's quarters below. A slim pedestrian bridge spans the distance from the main house across the roof of the workshop to the garden. The patio, workshop, bridge, and garden ironwork additions are all courtesy of Hutchinson.

888 No. 8 888



THE MABEL BAIRD HOUSE

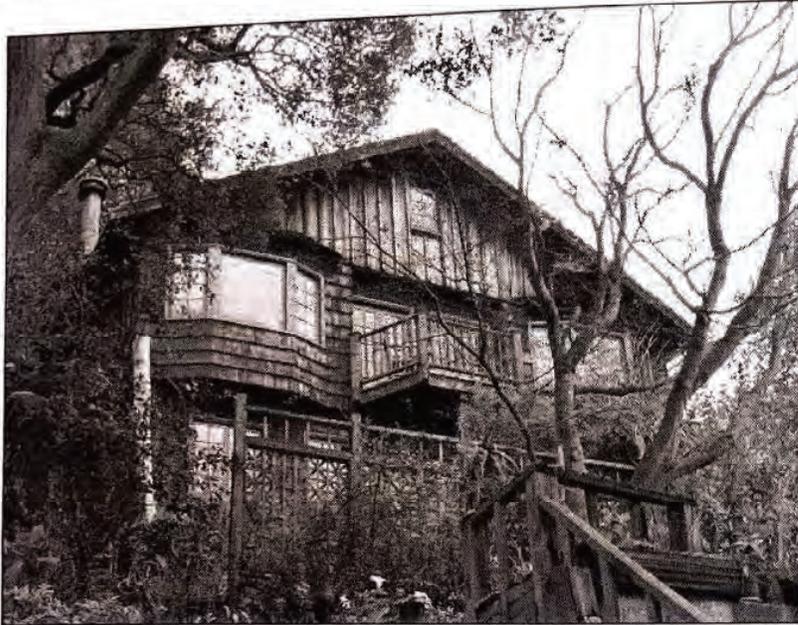
16 Mosswood Road @ Mabel Baird, designer, 1922



Garden lantern at 16 Mosswood Road. Daniella Thompson, 2005.

**I**N 1919, Mabel Anne Baird graduated Phi Beta Kappa from the University of California. In 1922, she designed this two-story cottage above and behind her family home at 14 Mosswood Road. It is said that no. 16 was built as a wedding present for a Baird family member. While we don't know this for certain, it would be a challenge to find a more romantic spot: the expansive views belying the cabin's seclusion among the oak woodlands. In 1928, the home was purchased by Charles and Olga Spieker who made it their primary home until 1991. Like Baird's earlier design at #14, the rectangular structure is shingled in cedar, has a gabled roof with overhanging eaves, casement windows, and French doors at the entryway. It is also built into the hillside, thereby providing ground level access to both the first and second story.

The interior is predominantly rough-hewn redwood in a board-and-batten configuration. Very little remodeling has occurred over the years, thereby leaving the kitchen and bathrooms remarkably intact. At some period,



*The Mabel Baird House, Daniella Thompson, 2005.*

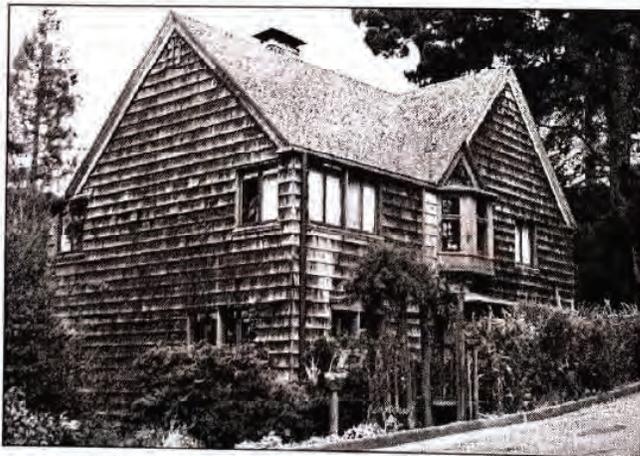
fashion dictated the painting of the redwood panels. The home's third and present owners have begun to restore the original interiors by flipping the boards to reveal the natural redwood, as originally intended. Note the restoration process in progress in the living room. Situated on the second floor, the location of this room ingeniously takes advantage of the gable roof to provide a cathedral ceiling of exposed beams and rough-hewn redwood. The size of the room easily accommodates the large clinker brick fireplace flanked by bookshelves, while the expansive windows invite the outside in. With a sleeping porch on the eastern side, nestled under mature oaks, this characteristically simple home is perfectly situated.

## ◆◆◆ No. 9 ◆◆◆



### THE MOUSER-PARSONS HOUSE

21 Mosswood Road ☉ architect unknown, 1888  
(John Hudson Thomas, architect, 1910 alterations)



*The Mouser-Parsons House, as remodeled by John Hudson Thomas. Anthony Bruce, 2004.*

Bay. On November 5 of that year, the *Berkeley Herald* reported:

*Dr. Mouser's house now being constructed on the hillside east of the town is visited by many who regard the situation as being extraordinary for the location of the dwelling. It will certainly open the eyes of many to the desirability of the hills as a handsome location for those who can afford to keep a horse and carriage and do not care for the frequent visits of their friends.*

Around his house Mouser planted an almond orchard. He called his country retreat *Atalaya* ("watchtower" in Spanish). Mouser was never listed in the Berkeley directory, but his son Benjamin, also a physician, appeared in the 1901 edition as a resident of Panoramic Way. As soon as the elder Mouser died, Benjamin sold *Atalaya* to editor-turned-realtor Warren Cheney. Cheney in turn sold the house to Edward Taylor Parsons (1861–1914) and his wife Marion (1878–1953). Parsons was one of the first salesmen for the Sherwin-Williams paint company.

**T**HE Mouser House is believed to be the first residence built on Panoramic Hill. In 1888 and again in 1895, Silas Mercer Mouser, M.D. (1823–1909) of San Francisco purchased large parcels on the hill from major landowner Charles A. Bailey. Also in 1888, Mouser began building a gable-roofed, white clapboard house on the present location of 11 Mosswood Road, where it faced the

*The Mouser House in its original location, facing west. Freshly cut Panoramic Way is in the foreground. Illustration from Charles Bailey, Berkeley the Beautiful, 1889. Courtesy of The Bancroft Library, University of California, Berkeley (xF869 BS B6).*



He traveled throughout the West and settled in San Francisco about 1900. An active mountaineer and photographer, he joined the Sierra Club the same year and assisted Club secretary William E. Colby in establishing the Club's outings program. Parsons served as a director of the Sierra Club from 1904 until his death. In his eulogy of Parsons, John Muir recalled:

*In 1907 he married Marion Randall, as able and enthusiastic a mountaineer as himself, whom he first met on the Sierra Club Outing of 1903, and three years later, in 1910, established his first home high up on the Berkeley hills overlooking the Golden Gate ...*



*Looking down on the Mouser House and its outbuildings clustered along what is now Mosswood Lane. Illustration from Charles Bailey, Berkeley the Beautiful, 1889. Courtesy of The Bancroft Library, University of California, Berkeley (xF869 BS B6 "University").*

Parsons moved the Mouser House to its present location, overlooking Strawberry Canyon, on land he had previously purchased from Mouser. He retained John Hudson Thomas to remodel it in the Arts and Crafts style. On the new site, the house was turned so the previous façade now faced away from the street to the view. The new entrance was close to the road and below the street grade. Tho-

mas added interest to the new façade by placing a substantial bay window surmounted by a false pediment above the entrance door, which shelters beneath a copper-sheathed awning supported by heavy wooden brackets. The exterior is clad in redwood barn shakes. Note that the shingles are even with the sash, and the windows have no visible frames except for the library window west of the entrance.

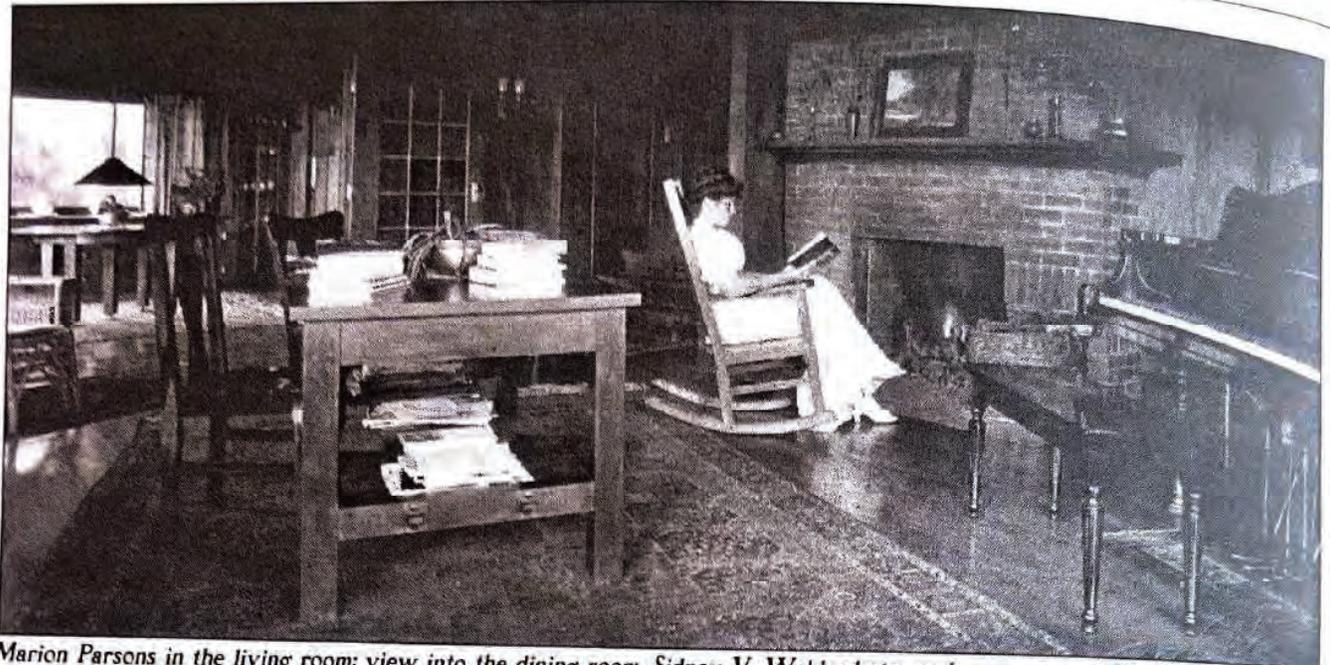
The ground floor comprises a kitchen to the right of the entrance, a library to the left, and at the rear, spacious living and dining rooms extending the entire length of the house. Heavy French doors with leaded-glass panels connect the rooms. Thomas clad the old plastered walls in board-and-batten redwood, with ceilings likewise paneled and beamed. The old double-hung windows gave way to horizontal picture windows affording stunning bay and canyon views. An angled bay window in the living room is a possible survivor from the farmhouse. Thomas designed built-in furniture for the three public rooms:

window seats, cupboards, sideboards, bookcases, and in the library, a fireside bench.

In the old house, all rooms on the ground floor were at the same level. When the house was turned around, the vestibule and library were built three steps above the living and



*Marion Parsons at the entrance. Courtesy of The Bancroft Library, University of California, Berkeley (POR 3 Marion Parsons).*



*Marion Parsons in the living room: view into the dining room. Sidney V. Webb photograph, courtesy of The Bancroft Library, University of California, Berkeley (POR 17 Marion Parsons).*

dining rooms to accommodate the slope of the hill. The ceilings, however, are the same height in all the rooms. Thomas cleverly exploited this feature by inserting a soffit next to the living-room fireplace to house the library storage cupboard. These two rooms also share back-to-back brick fireplaces with wooden mantels (Thomas removed the original chimneys, which were located at two ends of the house).

In the dining room, the mica-shaded ceiling lamp and wall sconce are the work of Dirk van Erp, the legendary San Francisco coppersmith who was the



*E. T. Parsons in his study. Sidney V. Webb photograph, courtesy of The Bancroft Library, University of California, Berkeley (POR 5 Edward Parsons).*

first to make these lamps in 1910. Many years ago, architect and neighbor Walter Steilberg told the current owner, "You'll grow to like them."

The kitchen is the only downstairs room to have been remodeled. A redwood-lined stairwell leads to the second floor. The balustrade and newel post are Victorian remnants from the original house. In the hall, the large bay window with its built-in seat creates a charming sitting room. Possibly for economic reasons, the upstairs walls were not plastered but finished with Beaver Board, a wood-fiber product. The Beaver Board company of Keeseville, N.Y. advertised its product thus:

#### **Better Walls and Ceilings**

*Use Beaver Board instead of lath and plaster. It never cracks: needs no repairs, does away with unsanitary wall-paper: is easily and quickly put up at any time of year: suits any kind of building. Let us show you how it looks.*

Redwood batten covered the seams between the Beaver Board panels and as trim at door height and around the ceilings. The walls in the four bedroom are now sheetrocked, but the batten has been retained, although at somewhat wider intervals.

It was at the Parsons home that John Muir began transcribing his Alaska journals in November 1912. Marion assisted him with the manuscript of *Travels in Alaska* in his final months and edited it for publication after his death in 1914. Edward Par-

sons died the same year. Parsons Memorial Lodge in Tuolumne Meadows at Yosemite National Park was built in his memory, and Parsons Peak in the Cathedral Range was named for him. Marion Parsons became the first woman elected to the board of directors of the Sierra Club and served for twenty-two years, having a hand in the establishment of the National Park Service in 1916. She was also an

amateur painter. In 1921, when Marion Parsons built a new house next door, this became the home of Dr. Earl Morse Wilbur (1886–1956), first dean of the Pacific Unitarian School for the Ministry (now Starr King School) and its president from 1911 until 1931. Dr. Wilbur was a leading historian of Unitarianism and wrote several authoritative books on the subject.

DDD No. 10 CCC



## THE MARION RANDALL PARSONS HOUSE

29 Mosswood Road & Walter T. Steilberg, architect, 1921



*The Parsons House in 1922. BAHA Archives.*

**E**DWARD AND MARION PARSONS were married for just seven years. He retired from the Sherwin-Williams Company the year of their marriage and died unexpectedly in 1914. An obituary in the *Berkeley Daily Gazette* of May 23, 1914 announced:

*After an illness of only a few weeks, Edward T. Parsons died yesterday at his home, on University Hill. Parsons returned from a business trip to Honolulu in April, and his illness dates from that time.*

Marion remained at 21 Mosswood Road for another seven years. She was busy with her activities in the Sierra Club: mountaineering, writing, editing, committee work, as well as her art. Her home continued to be a salon for leading nature enthusiasts and artists, where the Muir family, William Keith, Stephen Mather, William Colby, Ansel Adams, and others gathered. Marion also took in lodgers. The 1920 U.S. Census recorded three lodgers living with her. Two of them were Mary V.E. Ferguson and her daughter Elizabeth, a research assistant at the

University—future wife of Walter T. Steilberg, who was then a widower living at 38 Panoramic Way.

It is not known why Marion decided to build a new house. When she did, she called on Steilberg to design it on a double lot she owned directly to the east of 21 Mosswood Road.

The new house, also below the road grade, is sited away from the street and set in a rustic garden amidst seven mature coast live oaks. While 21 Mosswood is exposed, 29 Mosswood is very private—only the roof is visible from the street (note: the roof's charming horizontal green stripes, although evocative of Steilberg, are in fact a recent embellishment by the current owner). As you descend the steps toward the house, notice the *Sequoia gigantea* planted by the Parsonses.

At 29 Mosswood, Steilberg created a modern, streamlined version of 21 Mosswood. Before you enter, see how many green perforated Chinese tiles you can locate on the exterior of the house and the garage. These were Steilberg's signature marks, often used as vents. A Dutch door with leaded glass in the upper panel ushers the visitor into a small vestibule paneled in board-and-batten redwood. A sliding door in the west wall opens, and two steps descend into a large living room extending the full depth of the house. As in the Mouser-Parsons house, the walls here are paneled in untreated clear heart redwood, the ceiling is beamed, and a wide flat frieze is used above door level. At the front of the living room, a heavy soffit sets the library alcove apart. Built-in bookshelves, cabinets, and window seats recall similar arrangements at 21 Mosswood. So do the wide windows, which reveal generous bay and canyon views. The iron brackets of the wall sconces

are original, although the lampshades are not.

Folding French doors lead into the intimate dining room, which is considerably smaller than the one at the Mouser-Parsons House. In these doors, as well as in the windows, wooden muntins are used instead of the leading seen in the older house. The kitchen has been expanded and updated but retains a period feel. New cupboards match the originals.

In this house, Marion Parsons continued to receive social gatherings (Ansel Adams is said to have played the piano here). Again she took in lodgers, favoring professors' families. During the 1920s, her lodgers were Benjamin Harrison Lehman (1889–1977), his wife Gladys, and son Hal. Lehman was professor of English at the University and a minor novelist, whose best-known work was the suggestively titled *Wild Marriage*. In 1937 he married the actress Judith Anderson and settled at 97 Tamalpais Road. That marriage lasted but two years, and Lehman's ties with Marion Parsons continued until her death, when she bequeathed her house and two lots on Mosswood Road to Hal. Her will, filed in probate court on August 13, 1953, also specified:

*Give to Benjamin Harrison Lehman the drawings and etchings by Camille Pissaro and the old silver service and teaspoons:*

Another close friend, fellow Sierra Club leader William E. Colby who lived at 2901 Channing Way (Julia Morgan, 1905) and later in Big Sur, received a mountain painting by William Keith.

Hal Lehman never lived in the house. It was sold to Josephine Emily Smith (1886–1983), who for many years worked in the University comptroller's office, rising to the top position there. Miss Smith was an avid birdwatcher and a member of the Cooper Ornithological Club. So was her constant companion Mary Stephanie Albro (1885–1982), a University librarian. In the 1920s, the two had lived at 1801 Highland Place on the Northside. By 1937, they had moved to Panoramic Hill, residing at 51 Canyon Road, one of Miss O'Connor's cottages.

Miss Smith retired at the age of 70, around the time she bought the Parsons house. Her neighbor Ernest Sotelo tells that "Smith & Albro, Inc." used to hike in the Sierra, ski, and ice-skate. In a workshop adjacent to the house, Miss Smith had a hand press on which she printed cards for the Women's Faculty Club, of which she was a member. She took delight in shopping for typefaces. The current owners bought the house from her estate in 1984.

DDD No. 11 EEE



## THE ALLEN HOUSE

37 Mosswood Road © Walter H. Ratcliff, Jr., architect, 1911



**T**HE ALLENS were renting Warren Cheney's Maybeck-inspired garden cottage on College Avenue when they learned that their landlord was selling lots in the middle of Strawberry Canyon, uphill of the fine houses on Piedmont Way. University Hill was the name of this newly laid subdivision, and Professor of Classics James Turney Allen and his wife Amelia Sanborn Allen were some of its earliest residents.

Building their house near the end of Mosswood Road, this contemplative couple was afforded the quiet and privacy they desired. Their neighbors included other University faculty, including Professor George Stratton below them at 67 Canyon Road and Professor Carleton Parker across the street at 38 Mosswood Road.

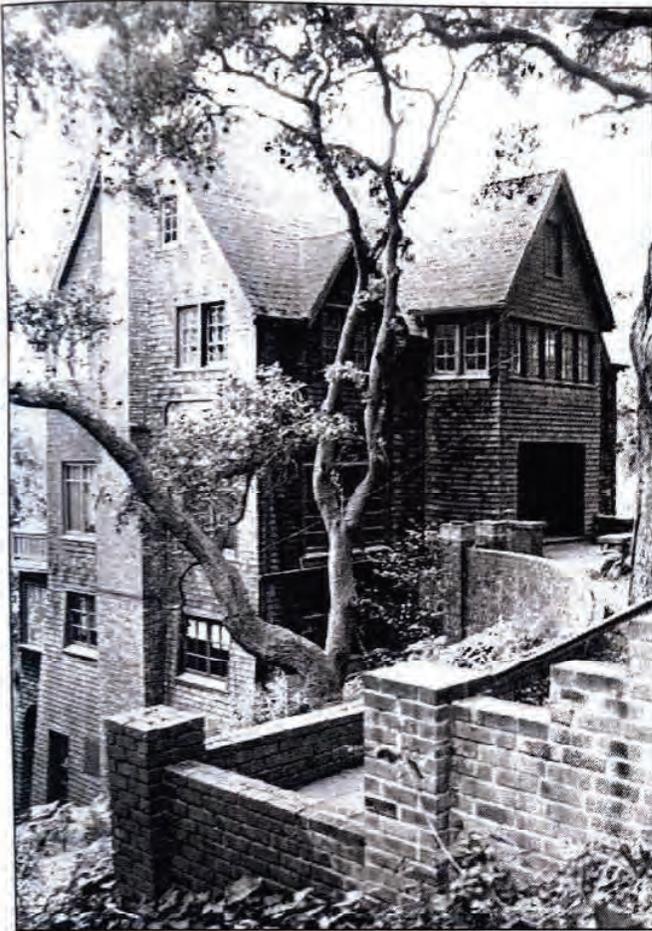
Designed by British-born architect Walter Ratcliff, the Allen House represents an integration

of the English vernacular with the brown shingle Arts and Crafts style. Even the approach to the house, along a narrow brick pathway, is reminiscent of English country cottage landscapes.

In keeping with the modest grandeur of the dwelling, the brick retaining wall is substantial yet graceful, with a built-in brick bench as an enjoyable amenity. When the house was built, a trellis extended from the front entrance. But as the growth of the live oak trees on this northern slope has created a shady location, the trellis has since been removed (and before the present owner's stewardship).

The steeply-pitched gable roof and the five stories give height to this house built on the downhill side of the road. Several front gables give additional lift, and the prominent battered foundation is a substantial base both visually and engineering-wise.

The front entrance is through a sheltered alcove,



*The Allen House. Daniella Thompson, 2005.*

and just inside the front door, the ceiling is low. The entrance hall steps down, following the slope of the hill, and opens up to a space with a 10-foot ceiling covered in redwood beams and paneling. A redwood fireplace mantel and high redwood baseboards bring additional warmth to the dining and living rooms.

The presence of live oaks and the abundance of large casement windows combine to give the experience of living in a large—albeit symmetrical and classical—tree house. A natural extension of this indoor-outdoor relationship was Mrs. Allen's enthusiasm for the birds in her immediate environs. In 1915, she published "Birds of a Berkeley Hillside" in the March issue of *The Condor*, written from her perspective of living in Strawberry Canyon.

Choosing to build "in the middle of a dense grove of young live oak trees", their lot was adjacent to what is now known as the University's Ecological Study Area. Mrs. Allen wrote, "No shooting is allowed at any season.... To the north and east the

oak forest is continuous, interspersed with bay trees; and there is a dense undergrowth of hazel, cascara, poison oak, spiraea, wild rose, snow-berry, wild currant, blackberry and brakes, with thimble-berries and wild parsnip filling the cross ravines."

Prof. Allen retired from the University as Professor Emeritus. He had shown leadership as a founding member of the Pacific Coast Philological Association, president of the Classical Association of the Pacific States, and president of the San Francisco Archaeological Society. His scholarship was vast and included a concordance of the dramas of Euripides. After his wife's death in 1945, he posthumously published her writings, entitled *Chasing Wrens*, which describes their expeditions to the Sierra Nevada, Santa Cruz mountains, and Monterey.

Prof. Allen remarried, and the second Mrs. Allen (Lois) continued to live out her years in the same residence. One of her friends, Helen Mead Pillans, professor of astronomy at Mills College, also lived at 37 Mosswood until she passed away. In her final years, Prof. Pillans lived in the downstairs in-law unit, and rented out the upstairs as a rooming house.

Very little of the exterior has changed since the brown-shingle house was built. The only interior changes are the 1985 remodel of the kitchen and 1992 remodel of the upstairs bath, both by Dan Phipps and Associates of San Francisco. Using the present owner's English-influenced furnishings, the interior first floor entrance, living room, and dining room have been decorated, painted, and freshly interpreted by artist Marc Foster Grant of Berkeley.

Over the years, the yard had become overgrown with English ivy, but is gradually being returned to a more native state. The redwood sorrel lining the entrance path volunteered upon removal of introduced species. Native plants thrive in the meadow and fire break between the house and the Ecological Study Area. In keeping with the philosophy of the Hillside Club, still there are no fences which would divide the landscape between the downhill Stratton House and the Parsons House on one side and the live oak and bay woodland on the other.

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*Climb the somewhat arduous Arden Steps, past the Parker House on the left, now sadly altered, and ascend out of the shady oak woodland into the bright sunlight of Arden Road, named by developer Warren Cheney after Shakespeare's "Arden Forest."*

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999 No. 12 999



**THE HERSAM HOUSE**  
100 Arden Road ☉ owner-designed, 1915  
— garden only —



*The Hersam House. Daniella Thompson, 2005.*

**A** HILLSIDE redwood house with an impressive clinker brick retaining wall and entryway. Designed by the original owners, Prof. and Mrs. Ernest A. Hersam. You are invited to climb the stairs into the garden and pause to enjoy the view and a glass of ice water.

**Some Arden Road Houses**

**9 ARDEN ROAD**  
Gene Bernardi House, 1968  
Wurster, Bernardi & Emmons, architects

**10 ARDEN ROAD**  
Tom Burke House, 1991  
D. Wilson, architect

**24 ARDEN ROAD**  
Ynes Ghirardelli House, 1940  
Gardner Dailey, architect  
The 1973 remodel by Don Porter included a second story.

**40 ARDEN ROAD**  
Linden Naylor House, 1940-43  
Harwell Hamilton Harris, architect

**50 ARDEN ROAD**  
Francis L. Cross House, 1938  
Winfield Scott ("Duke") Wellington, architect

**59 ARDEN ROAD**  
Prof. Oliver M. Washburn House  
Junk-Riddell Co., designer, 1912

**60 ARDEN ROAD**  
George Maslach House No. 1, 1951  
Hachiro Yuasa, architect

**62 ARDEN ROAD**  
George Maslach House No. 2, 1953  
Hachiro Yuasa, architect



**76 ARDEN ROAD**  
Bradley-Gardner House, 1925  
architect unknown  
Remodeled by William Wurster in 1939 for Eleanor Gardner.

**89 ARDEN ROAD**  
Eva de la Guerra Buchanan House, 1925  
owner-designed  
Notice the low brick wall along the front of the property, and the brick wall running downhill south of the house.

**95 ARDEN ROAD**  
Barbara Pitman Kalway House, 1953  
James B. Crocker, architect

*The Buchanan House and its handcrafted brick wall. 1952 photo from Donogh Real Estate Files, BAHA Archives.*



☞ No. 13 ☞



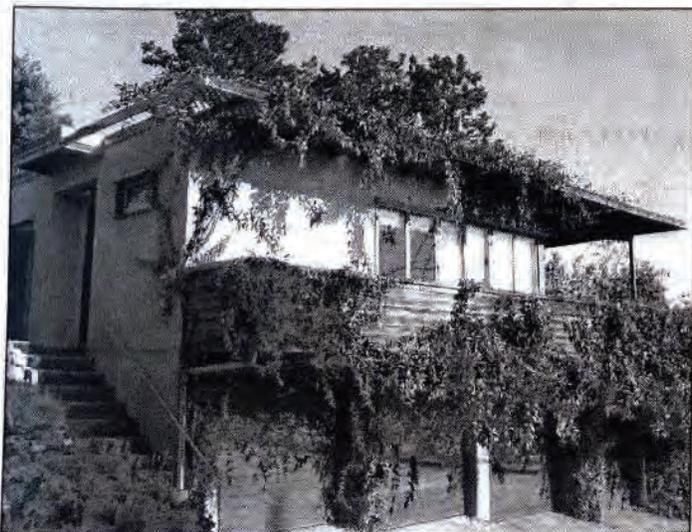
**THE ELEANOR GARDNER COTTAGE**  
70 Arden Road ☞ William W. Wurster, architect, 1941

**C**OTTAGES above garages are a recurring building type in Berkeley, especially on Panoramic Hill where lots are steep and land is scarce. This example was designed by William Wurster for Eleanor Gardner, who lived next door at 76 Arden Road (Bradley House, 1925). Two years earlier, in 1939, she had commissioned Wurster to remodel her older house.

The two-story, flat roofed cottage is a gentle form of Modernism: a rectilinear form that is both softened and enlivened by color, texture, and the play of light and dark. Wurster has masterfully composed simple and ordinary—but contrasting—building materials to create a seemingly effortless abstract design of great sophistication.

The primary siding materials are coarse, sand-textured concrete stucco impregnated with a gray color that is close to the color of sidewalks. The contrasting material is smooth, unpainted redwood boards about five inches wide. Thin strips of molding around windows and doors are painted a medium blue, or “Wurster Blue,” so called by University of California architecture students in the 1960s!

The garage/cottage is essentially a rectangle with four single-car garages across the ground floor façade that step up the hillside. Above the garages is a solid wood balcony dripping with trumpet vine.



Trellises above extend to the edge of the balcony completing the rectangular form. The cottage, above the garages and set back from the balcony, is L-shaped; the “L” created by a cut-out on the southwest side of the rectangle.

The ever-changing play of light and dark is an important element here. Strong shadows are created by the full-width, projecting balcony across the front, that casts bands of light and dark across the ground floor, as well as the cottage above. Medium, rectangular shadows are created by the trellis-work above the balcony (originally an open pattern of rectangles, now laid over with lattice work.) Small, subtle shadows are created by the recessed garage doors, and the slightly overlapping boards.

The entrance is on the north side, up pebble-embedded concrete steps. The composition of the entrance is pure geometry: a small, unsupported projecting roof shades the shallow recessed entry, edges are sharply defined, not rounded, and the front door is taller than average, a Wurster trademark.

The interior floor-plan consists of three rooms, plus a bath. The living room, on the west, has a band of modular casement windows that wrap around the southwest corner of the room. A door opens to a balcony. The original wood burning stove is in the north corner. A hallway, generously wide for the size of the living quarters, leads to the bedroom and bath, and ends with a door to the garden. Windows in the kitchen, bath, and bedroom are generous sized rectangles with four rectangular panes of glass.

Inexpensive plywood paneling on walls and ceilings, with seams covered by narrow half-round molding strips, is stained a redwood brown. The kitchen, with wood counters, is original. The only alterations are the plastered and painted walls of the kitchen and bath, and a new closet door in the bedroom.

William Wilson Wurster (1895-1973) is regarded as the most influential, early, mid-twentieth century Modernist architect in the San Francisco Bay Area. His work was simple and direct, even when

*The Gardner Cottage. Susan Cerny, 2005.*

large and elegant. He had a keen sense of proportion: the relationship between the height of a room and its size, and the size of windows and walls. His houses open gracefully to balconies, patios or gar-

dens and views are carefully framed. He stated that he wanted his work to look spontaneous — “unarchitected” — as if it had been designed by a carpenter.

☛ No. 14 ☛

## THE PARKER HOUSE

65 Arden Road ☛ Walter T. Steilberg, architect, 1935



**N**EARLY HIDDEN beneath lush growth and covered by creeping fig vines, is a small redwood house that can just be glimpsed if you look closely. From Arden Road, only the two garage doors are clearly visible, but as ones gaze moves through the garden gate and across the small uneven brick patio, the brown shingle house appears. The original redwood screen door is arched at the top to duplicate the graceful arch of the redwood front door, which is paneled vertically and inset with a lacy wood carving of fruit—perhaps pear—that echoes those seen in his own house. Behind this cutwork is an openable window.

A small front hall, with stairway leading to the left, opens into the light-filled rectangular living room, ending in a three-sided bay directly facing the Golden Gate, with a panoramic view stretching from the south bay to the Campanile, the campus, and the distant north bay.



The polished redwood beamed ceiling of low pitch is the cottage's finest feature, and beautifully uses structure as design. A center ridge beam runs the length of the room with five rafters in the bay radiating from a central point to the top of the walls, while the other rafters slope in parallel formation. At the east end, three rafters

*The front door with its carved pear panel. Daniella Thompson, 2005.*



*The entrance patio, suffused with late afternoon light. Daniella Thompson, 2005.*

fan to the corners where two skylights have been skillfully added to light these dark spots. Behind the rafters, the roof sheathing of wide redwood boards alternate with narrow bands, creating a polished and sophisticated design. A brick fireplace in the center of the north wall dominates the room and runs from floor to ceiling, with a tall, narrow opening. The floor and back wall of the firebox are laid with diagonal bricks, as are the smaller fireplaces in the dining room and the downstairs bedroom, all designed to share the same chimney in the center of the house. The upper section of the living room fireplace has a mantel wider on the sides and narrow across the front; above, the bricks taper slightly, and around the rafter end is a special brick design touch to be noticed.

The study is to the south of the living room and its original redwood sliding doors are on display. To the north, is the dining room with separate brick corner fireplace with cupboard above. A built-in corner cupboard is opposite with glazed cupboard above and storage below. The deck off the dining room,

and another below, have been added, as have large windows in the living room, dining room, and study.

All of the woodwork—doors, trim, newel posts, balustrades, and railings—is redwood that is especially beautiful, the hardware is all original, and the floors appear to be Philippine mahogany, which the architect had used in his own house. His signature inset carvings are found in several of the interior doors, and the exterior trim is Steilberg's signature shade of green (which is said that he chose partly for its durability) seen in other Steilberg houses on the tour.

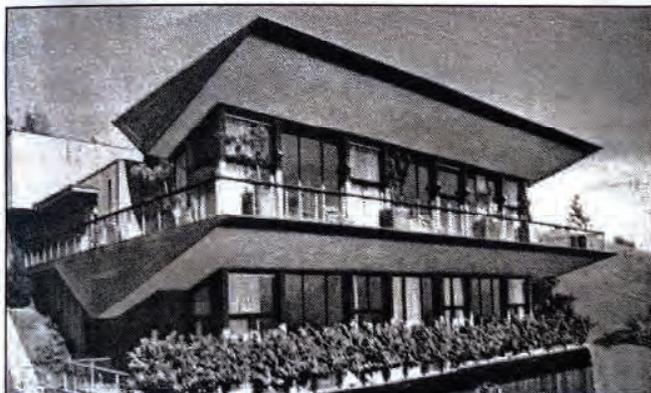
Original double-hung windows remain in the kitchen and small lower level back bedroom, all on the north side. Downstairs, a gracious master bedroom was created by removing a wall, leaving the corner fireplace in the middle of the east wall, and eliminating a small room on the north front of the house. The smaller back bedroom is most notable for its set of original windows set at a slight angle, creating a long triangular windowsill.

The house was built for Alfred Parker, a teacher in the Berkeley schools, and his wife, Ella. They both graduated from the University in the 1920s.

☛ No. 15 ☛

## THE JOHN WESTON HAVENS, JR., HOUSE

255 Panoramic Way ☞ Harwell Hamilton Harris, architect, 1939–41



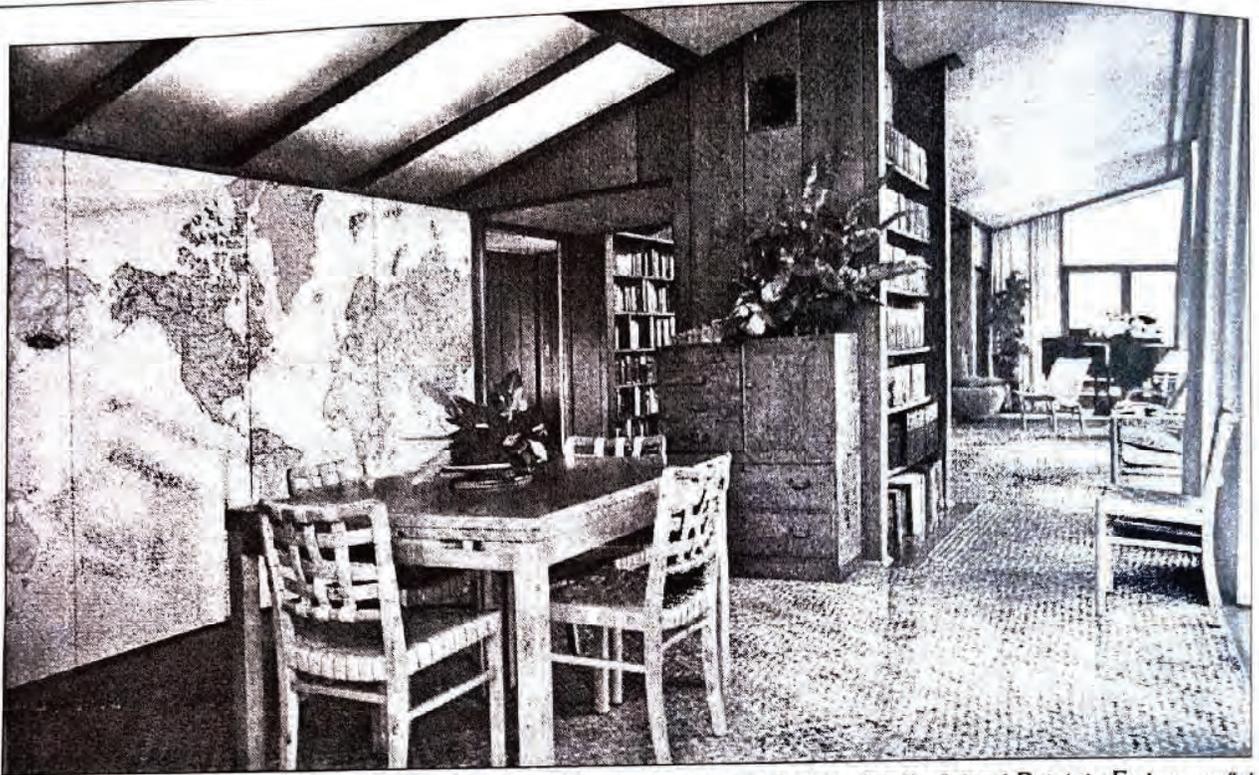
*The Havens House from below. From Elizabeth Gordon, "How to Judge Modern", House Beautiful, August 1944.*

**B**ERKELEY'S most revolutionary modern house was built, incongruously enough, for a scion of Berkeley's most traditional family, the Shattucks. In 1852, Francis Kittredge Shattuck (1825–1898) came to California and soon became a leading figure in the development of Oakland and Berkeley. By 1868, he had convinced his younger sister Elizabeth Helen (1835–1912) and her lawyer husband Henry Herman Havens to follow in his steps. Elizabeth had seven children. The third was John Weston Havens, who in 1881 entered the University of California. The childless Shattuck invited his nephew to live with him in Berkeley and made him his heir. John's only child was John Weston Havens, Jr. (1903–2001).

Young Weston grew up in a large brown-shingle house at 2631 Benvenue Avenue with his father and governess. From the windows, he could see the site of his future home on Panoramic Hill. He graduated from the University in 1923 and devoted his life to the parallel pursuits of managing the family's properties and art patronage. A devotee of modernism, he followed new trends in architecture, which led him to Harwell Hamilton Harris (1903–1990).

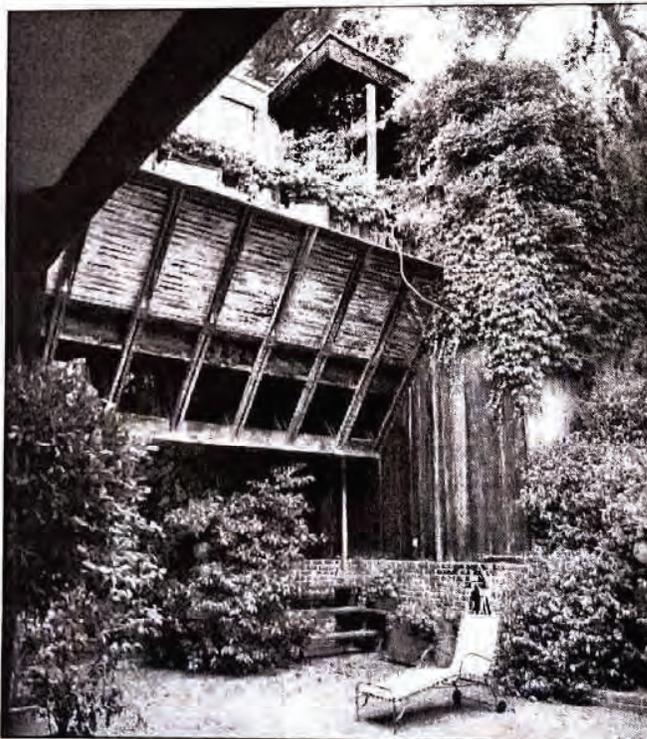
Born in Redlands, Harris was the son of an architect and rancher. His early ambition was to be a sculptor, and he studied at the Otis Art Institute. Visiting a Frank Lloyd Wright house was a revelation that changed his career. In 1928 he was admitted to the University of California architecture school, but instead of moving to Berkeley, he found employment with R.M. Schindler and Richard Neutra. Neutra discouraged Harris from attending formal classes in architecture, although he did attend classes given by Neutra at the Los Angeles Academy of Modern Art. While in Neutra's office, Harris worked on seminal projects such as the Lovell Health house and the Rush City competition.

Harris established his own practice in 1933. Inspired by the work of the Greene brothers and Bernard Maybeck, he developed a regional style that integrated Modernist principles with a sensitivity to site and materials. His own home, Fellowship Park, won the 1936 *House Beautiful* Small House



Looking from the dining room toward the living room. The mural was painted by family friend Patricia Fudger on folding panels that open to reveal the kitchen. From Elizabeth Gordon, "How to Judge Modern", House Beautiful, August 1944.

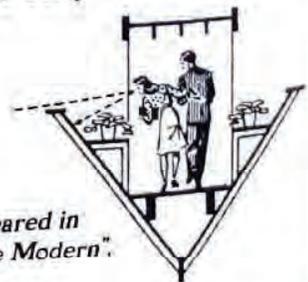
competition and established his reputation in California. In 1937, John Entenza, the influential edi-



tor of *California Arts and Architecture*, commissioned Harris to design his home. Weston Havens was a regular subscriber to the leading architectural magazines and was well acquainted with Harris's work. In 1939—following a trip to Europe, where he purchased modern furniture by Alvar Aalto, Bruno Mathsson, and other Scandinavian designers—Havens arranged a meeting with the architect. Soon thereafter he invited Harris to Berkeley and showed him two lots he had recently acquired high up between Arden Road and Panoramic Way (Havens then sold the lower lot to his friend, bank president Linden Naylor, who engaged Harris to design a house at 40 Arden Road).

At that time, Havens was living in the Coxhead-designed Rieber House at 15 Canyon Road. But he

The famous entry bridge that connects the house to the road. Henry Bowles, 1985.



A diagram of the bridge that appeared in Elizabeth Gordon, "How to Judge Modern", House Beautiful, August 1944.

wanted something altogether different: a house that would take maximum advantage of the glorious view. And he had other requirements: walls that should be either books or glass; a spiral stair; a pass-through between kitchen and dining room; and a map of the world. The architect delivered just that. In 1944, Harris described the design for a *House Beautiful* article devoted exclusively to this house:

*The ceiling of each room is tipped up to increase the vertical view and include a larger slice of the sky, which in this area is filled with ever-changing patterns of clouds sweeping across the Golden Gate toward the house and disappearing toward the hills behind the house. The view is no mere segment of something seen through a hole. Rather it is an extension of the sky, the water, the hills. Because the house has no visible connection with the ground, a soaring effect is produced by the rising ceilings. It is a sky house, more than an earth house.*

Built on a 35-degree slope and hidden behind a seven-foot high redwood fence, the house is divided into two volumes. The small east wing, comprising a 742-foot carport with maid's quarters below, hugs the hillside. A sunken courtyard separates it from the two-story main building to the west, which is approached via a dramatic covered bridge. Standing free of the slope, the house faces open space on all sides. Inverted roof gables maximize both natural illumination and views.

The main (upper) floor of the dwelling includes living and dining rooms, kitchen, and a guestroom. Like the exterior, the interior walls, cabinetry, and doors are made of redwood. In the public rooms, note



*The living room and its western view. Henry Bowles, 1985.*

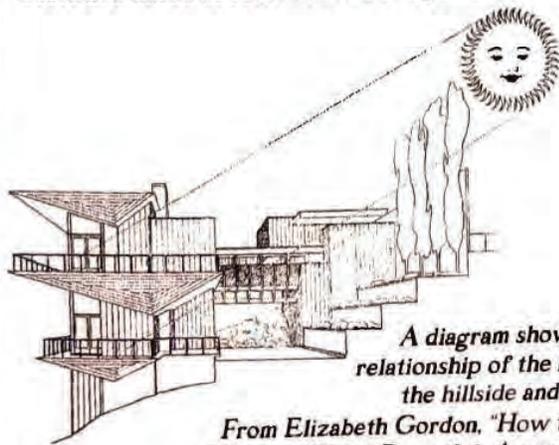
the lively contrast between inner and outer walls. Along the east wall, the ceiling is only seven-feet high. Here the warm colors of redwood bookshelves, brick hearth, books and furniture bestow an intimate atmosphere. In contrast, the western wall is all glass, extending the living space toward the view by way of a wraparound balcony, where the eaves are 15-feet high. In the dining room, the east wall displays a world map mural painted by Patricia Fudger, a family friend. The middle panels of this mural open to reveal a pass-through to the kitchen, which retains its original cabinetry.

A spiral stair sheathed in birch leads to the lower level, where two bedrooms with back-to-back bathrooms open onto private terraces and a badminton court facing a terraced garden to the east. On the west side, they face directly onto the Golden Gate.

Completed in December 1941, the Havens house represents the pinnacle of Harwell Hamilton Harris' career. Having lived in it for 60 years, Havens bequeathed it to the University of California.



*Portrait of Weston Havens. Arnold Genthe, 1928.*



*A diagram showing the relationship of the house to the hillside and the sun.*

*From Elizabeth Gordon, "How to Judge Modern", House Beautiful, August 1944.*

No. 16



## THE WILLIS LYNN JEPSON HOUSE & COTTAGE

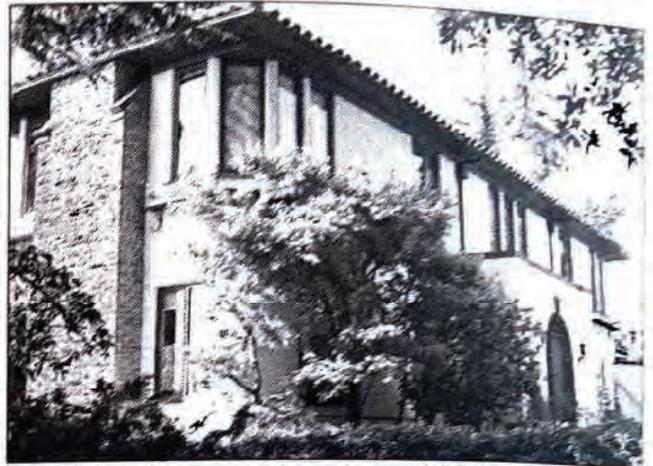
11 Mosswood Road & Julia Morgan, architect, 1925, 1930



— garden only —

**R**EFRESHMENTS of punch, cookies, and strawberries are to be found behind the gracious garden wall of the Willis Jepson House. Momentary pause might give reflection that this once was the site of Dr. Silas M. Mouser's country farmhouse, *Atalaya*, built in 1888. In those early days, as today, this plateau on the sloping hillside created an idyllic spot for Mouser's modest working farm surrounded by fragrant almond trees. In 1910 when Edward and Marion Parsons moved the old Mouser House around to 21 Mosswood Road, the level site, named by Dr. Mouser for its spectacular views—reaching far out beyond the edges of the western world—now lay open. It was not until 1925 and 1930, respectively, that Julia Morgan designed, first, the three-room house and garage and, then, the stately seven-room house hugging the rim of the hillside, leaving just enough space for the intimate formal garden.

Julia Morgan had already designed many beautiful Mediterranean-styled buildings by 1925. While her distinctive Mediterranean homes might seem to be a departure in "feel" from her earlier brown-shingle houses (see: the Hutchinson House, 9 Canyon Road, 1908, and the Turner House, 66 Panoramic Way, 1908), they each were individually expressive of her disciplined attention to classic pro-



*The Jepson House. Anthony Bruce, 2004.*

portions, careful placement of doors and windows, restraint of detailing, and choice of fine materials. Miss Morgan's house built for the noted botany professor, Willis Jepson, seems to be reflective of the surrounding homes designed by Walter Steilberg, who was closely associated with her throughout his career. Privately set back behind the garden, yet still glimpsed over the wall and through the picturesque iron gate, the house commands a presence quite unique on the hillside. Professor Jepson joined the community of neighbors on Panoramic Hill as he also was a charter member of the Sierra Club.

## HOUSES OF PANORAMIC WAY

*This inventory of houses on Panoramic Way, Panoramic Place, and Orchard Lane includes only those addresses that could be researched using City of Berkeley building permit records, City of Berkeley tax assessment records (at The Bancroft Library), and the BAHA Archives. Houses in the 400 block of Panoramic Way, and beyond, are within the Oakland city limits, and their documentation must await a future tour.*



*The Price Apts. Anthony Bruce, 1979.*

### 5-11 PANORAMIC WAY

Clifton Price Apartment House, 1912  
Julia Morgan, architect  
Clifton Price of the University classics department commissioned this 4-unit apartment building. In scale and style, it could be one of the grand houses or fraternities that by then mingled on the streets below.

### 10 PANORAMIC WAY

Wilson Price House, 1958  
no architect listed on building permit

### 12 PANORAMIC WAY

Golden Fine Apartment House, 1949  
Campbell & Wong (Worley K. Wong), architect  
This Modern building faces Prospect Street.

### 18-24 PANORAMIC WAY

Rev. Ray C. Brooks House, 1914  
W. S. Montgomery, designer  
The Brooks House and the next-door

house have been physically joined to create the present fourplex. Note the superb Craftsman window frames. Artists Walter and Margaret Keane lived and painted here in the mid-1950s.

### 26-30 PANORAMIC WAY

Mrs. Mary Bradley House, 1925  
no architect listed on permit

### 27 PANORAMIC WAY

Prof. Percival Exum Lewis House  
architect unknown, 1901 or 1902  
This shingled house was built about the same time as the Boke and Dean houses. The house rests on the remains of a brick cistern built to hold runoff from a spring: an important source of water for the early University.

### 34 PANORAMIC WAY

Leonard & Adeline Ascher House, 1936  
Frederick L. Confer, architect  
A "Regency" style house built by a professor.



*The Buckham "chalet" seen from below. House & Garden, Nov. 1911.*

### 36 PANORAMIC WAY

John W. Buckham House, 1908  
Frank M. May, designer  
The chalet imagery is similar to that of the Runde house at no. 122. The board-and-batten has been highlighted whimsically in green and white paint.

### 38 PANORAMIC WAY

Walter and Rowena Steilberg House, 1917  
Walter T. Steilberg, architect  
Cascading shallow gabled roofs with wide overhanging eaves together with the shadowy recessed entry, gives this house the romantic and engaging quality for which the Hill is reknowned. Steilberg designed this house early in his career for his first wife Rowena, an artist, who did the woodcarving around the front door.

### 48 PANORAMIC WAY

William Corlett House, 1958  
William Corlett, architect

### 50 PANORAMIC WAY

William Corlett House, 1949  
William Corlett, architect

### 52 PANORAMIC WAY

Anne Barnett House, 1954  
no architect listed

### 54 PANORAMIC WAY

Architectural Prototypes Duplex, 1964  
Architectural Prototypes, architect

### 56 PANORAMIC WAY

Architectural Prototypes Duplex, 1964  
Don H. Harms (Architectural Prototypes), architect

### 58 PANORAMIC WAY

Henry & Celestine Rowe House, c. 1890  
Henry Rowe designed and built several houses on the Hill. His own house was destroyed by fire in 1992.

### 59-61 PANORAMIC WAY

Atkinson-Moise House, 1929  
Walter T. Steilberg, architect  
In 1952, Howard Moise, an architecture professor at the University, designed a second story addition to the main body of the house which seamlessly joins old and new.

### 60 PANORAMIC WAY

William J. Moore House, 1913  
Henry Rowe, builder

### 62 PANORAMIC WAY

Laura McDowell House, 1908  
Henry Rowe, builder  
Additions include the rounded corner section with the salvaged 19th century double doors at the entrance.

### 64 PANORAMIC WAY

Mrs. E. Rountree House, 1908  
Henry Rowe, builder

### 65 PANORAMIC WAY

John G. Hoffman House, 1964  
Robert B. Tucker (Architectural Prototypes), architect

### 66 PANORAMIC WAY

Elsie Lee Turner House, 1908  
Morgan & Hoover, architects  
Elsie Lee Turner was one of Julia Morgan's most enthusiastic clients, and a close friend as well. She and other members of her family commissioned numerous buildings from 1904 to 1941, including the Black Sheep Restaurant building on Bancroft Way.



*Moise House. Anthony Bruce, 2004.*

### 67 PANORAMIC WAY

John G. Hoffman Cottage, 1964  
Robert Ducher (Architectural Prototypes), architect

### 70 PANORAMIC WAY

John Brecher House, 1949  
Hachiro Yuasa, architect  
Art historian and author Sheldon Cheney retired to this house when he returned to Berkeley in 1974. His father was Warren Cheney.



*Paine fountain. Anthony Bruce, 2004.*

### 72 PANORAMIC WAY

Mary & Robert Paine House, 1939  
Robert Ratcliff, architect  
As you walk up Panoramic you will see permanent mossy, wet patches on the street and on the steps leading to 72 Panoramic. Set back from the hedge is a small fountain with a carved head. Evelyn Ratcliff's father, sculptor Robert Paine [see 94 Panoramic] designed this fountain in the 1920s at the foot of their property to function as a run-off for the spring beneath it.

### 74 PANORAMIC WAY

Evelyn & Robert Ratcliff House, 1941  
Robert Ratcliff, architect  
This house, gracefully wedged into a narrow hairpin turn, was built in several stages for Evelyn and Robert Ratcliff, son of Walter Ratcliff. The architectural firm, begun in 1906, exists today in its third generation as The Ratcliff Architects.

**75-77 PANORAMIC WAY**

Jerome C. Ford Apartments, 1904  
A. H. Broad, designer

This early building rose above the surrounding orchards and used large expanses of windows and trellis-covered balconies to take advantage of the view.

**94 PANORAMIC WAY**

Robert Paine Studio, 1917  
Owner-designed

This unusual house was built by Robert Paine, a sculptor and the father of Evelyn Ratcliff, as his studio and the family home. Note the sidewalls sheathed in roofing material, and the bronze doorknocker and inscription sculpted by the owner. Among his sculptures are the paleolithic animals at the La Brea Tar Pits.

**101 PANORAMIC WAY**

Ferguson House, 1931  
Walter T. Steilberg, architect

The Fabricrete walls are 2 1/2 inches thick with wire mesh sandwiched in the middle. Robert Ratcliff, who designed an addition for the house, was faced with the challenge of cutting a doorway into a solid concrete wall.

**107 PANORAMIC WAY**

Mrs. V.F. Bortveit House, 1926  
Chester Miller, architect

Designed by a partner in the firm of Miller & Warneke for a drama instructor at the Cora Williams Insitute. The living room was intended for theatricals.

**111 PANORAMIC WAY**

Lucia Lane Hymes House, 1978  
"Lane-Manley Solar House"  
Garth Collier, architect

A design that employs solar energy.

**120 PANORAMIC WAY**

Miss S. Bayde Duplex, 1938  
no architect listed  
Owner-designed alterations, 1985-88.

**121 PANORAMIC WAY**

Kingsley Price House, 1964  
Robert Ratcliff, architect  
Commissioned by a member of the Clifton Price family on land he purchased from the Ratcliff family.

**122 PANORAMIC WAY**

Winifred Runde House, 1912  
Henry Rowe, builder

**125 PANORAMIC WAY**

Robert J. Darter House, 1934  
Julian C. Mesic, architect  
Alterations by Robert Ratcliff, 1947.

**130 PANORAMIC WAY**

David & Irene Singman House, 1956  
Charles Warren Callister, architect

**136 PANORAMIC WAY**

Janet & Byron Brown House, 1985  
Richard C. Hubble, architect

**140 PANORAMIC WAY**

Louise Rigg House, 1976  
Louise Rigg, designer with Carl Groch, architect

**150 PANORAMIC WAY**

Cliff Ceridono Duplex, 1962  
Haluk Akol, architect

**152 PANORAMIC WAY**

Calco-Davis Co. Duplex, 1963-64  
Calco-Davis Co., architect

**154 PANORAMIC WAY**

Calco-Davis Co. Duplex, 1963  
Calco-Davis Co., architect

**156 PANORAMIC WAY**

Calco-Davis Co. Duplex, 1964  
Calco-Davis Co., architect

**157 PANORAMIC WAY**

Edna & Elmera Schmidt House, 1926  
no architect listed on permit

**158 PANORAMIC WAY**

C.V. Carrickson House, 1963  
Jack Walling, designer

**160-162 PANORAMIC WAY**

A.B. Mann House & Guest Cottages, 1929  
no architect listed on permit  
alterations by Howard Moise, 1947  
Through the gate, with its rustic brick posts, one has but a tantalizing glimpse of these wooden buildings and landscaped grounds along Derby Creek.

**208 PANORAMIC WAY**

Marjorie G. Edwards House, 1923  
architect: *building permit is illegible*  
This brown-shingle house, designed in a "U" around a sheltered garden, is an early addition to upper Panoramic.

**222 PANORAMIC WAY**

Marion D. Taylor House, 1957  
owner-designed

**240 PANORAMIC WAY**

Elizabeth McGuire House, 1928  
Anton Boyko, designer  
The earlier address, no. "316", reflected the fact that the house, set in the middle of this large block, faced the upper part of the road. It was designed by an architecture student at the University and is hidden today from view.

**260 PANORAMIC WAY (old no. 200)**

Imogene Dougherty House, 1894  
Visible in early photographs of the Hill as a white-painted cottage. It retained its late 19th century appearance until a 1980s remodel. A cluster of cabins and sheds on the hill above it are remembered by Hill residents and may have been the outbuildings for this house.

**265 PANORAMIC WAY**

George J. Maslach House No. 3, 1955  
Hachiro Yuasa, architect

**280 PANORAMIC WAY**

Lafontaine-Hoyt House, 1906  
architect unknown  
The second owner, Dr. Werner F. Hoyt, remodeled the house in the 1920s and '30s, engaging architect John K. Ballantine, a friend of the family.

**299 PANORAMIC WAY**

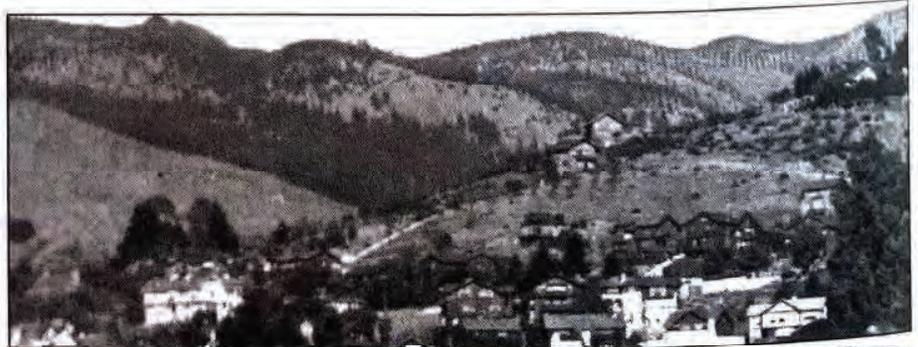
Margaret Hodgen House, 1926  
Elizabeth Austin, architect  
This steeply gabled, redwood house was designed by a 1910 University graduate who worked first for Gutterson.

**301 PANORAMIC WAY**

Mary Stearns House, 1932  
Elizabeth M. Austin, architect

**303 PANORAMIC WAY**

Henrik Wallman House, 1983  
Gene H. Clements, architect



Panoramic Hill in 1916. Courtesy of Bertha Clark Thomas.



The upper reaches of Panoramic Hill in about 1949. Seen in the ravine at the hairpin turn is the Mann House, 162 Panoramic; directly above it on the hillside is the Eaton House, with its two staggered roofs, at no. 336. Slightly to the right, the dark horizontal structure with white trim is the Bahme Duplex at no. 240. Above and close together, from left to right, are the backs of the Choate House, no. 352, the Wilson House, no. 356, and the Langworthy House, no. 358. To the right and above, partly hidden by trees, is the early brown-shingle cottage of the children's books authors. Donogh Real Estate Files, BAHA Archives.

#### 314 PANORAMIC WAY

John R. Dawson House, 1931  
J.A. Pinkerton, designer

This white stucco cottage was altered in 1958 by architect George O. Olsen.

#### 320 PANORAMIC WAY

house, pre-1928

#### 322 PANORAMIC WAY

cottage, pre-1929 (in rear of no. 324.)

324 PANORAMIC WAY (old no. 300)  
house, pre-1929

#### 330 & 332 PANORAMIC WAY

E.A. Cranston House, 1931, 1932  
Edwin Lewis Snyder, architect

The Cranstons had rented 314 Panoramic before buying this lot where they had watched the sunset many times. In 1931 they built the Monterey-style house, and, a year later, the cottage behind, originally for friends.

#### 335 PANORAMIC WAY

Dick Bahme House, 1963  
Ken Feenstra, architect

#### 336 PANORAMIC WAY

Lloyd & Dorothy Eaton House, 1940  
William Wilson Wurster, architect

#### 337 PANORAMIC WAY

Thomas & Della Reid House, 1964  
Don Harms, Robert Tucker & James Tuley, architects

#### 339 PANORAMIC WAY

Thomas & Della Reid House, 1956  
Gerard Fisher, designer

#### 340 PANORAMIC WAY

Dick Bahme Duplex, 1947  
Robert Adams, architect

#### 345 PANORAMIC WAY

Thomas & Della Reid House, 1964  
Don Harms, Robert Tucker & James Tuley, architects

#### 350 PANORAMIC WAY

Edwin C. Flynn House, 1936  
George Rushforth, architect  
This shingled house has a notable facade of random bricks and stone.

#### 352 PANORAMIC WAY

Choate House, pre-1929  
Earlier numbers for this house were "307" and "332". According to oral tradition, Harold and Evelyn Choate bought this property in the 1920s and honeymooned in the existing 1-room rustic cabin. They added to the house over the years.

#### 356 PANORAMIC WAY

Frank H. Wilson House, 1940-41  
L.F. Hyde, designer

#### 358 PANORAMIC WAY

Madeline Langworthy House, 1937  
Williams & Wastell, architects

#### 360 PANORAMIC WAY

Dick Bahme Apartment House, 1956  
Jack Pruyn, architect

Tucked behind the houses on the south side of this block, is, surprisingly, a 10-unit apartment building.

#### 363 PANORAMIC WAY

house, c. 1922

For many years the highest house on the Hill. Built for two authors of childrens' books, and was numbered as "400" and later as "341".

#### 365 PANORAMIC WAY

Donald A. Johnson Cottage, 1968  
Lars Thorsnes, architect

#### 367 PANORAMIC WAY

Donald A. Johnson House, 1968  
Lars Thorsnes, architect

#### 8 PANORAMIC PLACE

Douglas Carter House & Guest Cottage  
no architect listed on permit, 1941-42

#### 3 ORCHARD LANE

Harry Jackson House, 1915  
Jeffrey Bangs, architect  
The concrete balustrade to the west of the house is said to have been designed by Bernard Maybeck.

#### 19 ORCHARD LANE

Philip Bush House, 1950  
no architect listed on permit

#### 21 ORCHARD LANE

Alfred E. Parker Cottage, 1949  
C.O. Bradhoff, designer




## ACKNOWLEDGEMENTS




*To the volunteers and docents, to residents and former residents who have shared their knowledge, memories, and historic photographs, to Janice Thomas, Fredrica Drotos, and Michael Kelly for their memorable talk, and to the residents of Panoramic Hill who are sharing their homes, gardens, and neighborhood with us today, our deepest thanks.*

### — House Tour Committee —

**Chair:** Janice Thomas

**House Selection:** Susan Chase, Jane Edginton, Fredrica Drotos, Lesley Emmington Jones, Wendy Markel, Daniella Thompson, Anthony Bruce

**Publicity:**

Daniella Thompson, Arlene Silk, Wendy Markel

**Volunteers:** Susan Chase, Lynn Crosby, Sarah Wikander

**House Captains:** Barbara Barbour, Neysa Carpenter, Fredrica Drotos, Jane Edginton, Richard Ehrenberger, Steve Finacom, Jeff Gillman, Sally Hughes, Yvonne McCredie, Claudia Reet, Sally Sachs, Jerry & Renee Wachtel, Richard Wesell, Sarah Wikander

**Special Arrangements:**

Stephanie Manning, Tim Hansen, Carl Wikander

**Publications Table:**

Susan Dinkelspiel Cerny, Carrie Olson

**Traffic & Parking:** Paul Abboud, Jerry Sulliger

**Announcement:** Anthony Bruce

**Reception:** Austene Hall, Jeannie de Vries

**THE BERKELEY ARCHITECTURAL HERITAGE ASSOCIATION** is Berkeley's nonprofit preservation organization, incorporated in 1974. BAHA provides an active educational program of tours, lectures, publications, and research assistance. Membership, at \$25 per year, includes notification of all publications and events, with member discounts, and a subscription to the quarterly BAHA Newsletter. The research office and archives are located in the McCreary-Greer House, 2318 Durant Avenue across from the Berkeley City Club. This 1901 Colonial Revival residence was a gift to BAHA in 1986 from Alice Greer. Call 510-841-2242 for current office hours, write us at [baha@ren.com](mailto:baha@ren.com), or visit us at [www.berkeleyheritage.com](http://www.berkeleyheritage.com).

*The tour was held on Sunday, May 1, 2005.*

### — House Tour Brochure —

**Text:** Janice Thomas, Daniella Thompson, Lesley Emmington Jones, Sharon Entwistle, Jane Edginton, Fredrica Drotos, Susan Dinkelspiel Cerny; including material previously written for BAHA by Gray Brechin, Anthony Bruce, and Susan Dinkelspiel Cerny

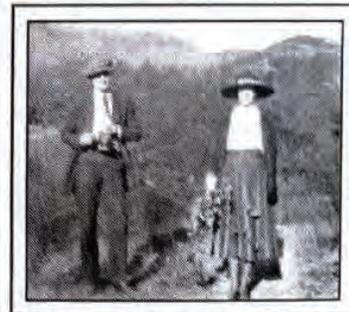
**Editing:** Anthony Bruce, Lesley Emmington Jones, Janice Thomas, Daniella Thompson

**Research Assistance:** Hilary Bendich, Anthony Bruce, Dan Dean, Joanna Steilberg Dwyer, John English, Lesley Emmington Jones, Barbara Dean Smith, Jerry Sulliger, Daniella Thompson

**Design:** Anthony Bruce

**Cover photograph:** Daniella Thompson, 2004.

**Printing:** Copygrafik



### **Special thanks to:**

Berkeley Path Wanderers Association for tending Panoramic Hill's paths; Irene Hegarty, Director of Community Relations, University of California; Susan E. Snyder, The Bancroft Library; College of Environmental Design, University of California, for opening the Weston Havens House; The Bread Garden for cookies; Frog Hollow for strawberries; Linda Snyder, for flower arrangements; and the Panoramic Hill Association for assistance and encouragement.



# UNIVERSITY HILL

## subdivision map, 1910



**THE WARREN CHENEY CO. INC.**  
**AGENTS**  
2154 CENTER ST. BERKELEY, CAL.

# UNIVERSITY HILL

## BERKELEY, CAL.

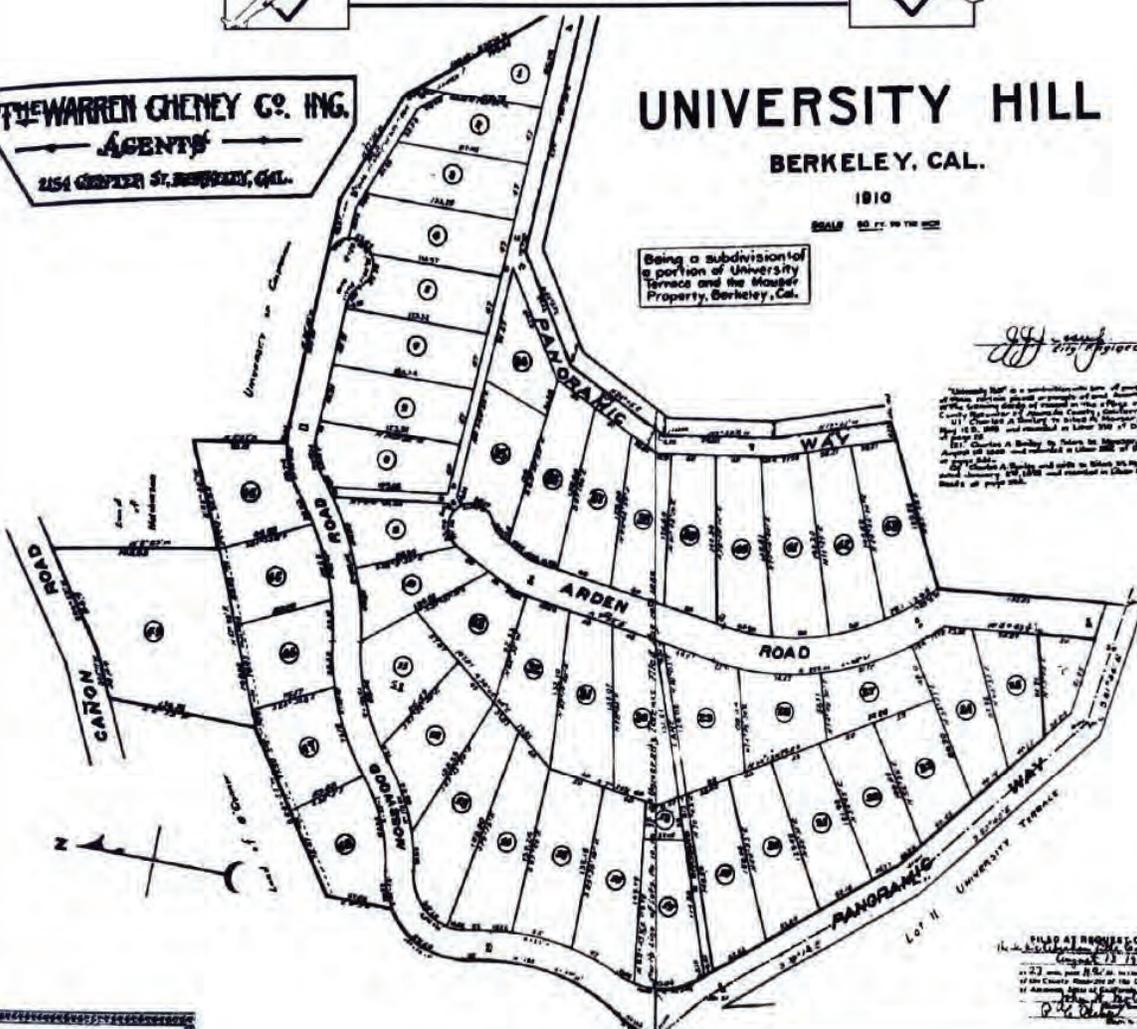
1910

SCALE 80 FT. TO THE INCH

Being a subdivision of a portion of University Terrace and the Mouser Property, Berkeley, Cal.

*J.H. Mouser*

University Hill is a subdivision of a portion of the above-mentioned property of said University of California, Berkeley, created on the 13th day of August, 1910, by the County Clerk of Alameda County, California, under the authority of a plat filed in the County Clerk's office on the 13th day of August, 1910, and recorded in Book 300 of Deeds of Alameda County, California, at page 207. The plat is a copy of the original plat filed in the County Clerk's office on the 13th day of August, 1910, and recorded in Book 300 of Deeds of Alameda County, California, at page 207.



**Stanley Farm**  
Particular Milk  
For Particular People

**MILKED** in the Berkeley Hills and delivered within fifteen minutes from the time it leaves the cow.

**IT STAYS SWEET THESE HOT DAYS**

**WE CAN SERVE** a few more Particular People south of Bancroft and East of Telegraph. If you are troubled with sour milk phone Berkeley 6303.

**Stanley Farm**  
**CANYON ROAD**

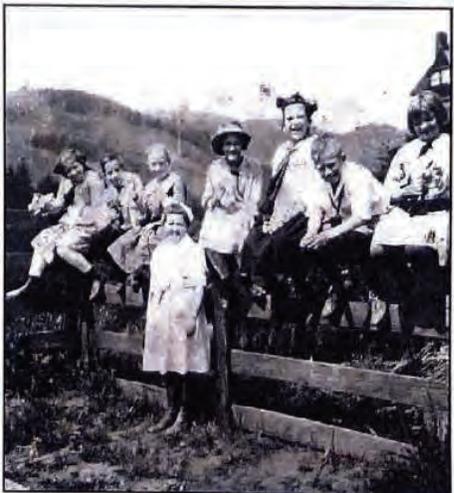
University Hill, a subdivision created by the Warren Cheney Co., was filed at the County Courthouse on August 13, 1910. It comprised a re-subdivision of Lots 12 and 15 of University Terrace, as well as a new subdivision of much of the Mouser estate, Atalaya. Orchard Lane was added as an amenity at this time.

Several dairy farms—"Such," "Stutt," "Stanley"—existed in Strawberry Canyon and were reached by Canyon Road. This ad appeared on September 28, 1912 in the Berkeley Gazette.

Ready for a hike up Canyon Road. Note Rieber House in upper right. BAH Archives, Lynne Crocker Collection.

PLAT AT REQUEST OF  
J.H. Mouser  
August 13, 1910

23  
J.H. Mouser  
County Clerk of Alameda County, California



---

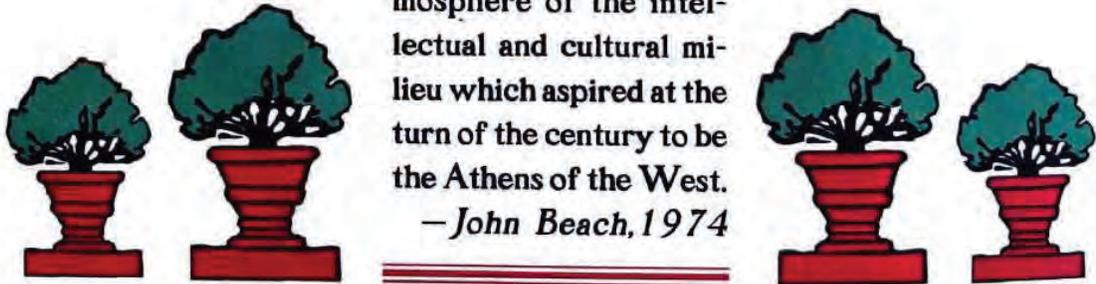
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**T**HE quality of this area depends not so much on its individual buildings, though there are many fine structures by Berkeley's most important designers, but upon the survival of a complete neighborhood that provides a background for these buildings. Thus, the individual designs of Coxhead, Morgan, or Maybeck do not appear as museum pieces in a glass case, divorced of context, but convey the image and atmosphere of the intellectual and cultural milieu which aspired at the turn of the century to be the Athens of the West.

—*John Beach, 1974*

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NPS Form 10-900  
(Oct.1990)

OMB No. 1024-0018

124

Attachment E

United States Department of the Interior  
National Park Service

National Register of Historic Places  
Registration Form

7

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name Panoramic Hill

other names/site number University Terrace, University Hill

2. Location

street & number Panoramic Wy, Canyon Rd, Mosswood, Orchard Ln, Arden Rd.  not for publication

city or town Berkeley  vicinity

state California code CA county Alameda code 001 zip code 94704

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this  nomination  request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property  meets  does not meet the National Register Criteria. I recommend that this property be considered significant  nationally  statewide  locally. (  See continuation sheet for additional comments.)

[Signature] 28 MARCH 2005  
Signature of certifying official/Title Date

California Office of Historic Preservation  
State or Federal agency and bureau

In my opinion, the property  meets  does not meet the National Register criteria. (  See continuation sheet for additional comments.)

\_\_\_\_\_  
Signature of commenting or other official Date

\_\_\_\_\_  
State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that this property is:

- entered in the National Register  See continuation sheet.
- determined eligible for the National Register  See continuation sheet.
- determined not eligible for the National Register
- removed from the National Register
- other (explain): \_\_\_\_\_

Signature of the Keeper [Signature] Date of Action 10/21/05

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Panoramic Hill  
Name of Property

Alameda, California  
County and State

5. Classification

Ownership of Property  
(Check as many boxes as apply)

- private
- public-local
- public-State
- public-Federal

Category of Property  
(Check only one box) AUG 11 2005

- building(s)
- district
- site
- structure
- object

Number of Resources within Property  
(Do not include previously listed resources in the count.)

| Contributing             | Noncontributing |            |
|--------------------------|-----------------|------------|
| 61                       | 18              | buildings  |
|                          |                 | sites      |
| 14 (roads, paths, walls) | 1 (wall)        | structures |
| 1 (fountain)             |                 | objects    |
| 76                       | 19              | Total      |

Name of related multiple property listing  
(Enter "N/A" if property is not part of a multiple property listing.)

N/A

Number of contributing resources previously listed in the National Register

6. Function or Use

Historic Functions  
(Enter categories from instructions)

Domestic – single and multiple dwellings  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Current Functions  
(Enter categories from instructions)

Domestic – single and multiple dwellings  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Description

Architectural Classification  
(Enter categories from instructions)

Shingle; Bungalow/Craftsman; Mission/Spanish  
\_\_\_\_\_  
Colonial Revival; Beaux-Arts  
\_\_\_\_\_  
\_\_\_\_\_

Materials  
(Enter categories from instructions)

foundation Earth, concrete  
\_\_\_\_\_  
roof Shingle; Terra Cotta; Concrete  
\_\_\_\_\_  
walls Shingle; Brick; Granite; Stucco; Concrete; Fabricrete  
\_\_\_\_\_  
other Brick; Iron; Copper; Ceramic Tile; Glass; Concrete;  
Fabricrete  
\_\_\_\_\_

Narrative Description

(Describe the historic and current condition of the property on one or more continuation sheets.)

See Continuation Sheets

Panoramic Hill  
Name of Property

Alameda, California  
County and State

**8. Statement of Significance**

**Applicable National Register Criteria**

(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing)

- A Property is associated with events that have made a significant contribution to the broad patterns of our history.
- B Property is associated with the lives of persons significant in our past.
- C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- D Property has yielded, or is likely to yield information important in prehistory or history.

**Criteria Considerations**

(Mark "X" in all the boxes that apply.)

Property is:

- A owned by a religious institution or used for religious purposes.
- B removed from its original location.
- C a birthplace or a grave.
- D a cemetery.
- E a reconstructed building, object, or structure.
- F a commemorative property.
- G less than 50 years of age or achieved significance within the past 50 years.

**Areas of Significance**

(Enter categories from instructions)

Architecture  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Period of Significance**

1901-1950  
\_\_\_\_\_  
\_\_\_\_\_

**Significant Dates**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Significant Person**

(Complete if Criterion B is marked above)

\_\_\_\_\_

**Cultural Affiliation**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Architect/Builder**

Bernard, Maybeck; Coxhead, Ernest; Morgan, Julia;  
Steilberg, Walter; Ratcliff, Walter H., Jr.; Thomas, John  
Hudson; Wright, Frank Lloyd; Atkins, Henry; Paine, Robert;  
Ratcliff, Robert; Wurster, William.

**Narrative Statement of Significance**

(Explain the significance of the property on one or more continuation sheets.)

**9. Major Bibliographical References**

(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

**Previous documentation on file (NPS):**

- preliminary determination of individual listing (36 CFR 67) has been requested.
- previously listed in the National Register
- previously determined eligible by the National Register
- designated a National Historic Landmark
- recorded by Historic American Buildings Survey # \_\_\_\_\_
- recorded by Historic American Engineering Record # \_\_\_\_\_

**Primary Location of Additional Data**

- State Historic Preservation Office
- Other State agency
- Federal agency
- Local government
- University
- Other

Name of repository:

See Continuation Sheet

Panoramic Hill  
Name of Property

Alameda, California  
County and State

**10. Geographical Data**

**Acreage of Property:** 12.3 acres

**UTM References**

(Place additional UTM references on a continuation sheet)

|   | Zone | Easting | Northing |   | Zone | Easting | Northing |
|---|------|---------|----------|---|------|---------|----------|
| 1 | 10   | 666060  | 4191480  | 3 | 10   | 666360  | 4191360  |
| 2 | 10   | 660250  | 4191600  | 4 | 10   | 666170  | 4191210  |
|   |      |         |          | 5 | 10   | 666100  | 4191300  |

**Verbal Boundary Description**

(Describe the boundaries of the property on a continuation sheet.)

**Boundary Justification**

(Explain why the boundaries were selected on a continuation sheet.)

**11. Form Prepared By**

name/title Janice Thomas & Fredrica Drotos

organization Berkeley Architectural Heritage Association date November 8, 2004

street & number 37 Mosswood Road telephone (510) 549-1171

city or town Berkeley state CA zip code 94704

**Additional Documentation**

Submit the following items with the completed form:

**Continuation Sheets**

**Maps**

A **USGS map** (7.5 or 15 minute series) indicating the property's location.

A **Sketch map** for historic districts and properties having large acreage or numerous resources.

**Photographs**

Representative **black and white photographs** of the property.

**Additional items**

(Check with the SHPO or FPO for any additional items)

**Property Owner**

(Complete this item at the request of the SHPO or FPO.)

name \_\_\_\_\_

street & number \_\_\_\_\_ telephone \_\_\_\_\_

city or town \_\_\_\_\_ state \_\_\_\_ zip code \_\_\_\_\_

**Paperwork Reduction Act Statement:** This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*).

**Estimated Burden Statement:** Public reporting burden for this form is estimated to average 18.1 hours per response including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and the Office of Management and Budget, Paperwork Reductions Project (1024-0018), Washington, DC. 20503.

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 1

Panoramic Hill Historic District  
Alameda County, California

### NEIGHBORHOOD CHARACTER

The Panoramic Hill Historic District is a woodsy, hillside residential neighborhood consisting primarily of single-family detached houses built primarily from 1901 through the 1940s in various stages and manifestations of the Bay Area Tradition. Whereas the proposed district is located in Berkeley, California, part of the hillside neighborhood is in Oakland. The Berkeley section is in the lower elevations and where early development occurred.

The hill itself is geographically distinguished by Strawberry Canyon to the north and Hamilton Gulch to the south. In this way, the hill's borders, and also the neighborhood's boundaries, are naturally articulated. Situated in the East Bay Hills, the hillside's predominant orientation is west.

The neighborhood is uphill, within walking distance, and east of what is now known as the University of California at Berkeley's Central Campus. The western face of this hillside neighborhood orients to the panoramic views of the San Francisco Bay, the Golden Gate, Mt. Tamalpais, and to historically significant University structures, e.g. the Campanile. The northern face of the Panoramic Hill neighborhood looks across Strawberry Canyon to another hill where the Lawrence Berkeley National Laboratory and the University's Hill Campus are also located. The Hill Campus includes the Witter Intercollegiate Rugby Field, the Levine-Fricke Intercollegiate Softball Field, and the Strawberry Canyon Recreation Area, which are located at the base of the Panoramic Hill neighborhood, and undeveloped open space known as the Ecological Study Area, which is located to the east of the neighborhood. The northwestern face of the neighborhood orients to the California Memorial Stadium.

To the immediate west of the Panoramic Hill neighborhood is housing zoned for multiple units. With the college campus nearby, many of these dwellings are sororities, fraternities, and co-ops. To the southwest of the neighborhood is historic Hillside Court and Hillside Avenue, which is zoned for single-family use.

At the time of the neighborhood's beginning, the floor of Strawberry Canyon was known as Strawberry Valley, and Strawberry Creek flowed through the canyon above ground. Then, a "beautiful natural place"<sup>ii</sup>, the creek has since been culverted and the ravine filled. The University's Botanical Gardens were also in the vicinity<sup>iii</sup>. The properties located at 1, 9, and 15 Canyon Road were sited so as to benefit from these amenities as much as for the panoramic views. Despite the absence of the creek and the botanical gardens in contemporary times, the structures stand as a reminder of the neighborhood's early relationship between natural and built environments.

NPS Form 10-900-a  
(8-85)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 2

In general, contributing houses in the district are as unique as the sites upon which they were built because each house is custom-designed for the peculiarities of the hilly topography. Although some houses are stucco and others a patented concrete known as Fabricrete, most of the houses are clad in still unpainted and unstained wood shingles. Natural building materials, e.g. redwood, are glorified, albeit modestly, in these houses and serve both functional and aesthetic purposes. The relationship between indoors and out-of-doors is evident in expansive window elements granting bay and/or canyon views, numerous west facing and/or north facing balconies, and the prevalence of outdoor rooms, e.g. patios and porches, juxtaposed against living rooms, dining rooms, and sleeping quarters.

The district includes 79 buildings, of which more than 60 contribute. The vast majority were single-family dwellings (and ancillary structures) at the time of their construction although two apartment buildings were built in the neighborhood during the early 1900s. Today the district is zoned single-family although there are numerous exceptions. Many single-family homes have secondary units and in other cases what were originally single-family houses have been divided up into several living units.

The area was developed before the road was macadamized and before the automobile was the preferred and common mode of transportation. There is only one road into the neighborhood, Panoramic Way, and it is narrow and switches back and forth like good hiking trails cut for steep terrain. The road follows the contour of the hill rather than the hill being shaped and cut out to conform to the structure. Off of this one road are three streets, i.e. Canyon Road, Mosswood Road, and Arden Road, which also come to dead ends and which are within the district boundaries. An extension of Panoramic Way dead ends at the first switchback, but this more recently built area is not included in the district. Panoramic Way also continues up the hill beyond the boundaries of the district.

Pedestrian pathways are characteristic of the neighborhood. The most elaborate is a public pedestrian thoroughfare built in a classical Beaux-Arts style known as Orchard Lane. Other public pathways include Mosswood Lane and Arden Steps. Given the meandering route of Panoramic Way, the several arterial pedestrian paths facilitate more efficient foot travel.

Several houses have their main entrances off of these public pedestrian thoroughfares, e.g. 1 and 3 Orchard Lane, and 101 and 107 Panoramic Way. In addition to public pathways, there are also numerous jointly-owned private walkways, e.g. the concrete walkway shared by 5-11 Panoramic Way, 23 Panoramic Way, and 73, 75, and 77 Panoramic Way.

After the road was macadamized and the automobile popularized, numerous garages were built. Several have apartments built above them, e.g. a combination concrete garage and brown shingled apartment at both 1 Panoramic Way and 14 Mosswood Road. In the case of 6 Mosswood Road, both the garage and apartment were built of concrete. In another instance a two-story house was built above a two-car garage, e.g. 101 Panoramic Way. Garages were also sometimes built into retaining walls, e.g. 15 Canyon Road.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 3

Although some fences have been added over the years, there are several clusters of houses where properties blend with little evidence of where one highly irregular lot begins and the other ends. For example the back yards of 67 Canyon Road and 37 Mosswood Road and the side yard of 29 Mosswood Road and 37 Mosswood Road are spacious, open, unfenced and an appropriate transition to the undeveloped University land to the immediate east.

There are numerous retaining walls, one of which is interrupted or cut out for a staircase and concrete fish pond (at 72 Panoramic Way). The sculpted spout is used to direct water drained from the natural underground springs. To this day water seeps from the adjacent retaining wall. A tall concrete retaining wall, with tapered pillars on top and with a trellis on top of the pillars, curves around the northwest base of the district at 15 Canyon Road. On Arden Road a privately owned retaining wall at the entrance of 100 Arden Road is made entirely of clinker brick. A concrete retaining wall at the second hairpin between 101 and 107 Panoramic Way on the uphill side is broken up by the upper extension of Orchard Lane. The concrete retaining wall on the downhill side of Panoramic Way at the second hairpin creates just enough space for the niche upon which 74 Panoramic Way is built. In these various ways, the hillside development of houses, retaining walls, streets, fountains, and fences is in tune with nature.

### PUBLIC INFRASTRUCTURE

Panoramic Way, a steep and narrow road that switches back and forth at sharp angles through the Panoramic Hill neighborhood, up the hill to the Oakland border and beyond, was carved out in 1888 by Charles A. Bailey as he developed University Terrace. So perilous was the dirt road that, as late as 1917, only one hill resident owned a car; even horses were apt to stumble as they tried to navigate the sharp turns. Though the road was never properly graded, it was eventually paved, and though discussions to create a second access road took place, Panoramic Way has retained its original form and remains the only access road to the Panoramic Hill neighborhood.<sup>iii</sup>

Canyon Road was spelled Cañon Road on a 1910 map of the University Hill subdivision, the spelling being a reflection of the Spanish heritage of the Peralta tract that predated existing development. Before University Hill was developed, the same road was shown on University Terrace subdivision maps in 1888 but without a street name. Before University Terrace was developed, the same road could be seen on Boardman's 1868 map of the Berkeley Property Tract but without a street name. The road itself is flat unlike every other road on Panoramic Hill, joins Panoramic Way at its entrance to the neighborhood, extends around to the canyon side of the hill, passes the adjacent California Memorial Stadium, and ends in a substandard cul-de-sac. A map of Strawberry Valley in 1875 shows the same road extending into the canyon.<sup>iv</sup>

Mosswood Road begins at the second hairpin turn on Panoramic Way, curves around the hillside, runs parallel to Canyon Road, and ends in a substandard cul-de-sac on the north facing side of the hill. The University's Ecological Study Area can be accessed from Mosswood Road as the street borders the undeveloped area, which is coastal live oaks, bay trees, and native ferns in this particular

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 4

ecosystem. From Mosswood Road, a footpath has been worn from human traffic and goes downhill to the Strawberry Canyon Recreation Area and uphill to the Lower Jordan Fire Trail. The road was laid out by Warren Cheney in 1910 for the University Hill subdivision.

Arden Road begins on Panoramic Way and ends in a cul-de-sac just uphill of Mosswood Road. The road was laid out by Warren Cheney for the University Hill subdivision in 1910.

Orchard Lane is a public pedestrian path developed by Warren Cheney in 1910 as part of his University Hill subdivision. Designed by Henry Atkins, the classical Beaux-Arts concrete staircase connects the beginning of Panoramic Way to Panoramic Way at the second hairpin. A more simplified version of Orchard Lane picks up at the second hairpin and connects to Arden Road. The beginning of Orchard Lane is graced with corner piers which were originally topped with urns but have since been lost to vandals. The pathway is lined with poplar trees planted by architect Walter Steilberg when he lived at 1 Orchard Lane. The pedestrian pathway curves up the hill and is defined by balustrades. Each landing benefits from a concrete bench and becomes a place to linger. Whereas the lower section of Orchard Lane is adorned with benches, balustrades, and corner piers, the second section of Orchard Lane is an unadorned concrete stairway with numerous landings. Several houses "front" on both upper and lower sections of Orchard Lane, including (but not limited to) 1 and 3 Orchard Lane and 101 and 107 Panoramic Way. Orchard Lane is not only an arterial pedestrian corridor stairway for movement within the neighborhood but also a visual link to the Bancroft Steps downhill of the neighborhood, also designed by Henry Atkins, and ultimately a practical route to Piedmont Way and the University. Orchard Lane was made a City Landmark in 1991.

Arden Steps is a steep concrete staircase of 100 steps connecting Mosswood Road to the cul-de-sac at Arden Road, which is where Arden Path begins, and extends to Panoramic Way at the upper reaches. This public staircase was part of the University Hill development, and in 1915 a house was built at 38 Mosswood with the main entrance off of Arden Steps. The staircase has a utilitarian design consisting of a retaining wall and galvanized steel railing on its east side, a curb on the west side, and two small landings along its length.

Mosswood Lane was named Stockade Lane when University Hill was first subdivided in 1910. However, in 1922 when Walter Steilberg built a Fabricrete cottage fronting on the footpath, he renamed the public thoroughfare. Whereas Orchard Lane is formal in design, and whereas Arden Steps is a steep climb, Mosswood Lane is an unimproved path with gentle slope and curvature. Boy Scouts reinforced the integrity of the path with railroad ties (circa 2000), and gravel was laid on the lower elevations during a garden tour (circa 2001) but otherwise the path remains unchanged. The path is lined with redwood trees on one side with fallen redwood needle-like leaves softening the footpath itself. The homes that flank each side of the path are the rear yards and back sides of historic and architecturally important dwellings including two by Julia Morgan and two by Ernest Coxhead and one by Frank Lloyd Wright. The curved retaining wall of a Beaux-Arts terrace at 3 Orchard Lane also backs up to Mosswood Lane and was designed by Bernard Maybeck although the retaining wall is now covered by overgrown ivy.

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 5

PRIVATE DEVELOPMENT

1. 1 Panoramic Way – TWO CONTRIBUTING: cottage and garage - combination;  
playhouse pergola and garage combination (a)

Year built: 1921; 1931  
Architect: Steilberg, Walter  
Original owner: Steilberg, Walter

This small three-room brown shingle cottage sits above a two car concrete garage at the base of Walter Steilberg's family home. The redwood garage doors with decorative cut-outs are hinged and roll along a metal track inside the garage. A bay window with decorative mullions on the western elevation once opened to panoramic views of the bay. Exterior decorative details include Chinese perforated tiles that also serve as vents. Indoor and outdoor relationships strengthened with a Dutch door at the south elevation which opens onto a wide brick walkway and pergola that runs parallel to Panoramic Way until it meets a brown shingle playhouse with amber glass in windows at the end. The playhouse has a low-pitch gable roof with an 18 lite picture window with centered decorative medallion. Supporting the walkway and pergola is a concrete retaining wall with a built-in garage constructed in 1931.

2. 5, 7, 9, 11 Panoramic Way - ONE CONTRIBUTING: apartment building

Year built: 1912  
Architect: Morgan, Julia  
Original owner: Price, Clifton

"This two-story and basement apartment building is designed around an interior court on a hillside where the views, and hence the fenestration, are of major importance. Upstairs, a large bay over the arched entrance is flanked by groups of 4 windows together, then another bay at each end. On the first floor the large banks of windows at the corners have balustrades that repeat the design of the front of the central arch, and suggest balconies without breaking up the masses. Brick steps lead up to a small terrace from an entrance at one side. There is a suggestion of half-timbering, not used in a medieval sense as much as for design element to emphasize the windows. The central lower façade is indented, with the plain supports creating pattern interest."<sup>iv</sup> The half-timbering has been painted off-white, the color of the stucco, and is not original. Part of the front lawn, the hedge, and retaining wall were removed in 1995 to make way for a parking pad for residents and guests' vehicles. A trellis covers. The change does not negatively impact the integrity of the structure.

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 6

3. 18, 20, 22, 24 Panoramic Way – TWO CONTRIBUTING: house; [20, 22, 24 PWay]  
house (a) [18 PWay]

Year built: between 1911 and 1921<sup>vi</sup>  
Architect: unknown<sup>vii</sup>  
Original owner: unknown

This fourplex is made from two separate buildings which have been physically joined. Both buildings have very shallow street setbacks and appear as one story on the street side but are multi-story from the rear. One of the buildings (18) is stucco whereas the other (20, 22, 24) is clad in brown shingles. The stucco building has an arched entry way that is flanked by small six- lite casement windows. A projecting bay window to the north sits atop a below street-level garage. The garage has side-hinged doors. The wood shingle building is L-shaped with a complicated front gable roof with exposed rafter tails. Three gently pitched parallel gables recede from back to front. The house has a side main entrance. A cantilevered porch wraps from the south side to the western exposure with scroll sawn Swiss chalet inspired balcony railing. A pair of off-center double-hung sash windows and an ornamental leaded glass casement window with Craftsman inspired window frames adorn the simple front façade.

4. 23 Panoramic Way – ONE CONTRIBUTING: house  
NON-CONTRIBUTING: detached garage rehabilitated 1987 (a)

Year built: 1901  
Architect: Maybeck, Bernard  
Original owner: Boke, George H.

This two story wood frame home on a concrete foundation with a shallow gabled roof, wide overhanging eaves with exposed rafter tails is sheathed on the first floor with horizontal redwood boards and on the second with vertical boards overlaid by horizontal boards, creating a kind of half-timbering effect. The roofline of the front façade is interrupted by a large dormer with a sweeping gable containing four wood casement windows with single lites. The exterior was originally oiled but has since been stained a brownish color to preserve the wood from sun damage while blending in with the environment. The house was originally designed without a roof over the front porch, but early photos show the roof was added long ago. One enters the house via a half-level below the main floor. The living room windows, originally three pairs of casements with a single horizontal division, were replaced by fixed sheets of glass by the second owner, and then returned to the original fixed pane windows by the third and current owners<sup>viii</sup>. These three large windows occupy the west elevation first floor, while four smaller casement windows occupy the dormer directly. The view is oriented toward the San Francisco Bay. The shallow gable roof, wide overhanging eaves, carved balustrades, and cross-log corners all add to the chalet feeling. Board balusters hand sawn in a Swiss motif ornament a sleeping porch on the eastern exposed second story. Posts have been added underneath to support the sleeping porch. The original wood shingle roof has been replaced with a

NPS Form 10-900-a  
(8-86)

DMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 7

composition shingle roof of similar character. One of the most innovative features is the continuous L-shaped space that connects the living and dining room, presaging more modernist dwellings.

A three car garage located uphill behind the home is accessed by Panoramic Way as it winds to its second switchback (across from and below 74 Panoramic Way). The garage is true to the original style of the Boke House with its shallow gabled roof and its stained cedar shakes. It is one story on the street level and two stories from the backyard level of the Boke House with storage on the first or backyard level. Five single lite casement windows open the garage to bay views.

5. 25 Panoramic Way – TWO CONTRIBUTING: house;  
detached garage (a)

Year house built: 1908  
Designer/builder: Broad, A.H.  
Year garage built: 1926  
Original owner: Deane, Margaret

This two story single-family dwelling with side gabled roof has an exterior clad in unpainted and unstained redwood shingles. A side entrance porch with projecting gable mimics the Boke House next door. A projecting bay on the southwest façade contains four sash windows, and two flat projecting bays on the second story each contain a pair of sash windows. Because the house is built near the first hairpin turn on Panoramic Way, the house fronts on Panoramic Way while the garage at the rear of the house also has access from Panoramic Way. The two car garage is brown shingles and has a shallow gabled roof. The structure is enhanced by two square windows each containing four square lites on the western wall opening the garage to SF Bay and Golden Gate views.

6. 27 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1903  
Designer/builder: Hoover, Edgor  
Original owner: Lewis, Exum Percival

This two and one half story simple rectangular brown shingle single-family dwelling with side gable moderately pitched roof and overhanging eaves was built on what remains of a brick cistern used to hold water for the University in its early days.<sup>ix</sup> The front entry is from a shed roofed porch which projects from the northwestern façade. Situated between an uphill and downhill section of Panoramic Way, the house is two stories from below, facing the bay. From above and behind, the house is one story and appears to be a very small cottage shallowly set back from Panoramic Way after the first hairpin turn. Fenestration on the eastern façade consists of a pair of small, vertically elongated wood-frame sash windows. A pair of multi-lite French doors dominates the southern exposure. The front western exposure is no longer visible to the passerby, due to the lush vegetation grown up and around the structure.

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 8

7. 30 Panoramic Way – NON-CONTRIBUTING: house – extensive alterations8. 32 Panoramic Way - NON-CONTRIBUTING: house – extensive alterations9. 36 Panoramic Way – ONE CONTRIBUTING: houseYear built: 1908  
Designer/builder: May, Frank M.  
Original owner: Buckham, J. W.

This two-story hillside house mimics the imagery of a chalet with features such as scroll sawn balcony, vertical wood siding, and carved ornamentation, all of which are similar to the well-known Boke House at 23 Panoramic Way. The shallow side-gable roof is complicated on both north and south sides by three shed dormers 'perforating' the roofline at the eave and supported by wooden side-brackets flanking each sash window. Built on the downhill side of Panoramic Way, a terrace and balcony face into the hillside. The approach is from the northeast where the kitchen entrance is most obvious and under a small shed roof. Exposed beams support the gently sloping shed roof. The main entrance to the southeast is accessed by way of a gable roofed entry porch. The combination half-limber and board-and-batten exterior is now painted cream with green trim.

10. 38 Panoramic Way – ONE CONTRIBUTING: house and garage combinationYear built: 1917  
Architect: Steilberg, Walter  
Original owner: Steilberg, Walter

This three story stucco presents a half story façade to the street and steps down the hill to become three stories on the western elevation. The roof is a series of low-raking gables which widely overhang the walls of this asymmetrical cruciform floor plan. The end beams are finished in scroll sawn carving. The entrance is recessed with woodcarvings around the front door. Massive stucco-faced chimney pierces the roof at the south with a pitched chimney cap. Twin front facing gables project on the front northern exposure; one houses a narrow single-car garage while the other a large segmented arch window of leaded, opaque, colored glass. Steilberg's first wife Rowena crafted the wood carvings around the entry door and was responsible for the sculptural detail on all of his early buildings.

11. 59 & 61 Panoramic Way (formerly 69 & 71) – TWO CONTRIBUTING: house;  
detached garage (a)Year built: 1928-1929  
Architect: Steilberg, Walter  
Original owner: Atkinson, Florence  
Architect: Moise, Howard

NPS Form 10-906-a  
(8-86)

DMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 9

A two story, single family, wood shingle clad structure with a low-raking gable roof, broad eaves and projecting end beams atop a concrete foundation, follows an L-shaped plan. The home was built into a triangular lot inside the first hair-pin turn on Panoramic Way, with a very shallow setback on the uphill side and nestled in among redwood trees. Steilberg composed the home to conform to the setting so that the southern wall is angled away from what is now a tree stump but would have been a mature tree when the house was designed. On the western facade a second redwood was used in place of a decorative pillar holding up a trellis over the half round portico containing a rooftop terrace. A stone retaining wall combines with a concrete retaining wall covered with wooden lattice curved to follow the contour of the hillside. Above the retaining wall is a terrace. A pergola gateway with wooden columns, tapering from bottom to top with hand carved cross braces, marks the entrance from the eastern side. The second story was designed in 1954 by architect Howard Moise although visual inspection does not reveal where the addition begins and ends. The house was later subdivided into two apartments with the entryway to one apartment on the eastern (uphill) side of the lot. The entryway is inset with a substantial wooden lintel where the original street number (#71) is carved. To the left of the entry is a window screened by six green glazed perforated Oriental tiles. Additional fenestration includes two-lite casement windows placed asymmetrically. A north-east corner window configuration groups three windows per side separated by natural redwood vertical supports and two incised horizontal bands at the top. A large, mullioned bay window dominates the south-facing elevation. A red brick chimney is prominent on the northwest elevation. A single-car wood frame garage is wedged into the narrowest part of the lot at Panoramic Way's first hairpin turn. Lattice work overlapping in squares atop wood siding gives the garage the appearance of an oversized Japanese jewel box; the effect is enhanced by ochre glazed perforated Oriental tiles on the eastern side and similar tiles glazed "Steilberg-green" on the western side.

12. 60 Panoramic Way – TWO CONTRIBUTING: house  
retaining wall (a)

Year built: 1913  
Contractor: Rowe, Henry  
Original owner: Moore, William J.

This two and one half story single-family dwelling is built on the uphill side of Panoramic Way near the first hairpin turn. The exterior is clad in natural wood shingle and topped by a front gabled roof with overhanging eaves which are supported by exposed roof beams. The chimney is clinker brick. On the first story of the western façade is a square bay with three double-hung windows consisting of multiple lites and an inset entry porch. The front door has a vertical inset panel flanked by side lites of diamond-paned leaded glass. The second story contains a pair of three-sided bay windows under a secondary hip-roof overhang. A stone retaining wall of local volcanic rhyolite about 4 feet in height wraps around the property line at the street, adjoining the retaining wall at 62 Panoramic Way. A flight of steep stone steps leads to the wooden entry porch.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 10

13. 62 Panoramic Way – TWO CONTRIBUTING: house  
detached garage (a)

Year built: 1908  
Designer/builder: Rowe, Henry  
Original owner: McDowell, Mrs. Laura

This two and one half story single-family gable roof house in natural wood shingle is built on the uphill side of Panoramic Way. The west-facing main entrance has been altered with salvaged nineteenth-century double French doors with a large four lite square transom above. The entire entry structure is a half-round two story tower topped by an enclosed balcony. The street level garage is integral to the concrete retaining wall and was structurally reinforced in the early 1990s, but maintains its integrity. A pair of wooden side-hinged doors open out to the street.

14. 64 Panoramic Way – ONE CONTRIBUTING: house  
NON-CONTRIBUTING: garage and apartment – altered (a)

Year built: 1908  
Contractor: Rowe, Henry  
Original owner: Rountree, Mrs. E.

Two and one half story gabled roof shingle clad house has elaborately bracketed eaves. Built on the uphill side of Panoramic Way, the property is accessed by way of a concrete staircase shared with 66 Panoramic Way. Main entrance to house is on the north side, protected and defined by a gable-roofed open porch. Windows are undivided double-hung sash. A ground floor addition with a deck opening off the main floor is a non-contributing feature. Although constructed as income-property with apartments, it appears to be a single-family dwelling.

15. 65 & 67 Panoramic Way – TWO NON-CONTRIBUTING: house; [65 PWay]  
house [67 PWay] -  
later construction (c. 1964)

16. 66 Panoramic Way - ONE CONTRIBUTING: house

Year built: 1908  
Architects: Morgan, Julia and Hoover, Ira  
Original owner: Turner, Elsie Lee

This three story, brown shingled rectangular house sits on a concrete foundation beneath a complicated multi-level side-gabled roof with exposed rafter tails. The original gable roof entry porch has been enclosed. Built on the uphill side of Panoramic Way, the property is accessed by way of a concrete staircase shared with 64 Panoramic Way. Originally, a single family house, it now has

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 11

multiple entrances to accommodate four apartments. The main and original entry is on the southside and accessed from the shared concrete landing. The gable entrance into 66 B, has overhanging eaves and support brackets; the brackets are decorated with a distinctive arrow pointing earthward. The second and third story exteriors are clad in stained wood shingles. The first story exterior is clad in clapboard siding with a pair of four-lite casement windows to the north and a pair of large picture windows to the south on the western facade. The second story has a flat bay with a single lite picture window flanked by two – four-lite casements. A long shallow shed dormer with a pair of four-lite casement windows dominates the western roofline on the third story. The dormer is supported by four carved wooden angle brackets. The fundamental contributing features remain intact, while alterations and additions are sympathetic.

17. 70 Panoramic Way – ONE NON-CONTRIBUTING: house – substantial alterations in 1960s

18. 72 Panoramic Way – TWO CONTRIBUTING: studio;  
fountain (a)

Year studio built: 1939  
Architect: Ratcliff, Robert  
Original owner: Ratcliff, Robert  
Year fountain built: 1939  
Sculptor: Paine, Robert

This small one story two room structure on the uphill side of Panoramic Way was built as a studio by and for architect Robert Ratcliff. The studio is clad in horizontal wood siding with a shed roof. Entry is through a Dutch door with a handcrafted doorknob. A brick chimney is on the back side. Reinforced concrete retaining walls along the steep side of the roadway open to reveal a split level concrete stairway and reinforced concrete railing containing a rectangular fish pond fed a constant supply of fresh water from the mouth/spout of a sculpted Poseidon-like character draining water from a natural spring in the hillside. The architect Walter Steilberg, while being interviewed by the architectural historian Sally Woodbridge, commented, "...it was only through the wisdom of Mr. Paine—Robert Paine, the sculptor, who was the father of Mrs. Robert Ratcliff—that the spring was drained. He made a fountain of it for their house and that, for the time being, put a stop to it. Water ran the year round; if he hadn't done that, we would have had more slides there."<sup>xx</sup>

19. 74 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1941-1952  
Architect: Ratcliff, Robert  
Original owner: Ratcliff, Robert

The low, horizontal lines of this single-family house are created by varnished clapboard siding, a split-level floor plan, and a shallow gable roof. Carefully tucked into a hairpin on Panoramic Way, the downhill side of the house is supported by a retaining wall, which also supports the road cut for

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service**National Register of Historic Places  
Continuation Sheet**

Panoramic Hill, Alameda County, CA

Section number 7 Page 12

Panoramic Way. The entrance from the downhill side of the second Panoramic Way hairpin is marked with a shallow, concrete urn supported by a base of pressed bricks stacked at cross angles with a garden stairway of the same brick. The house was built in several stages with significant additions in 1952 including a projecting glass stair tower at the south end. A series of six large square picture windows on the western facade is contrasted with minimal window openings on the eastern side. Variation in materials includes a sand-colored pressed brick chimney and a stucco covered chimney. An asymmetrical gable roof gradually becomes symmetrical.

20. 73, 75, 77 Panoramic Way – ONE CONTRIBUTING: apartment building

Year built: 1904  
Designer/builder: Broad, A.H.  
Original owner: Ford, Jerome C.

This three story rectangular structure with side gable roof on the downhill side of Panoramic Way is actually a three unit apartment building. Each floor of this brown-shingle, Craftsman style structure is a separate apartment with no interconnecting stairway, and each has its own entrance directly to the outdoors. The eastern façade has a small enclosed porch with two stacked shed roofs and a trellis composed of heavy beams and cross-members. Fenestration consists primarily of double-hung sash. Balconies upstairs and down dominate the western façade. A small north facing balcony provides the entry porch for the apartment below. A rustic wooden pulley rigged beside the balcony would have eased the transport of heavy items to the second floor residence. Wood sash windows have been replaced with aluminum but do not significantly diminish the structure's overall integrity.

21. 94 Panoramic Way – ONE CONTRIBUTING: house

Year built: 1917  
Owner/designer: Paine, Robert Treat  
Original owner: Paine, Robert Treat

This modest yet eclectic bungalow was designed by the sculptor Robert Treat Paine. Paine designed the bungalow with his love of ships in mind and lived here with his wife and two daughters throughout his adult life. The roofline has a delicate camber leaving the impression one is in the bow of a ship. Taking advantage of the cheapest materials, including salvaged wood, Paine used tarpaper for the exterior siding on the first story, alternating with post and beam wood panels. The north side is now sheathed in copper which was a renovation by Ratcliff family members during the past decade. [Paine's daughter Evelyn married Robert Ratcliff, and the bungalow remains in the Paine/Ratcliff family to this day.] A balcony is cantilevered over hand carved outlookers with flat scroll-sawn balustrades on the west side of the cabin. On the second story, the exterior perimeter consists of clapboard siding. A row of nine ribbon windows each with twelve small square lites, open the small 'master' bedroom to the majestic bay views. A second bedroom contains a northern wall of built-in bookshelves and end tables reminiscent of crew quarters in a ship's hold. The corners of the south wall of the upper story are cambered. A balcony at the front (east side) serves as a roof over the

NPS Form 10-500-a  
(5-85)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 13

entry while ornamental scrolls on heavy wooden brackets support the balcony. A final feature of this unique home is the bronze door knocker of a sculptor with anvil declaring this the studio of Robert Treat Paine. Attached to the front door made of vertical planks with large metal studs, the doorknocker's existential inscription reads: "The bird of time has but a little way to fly and lo the bird is on the wing."

22. 101 Panoramic Way – ONE CONTRIBUTING: house and garage combination

Year built: 1931  
Architect: Steilberg, Walter  
Original owner: Ferguson, Mary Vaneveren

This three story Fabricrete single-family dwelling with an intersecting gable terracotta tile roof is located on the uphill side of Panoramic Way. The first story consists of a two-car garage designed with heavy fabric curtains in place of a door. Two stories of living space rise above the garage with the bedroom level below the main living area and entrance. The dwelling faces the Bay with the main entrance on the side accessed from Orchard Lane. On the other side of Orchard Lane is the main entrance of 107 Panoramic Way, and the two dwellings are complementary in Mediterranean and Spanish Revival idioms. The front door is accessed through a covered inset entryway; the low, small portal has a lintel above adorned with decorative scrolling. The heavy Fabricrete interior is remarkable for its barrel-vaulted ceiling in the living room. French doors from the living room open onto a balcony oriented toward the Bay and ornamented with Steilberg's signature, glazed, Oriental, perforated, ceramic tiles. The L-shaped plan with breadth in front has a kitchen wing in the back. Fenestration consists of steel sashes and casements. A three-sided bay on the southwest side has a tile hip roof and amber glass window panes. An addition in 1953 by architect Robert Ratcliff enclosed the north elevation porch and is the only alteration to the house. The addition is complementary although in the Ratcliff vernacular, as illustrated by frameless glass window slides.

23. 107 Panoramic Way – ONE CONTRIBUTING: house and garage combination

Year built: 1926; 1939  
Architect: Miller, Chester  
First owner: Bortweit, V.F.

This three and one half story single-family dwelling follows an L-shaped plan and borrows from Mediterranean, Pueblo, and Spanish Colonial Revival features including a flat roof with tile-covered eaves and a white stucco exterior. Situated on the uphill side of Panoramic Way, its main entrance is across from 101 Panoramic Way on Orchard Lane. The first story consists of a two-car garage cambered at 45 degree angles to connect the vertical and horizontal elements. Garage doors are tongue and groove and hinged on the side. The west elevation is dominated by an oversized casement window; a huge multi-paned picture window composed of three parts. The center is a vertical piece of unadorned glass flanked by tall narrow mullioned casement windows. The whole

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 14

configuration is six panes high. The half story consists of a square penthouse room with pyramidal hip tile roof rising above the main flat roof. A round edge parapet wall simulates adobe construction. Windows have steel sashes of various shapes.

24. 1 Canyon Road – TWO CONTRIBUTING: house;  
Beaux-Arts stairway and retaining wall (a)

Year built: 1906  
Architect: Coxhead, Ernest  
Original owner: Torrey, Frederic

This three-story rectangular single-family dwelling with side-gable roof, overhanging eaves, and natural wood shingles, is built on the uphill side of Canyon Road at the back of its lot. Originally accessed by way of log steps, within several years the entrance stairway was formalized in a Beaux-Arts classical style designed by Henry Atkins in the vernacular of nearby Orchard Lane (see below). The steeply pitched gabled roof is punctuated by three dormers with broad sash windows. Two plain brick chimneys flank each side gable. The first story is dominated by a massive bay window supported by large wood brackets. Originally the front door was sited at the back of the house to maximize vistas of the bay, creek, and the UC Botanical Gardens from the interior. The house has since been reconfigured to accommodate several apartments. The entrance from the back has been relocated to the southern side where there is a large patio and pergola. An open loggia once extended off the dining room to the north. In the 1950's a sleeping porch on the main level was enclosed with double-hung aluminum windows. The exterior from the front is largely intact, and in general, the house retains its integrity.

25. 5 Canyon Road – ONE CONTRIBUTING: (1) garage and cottage combination

Year built: 1935  
Architect: Steilberg, Walter  
Original owner: Torrey, H.B.

A one-story brown shingle cottage atop a three-car Fabricrete garage was built on the uphill side of Canyon Road with no street setback. The garage is composed of three graceful ivy-covered doorless arches. The second story fenestration consists of three sets of wood windows, including a pair of casements flanked by two bays. The structure has a side-gable low pitched roof with overhanging eaves and a side entrance accessed from the same Beaux-Arts stairway to 1 Canyon Road.

26. 9 Canyon Road – ONE CONTRIBUTING: house;  
ONE NON-CONTRIBUTING: detached garage (a) – later construction

Year built: 1908, but extensively remodeled in 1920s  
Architect: Morgan, Julia, Ira Hoover, William C. Hays  
Architect: William C. Hays

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 15

Original owner: Hutchinson, Lincoln

A two story rectangular single-family house with moderately pitched side gable roof; this dwelling was originally built as a brown shingle and redesigned after a fire in the 1920s when a story was added and the structure sheathed in stucco. Three great arches and a three-story tower of small paned windows dominate the west elevation with the former providing support for an open-air terrace above and the latter allowing ample light and views. Built on the uphill side of Canyon Road and at the back of the lot, the house is accessed by the classical concrete stairways shared with 1 Canyon and designed by Henry Atkins.

27. 15 Canyon Road – THREE CONTRIBUTING: house;  
detached garage (a)  
retaining wall (b)

Year built: 1904  
Architect: Coxhead, Ernest  
Original owner: Rieber, Charles

This massive three-story brown shingle is located at the base of the Panoramic Hill neighborhood and irregularly shaped to conform to the lateral curve of the hillside. The house was sited so as to afford direct and unimpeded views of the San Francisco Bay and Golden Gate as well as Strawberry Creek and the UC Botanical Gardens through the oversize bay windows. The steeply pitched side gable roof is punctuated by five steeply pitched gable dormers; clinker brick chimneys dominate the north and west elevations. A two story leaded glass window opens the interior staircase to northern light. Windows on the back are double-hung with diamond-paned leaded glass in upper sash. The main entrance is on the back side accessed by a winding brick path through a sheltered garden. A studio and terrace on the northeastern slope face the Bay and Canyon. A concrete retaining wall topped by tapered pillars supporting a trellis surrounds the property, and includes a single car garage cut within. Some superficial changes do not diminish the integrity of the overall structure. Originally single family, the house was subdivided into three units during World War II.

28. 33 Canyon Road - ONE CONTRIBUTING: house

Year built: 1907  
Owner/designer: Whitney, Albert<sup>vi</sup>

This single-family L-shaped home is clad in wood shingles under a low slung gable roof of wood shakes atop its original brick foundation. The main entry is from the south west side by way of a brick walkway. The living room forms the L-shape of this structure and appears to be a very old addition to the original rectangular structure. A modest wing with a shed roof on the back of the house has multiple light windows. Other fenestration is mainly composed of expansive casements with six small panes at the top; small eight paned windows near main entrance door; and four ribbon windows at attic level on the northern exposure. Located uphill of and accessible from Canyon Road via a steep

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 16

path, the more convenient pedestrian access now that automobiles are used to access the neighborhood, is downhill from Mosswood Road and via Mosswood Lane. From Mosswood the house appears to be a modest one story structure, while the Canyon Road approach presents two and one half stories with panoramic views of Strawberry Canyon and the San Francisco Bay. The property flows to the terraced garden at 15 Canyon Road just below, which is separated by a modest weathered split-rail fence. A wood-framed single panel glass door on the eastside kitchen entrance and some minor window alterations on the eastern side do not negatively impact the overall integrity of the structure.

29. 37 Canyon Road – ONE NON CONTRIBUTING: house - later construction (c. 1969)

30. 39 Canyon Road – ONE NON CONTRIBUTING: house - later construction (c. 1971)

31. 45 Canyon Road - ONE CONTRIBUTING: house and garage combination

Year built: 1924  
Architect: Steilberg, Walter  
Original owner: O'Connor, Lenore

This small rectangular cottage with shallow street setback was the last of four cottages (see 47, 49, and 51 Canyon Road) built on one lot by owner Lenore O'Connor. Today the cottages are part of a condominium association with the grounds commonly maintained. Built at the base of the hill on a heavily wooded north facing slope and oriented toward Strawberry Canyon, the cottages blend into the site. Although similar in style (e.g. scroll-sawn balconies, combination horizontal siding/redwood shingle), each is unique and sensitive to the idiosyncrasies of individual sites. One unique feature of 45 Canyon Road is the complicated roof which is apparent especially from the perspective of the back and southwestern side where two sides of the roof come together to create an unusual triangular point for what is an otherwise ¼ pitch gable roof. On the rustic exterior, the upper story is shingled whereas the main story is vertical boards with a cornered notch at the bottom of each board. The foundation is reinforced concrete and brick, and the chimney is also brick. Casement windows and a balcony with scroll-sawn railing are some of the features consistent with the other cottages. The garage doors of the two-car garage are paneled with small squares and rectangles and nearly gothic pointed windows, or cut-outs, which are now filled in with opaque material.

32. 47 Canyon Road - ONE CONTRIBUTING: house

Year built: 1927  
Designer/builder: Lassing, T.F.  
Original owner: O'Connor, Lenore

This cottage sitting at the back of the lot has completely rustic horizontal board siding and no shingles. Balconies, scroll-sawn porch railing, and a gable roof are compatible with details of

NPS Form 10-900-a  
(8-88)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 17

neighboring cottages. A small modern addition does not detract from the structure's overall contribution.

33. 49 Canyon Road - ONE CONTRIBUTING: house

Year built: 1908  
Designer/builder: Lassing, T.F.  
Original owner: O'Connor, Lenore

Built in 1908 at the back of the lot, this cottage has rustic horizontal board siding below and board-and-batten above with all siding left alone, unpainted, weathered, and natural. Casement windows have small panels in a square plane. A penthouse story has interesting gable roof.

34. 51 Canyon Road - ONE CONTRIBUTING: house and garage combination

Year built: 1924  
Architect: Steilberg, Walter  
Original owner: O'Connor, Lenore

Built at the front of the lot with shallow street setback, this two story cottage with reinforced concrete and brick foundation has board and horizontal battens covering the first floor exterior and natural wood shingle covering the second floor exterior under a simple gable roof. The modest living quarters are located on the second story above a one car garage with hinged wooden barn doors enhanced by decorative window vents. The second story fenestration consists of a decoratively mullioned three panel with side lights and a multi-lite casement on the north and an expansive three panel French doors opening onto a side porch entry with scroll-sawn Swiss chalet style railings. In 1982, a sympathetic alteration converted a second garage to additional living space with two pairs of four light wooden windows and a street level entry under the second story porch. The alteration does not significantly alter the integrity of the structure.

35. 53 & 57 Canyon Road - ONE NON CONTRIBUTING: two unit building - later construction, 197036. 61 Canyon Road - ONE NON CONTRIBUTING: house - later construction (c. 1987)37. 67 Canyon Road (formerly 51 Canyon Road) - TWO CONTRIBUTING: house;  
detached  
garage (a)

Year built: 1911  
Owner/designer: Stratton, George Malcolm<sup>xii</sup>

NPS Form 10-900-a  
(8-85)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 18

This single family house rises three and a half stories from the street on the uphill side of Canyon Road; the bulk and mass is striking. The wood shingled structure has a double steeply pitched side gabled roof with overhanging eaves. The front gable has been altered by the addition of two large skylights facing north. The main entrance is on the west side by way of a concrete and brick stairway, made complex by many turns and levels. The west facing entry portal is defined by a Tudor-arched door way, a built-in bench on one side, board and batten siding, and a single-paneled wooden door. A one story western wing off the main house has a side-gable roof. A second story open face balcony on the north side is supported by massive wooden brackets that, although sympathetic, are not original. Balcony railing was replaced with compatible modifications in 2003. Built on a sub-standard cul-de-sac with very shallow street setback and facing Strawberry Canyon, the house is bordered by a forest of coastal live oaks and bay trees in the undeveloped land known as the University of California at Berkeley's Ecological Study Area. The physical location at the base of the hill and at the geographic interface between the neighborhood and the University makes this house a socio-geographic landmark. A five foot high concrete retaining wall following the contours of Canyon Road has been recently retrofitted but maintains the original brick steps to the expansive entry. While the public side of the home is austere, the back side opens onto a lush terrace garden providing a private outdoor living area for the residents. Windows are mostly plain double hung sash. A window has been added to the street-side of the house on the floor below the main entrance. The overall structure retains its integrity. A one-car garage is built into a concrete retaining wall of the hillside is unaltered.

38. 4 Mosswood Lane - ONE CONTRIBUTING; cottage

Year built: 1930  
Architect: Steilberg, Walter  
Original owner: Steilberg, Walter

This one and one half story Mediterranean style cottage is built of Fabricrete with a shallow gable roof of terracotta tiles and was Steilberg's response to the devastating Berkeley Hills fire in 1923. This was meant to be a low cost home impermeable to fires and other disasters. The windows have steel sashes, the sills are tile. The only wood in the structure are the kitchen cabinets, the doors and bookshelves built-in beside the fireplace and the table in the breakfast nook. The cottage is accessible only by foot off Mosswood Lane and from the rear of the Steilberg family compound at 1 Orchard Lane and 1 Panoramic Way; the cottage is a hidden gem. A roof top terrace, accessed by a graceful curving substandard stairway, breaks the roofline on the front eastern elevation. Metal frame multi-lite windows are plentiful. A large picture window on the western façade allows an expansive bay view from the living room. An oversize fireplace in the living room provides heat throughout the house due to the foot thick concrete walls which have pigment rubbed in while still wet so that the interior never requires painting, which was another cost saving feature. Even the lighting fixtures were designed by Steilberg. Using capiz shells for the built in shades, a technique adapted from antique Chinese domestic paning, he felt they would be a low cost solution to lighting. The front door is similar to the one Steilberg designed for 6 Mosswood Road, that is, an arched doorway with leaded designs in colored glass. Venting is cleverly concealed behind Steilberg's trademark glazed green Oriental

NPS Form 10-900-a  
(8-88)

CMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 19

perforated tiles. The half story on the western elevation consists of a small bedroom or study accessed by a steep, gently curving interior stairway.

39. 6 Mosswood Road – ONE CONTRIBUTING: cottage and garage combination

Year built: 1924  
Architect: Steilberg, Walter  
Original owner: Mel, Charles

This two story Mediterranean style Fabricrete cottage with terra-cotta tile shed roof sits atop a foundation of five large archways forming five garage spaces with entry off of Mosswood Road on a sub-standard lot. A flat projecting bay window flanked by two four lite casements rests above two north west facing arches. An iron and glass balcony is buttressed by Fabricrete piers and centered above the fourth archway on the western façade accessed by multiple lite French doors. A side entry is tucked away, not visible from the street, and accessed by a concrete stairway shared by 8 and 10 Mosswood. The entry door is arched with leaded glass panes. In 2004, the two most southern garages were altered with the addition of side hinged custom built wooden barn doors, which are compatible with and do not detract from the whole, and replace original (but deteriorated) hanging curtains.

40. 8 Mosswood Road - ONE CONTRIBUTING: house

Year built: 1919  
Architect: Allen, Harris  
Original owner: Mel, Charles

This two and one half story home sits on the uphill side of Mosswood Road and behind 6 Mosswood Road and shares the entry stairs for 6 and 10 Mosswood Road. The exterior is finished in ship-lap siding on the first story and jazz stucco on the upper one and one half stories with a low gabled roof and overhanging eaves. The side entry is on the north under a gabled portico through an arched doorway.

41. 10 Mosswood Road – ONE NON CONTRIBUTING: house – significantly altered42. 11 Mosswood Road - TWO CONTRIBUTING: house;  
cottage and garage combination (a)

Year garage-apartment built: 1925  
Year house built: 1929  
Architect: Morgan, Julia  
Original owner: Jepson, Willis

NPS Form 10-900-a  
(8-85)

CMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 20

This two story rectangular structure with stucco exterior and shallow hipped terracotta tile roof is one-room deep and symmetrical with single lite casement windows dominating all sides. The narrow depth and window dominance afford spectacular views of the bay from each room. Corner windows are canted on all four corners. The windows of the southeastern and southwestern elevations are arched, while all others are single or double rectangles. The back yard is terraced with a 10 foot high concrete retaining wall that edges the property and forms a privacy barrier between the garden and the public Mosswood Lane to the west. The front yard towards the east is level. The front gate located at the second switchback of Panoramic Way (where Mosswood Road begins) is a reminder of days when there were fewer cars navigating the switchback. Ironwork configured in a herbarium theme flank the front arched entry way door. Three fireplaces are distinctive, especially a carved "Herbarium Mantel" by Jules Suppo. The interior also boasts a single person "birdcage" elevator between the first and second stories. Exterior alterations include a wooden privacy fence and alternate gated entrance on the northeast side at the street as well as a sliding glass door which led to an outdoor balcony (later added and now dismantled) along the southwestern side of the house. The sliding doors are not visible from the street and therefore do not detract significantly from the overall integrity of the structure. The two car garage with small apartment above was originally built for Willis Jepson, renowned Botanist and UC Professor, while Julia Morgan completed the design and construction of his home at 11 Mosswood.<sup>xiii</sup> The apartment is a rectangular stucco structure with terracotta tile hipped roof. Fenestration consists of multi lite casement windows and a set of French doors opening to a small ornamental balcony on the southern exposure. Entry is gained from the west up a narrow flank of wooden stairs across a portico running the length of the second story western façade.

43. 13 Mosswood Road - TWO NON-CONTRIBUTING: house;  
retaining wall (a)

Year designed: 1939  
Year built: 1975  
Architect: Wright, Frank Lloyd  
Original owner: Feldman, Joseph

Built entirely with four materials – glass, wood, concrete, and brick - the exterior of this one-story is rust-colored custom-made brick on the street side and floor to ceiling walls of glass on the back and sides where panoramic bay views, terraces, and living spaces meet. A cantilevered roof creates a spacious carport and entrance at the front and provides cover for the terracing on the sides and back. The terrace has been expanded and carried toward the street while access to the terrace has been increased by replacing a window with a door. The downward sloping site is supported by a massive brick retaining wall that not only creates the terrace but is reminiscent of the retaining wall built sixty years earlier at 100 Arden Road (see photo 61.a.1). The horizontal lines of the house are strengthened by the rooflines, the brick pattern, and even a horizontal metal railing painted in rustic red. The interior board and batten walls are made entirely of California clear heart redwood; light fixtures and other interior detail are all original designs of Wright. Clerestory windows surrounded by a band of redwood cutouts serve as walls. The house was originally conceived in 1939 for Lewis N.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 21

Bell in Malibu but built at the Berkeley location in 1974. The posthumous project was authorized by Olgivanna Wright and overseen by Taliesin Foundation architects.<sup>xiv</sup> The design, materials and foundation were reworked to suit the northern California character of the new site. For example, "(t)hirty thousand bricks were specially made to the 2 ¼" Eastern U.S., rather than the 2 5/8" California, standard to fit Wright's 13" unit system, here applied to a two-foot-grid parallelogram module."<sup>xv</sup> The house is significant and its importance is underscored by the support of the Frank Lloyd Wright Building Conservancy. Ronald L. Scherubel, Executive Director of the organization has provided some explanation of the building's history and important qualities.

*In the late 1930s, Lewis N. Bell engaged Frank Lloyd Wright to design a house for him on a hilly Los Angeles site. Wright accepted the commission and the plans were completed in 1939 calling for a house of brick and native wood to be nestled into the Hollywood Hills near Mulholland Drive, commanding a sweeping view of Los Angeles. Regrettably, due to the high cost of the construction, the Bells did not proceed with the building of what would have been one of Mr. Wright's more charming, small, early Usonian houses. Wright and Taliesin retained the original drawings.*

*In 1974 Mr. and Mrs. Joe Feldman went to Taliesin looking for a Frank Lloyd Wright plan that they could build. After some deliberation with officials at Taliesin, including Kamal Amin, a senior architect and structural engineer with 23 years in the Taliesin Fellowship, Bruce Brooks Pfeiffer, currently head of the Frank Lloyd Wright Archives, and Olgivanna Wright, Wright's widow, they chose the plans for the Bell House as most appropriate for Joe Feldman's site.*

*The construction followed the original 1939 plans prepared by Wright, as closely as the more modern building and seismic codes would permit. California clear heart redwood is used in the board and batten walls and for trim. The most significant changes include flipping the plans into a mirror image of the original layout to better fit the new site, and constructing a more substantial retaining wall out of brick instead of board and batten. Being in an earthquake zone and on a very steep hill, the main challenge was to insert the necessary reinforcement to maintain the integrity of the aesthetics without the slightest of design changes. None of these modifications detract from the significance of the final structure.*

*The Feldman House is extremely significant in that it fills a gap in the record of Wright's actual built works, allowing architectural historians and students to see an important early step in Wright's development of the Usonian house, following so closely its introduction with the Jacobs 1 House in 1936, albeit through the eyes and talents of the Taliesin Architects' later adaptation. The house exhibits Wright's early genius for making a very small space seem so large and open. It was his first use of the hexagonal modular design in a smaller house, after its successful introduction in the much larger Hanna House in 1936. The hexagon form which almost eliminates corners, coupled with the expansive windows, allows the living space to flow out onto the deck making the interior space appear much larger than its square footage suggests.*

The Feldman House is not yet fifty years old and for that reason has been named a non-contributor. However, as the building approaches the fifty-year mark, it should be re-evaluated and, if integrity is maintained, re-classified as contributing.

NPS Form 10-900-a  
(8-88)

DMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 22

44. 14 Mosswood Road - FOUR CONTRIBUTING: house;  
detached garage (a)  
cottage (b)  
retaining wall (c)

Year house built: 1919  
Architect: Baird, Mabel R.  
Original owner: Baird, Robert H.  
Year garage built: 1936  
Architect: Steilberg, Walter  
Original owner: Hutchinson, Lincoln

Built on the uphill side of Mosswood Road, this rectangular brown shingle, two and one half story house is entered through a projecting covered porch. An early alteration, it is flanked on the street side with two evenly placed large square four lite stationary windows. Two pairs of French doors originally formed the entryway, which is the same door treatment for 16 Mosswood Road which was also designed by Mabel Baird. The current owner has (as a seismic upgrade) converted the entryway to a single pair of working French doors with a stationary side light utilizing the original doors in the conversion. However, this alteration has not adversely affected the integrity of the original design. A second story sleeping porch forms the wide dormer above the entrance and is inset with three casement windows. The back eastern facing wall of the house is tucked into the hillside. The architect made clever use of the natural features of the site by abutting a tiled terrace to the second story master bedroom. The terrace is reached through multi-lite French doors. Below the terrace, a servant's quarter is tucked off the kitchen entrance to the home. The roof is gabled, and the interior is sheathed in redwood. In 1936 the then owners commissioned Walter Steilberg to design a three car garage. Made of a patented method of making reinforced concrete known as Fabricrete (see section 7, Walter Steilberg), the garage is adorned with simple Art Deco inspired details on the façade. Above the garage is brown shingle north-facing studio with two projecting bay windows to the north, one to the east, and one to the west topped by a gabled roof with exposed rafter tails. A one room wood shingled guest cottage (approximately 9' x 14') conforms to the slope of the hillside and was added to the northeast of the property at approximately the same date as the garage. The cottage has a gently sloping gabled roof with exposed rafter tails and expansive windows on the north and south sides. The front west facing façade is only wide enough for the single entrance door flanked by decorative sidelites and one small single lite casement window. A natural, uncut rock retaining wall extends from the southwest property line to the northeasterly garage, following and defining the gentle curve of Mosswood Road. The entire property is enveloped in coastal live oaks, native shrubs and a few exotics.<sup>xvi</sup>

45. 16 Mosswood Road - ONE CONTRIBUTING: house

Year built: 1922  
Owner/designer: Baird, Mabel R.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 23

This square-shaped Arts & Crafts influenced bungalow has a rustic exterior being clad in natural wood shingled siding above a concrete foundation for two stories and wide board and narrow batten for the top half story. The roof is a gently sloping gable with exposed rafter tails. The west facing entrance façade of the home is fully symmetrical; four pair of wood casement windows containing eight lites per window are placed two pair on each side of an entry way of ten lite French doors. A second story cantilevered balcony with closely spaced vertical wood spindles projects over the front entrance. The second story west facing facade continues the symmetry with double French doors placed center to the façade and opening to the balcony and flanked by projecting bay windows framed on either side by eight-lite casement windows. The third or half story has one centered eight-lite casement window. A clinker brick fireplace and chimney is visible on the northwest side of the structure. From the rear the home conforms to the sloping hillside and appears to be a single story cottage with entry accessed through a sleeping porch containing four single pane sliding ribbon windows on the front and two sets of triple casement windows on the north and south sides of the porch. Sheltered from the street at the end of a 100' long, steep, ascending path, the house is situated above and behind 14 Mosswood, surrounded by coastal live oaks and bays laurels, yet opened to panoramic views of the Golden Gate Bridge, the Campanile and the surrounding Berkeley hills.

46. 20 Mosswood Road - TWO NON-CONTRIBUTING: house;  
detached garage (a) –  
later construction (c. 2000)

47. 21 Mosswood Road - TWO CONTRIBUTING: house;  
detached garage (a)

Year house built: 1895  
Builder: unknown  
Original owner: Mouser, Silas  
Year moved and remodeled: 1910  
Architect: Thomas, John Hudson  
Owner: Parsons, Edward T.  
Year garage built: 1924

This single-family, two story dwelling was originally a white clapboard farmhouse located where 11 Mosswood Road now stands. In 1910, the house was relocated to its current site and remodeled in the Arts and Crafts style. Close to the road with a very shallow street setback, the exterior is clad in redwood shingles. The shingles are even with the sash, and the windows have no visible frame. The interior was remodeled, and except for the kitchen, the first floor walls and ceiling were paneled in redwood throughout. Open-faced balconies orient to the north and the canyon below. Expansive picture windows on the southwestern corner provide views of the bay and on the north provide views of the canyon. The street side of the house has smaller rectangular single lite casement windows arranged symmetrically on either side of the entry way. The entry door is multi-lite beveled glass protected by a copper sheathed awning which forms the support for a second story bay window.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 24

48. 29 Mosswood Road - TWO CONTRIBUTING: house;  
detached garage (a)

Year built: 1921  
Architect: Steilberg, Walter  
Original owner: Parsons, Marion

This two and one half story brown-shingle home is a large rectangle upon a concrete foundation. A low-hipped roof surmounts the design and widely overhangs the building in various places. Sited facing the downhill side of Mosswood Road, the home is two stories on the front elevation and three full stories on the rear (facing Strawberry Canyon).

"The walls have a massive, 'bearing' quality because of the relatively small ratio of window to wall area, but the fenestration forms the principal element of articulation for the design. The windows are of varying dimensions, and give an 'at-random' quality to the rear elevation. Banked casements are used exclusively on the upper story. Large fixed-sash picture windows are found on rear." HRI The main floor interior is almost exclusively finely finished redwood board and batten on both walls and ceilings. An original sleeping porch is with accordion wood sash windows is maintained on the northern (canyon side) of the second story. In 1985, the kitchen was enlarged and a family room was added to the north eastern side of the home but the addition is sympathetic (including a hipped roof and redwood shingle siding) with the original structure and does not detract from the overall integrity. Built just prior to the devastating North Berkeley fire of 1923, this home still has the original roof top sprinkler system, installed by the owners after 1923 to protect against future catastrophe. A two-car garage, clad in brown-shingle, on two story high stilts, was built as part of the same project. The garage has a side gable and a shed roof off the back with a pair of casement windows that open to the canyon. On the east side wall, window openings are filled with green, glazed, perforated Oriental tiles. Plain, stained, wood doors are recent additions.

49. 37 Mosswood Road – TWO CONTRIBUTING: house;  
retaining wall (a)

Year built: 1911  
Architect: Ratcliff, Walter H. Jr.  
Original owner: Allen, James T. Allen

Built on the downhill side of Mosswood Road, the three story brown shingle rectangular house has a steeply pitched side-gable roof, a steeply pitched front gable over the inset front porch, and gables over each of the windows on the top floor. The house is symmetrical with the entrance centered in the front and rows of multi-paned casement windows on each side. A substantial battered concrete foundation supports the structure. A curved roofline graces one upstairs deck which is enclosed on two sides and suitable for sleeping. This house is on the edge of the neighborhood, sited above and behind 67 Canyon Road and borders the University's Ecological Study Area. An open faced balcony opens off the northern exposed canyon side of the house and next to the adjacent oak-bay woodlands of the Ecological Study Area. In general, windows are large and plentiful serving to bring nature inside; in the living room, each sash of the large casement windows is divided into ten panes. The east elevation dining room has a large rectangular picture window overlooking the oak-bay

NPS Form 10-900-a  
(8-86)

CMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 25

woodlands next door. From the street, the brick stairway and retaining wall gracefully curves to follow the contours of the hillside and forms a built-in brick bench as it reaches the front entryway. The original plans show a trellis at the entrance, but that was before the oak trees were mature on this north facing lot. Some windows have been added to the side and back on the eastern and southern corner of the main floor, but otherwise the exterior is unaltered.

The University land next door was not then known as the Ecological Study Area. However, it was a preserve where "no shooting is allowed at any season..."<sup>xvii</sup> and the grounds of 37 Mosswood were part of that larger landscape. As described by Mrs. Amelia Sanborn Allen, "Our house is in the middle of a dense grove of young live-oak trees, on the southern wall of the canyon opposite the University dairy, and to the south and west of the swimming pool."<sup>xviii</sup> The landscape of 37 Mosswood Road and the adjacent University land remains much the same today.

50. 38 Mosswood Road – ONE CONTRIBUTING: house

Year built: 1915  
Owner/designer: Parker, Carleton

This three story roughly square structure is sided with natural wood barn shakes under a flat roof with overhanging eaves. The dwelling steps steeply down the hillside from Arden Road although its address is Mosswood Road, and its entrance is off the Arden Steps. The second story entrance is from a side porch with a balcony above. Fenestration consists of single lite casement windows and two picture windows on the western exposure claiming views of the Golden Gate from the second story living room. Cantilevered porches on the northern exposure of the first and second stories overlook Strawberry Canyon. The third story back of the house is at street level with access from the cul-de-sac at Arden Road adjacent to the massive clinker brick retaining wall for 100 Arden Road. After a fire in the 1940's the original steeply pitched gable roof was replaced with the current flat roof and broad eaves. In 1982, a deck was added to the first story on the northern (canyon) side of the house of house. The alterations do not substantially detract from the integrity of the dwelling.

51. 1 Orchard Lane - ONE CONTRIBUTING: house

Year built: 1922  
Architect: Steilberg, Walter  
Original owner: Steilberg, Walter

This three-story, 12-room single family house was the principal residence (and one of three related structures) for Walter Steilberg and his family (rf. 1 Panoramic Way and 4 Mosswood Lane). The exterior is finished in unpainted/unstained redwood shingles and rose-colored stucco. Green painted window trim matches the green of the surrounding almond trees, whereas the underside of the eaves was once sky blue. An octagonal tower dominates the western façade; the third story of which has a balustrade formed by his trademark glazed green Oriental perforated tiles. Exemplifying the relationship of the building and its site, "the house climbs a slope with each story opening onto

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 26

terraces or decks, with glass doors echoing the fenestration."<sup>xx</sup>...glass dining room with mirror doors on east wall reflecting the bay view. This room is duplicated on the third story but here a bank of glazed perforated Chinese tiles forms a balustrade. Architectural features include mullions of amber glass, elaborate and expansive fenestration, custom-designed lighting fixtures, door handles, and paint custom-ordered to match outdoor colors. The south wing was built as bedrooms and the top-floor (east) porch was enclosed in 1927. Expansion of the top floor, south-facing study in 1945-46 involved changing the small peaked-roof space to a 10'x12' flat-roofed space suitable for use as a bedroom. At about the same time, an outside door (glass-paned) was added to a corner of the north, second-floor bedroom, in order to ease access to that room which was being converted to Steilberg's office. The original wood shingle roof has been replaced with composition shingle.

52. 3 Orchard Lane – TWO CONTRIBUTING: house;  
retaining wall (a)

Year built: 1915  
Architect: Bangs, E. Geoffrey  
Original owner: unknown

This rectangular two story wooden structure with wood shingle siding stained a dark brown has a gently gabled roof. The house conforms to the hillside, and its second story roofline is on grade with the switchback where Panoramic Way intersects Mosswood Road. The fenestration consists primarily of large picture windows, commanding expansive views of the Golden Gate. Some wooden windows have been replaced by aluminum but size and locations remain as originally built. A second story portico is reached by a pair of large French doors and is shielded from the western exposure by a generous pergola. The property is accessible by foot in three ways - from the west via Mosswood Lane, from the south via a classical entrance marked by a delicately painted #3 on a pillar mid-way up Orchard Lane, or from the south east by way of the topmost landing of Orchard Lane as it meets Panoramic Way at the Mosswood intersection. Built five years after the completion of Orchard Lane, the main entrance was then from Orchard Lane and designed in the beaux-arts style. The design is carried through to two terraces that wrap around the back of the house mimicking the pattern of the classical balustrades.<sup>xix</sup> The retaining wall to this terrace can be seen from Mosswood Lane below. The main entrance to the 3 Orchard Lane is from Orchard Lane and the design of the private staircase is in the beaux-arts style in keeping with the vernacular of the public staircase. The terrace is likewise designed in the Beaux-arts style and is graced with concrete balustrades supported by two massive curved retaining walls one of which can be seen from Mosswood Lane below. The similarity of design between the Beaux-arts staircase at 3 Orchard Lane and Orchard Lane itself makes the private entrance appear to be a branch of Orchard Lane.<sup>xx</sup>

53. 19 Orchard Lane – ONE CONTRIBUTING: cottage

Year built: 1950.  
Builder: Jevans, J.H.  
Original owner: Bush, Phillip

NPS Form 10-900-a  
(8-85)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service**National Register of Historic Places  
Continuation Sheet**

Panoramic Hill, Alameda County, CA

Section number 7 Page 27

This small (26' x 26') one and one-half story cottage with its flat, tar and gravel roof is accessible solely by foot, by way of the public Orchard Lane steps. The small, simple box-like structure is unobtrusive as it descends the hillside upon which it is built. The southern and eastern facades are devoid of fenestration. The original entry door situated next to the red brick chimney on the southern façade is no longer used and has been replaced with clapboard siding to match the rest of the cottage and does not adversely affect the integrity of the structure. Entry is through a private gateway via the deck which runs the length of the western façade. The western façade is dominated by French doors providing panoramic bay views and entry to the cottage. Two small fixed rectangular wood windows on the northern façade comprise the only other fenestration. The cottage sits atop a cistern formerly used as a reservoir fed by an underground spring. The redwood clapboard siding has been painted brown and is illustrative of the Second Bay Region Style.

**54. 21 Orchard Lane – ONE CONTRIBUTING: cottage**

Year built: 1949  
Builder: Brodhoff, C.O.  
Original owner: Parker, Alfred

This rectangular one and one-half story cottage is clad in redwood clapboard stained a dark brown. The shallow pitched gable roof is notched in the southeastern corner in order to accommodate a mature coastal live oak tree but is otherwise symmetrical. The cottage is accessible only by foot by way of the Orchard Lane steps. The unadorned entrance to the house faces the hillside to the east under a small shed roof. The western façade is dominated by three pairs of eight-lite casement windows which open the cottage up to the panoramic bay view. A large clinker brick chimney and a single eight-lite casement window dominate the southern exposure visible from the Orchard Lane path. This cottage casually combines elements from both First and Second Bay Region Styles into a small, unified whole.

**55. 59 Arden Road (formerly 30 Arden Road) - ONE CONTRIBUTING: house**

Year house built: 1912  
Builder: Junk-Riddle Co.  
Year garage built: 1924  
Original owner: Washburn, O.M.

This two and one half story rectangular wood shingled home with gabled roof, exposed rafter tails, broad eaves and angled support brackets for the beam ends, is mostly hidden from Arden Road. The main entrance on the south side of the dwelling is from Arden but the home is most visible from the Orchard Lane steps on the north side. The western façade is open to light and bay views through wide double hung sash windows wherein the upper sash is divided vertically into four panes. A sun room with a band of windows brings in light from the west, and a square bay window with shed roof opens the house to wooded views on the south elevation. The chimney is clad in concrete. Minor exterior alterations include replacement of two upstairs windows without vertical lites and the addition

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 28

of an attached garage of hollow tile sometime prior to 1929. The garage is compatible and does not detract from the overall integrity of the home. The original house burned to the ground on December 26, 1912 and was rebuilt soon thereafter.

56. 65 Arden Road - ONE CONTRIBUTING: house

Year built: 1935  
Architect: Steilberg, Walter  
Original owner: Parker, Alfred

This L-shaped natural barn-shingled home with hipped roof and wide overhanging eaves has a shallow street setback as it steps down the western slope of the hillside from Arden Road. The front of the house is dominated by a two car garage which abuts the house to form the L. The garage is closed from the street by undistinguished redwood doors. A small brick terrace enclosed by a wooden fence and gate leads to the main entry door protected by a shed roof projecting from the garage wing. There are no windows on the street side and main entrance. The only ornamentation is found on the entry door where a small privacy window is carved in an "Oriental" motif. From Arden Road the home appears to be a one story cottage attached to a large garage. From the Orchard Lane approach the house is three stories tall and is dominated by a three sided turret like structure with double single lite casement windows in each face of the turret, giving commanding views of the Bay to the west. A side second story entrance is located off of Orchard Lane.

57. 70 Arden Road - ONE CONTRIBUTING: house and garage combination

Year built: 1939  
Architect: Wurster, William  
Original owner: Gardner, Eleanor

This rectangular wood siding and stucco two story home runs parallel to the street in a shallow L configuration. The second story living space above a line of four single stall garages on the street level has a flat roof with overhanging eaves. The main entrance is from the north side in a recessed alcove barely visible from the street. Built on the uphill side of Arden Road three very large casement windows on the western façade provide an expansive view of the bay. The stucco has had an ochre pigment added before application. A projecting balcony with horizontal board on its face runs the entire length of the western facade. Redwood garage doors are compatible. This home is a fine example of Second Bay Region Style architecture.

58. 76 Arden Road - ONE CONTRIBUTING: house

Year built: 1925  
Contractor: Mason-McDuffie Co. Designer unknown  
Original owner: Bradley, H.W.  
Interior second unit; 1939

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(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 29

Architect: Wurster, William

This two and one half story box style Mediterranean-influenced stucco over wood two-story structure has a flat recessed roof and is on the uphill side of Arden Road facing the Bay. The main entry is from the south side up two flights of steep concrete steps. Two large picture windows each flanked by casements dominate the western façade, one window per story. The second story window is enhanced by an inset in the stucco wall above in the shape of a elongated half oval. The half story basement was converted to a second unit in the 1940s and designed by William Wurster. The unit has characteristic modern features such as a cement floor in bathroom and kitchen, plywood paneling on the walls, and a Celotex ceiling.

59. 89 Arden Road – ONE NON-CONTRIBUTING; house remodeled extensively in 1991.

60. 95 & 99 Arden Road - ONE NON-CONTRIBUTING: duplex - later construction (c. 1953)

61. 100 Arden Road (formerly 47 Arden Road)- THREE CONTRIBUTING: house;  
detached garage (a)  
retaining wall (b)

Year built: 1915

Designer/owner: Hersam, Ernest A.

This imposing two and one half story rectangular structure is sheathed in natural wood shingles and sits on a concrete foundation under a side gabled roof with wide over-hanging eaves and exposed rafter tails. A remarkable clinker brick retaining wall and entry way envelops the property and presents an inviting though fortress-like effect as it follows the gentle curve of the Arden Road cul-de-sac. Several landings twist and turn to reach the main entrance on the south side of the property where a pitched gable porch roof protects the classic Craftsman door from the direct sun. To the left of the entrance is a secondary retaining wall with clinker brick buttresses forming the border for a garden and a built-in clinker brick bench. Fenestration consists of three large square picture windows dominating the western façade opening the living room to spectacular bay views. On the second story, double hung sash windows have six lites in each of the top sashes, and a balcony is supported by wooden angle brackets. Inside the house, walls and ceilings are paneled in unstained clear-heart redwood. The garage is built into the hillside and faced by the clinker brick retaining wall with a high-opening arched doorway and an unremarkable wooden door.

<sup>i</sup> Siegel and Strain, Architects, Historic Structure Report California Memorial Stadium (Berkeley: University of California Office of Planning, Design, and Construction, 1999), p. 13.

<sup>ii</sup> Suzanne B. Riess, editor, *The Julia Morgan Architectural History Project* Vol. 1 (Berkeley: The Regents of the University of California, 1976), p. 109-110.

<sup>iii</sup> Gray Allen Brechin, *Berkeley Urban Conservation Survey* (BAHA); Marilyn Wright Ford, "Panoramic Hill: The Early Days," in *Panoramic Hill: Berkeley's Most Romantic Neighborhood*, revised edition (Berkeley: BAHA, 1996), pp. 1-2; Riess, p. 104.

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 7 Page 30

<sup>iv</sup> Frank Soulé, Jr., Map of Strawberry Valley and Vicinity – *Showing the Natural Sources of the Water Supply of The University of California With proposed System of Reservoirs, distributing Pipes, etc.*, 1875.

<sup>v</sup> Berkeley Urban Conservation Survey (Berkeley: Berkeley Architectural Heritage Association, 1977).

<sup>vi</sup> Not shown on 1911 Sanborn maps but building altered in 1921.

<sup>vii</sup> A search of building permits, zoning permits, finance records, and BAHA files found no information about original owner or architect.

<sup>viii</sup> Warren and Lorna Byrne, *Notes on the Exterior* (Berkeley: Berkeley Architectural Heritage Association, block 10-1861, 2004).

<sup>ix</sup> Soulé.

<sup>x</sup> Riess, p. 103

<sup>xi</sup> Interview of Florence Stratton Reinke by Anthony Bruce and Lesley Emmington-Jones (Berkeley: Berkeley Architectural Heritage Association, audio tape, October 1977).

<sup>xii</sup> Ibid.

<sup>xiii</sup> Interview of Howard Mel by Fredrica Drotos, 10/30/04.

<sup>xiv</sup> Interview of Jeanne Allen by Janice Thomas, 10/30/04.

<sup>xv</sup> William Allin Storrer, *The Architecture of Frank Lloyd Wright: A Complete Catalog*, 2<sup>nd</sup> ed. (Cambridge, Massachusetts: The MIT Press, 1991) A436.

<sup>xvi</sup> Interview of Hilary Bendich by Fredrica Drotos, 11/8/04.

<sup>xvii</sup> Amelia Sanborn Allen, "Birds of a Berkeley Hillside," in *The Condor* Vol. XVII (March 1915), p. 79.

<sup>xviii</sup> Allen, p. 78.

<sup>xix</sup> Interview of Jane Bendix, current owner of 3 Orchard Lane, by Janice Thomas on 10/23/04. Mrs. Bendix described a watercolor of the exterior of her house which was signed by Bernard Maybeck. She believes he had a role in designing her house.

<sup>xx</sup> Ibid.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 1

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### SUMMARY

The Panoramic Hill Historic District is eligible for the National Register of Historic Places under criterion C at the local level of significance. Under criterion C, Panoramic Hill is significant in the area of Architecture as a neighborhood that represents the Bay Area Tradition in architecture, primarily the first phase associated with the Arts and Crafts Movement. The district includes notable houses by architects Ernest Coxhead, Bernard Maybeck, Julia Morgan, Walter Steilberg, and others; a distinctive street plan; and paths and steps that provide pedestrian circulation. Since the north side fire of 1923, Panoramic Hill is among the most extensive surviving Arts and Crafts neighborhoods in Berkeley, which was the Northern California center of this important early twentieth century architectural movement. The district is significant for the period from 1901, when the first home was constructed, through 1950. Construction of significant new buildings dwindled during the 1940s and had virtually ended by that later date. A few significant architect-designed alterations took place to existing homes in the early 1950s. One home, the Feldman House at 13 Mosswood Road, was constructed in 1975 from a 1939 Frank Lloyd Wright design.

### HISTORIC CONTEXT

#### Architecture

Late nineteenth-century California residential architecture for the middle and upper middle classes was characterized for the most part by repetitive floor plans, wood construction, and decorated interior and exterior surfaces. These decorated surfaces reflected the possibilities suggested by mass produced illustrations and realized by steam-driven machinery in wood-working factories more than they did any conscious aesthetic ideas. Painted houses of this sort line the streets of Berkeley's new neighborhoods that were expanding with the University of California, notably the College Homestead tract on the south side of the campus, the principal residential neighborhood for the University. In later years, houses like these came to be identified collectively as "Victorian," or labeled by stylistic terms as Italianate, Eastlake, or Queen Anne.

Victorian Berkeley was little different from Victorian neighborhoods throughout California and the rest of the United States. Likewise, Victorian America had many similarities with comparable districts of Europe and other industrialized countries. The common ingredient in all of these places was the recent and rapid industrialization of societies. Everywhere, industrialization resulted in a growing middle class and, at the same time, a growing gap between those who could afford to live comfortably and those who struggled in poverty. The architecture we now call Victorian was developed to accommodate those who benefited

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 2

materially from industrialization. The plentiful and conspicuous architecture of Victorian houses struck many as a symbol of the age, for both good and bad.

In England, where the differences between rich and poor were particularly strong, and the differences between middle class neighborhoods and working class slums were particularly evident, powerful critics focused their attacks – and solutions – on architecture. John Ruskin and William Morris saw the middle ages as the last great period for architecture, which went into decline with the Renaissance and sunk to its nadir during the Industrial Revolution in the nineteenth century. Since the middle ages, when skilled craftsmen were directly responsible for the creation of beautiful buildings, industrialization had resulted in the estrangement of workers from their work and in the consequent ugliness of buildings and cities.

Out of this critique, and the examples of William Morris, came the Arts and Crafts Movement. This movement began in England and subsequently spread to the United States and other industrialized countries. It sought to replace mass-produced, machine-made architecture whose appearance alienated people from society with hand crafted architecture whose appearance helped to unify producers and users of architecture, among different elements of society.

The Arts and Crafts movement influenced progressive architects and clients in cities throughout the United States – although usually more for its architectural than its social aspects. The work of H.H. Richardson and Frank Lloyd Wright, the Shingle Style in New York and New England, the Mission Revival, and other regional expressions all reflected aspects of the ideas and imagery of the Arts and Crafts movement in various ways. However, nowhere did the Arts and Crafts movement emerge more directly than in the San Francisco Bay Area, and nowhere did it flourish more extensively than in Berkeley.

Arts and Crafts ideas were introduced to the San Francisco Bay Area by Joseph Worcester, a Swedenborgian minister who cultivated “rustic qualities” in a house in Piedmont in 1876 and in four shingled houses on top of Russian Hill in San Francisco in 1888-1889.<sup>1</sup> These were followed in the 1890s by the generally scattered work of four recently arrived architects to the Bay Area – Ernest Coxhead, Willis Polk, A.C. Schweinfurth, and Bernard Maybeck. Trained in different ways, beginning in the late 1880s these sophisticated architects introduced to the region buildings with a new kind of imagery for clients who shared their rejection of the architectural mainstream. Although each architect had a distinctive approach, the four produced buildings with certain common characteristics – unpainted redwood structures often clad in shingles, reliance on vernacular sources (of various kinds, including California barns and working buildings, California Missions, English country architecture, and the architecture of rural northern France), hand craftsmanship (ironically, most of these houses were just as dependent on industrial processes and machine-driven tools as were those in Victorian styles), and compositions of contradictory volumes, surfaces, and details.

In the mid 1890s, the groundwork was laid for a broader impact of Arts and Crafts ideas and of the work of these architects. A house designed by Maybeck for himself led to another

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 3

designed for his friend, the poet, Charles Keeler, and subsequently to several others near Keeler's house on Highland Place in north Berkeley. In the development of these houses, Maybeck and Keeler promoted a radical view of residential architecture, with simple houses built in harmony with nature. These ideas were given a forum with the establishment of the Hillside Club in 1898 – at first a women's club which met in Schweinfurth's shingled Unitarian Church on the south side of the campus. Reorganized by Maybeck and Keeler to include men in 1902, the Hillside Club functioned as a persuasive force for the dissemination of Arts and Crafts ideas in Berkeley. The publication in 1904 of the *Simple Home* by Keeler made these ideas more coherent and more widely available. From Keeler's book and Berkeley's example, progressive architects and clients built neighborhoods of rustic, unpainted, wood houses that blended with their natural settings on streets laid out to minimize disruption to the typically hilly topography. These neighborhoods formed a sharp contrast to more ordinary districts of painted houses on regular lots, whose landscaping and decoration emphasized both their separation from nature and their origins in industrial society.

Beginning around the turn of the century, enclaves of Arts and Crafts houses began to develop in scattered parts of the San Francisco Bay Area. While the largest such neighborhood was on the north side of Berkeley, others developed on the south side along Panoramic Way and Hillside Court; along Edgewood Avenue in San Francisco; in the Professorville neighborhood in Palo Alto and in Mill Valley, Sausalito, Ross, and San Anselmo in Marin County. In addition, Pacific Avenue where it faces the Presidio in San Francisco, was built as an urban version of what was generally a suburban development.

Mostly begun in the early 1900s, these neighborhoods of Arts and Crafts houses were built up with a consistent character during the 1910s and 1920s. Where there was room for infill buildings, or where there was room to expand, these neighborhoods grew in later decades in ways that were stylistically different but, at the same time, similar in important underlying ways. The results were often neighborhoods that were stylistically diverse but still harmonious and cohesive, unified by the use of materials, relationships to the natural setting, reference to vernacular sources, and employment of architectural contradictions. In retrospect, scholars have identified a Bay Area Tradition in architecture that, through a series of phases, encompasses a variety of styles.<sup>11</sup>

Following the first phase of the Bay Area Tradition, characterized by two generations of Arts and Crafts architecture designed by Coxhead, Polk, Schweinfurth, Maybeck, Julia Morgan, Louis Christian Mullgardt, John Hudson Thomas, and others, were two later phases. The second phase from the 1920s to 1950s drew on the imagery of small cottages based on northern European vernacular designs; the historical vernaculars of California in wood and stucco – Spanish Colonial, Monterey, and rural farms; and a regional modernism, typified by the work of William Wurster. The third phase, of the 1960s to 1970s, was characterized by the work of architects Charles Moore, Donlyn Lyndon, William Turnbull, and Joseph Esherick. The emblematic project of this phase was Sea Ranch, inspired both by rural California barns and by the work of the modern architect, Louis Kahn.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 4

In neighborhoods that were established in the first (Arts and Crafts) phase of the Bay Area Tradition, infill and additions to the neighborhood with buildings from subsequent phases was common and typically resulted in still-compatible neighborhoods. The original north Berkeley Hillside Club neighborhood was largely destroyed by a devastating fire in 1923. Wood and stucco houses representing both the first and second phases of the Bay Area Tradition were rebuilt around remnant clusters (for example, along Buena Vista Road) of early Arts and Crafts era houses. On Panoramic Hill, houses from the second phase of the Bay Area Tradition were built on infill lots and up the hill to the east of the original cluster of Arts and Crafts era houses. In these cases and elsewhere, the neighborhoods have remained coherent ensembles through decades of development and change.

### Architects

#### Bernard Maybeck (1862-1957)

Bernard Maybeck was born in New York City in 1862, the son of German immigrants. His father's training in Flemish and Dutch cabinet making and specialization in wood carving, along with his own education at the Deutsche-Americanische Schule, deeply influenced the future aesthetic of Bernard Maybeck's architecture. In 1881, Maybeck set sail for Paris, where he studied at the Ecole des Beaux-Arts. In 1886, after five years in Paris, Maybeck returned to the United States and joined the firm of Carrère and Hastings in New York. In 1889 he came to the Bay Area, and eventually joined the offices of A. Page Brown, the most prestigious architectural firm in San Francisco. In 1894 he joined the Department of Instrumental Drawing at the University of California in Berkeley, a move that forever changed Maybeck's career. The largely rural town of Berkeley, with its beautiful hillsides and sweeping vistas of the Bay Area proved to be the perfect canvas for Maybeck to develop his love for German and Dutch medieval architecture, to foster the growth of the Arts and Crafts movement in California. Over the next several decades, Maybeck developed a reputation as an eccentric artist and became one of the most influential voices of the Hillside Club and residential development of Berkeley and the Bay Area. He mentored numerous aspiring architects, including Julia Morgan and Lillian Bridgman, and designed some of the most significant works of architecture in the Bay Area, including the First Church of Christ, Scientist, in Berkeley, and the Palace of the Fine Arts in San Francisco. Maybeck died on October 3, 1957 at the age of 95.<sup>iii</sup>

On Panoramic Hill, Maybeck designed the single-family dwelling at 23 Panoramic Way. The Swiss-chalet style home was designed in 1901 for law professor George Boke. The Boke House, as it has come to be known, has been copied twice there being one on Mather Street in Oakland and another in Aberdeen, Washington.<sup>iv</sup> Although the houses were built from the Boke house plans, which Maybeck had himself sold, he did not supervise construction of the Oakland and Aberdeen structures, and as a result, there are subtle differences in detail from the original.<sup>v</sup>

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 5

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### Ernest Coxhead (1863-1933)

Ernest Coxhead was born in Eastbourne, England in 1863. He trained at the Royal Academy and Architectural Association in London. He and his brother, Almeric, immigrated to Los Angeles, California, in 1886, where they opened an architectural practice together. Three years later, they relocated to San Francisco, where Coxhead stayed until his death in 1933. Inspired by the natural beauty of the Bay Area and influenced by the English arts-and-crafts movement's search for "truth" in design, Coxhead aspired to create a regional style that celebrated and respected the natural surroundings of the area. He favored English country architecture in his domestic designs - steeply pitched roofs, restrained informal exteriors that offered few clues to the interior design, formal interiors, and asymmetrical floor plans that lent themselves to elements of surprise and freedom of expression. His early houses were clad with brown shingles, and although shingled houses had long been popular in the American suburban and rural landscape, he, along with such contemporaries as Willis Polk, A.C. Schweinfurth, and Bernard Maybeck, was responsible for bringing idealized rustic beauty to an urban environment. A trip to Europe, with a stop en route at the World's Columbian Exposition in Chicago, along with America's growing interest in classicism and Beaux-Arts architecture, influenced Coxhead's later, larger houses, but their impact did not have the same reach as his earlier, shingle homes. Coxhead died in Berkeley in 1933.<sup>vi</sup>

On Panoramic Hill, Coxhead designed two brown shingle single-family dwellings during the first decade of the 20<sup>th</sup> century. Both were located on Canyon Road before Strawberry Creek had been culverted and the stadium built. The first of these Coxhead-designed houses was built in 1904 for Professor of Logic and Rhetoric Charles Rieber at 15 Canyon Road. The site sensitive design conforms to the lateral curvature of the hillside and its footprint is U-shaped and slightly akimbo as it wraps around the hill. The orientations of this complicated footprint are to both the bay and the canyon where Strawberry Creek flowed. A courtyard created inside the U-shape structure is the back of the house, a formal entrance, and having a terraced garden backdrop. The second of the Coxhead-designed houses on Panoramic Hill was built in 1905 for San Francisco fine-arts dealer Frederick Torrey at 1 Canyon Road. Also facing west with views, this brown shingled residence has dormer windows and a complicated footprint with numerous courtyards.

### Julia Morgan (1872-1957)

Julia Morgan was born in San Francisco in 1872 and raised across the bay in the then affluent suburb of Oakland. She enrolled in the University of California in 1890, where she was one of few women who majored in Civil Engineering. A lifelong friendship, mentorship, and professional partnership began during her junior year, when Morgan met and studied under the young and eccentric architect and professor, Bernard Maybeck. After graduating with honors in 1894, Morgan collaborated with Maybeck, who encouraged her to study at his *alma mater*, the École des Beaux-Arts. Six years later she returned to California, the first to earn a degree in

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 6

architecture at the École des Beaux-Arts, and soon found work with John Galen Howard. In 1904 she set up her own business in the carriage house of her parents' home. By 1905, she had moved her practice to San Francisco, and from 1907 until her final retirement in 1951, Morgan located her practice in the Merchants Exchange Building in San Francisco. Apart from a short-lived partnership with Ira Hoover, she retained sole ownership of and authority over her architectural practice, which was one of the most prolific in the region. Though William Randolph Hearst's estate near San Simeon remains Morgan's most famous commission, she built her practice on the hundreds of houses and dozens of clubs, charities, schools, and other organizations of an extensive and influential women's network. Julia Morgan died in San Francisco in 1957.

On Panoramic Hill, Morgan designed three structures. One was an apartment building located at 5-11 Panoramic Way in 1912. This two story basement apartment building of stucco and half-timber was designed in a restrained Tudor mode. The symmetrical structure is U-shaped with a court yard in the back and gable roofs on the back wings. Windows dominate the front elevation so as to take full advantage of the panoramic views of the bay. In the front of the building is a common staircase and entryway for four apartments. Bay views are on the west elevation. The structure is subtle in design with the half-timbering being the predominant design element.

While still working with Ira Hoover in 1912, Morgan designed a brown shingle "apartment house" for Elsie Lee Turner, a childhood friend, at 66 Panoramic Way. In 1929, Morgan designed a single-family dwelling for Professor of Botany Willis Jepson at 11 Mosswood Road. A rectangular wood-frame stucco structure with tile roof, the Mediterranean style house is one room deep which brings light and the outdoors into each room.

### Walter Steilberg (1887-1974)

Walter Steilberg was born in Louisville, Kentucky, in 1887, and grew up in San Diego, California. During his high school years, Steilberg spent his summers working in the offices of Irving Gill, widely recognized as one of the most influential architects in modernism. Steilberg moved to Los Angeles after high school graduation and worked for Myron Hunt, most famous for such projects as the Rose Bowl in Pasadena, Caltech, Pomona, and Occidental College campuses, and the Pasadena Public Library. Steilberg studied architecture at the University of California, graduating in 1910 with a bachelor's degree in architecture and minor in structural engineering. Steilberg worked with Julia Morgan for ten years, before establishing his own office in 1920. He continued to acquire significant engineering work from Morgan, including that of the Berkeley City Women's Club, Pasadena YWCA, and work related to Hearst Castle. The devastating 1923 Berkeley fire, which scorched the hills to the north of the University campus and destroyed 400 buildings, inspired Steilberg to develop more fireproof construction materials. He patented a method of making reinforced concrete known as Fabricrete, which utilized thin stucco membranes to create a vertical air cavity.<sup>vii</sup> Steilberg was designing residential structures during the Great Depression. At the start of World War II, Steilberg was 54 years old and rather than

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United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 7

enlisting he worked for a company in Seattle designing army bases. After the war, Steilberg served as structural engineer for the 1949 renovation work of UC Berkeley's Memorial Stadium. He died in 1974.

Steilberg's buildings on Panoramic Hill demonstrate his talent for designing domestic architecture, and there he would find a suitable location for two family homes among other structures. His first family home was located at 38 Panoramic Way, but ended tragically when both his first wife and daughter died from influenza. He was asked to design 1 Orchard Lane for Mrs. Mary V. Ferguson, who would become his mother-in-law, upon marrying Mrs. Ferguson's daughter Elizabeth. There he would raise his family and live for the remainder of his life. While 1 Orchard Lane was under construction he lived in the brown shingle cottage he designed at 1 Panoramic Way.

After the Berkeley hills fire of 1923, Steilberg's designs were intentionally as fireproof as possible: "I watched 400 buildings burn to the ground and decided to build a fireproof house."<sup>viii</sup> His design solutions were to develop the Fabricrete system while also utilizing metal window sashes, tile window sills, and floors of reinforced concrete. To demonstrate the feasibility of the Fabricrete system, Steilberg designed 101 Panoramic Way which is a two car garage at ground level and a two story house above. The reinforced concrete was used throughout and even for a vaulted ceiling in the living room. Steilberg used the same Fabricrete system to build five garage spaces on the ground level with a cottage above at 6 Mosswood Road. This would be rental property for the owner Charles Mel. The five garage openings were covered with muted colored, striped cotton curtains to soften the potential bluntness of the long five car garage. The Fabricrete cottage at 4 Mosswood Lane was built on Steilberg's family property that included 1 Orchard Lane and 1 Panoramic Way. It served as income property.

Steilberg was commissioned to design two other garage-apartment combinations (1 Canyon Road and 14 Mosswood Road) on Panoramic Hill both of which were built with reinforced concrete at ground level with brown shingle cottages on top.

Steilberg also was commissioned to design several houses on the hill, e.g. the brown shingle house for Marion Parsons at 29 Mosswood Road in 1921, the brown shingle house designed for Florence Atkinson in 1928 at 59/61 Panoramic Way, the brown shingle cottage for Lenore O'Connor at 45 Canyon Road in 1924, and the brown shingle residence at 65 Arden Road in 1935 for Alfred Parker.

Walter H. Ratcliff, Jr. (1881-1973)

Walter H. Ratcliff, Jr. was born in London in 1881. The family immigrated to America in 1893, finally settling in Berkeley, California. Ratcliff attended the University of California, where he

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 8

majored in chemistry and graduated with honors in 1903. During his undergraduate years Ratcliff developed an interest in architecture and designed his first speculative house in Berkeley in 1902. Over the next few years he designed and built a number of brown-shingle speculative houses in Oakland and Berkeley. In 1904, Ratcliff attended the British School in Rome. Two years later, he returned to Berkeley and worked in the offices of John Galen Howard. By 1908, he had started his own practice, first in San Francisco, then in Berkeley (where it is now the oldest East Bay firm), and continued to design both great and small, mostly English-influenced homes. In 1913, the city of Berkeley appointed Ratcliff City Architect, in which position he developed a reputation for both design and economy. Mills College, the women's college in Oakland, appointed him campus architect in 1923; the school's desire for buildings in the increasingly popular Spanish Colonial Revival style sent Ratcliff traveling to Mexico to sketch buildings of the early Spanish colonial period. From that point forward, he alternated regularly between English and Spanish styles. Walter Ratcliff died in Berkeley in 1973.

On Panoramic Hill, Ratcliff designed the brown shingle single-family structure at 37 Mosswood Road. Built in 1911 for Professor of Classics James Allen, the steeply pitched gable roof and the apparent five stories give height to this house built on the downhill side of the street. The presence of coastal live oaks and the abundance of large casement windows combine to give the experience of living in a large, albeit symmetrical and classical, tree house. Several front gables add lift to the house which is supported by a prominent battered foundation.

### Robert T. Paine (1869-1946)

Robert Treat Paine was born in Indiana in 1870. A sculptor and technical innovator, he studied at the Chicago School of Art and also under Augustus Saint-Gaudens at the Art Students League in New York. While in New York, Paine invented a "pointing-up" device for mechanically tracing the outlines of a sculpture and reproducing them on a magnified scale, a process which had previously been done by hand. The first piece thus enlarged was the 1896 model for Saint-Gaudens' William Tecumseh Sherman Monument, a heroic-size bronze group standing at the 59th Street entrance of Central Park in New York City. After working in Italy, Paine moved to Berkeley in 1913 and in 1915 was commissioned to work on the upcoming 1915 Panama-Pacific Exposition in San Francisco. In this capacity he supervised the installation of sculptural embellishments to the Palace of Fine Arts and also created *The Illustrious Obscure*, a fountain on an island at the north end of the Palace of Fine Arts lagoon. Over three decades, Paine was commissioned to do numerous sculptures and sculptural embellishments by both private individuals and public institutions. His wife Mary Trueblood Paine taught mathematics at the Extension Division of the University of California. One of their two daughters, Evelyn Paine, married architect Robert Ratcliff and lived much of her childhood and all of her adult life in the Panoramic Hill neighborhood. Robert T. Paine died in 1946.

On Panoramic Hill in 1917, Paine designed his personal studio at 94 Panoramic Way although the building would serve primarily as his family residence. As a sculptor for numerous public

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 9

installations, he was often living on-site and away from home. The house at 94 Panoramic Way has a handcrafted doorknocker, unusual exterior sheathing, e.g. tarpaper in combination horizontal board siding, and an unusual roofline that is nearly flat but slightly cambered. In response to slides caused by an underground spring at 74 Panoramic Way, Paine designed a fountain for the downhill property at 72 Panoramic Way.<sup>ix</sup>

### John Hudson Thomas (1878-1945)

John Hudson Thomas was born in Ward, Nevada in 1878 and grew up in the San Francisco Bay Area. After graduating from Yale University in 1902, he enrolled in the architecture program at the University of California and studied under the tutelage of John Galen Howard and Bernard Maybeck. Thomas worked for Howard for a short time, before entering into a partnership with George T. Plowman in 1906. During this period of his career he designed, with Plowman, a series of redwood bungalows which established his reputation. In 1910 he established his own practice. He continued to design wood houses when clients requested them, but he became deeply involved with exploring the visual possibilities of working in stucco. Thomas borrowed ideas from a range of sources and transformed and integrated them into very complex compositions. Among the most influential architects in Thomas's career were Adolf Loos, Otto Wagner, Charles Mackintosh, and Charles Voysey. A member of the Hillside Club, he mastered the archetypal Craftsman style advocated by Charles Keeler, but Thomas's early work also shows a whimsical exploration in Mission, Gothic, Tudor, Art Nouveau, English Cottage, and Viennese Secessionist styles. After 1915, however, Thomas designed more literal interpretations of historical styles, a notable feature of the second Bay Area Tradition. Thomas died in 1945.

John Hudson Thomas only designed one house on Panoramic Hill, and it was a remodel at that. However, his work in 1910 to remodel a farmhouse and the first house in the subdivision of University Hill, was important as an expression of Arts and Crafts period ideals in general and the early environmentalist owners', Edward and Marion Parsons', ideals in particular. The structure at 21 Mosswood Road was transformed from a white clapboard exterior to cladding in brown shingle. The downstairs interior was sheathed entirely in redwood. A modest entry was put on the street side with balconies and a more expansive window mass on the back and side which oriented toward the canyon and bay. The entry of the house was rotated 180 degrees, and one of the design challenges was surely to make what was the back side of the house a suitable entrance while the front of the house used every bit of space for windows, balconies, and interior seating areas with no access from this elevation.

### Robert W. Ratcliff (1913 - 1998)

Robert Ratcliff was born on May 6, 1913 in Berkeley, California, where he lived his entire life. In 1936, he graduated from the School of Architecture at the University of California at Berkeley. In

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 10

1945, after serving in the Army, he joined the architectural firm of his father, Walter H. Ratcliff. With the Ratcliff firm Robert was responsible for the Mills College general plan and the design of nine buildings there. Much of his work centered around the University of California, not only at Berkeley but at Santa Cruz, San Francisco, San Diego, and Irvine. He was responsible for numerous restoration and renovation projects at the Berkeley campus in the early years of his career. As an architect for the City of Berkeley, he designed the controversial round firehouse on the Alameda, inspired by the triangular site and his desire to build around the mature trees located there. He designed the administration building for the Pacific School of Religion, the Alameda County Administration Building, several buildings at the Lawrence Berkeley National Laboratory, Kaiser Hospital, Fernwald Student Housing and Highland Hospital in Oakland. As someone who worked in the Second Bay Region Style, he was heavily influenced by the work of William Wurster and worked as an alumni advocate to change the curriculum of the UC School of Architecture towards Modernism and away from the Beaux-Art system of which his professors had been advocates. Ratcliff and his wife Evelyn, a landscape architect and the daughter of sculptor Robert Treat Paine, were devoted environmentalists and advocated for open creeks and for development inclined toward preserving and enhancing the natural features of a site. Their son Christopher Ratcliff is the third generation of architects to join the family business, Ratcliff Architects. Robert Ratcliff died in 1998.

Ratcliff designed numerous single-family dwellings on Panoramic Hill, but only two within the district boundaries. More importantly than the number he designed is that he chose the neighborhood as the location for his family home at 74 Panoramic Way. The house was built in stages, but the first stage was as early as 1941, at the beginning of World War II. The particular site he chose was a small niche of land within the precarious second hairpin turn on Panoramic Way and above ground of an underwater spring. He also designed the cottage next door at 72 Panoramic Way.

### William Wilson Wurster (1895-1973)

William Wurster was born in Stockton, California in 1895. He was trained in the classical Beaux-Arts tradition at the University of California. His San Francisco-based architectural firm Wurster, Bernard & Emmons was formed in 1945. He designed more than 200 homes, primarily in the 1930's, 1940's, and 1950's, which emphasized the relationship between indoors and outdoors, locating windows to intentionally capitalize on views, simplifying and reducing both interior and exterior detail, using indigenous materials, and exemplifying a sensitivity to site. Utilizing these relationships, one particularly influential residential building was the Gregory Farmhouse, which is a rustic, one-story ranch house in Scotts Valley, California. Wurster was responsible for creating the College of Environmental Design at UC Berkeley, which was interdisciplinary in its approach to design, and included Landscape, Planning, Architecture, and Design Arts. He became the College's dean. The building which houses the College of Environmental Design was named for Wurster and his wife Catherine Bauer Wurster, a notable planner, although he did not design the building as commonly thought. Wurster was designing houses during a period of national economic downturn. The characteristic lack of ostentation in his designs was

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 11

especially attractive to wealthy Bay Area residents, who commissioned him to build homes from Lake Tahoe to Big Sur. His designs were warm in comparison to the austere International style of architects, such as Ludwig Mies van der Rohe and Le Corbusier and have been referred to as "soft modernism." Wurster won the prestigious Gold medal from the American Institute of Architects. He died in 1973.

On Panoramic Hill, Wurster designed a boxy garage and cottage combination at 70 Arden Road in 1939 for Miss Eleanor Gardner who lived next door at 76 Arden Road. Wurster also designed an extra dwelling unit to be incorporated into the lower floor of Miss Gardner's home at 76 Arden Road.

### Frank Lloyd Wright (1867-1959)

Frank Lloyd Wright was born in Richland Center, Wisconsin. From a young age, buildings fascinated Wright, but rather than architecture he studied civil engineering at the University of Wisconsin in Madison. After school, he moved to Chicago to work for the architectural firm of J. Lyman Silsbee and in 1887, was hired by the firm of Adler and Sullivan who were designing Chicago's Auditorium Building. Louis Sullivan was the young Wright's mentor and "Lieber Meister" (beloved master) and Wright eventually became the chief draftsman and head of the firm's residential design. It was not long before Wright began to develop his own architectural ideas—low, sheltering rooflines, the prominence of the central fireplace and "the destruction of the box" in favor of an open floor plan. Contrary to the firm's policies, Wright began "moonlighting", and was subsequently fired for the betrayal. He left, taking with him, Sullivan's considerable design influence. Wright began his own firm in 1893 and worked out of his now famous Home Studio in Oak Park, an affluent Chicago suburb. In the years between 1893 and 1901, Wright produced 49 buildings—primarily residential. This work is collectively known as the "prairie school". His personal life was dramatic and tragic and included abandonment of his first wife for a highly publicized liaison with Mamah Borthwick Cheney, the wife of a client. She was murdered by a servant, who also set their home on fire. It took Wright over 20 years to recover from these events, but even during the nadir of his career, he completed many important architectural projects including the Imperial Hotel in Tokyo and several concrete Californian residences. In 1932 Wright founded the Taliesin Fellowship. Thirty apprentices came to live and learn with Wright—bringing with them, a reliable stream of fees and sending out into the world—avid Wright disciples. The Fellows program was expanded to Arizona in 1936 and coincided with a rush of new commissions, including Fallingwater, his most famous building. During the war years, few buildings were produced, but under the G.I. bill, Taliesin built 270 houses—many in the simplified Usonian style. Wright also completed large important projects including Price Tower skyscraper, the Guggenheim Museum and the Marin County Civic Center. Frank Lloyd Wright defined "organic architecture" as architecture that is appropriate to time, appropriate to place, appropriate to man. These three concepts characterized his work throughout his long career. He died at the age of 92.

NPS Form 10-900-a  
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CMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 12

On Panoramic Hill, Wright's designs found suitable expression at 13 Mosswood Road. The house was originally designed in 1939 for Lewis N. Bell in Malibu but was re-sited to the Berkeley location in 1974. The posthumous project was authorized by Olgivanna Wright and overseen by the Taliesen architects. The design, materials and foundation were reworked to suit the northern California character of the new site. The house is an excellent example of Wright's Usonian period and includes characteristic features, e.g. masonry rising directly out of the ground, a centralized kitchen, a carport instead of a garage, and a dining room folded into a corner of the living room and adjacent to the fireplace.<sup>x</sup>

### District History

#### Early Ownership and Planning

No roads led to plot number 80 in 1857 when Julius Kellersberger surveyed and platted the 16,970.68 acre ranch of Vincente and Domingo Peralta.<sup>xi</sup> By 1875, the location of plot 80 was identified as part of the "undivided mountain or hill land" of the Peraltas' ranch – the future Panoramic Hill neighborhood – at the very eastern limit of the land envisioned for development.<sup>xii</sup> Only dense black lines arranged in circular patterns signified the Coastal Range – evidently an impossible place to reach, let alone build. Kellersberger's map would foreshadow the slow and particular development of Panoramic Hill

By the time the College of California intended to relocate from downtown Oakland to the rural, unincorporated town of Berkeley to the north, the College had plenty of undeveloped land including, by then, plot number 80. To raise the money necessary to develop the college campus, the College of California turned to Isaac H. Brayton, as it had done in the past. A Congregationalist minister and large property owner, he owned the College of California buildings located in Oakland as he had loaned money to the College to save it from imminent bankruptcy in 1868. Since the new college planned to continue using the downtown Oakland buildings, for the time being at least, it offered to swap all of its land outside the boundaries of the future Berkeley campus for the mortgage on the buildings of the Oakland campus. The proposed land deal included Plot 80.

The land deal also included a small portion of what was known as the Berkeley Property Tract. As early as 1864 the College of California had acquired undeveloped land east and south of Strawberry Creek and had hired Frederick Law Olmsted to design a suitable residential neighborhood conducive to contemplation and refinement. The land deal included a part of the Berkeley Property Tract that remained undeveloped and outside of, although nearby, the area laid out by Olmsted.<sup>xiii</sup>

By the time the land deal was finalized, it was Isaac Brayton's widow, Mary, who signed on the dotted line making her the property owner of the future Panoramic Hill neighborhood.<sup>xiv</sup> Brayton

NPS Form 10-900-a  
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OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 13

did little to foster development on the hill, and upon her decease, her brother, sister, and in-laws inherited the land, and subsequently sold it in 1887 to real estate developer Charles Bailey.

The neighborhood began the following year in 1888 when Bailey subdivided University Terrace and cut a road "to meander...by the most feasible route according to the natural lay of the land..."<sup>xv</sup> The result is Panoramic Way, a narrow road with hairpin turns up the southern half of the hillside.

Also in 1888, Bailey sold one parcel of land to Silas M. Mouser, a San Francisco-based surgeon and physician, who first arrived in California in 1849. In 1895, he sold Mouser another parcel, who at some time between 1888 and 1895 built on the land a relatively modest farm house, planted almond orchards, and called his country retreat "Atalaya", the Spanish word for "watchtower." The local newspaper took note: "Dr. Mouser's house now being constructed on the hillside east of the town is visited by many who regard the situation as being extraordinary for the location of the dwelling. It will certainly open the eyes of many to the desirability of the hills as a handsome location for those who can afford to keep a horse and carriage and do not care for the frequent visits of their friends."<sup>xvi</sup>

By the time of his death in 1906, Bailey had divided his remaining land into parcels and sold all of it as part of University Terrace. Atalaya, meanwhile, remained intact until 1909. That year, just before his death, Silas Mouser deeded the farm to his son who, just one year later, sold it in its entirety to Warren Cheney, former editor of the literary magazine, *The Californian*, who turned to real estate development when his eyesight began to fail. Atalaya gave way to a new subdivision, University Hill,<sup>xvii</sup> which together with University Terrace would comprise the future Panoramic Hill neighborhood.

### Residential and Infrastructure Development for Diverse Intellectual Community

Even as the earthquake of 1906 sent thousands of San Franciscans fleeing across the bay to build new homes and new lives in Oakland and Berkeley and even as Francis Marion Smith and the Real Estate Syndicate opened extensive tracts of land and expanded the Key Route rail system to the outreaches of Oakland and north Berkeley, University Terrace and University Hill remained isolated. With no immediate access to public transportation, a single, narrowly winding access road, and steep, irregular lots that were difficult to build upon, prospective homeowners were a self-selecting lot. Situated above the lush flora, running creek and waterfalls of Strawberry Valley and the UC Botanical Gardens, commanding breathtaking views of the San Francisco Bay and beyond, and within walking distance of the University, the hill did ultimately attract nature lovers, artists, bohemians, and intellectuals who sought refuge from the deleterious effects of urban life and industrial development.<sup>xviii</sup>

In 1901 George Boke, who would eventually be Professor of Law in the School of Jurisprudence, hired Bernard Maybeck to design a rustic home with Swiss chalet features at 23 Panoramic Way in the University Terrace subdivision. A widow named Margaret Deane then

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 14

hired Boke house builder A.H. Broad to build a shingled home with similar chalet features next door at 25 Panoramic Way. Over the next few years, development picked up pace, allowing J.R. Baird, a real estate developer and future resident of the hill, to report in 1906, "Hill property is demanding good prices and there is an unusual call for lots in the highest sections of Berkeley. We have disposed of several lots in the University Terrace during the past week and have several deals under negotiation."<sup>xxix</sup>

By 1910, when Warren Cheney subdivided University Hill, seven more homes had been built along Panoramic Way and Canyon Road in the University Terrace area. Cheney saw promise for University Hill and quickly set about promoting its development. Though owned by the University, nearby Strawberry Valley enhanced the properties' appeal, a fact that was capitalized upon in Cheney's advertisements which noted that "the beautiful property will always be held as a public park."<sup>xxx</sup>

Cheney forged two new roads from Panoramic Way into Atalaya, Dr. Mouser's former property, naming them Mosswood Road and Arden Road, and hired Henry Atkins, of Vickery, Atkins and Torrey, a prominent San Francisco fine arts firm, to design a pedestrian pathway connecting Panoramic Way to the new roads. The result was Orchard Lane, a concrete classical stairway, complete with urns, balustrades, and a graceful curve up the hillside. In keeping with the prevailing style of public architecture in the Bay Area at the time, Atkins chose the Beaux-Arts style.<sup>xxxi</sup>

Being in walking distance of the University campus, the hill attracted numerous faculty including Charles Rieber, Professor of Logic and Rhetoric, who commissioned architect Ernest Coxhead to design his family home at 15 Canyon Road. Other early faculty residents included, but were not limited to, Albert Whitney, Professor of Mathematics, who built his home at 33 Canyon Road in 1907. Lincoln Hutchinson, Professor of Commerce, followed suit in 1908 with a home at 9 Canyon Road designed by Julia Morgan. George Stratton, first chair of the Department of Psychology, built his home at 67 Canyon Road (formerly 51 Canyon Road) in 1911. Also in 1911 James T. Allen, Professor of Classics, commissioned Walter Ratcliff to design his home at 37 Mosswood Road. Carleton Parker, Professor of Labor Economics, built at 38 Mosswood Road in 1915, and Ernest Hersam, Professor of Mining, built higher up on the hill at 100 Arden Road (formerly 47 Arden Road) also in 1915.<sup>xxxi</sup>

Not surprisingly given its location near Strawberry Valley, and the vigorous climb to reach the hill, the neighborhood also attracted nature lovers and early leaders in the environmental movement. One such resident was Edward T. Parsons, a member of the Sierra Club, who aided John Muir in the fight to save Hetch-Hetchy Valley from being dammed. As he was also active in planning club trips and an accomplished writer, Parsons Memorial Lodge was built in his memory. His wife Marion Parsons shared Edward Parsons' enthusiasms, and after his death she continued to host Sierra Club meetings at their home at 21 Mosswood Road. They had transformed the once clapboard farmhouse into a craftsman gem through the capable

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 15

design work of John Hudson Thomas. Marion Parsons served as director of the Sierra Club for over 20 years from 1914-1938.

Hill resident Lincoln Hutchinson, resident of 9 Canyon Road, co-founded the Sierra Ski Club in Norden when he was not on campus teaching. Other Sierra Club connections included member Clifton Price, who developed the Julia Morgan-designed apartment building (5-11 Panoramic Way), and Sierra Club charter member Willis Jepson, who was also Professor of Botany at the University and owner of the Julia Morgan designed residence at 11 Mosswood Road.

The label "nature lover" is apt for this generation of hill resident. Willis Jepson made his life's work the classification of native flora and developed the first complete index of California native plants. Moving on the hill in the mid- to late 1920s<sup>xxiii</sup>, on the original site of the Mouser farmhouse, and where there are now two residences (11 Mosswood Road and 13 Mosswood Road), he found a suitable environment for a personal research garden. Amelia Sanborn Allen, of 37 Mosswood Road, wife of Classics Professor James T. Allen, was a self-educated ornithologist who developed her avocation while residing in Strawberry Canyon<sup>xxiv</sup> and during vacations to the Sierras, Santa Cruz mountains, and Monterey<sup>xxv</sup>. Of her home in Strawberry Canyon, she wrote

"Our house is in the middle of a dense grove of young live-oak trees.... The house faces south and up the hill. To the west are three unimproved lots, one of woodland, the others partly open, with several rather large pine trees. To the north and east the oak forest is continuous, interspersed with bay trees; and there is a dense undergrowth of hazel, cascara, poison oak, spiraea, wild rose, snowberry, wild currant, blackberry and brakes, with thimble-berries and wild parsnip filling the cross ravines."<sup>xxvi</sup>

For others, nature was integral to their domestic lifestyle, such as Cornelia Stratton Parker's description of life at 38 Mosswood Road.

"There, around the redwood table in the living-room, by the window overlooking the Golden Gate, we had the suppers that meant much joy to us and I hope to the friends we gathered around us. There, on the porches overhanging the very Canyon itself we had our Sunday tea-parties."<sup>xxvii</sup>

The remote neighborhood also nurtured intellectual, sophisticated lifestyles, e.g. Ben Lehman, Professor of English, who from his Strawberry Canyon residence at 29 Mosswood Road, corresponded regularly with such famous writers as Sara Bard Field, Gertrude Atherton, John Steinbeck, and Thornton Wilder. Walter Steilberg, who first lived in 38 Panoramic Way then later at 1 Orchard Lane, hosted a panoply of guests including musicians Alfred Hertz, Ernest Block, Albert I. Elkus, Henry Cowell, and Ernst Bacon; writers Thornton Wilder, Leonard Bacon, Austin Wright, Sheldon Cheney, and Charles Keeler; photographers Ansel Adams, Imogen Cunningham, and Cedric Wright; artists Beniamino Bufano, Ralph Stackpole, Ray Boynton, Rudolph Schaefer, Joseph Page-Fredericks, and Robert Paine; fellow architects Eliel

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 16

Saarienen, Richard Neutra, Harwell Harris, Warren Callister, Gardner Daily, Julia Morgan, Henry Gutterson, and William Corlett; psychologists Edward C. Tolman and James Stratton, all of whom are just some of the notable people who graced the halls of the Steilberg houses.<sup>xxxviii</sup>

The neighborhood naturally attracted faculty because of its proximity to the University campus. But the neighborhood was also near Piedmont Way then the location of Berkeley's finest homes<sup>xxxix</sup> and attracted connoisseurs of fine art as well as artists. For example, Frederic Torrey, who lived at 1 Canyon Road, was a principal in Vickery, Atkins and Torrey, a prominent San Francisco fine arts firm that helped to launch the careers of such notable artists as Imogen Cunningham and Maynard Dixon. Torrey apparently took pleasure in shocking the still rather conservative Berkeley art community by hanging Marcel Duchamp's *Nude Descending a Staircase* in prominent view in the entrance foyer of his home at 1 Canyon Road. He had bought the piece at the Armory Show in New York in 1913, which introduced to Americans Europe's most avant-garde artwork and subsequently changed the face of American artwork for the twentieth century.<sup>xxx</sup> Professor Rieber's wife, Winifred Smith Rieber, of 15 Canyon Road, was an esteemed portrait artist whose subjects would eventually include such notable figures as Albert Einstein, Thomas Mann, Phoebe Hearst, and Mrs. Herbert Hoover.<sup>xxxi</sup> Professor Carleton Parker and his wife Cornelia Stratton Parker enjoyed having guests to their home at 38 Mosswood Road; one such guest was artist Alexander Calder, who was then a student at Berkeley High School.<sup>xxxii</sup>

In the 1920 census records, there were a total of 34 households on the hill including a doctor, an accountant, a traveling salesman, five high school or grammar school teachers, one author, three artists, one art dealer, and nine professors. In general, the hill attracted a diverse and progressive crowd living outside mainstream commerce and industry.<sup>xxxiii</sup>

### Architectural Development

The first house to be built in University Terrace was the Boke House at 23 Panoramic Way. Built in 1901, this house has become one of Maybeck's most famous designs and exemplifies the basic tenets of vernacular architecture in the California Arts and Crafts movement. The same year, Boke House builder A.H Broad designed and built 25 Panoramic Way. Like the Boke House, the exterior was clad in brown shingles and the interior walls and ceiling covered in redwood. These were small brown shingle houses, and the dwelling next door at 27 Panoramic Way, built soon thereafter in 1903, was no exception.

At the same time as these single-family houses were being built at this remote hillside location, a more population dense three-unit apartment building was designed for 73, 75, & 77 Panoramic Way. The brown shingle dwelling was designed by the builder A.H. Broad and

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OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 17

resembled a single-family dwelling from the outside. Inside, however, each apartment occupied a floor, and there were no connecting interior stairways in between. Balconies dominated the west elevation. Just uphill of the Boke House, a concrete pathway connected the apartment building to the Boke House and to Panoramic Way below.

Although small houses and apartment buildings were being built on Panoramic Way during the first decade of the 20<sup>th</sup> century, two large single-family houses were designed by Ernest Coxhead at 1 and 15 Canyon Road in 1906 and 1904, respectively. Although the houses on Panoramic Way had views of the bay and distant vistas, the houses on Canyon Road also had views of the nearby UC Botanical Gardens and Strawberry Creek. The emphasis on indoor-outdoor relationships was enhanced with window placement, window size, courtyards, and terraces. The large buildings blended in to their environments with brown shingled exteriors.

As demand for hill locations increased, another apartment building was built in the neighborhood in 1912. Designed by Julia Morgan, the four-unit stucco half-timbered apartment for Professor Price made no apologies for being an apartment building unlike the apartment building at 73, 75, and 77 Panoramic Way. However, it was subtle and restrained as many of Morgan's residential projects were inclined to be.

Before designing the Price Apartments, Morgan designed in 1908 a brown shingled house at 66 Panoramic Way. The dwelling was designed for her childhood friend Elsie Lee Turner, who used the dwelling for income property. A concrete staircase was shared with 64 Panoramic Way, which was also clad in brown shingles. For both buildings, the main entrances were to the side, faced each other, and oriented in a friendly arrangement toward the shared stairway.

Once the University Hill subdivision was developed in 1910, development moved further along Canyon Road and deeper into the canyon. Development moved from the western face of the hill to the northwestern face, which was along the new streets of Mosswood and Arden Roads. Also added was Orchard Lane, an arterial path that facilitated efficient travel, but also served as announcement of a more exceptional development. Formerly Dr. Mouser's almond orchard, the University Hill area also had plenty of fruit trees and an abundance of live oaks.<sup>xxxiv</sup>

In 1910, Edward T. Parsons bought Mouser's farmhouse and had it moved to its present location at 21 Mosswood Road, which allowed for a more prominent view of the canyon than its former location at Panoramic Way's second hairpin turn. John Hudson Thomas was hired to remodel the farmhouse. To enhance the canyon views, he found creative solution in transforming what was originally the back of the house to a street side front entrance so as to utilize the expansive windows in what was originally the front of the house.

Between 1911 and 1915, four professors would build houses in the most remote location possible within the University Hill subdivision. In 1911, Professor George Stratton built a house at the end of Canyon Road, and Professor James Allen built a house at the end of Mosswood Road. Both of these houses were next door to undeveloped University land. In 1915, Professor

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 18

Parker built a house at 38 Mosswood, and Professor Hersam built a house at the cul-de-sac of Arden Road (now 100 Arden Road; then 47 Arden). In all these instances, rather than seeking fantastic panoramic views of the bay, they sought refuge at the end of the road, near the undeveloped University land next door, and oriented towards Strawberry Canyon. Although only one of them, 37 Mosswood Road, was designed by an architect, i.e. Walter Ratcliff, all were clad in brown shingles, had steeply pitched gable roofs, and interior walls and ceilings lined in redwood.

The Arts and Crafts movement continued to find expression on Panoramic Hill after World War I. Mabel Baird, who designed 14 and 16 Mosswood Road in 1919 and 1922, respectively, continued in the shingled mode. Even Walter Steilberg, who built an international reputation for his experiments in fireproof construction methods, designed 65 Arden Road in the old shingled manner in 1935.

The Bay Area's Arts and Crafts architecture included many styles, and the variations on the Arts and Crafts theme found expression on Panoramic Hill. A combination of factors influenced architects, builders, and home owners to seek alternatives to brown shingles. Rapid deforestation rendered wood increasingly scarce and expensive to build with, and the devastating Berkeley fire of 1923 made all too clear that the beloved wood houses posed serious fire hazards. In response to these and other factors, architects and home owners turned to Spanish Colonial Revival and Mediterranean styles of domestic architecture and built with concrete, tile, iron, and stucco instead of wood. These new styles still adhered to the basic tenets mentioned above, but also celebrated California's history and climate. In fact, with their flat roofs, thicker walls, and greater use of tile, they were more appropriate for the dry and temperate to warm climate than the often steeply pitched gabled roofs of earlier shingled houses.

The Steilberg compound at 1 Panoramic Way, 1 Orchard Lane, and 4 Mosswood Lane exemplifies the evolution of design away from brown shingle to other materials. Designed and constructed between 1922 and 1929, the property includes a classic shingled cottage (1 Panoramic Way), a half shingle/half-stucco main house (1 Orchard Lane), and a small Fabricrete cottage with a low pitched tile roof with flat terrace on top (4 Mosswood Lane).

Built in 1931, the Fabricrete house at 101 Panoramic Way is Mediterranean influenced while the stucco dwelling at 107 Panoramic Way, built in 1926, is more pueblo-style, but both retain Arts and Crafts features. The Julia Morgan-designed Spanish Colonial Revival stucco house and garage-cottage combination at 11 Mosswood Road likewise retain detail that define the period. The avian-themed hand-wrought iron gate at the front entrance as well as the fireplaces carved by Jules Suppo<sup>xxxv</sup>, who did much of the artisanal work at Hearst Castle, underscore this point particularly well.

In 1939, William Wurster designed a boxy wood siding and stucco house with four single stall garages below. By 1941, Robert Ratcliff had committed to building his family home in the niche

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 19

of land created by the second hairpin turn on Panoramic Way in synchrony with the Walter Steilberg-designed house at the first hairpin turn on Panoramic Way built in 1928. Meanwhile, Frank Lloyd Wright would be designing a home for a Malibu residence in 1939 that would later be re-sited by Taliesin architects for the northern California location at Panoramic Hill and supervised during construction in 1974.

### Changes to the Area Adjacent to the District – California Memorial Stadium

Though the Hayward Fault runs through the first switchback at Panoramic Way and has always posed an imminent threat to the neighborhood, the biggest upheaval to the area was the construction of California Memorial Stadium in Strawberry Canyon, immediately to the north of Canyon Road. The new stadium was originally designed for the flatlands to the south of campus. But after much debate, and to the dismay of residents who had bought property and built their homes with Warren Cheney's promise of unspoiled nature forever surrounding them, the University finally decided to build on the Strawberry Canyon site, permanently and fundamentally changing the natural landscape as well as the residents' relationship to the University.<sup>xxxvi</sup>

Preparations for the construction of the new stadium immediately made apparent how dramatically it would alter the landscape that had shaped the development of Panoramic Hill for decades. Excavation of the 22-acre site began in January 1923. With 24,000 pounds of black powder and 10,000 pounds of dynamite, excavators loosened the ground. A combination of steam shovels, Caterpillar tractors, horse-drawn wagons, and hydraulic machines then removed the earth. Strawberry Creek was also diverted before construction began. By the end of November 1923, Panoramic Hill residents who once overlooked a botanical garden and an untamed bird and wildlife sanctuary now set their gaze upon "a double-decked steel and reinforced concrete structure with 60,000 seats, and underneath the seating decks were training quarters, convenience stations, reception room, handball and tennis courts, and other features. The outer walls were 91 feet high and ...bigger than the Coliseum in Rome."<sup>xxxvii</sup>

The University's decision to build at the Strawberry Canyon site launched a litany of complaints to the city; some of the most vocal of them came from residents of Panoramic Hill. Walter Steilberg, who had already designed and built two houses on the hill, and Walter Ratcliff who had designed one house on the hill, along with other prominent architects, e.g. John Galen Howard, Henry H. Gutterson, and William Corlett<sup>xxxviii</sup>, whose son would later build on the hill, voiced their concern over the suitability of the site—its seismic vulnerability (the Hayward fault runs through the middle of the site), potential traffic problems, excavating the land, and the destruction of the landscape. Most concerned residents cited the fire chief's assertion that building the stadium at the Strawberry Canyon site would create a dangerous fire hazard, which was the one legal argument that could be sustained. But implicit in many of the complaints was a concern over the destruction of the natural environment around which they had built their homes and lives. Berkeley residents had just witnessed the effects of campus expansion at Bancroft Way, the street running along the southern perimeter of the University campus. The

NPS Form 10-900-a  
(8-85)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service**National Register of Historic Places  
Continuation Sheet**

Panoramic Hill, Alameda County, CA

Section number 8 Page 20

destruction of trees and demolition of homes with street widening presaged similar devastation during stadium construction. Other Panoramic Hill residents, like Theological Seminary Professor John Buckham at 36 Panoramic Way, made generic references to spoiling the beauty of the city. Still other residents fled. Harold Sawyer, who had recently purchased property on the hill with the intention to build, assured the city that he would not do so if the stadium were built in Strawberry Canyon. A man of his word, Sawyer and his family moved to Oakland instead. Professor of Logic Charles Rieber, who along with his wife the esteemed portrait artist Winifred Smith Rieber, fought a very public battle to conserve the beauty of the area which was adjacent to their home at 15 Canyon Road. In an embarrassing move for the Berkeley campus, the family relocated to southern California, where Rieber became the first Dean of the College of Arts and Sciences at the University of California, Los Angeles, and where ultimately a building was named in his honor.<sup>xxxix</sup>

Neighborhood Development After the Stadium

Despite substantially changing the neighborhood environs, development on the hill continued after the stadium was built. Walter Steilberg had already put in the foundation for 1 Orchard Lane "when the stadium frenzy broke loose."<sup>xi</sup> He had designed a dining room plate glass window to look into the Botanical Gardens from one direction and San Francisco from the other. But the construction of a sorority house across the street on the other side of Panoramic Way in combination with stadium construction rendered these design details pointless. Despite these changes, Walter Steilberg continued to live on the hill, raise his family, and find other inspiration in the neighborhood. Later, in 1941, Robert Ratcliff would begin building his family home on Panoramic Hill at 74 Panoramic Way. He had already designed a small cottage at 72 Panoramic Way, for his mother-in-law, and his father-in-law Robert Paine had already designed a house at 94 Panoramic Way.

Garages would proliferate as many early houses on the hill were built without garages. For example, in 1939 Miss Eleanor Gardner who lived in 76 Arden Road commissioned her friend William Wurster to design a four car garage with apartment above.<sup>xii</sup>

Proximity to the campus and student housing shortages during the 1960's created demand for housing on Panoramic Hill as elsewhere in the City. In 1963, architect Howard Moise was granted a use permit to use 9 Canyon Road for a two-family dwelling.<sup>xiii</sup> One of the small cottages in the condominium association on Canyon Road was subdivided further and was allowed by the City of Berkeley to become a two family dwelling.<sup>xiii</sup> Professor Rieber's former residence at 15 Canyon was sub-divided into three dwelling units. In the 1960's, Professor Buckham's former residence at 36 Panoramic Way received a use permit to operate a boarding house.<sup>xiv</sup>

Development intensified further when on July 20, 1967, the City of Berkeley adopted Ordinance No .4273 which allowed two dwelling units to be built on one lot. But within 10 years,

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 21

homeowners had organized and led the effort to down-zone the neighborhood into the most restrictive single-family zone in Berkeley. Known as the Environmental Safety-Residential zone, and in recognition of substandard infrastructure and extreme fire hazards, it effectively halted the rapid proliferation of more intensive development unsuitable for the neighborhood.

### Panoramic Hill Subdivisions and Boundaries

The Panoramic Hill Historic District occupies portions of three early subdivisions. These are the Berkeley Property Tract, University Terrace, and University Hill. The first of these was the Berkeley Property Tract, from which parts were resubdivided, one part of which was University Terrace. University Hill was subdivided from Dr. Mouser's farm known as Atalaya.

The relationship between University Terrace and University Hill is like two irregular pieces of a jigsaw puzzle that together make a whole. What is, or is not, in one subdivision or the other is virtually irrelevant to its sense of place.

The unifying element is Panoramic Way by which every motorized traveler must use to enter and leave the neighborhood. So, for example, residential areas not accessed by Panoramic Way, such as Hillside Court on the southwestern façade of Panoramic Hill, are not included in the Panoramic Hill district. The district is defined therefore by common access and not by geography, topography, or even proximity.

The proposed district occupies portions, but not all, of both University Terrace and University Hill. At some point during the hill's development, the two subdivisions accessed by Panoramic Way became known as Panoramic Hill. No subdivision was ever developed by that name, but Panoramic Hill nevertheless became the colloquial identifier. The name of the Mouser's farm, Atalaya, never stuck although it was at one time Warren Cheney's choice for what would become Arden Road. University Terrace and University Hill did not last and without subdivision maps there would hardly be a record of their usage. Instead it was Panoramic Hill that would evolve as a most accurate name since the neighborhood was blessed by panoramic views and one narrow, meandering, impossible, but quaint road by the same name. It is the Panoramic Hill Historic District that holds this history.

### EVALUATION

The Panoramic Hill Historic District is eligible for the National Register of Historic Places under criterion C at the local level of significance. Under criterion C, Panoramic Hill is significant in the area of Architecture as a neighborhood that represents the Bay Area Tradition in architecture, primarily the first phase associated with the Arts and Crafts movement. The district includes notable houses by architects Ernest Coxhead, Bernard Maybeck, Julia Morgan, Walter

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service**National Register of Historic Places  
Continuation Sheet**

Panoramic Hill, Alameda County, CA

Section number 8 Page 22

Steilberg, and others; a distinctive street plan; and paths and steps that provide pedestrian circulation. Since the north side fire of 1923, Panoramic Hill is among the most extensive surviving Arts and Crafts neighborhoods in Berkeley, which was a center of this important early twentieth century architectural movement. The district is significant for the period from 1901, when the first building was constructed, to 1950.

**Integrity****Location**

The Panoramic Hill Historic District retains integrity of location. It remains today where it was built. One house, Dr. Mouser's farmhouse of 1888, was moved within the district to 21 Mosswood Road in 1910. This change occurred within the period of significance and is part of the history of the district.

**Design**

The Panoramic Hill Historic District retains integrity of design. The principal changes to the district since the end of the period of significance are the construction of 11 new houses and the alteration of many houses for multi-tenant use. The new houses are compatible in scale and materials; although not contributors, they maintain the pattern of development of single family houses and garages that characterizes the design of the district. The alteration of houses for multi-tenant use is generally not accompanied by major exterior alterations. However, multi-tenant use is often associated with lower maintenance than exists for single-unit residences.

**Setting**

At a grand scale, the setting of the district is little changed. The major aspects of setting – its isolation on a hill with canyons to the north and south and a panoramic view to the west, are unchanged.

The principal changes in the immediate setting are the development of apartment buildings adjacent to the district on its west side and the expansion of the neighborhood up the hill to the east. The apartment buildings present an incompatible edge to the district. The expanded neighborhood to the east, much of it representing the second and third phases of the Bay Area Tradition, is newer than the area within the district but is generally not incompatible with it. It is possible that parts of this expanded neighborhood could be added to this district in the future when sufficient perspective exists to evaluate it.

**Materials**

NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 23

Integrity of materials in the district remains high. The full range of materials, including the dominant redwood, remains present, as do other materials – stucco, tile, iron, concrete, and brick. The use of materials is one of the hallmarks of the Arts and Crafts movement, and the original materials are largely intact.

Workmanship

Integrity of workmanship, like integrity of materials, is high. Likewise, workmanship is a hallmark of Arts and Crafts architecture. Workmanship is a characteristic that is more evident up close, to private visitors, than from public streets and pathways.

Feeling

Integrity of feeling is diminished – in generally superficial and ephemeral ways – notably the parking of cars along the roads, and minor exterior modifications for multi-tenant use.

Association

Integrity of association is high. Because the original houses and other buildings and structures of the district are intact, the association with the history of the district is present.

<sup>i</sup> Richard Longstreth, *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century* (Berkeley, 1983), pp. 112-113.

<sup>ii</sup> Sally Woodbridge, *Bay Area Houses*, New Edition (Salt Lake City: Gibbs Smith Publisher, 1988), pp. 8-22.

<sup>iii</sup> Kenneth H. Cardwell, *Bernard Maybeck: Artisan, Architect, Artist* (Santa Barbara: Peregrine Smith, Inc., 1977).

<sup>iv</sup> Berkeley Urban Conservation Survey, Folder 1861, BAHA; Cardwell, *Bernard Maybeck*, pp. 74-77.

<sup>v</sup> Interview of John Arthur by Janice Thomas on 10/26/04. Mr. Arthur is author of two books on Bernard Maybeck to be published in the spring 2005 by Gibbs Smith Publisher.

<sup>vi</sup> Ernest Coxhead Collection, 1919-1932 Finding Aid, College of Environmental Design Archives, University of California, Berkeley; <http://findaid.oac.cdlib.org/findaid/ark:/13030/tf087001g5/bioghst/112931656>.

<sup>vii</sup> John Beach, *Berkeley Gazette*, December 19, 1974.

<sup>viii</sup> *Ibid.*

<sup>ix</sup> Suzanne B. Riess, editor, *The Julia Morgan Architectural History Project* Vol. 1 (Berkeley: The Regents of the University of California, 1976), p. 103.

<sup>x</sup> Interview of Jeanne Allen by Janice Thomas on 10/30/04.

<sup>xi</sup> Julius Kellersberger, *Map of the Ranchos of Vicente and Domingo Peralta*, January 21, 1857, Alameda County Office of the Recorder, Book 17, p. 12.

<sup>xii</sup> *Map of the Undivided Mountain or Hill Land of the Vicente and Domino Peralta Rancho*, March 2, 1875.

<sup>xiii</sup> Berkeley Architectural Heritage Association, *Frederick Law Olmsted's Berkeley Legacy – Piedmont Way and The Berkeley Property Tract* (Berkeley: 1995), p. 1-5.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 24

<sup>xiv</sup> Ibid.; *Official and Historical Atlas Map of Alameda County*, California (Oakland: Thompson & West, 1878), pp. 112-13; Verne Stadtman, *The University of California: 1868-1968*, p. 40.

<sup>xv</sup> *Alameda County Book of Deeds 350/77*.

<sup>xvi</sup> *Berkeley Herald*, November 5, 1888.

<sup>xvii</sup> Frank Soulé, Jr., *Map of Strawberry Valley and Vicinity Showing the Natural Resources of the Water Supply of the University of California with Proposed System of Reservoirs, Distributing Pipes, etc.* (Lith. Britton Rey & Co.: San Francisco, 175); Survey map of University Terrace, 1888, BAHA; *Alameda County Book of Deeds 325/159-163, 330/43, 50/75-78, 559/355-56, 1637/446-48, 1754/186-189*.

<sup>xviii</sup> Kellersberger; Alameda County Office of the Recorder, Book 17, p. 12; for a history of the Key Route system and Reality Syndicate, see George Hildebrand, *Borax Pioneer: Francis Marion Smith* (San Diego: Horwell-North Books, 1982).

<sup>xix</sup> "Realty Men Report many Sales and an Advance in Prices," in Richard Schwartz, *Berkeley 1900: Daily Life at the Turn of the Century* (RSB Books, 2000), p. 183.

<sup>xx</sup> University Hill," advertisement in *Berkeley Gazette*, August 16, 1910; "More about University Hill," advertisement in *Berkeley Gazette*, August 17, 1910, p. 8.

<sup>xxi</sup> The Bay Area boasts some of the greatest concentration of Beaux-Arts architecture in the United States. Phoebe Hearst, widow of mining tycoon and United States Senator George Hearst and mother of politician and media mogul, William Randolph Hearst, for example, underwrote an international competition in 1898 to find an architect who could design a new University of California campus worthy of international prestige; virtually all the applicants, including the architect of the winning design, studied for some period at the Ecole des Beaux-Arts. San Francisco also took advantage of its ruined state following the 1906 earthquake to construct a city hall and civic center in the Beaux-Arts style as well. John Bakewell and Arthur Brown, Jr., both Beaux-Arts graduates and contemporaries of Julia Morgan, designed and implemented the complex as it stands today. See Gray Brechin, *Imperial San Francisco: Imperial San Francisco: Urban Power, Earthly Ruin* (Berkeley, 1999); Richard Longstreth, *On the Edge of the World: Four Architects in San Francisco at the Turn of the Century* (Berkeley, 1983); Roy Lowe, "A Western Acropolis of Learning": *The University of California in 1897* (Berkeley, 1996).

<sup>xxii</sup> Anthony Bruce, et al., *Panoramic Hill: Berkeley's Most Romantic Neighborhood*, revised edition (Berkeley: Berkeley Architectural Heritage Association, 1996).

<sup>xxiii</sup> Jepson may have lived in the garage apartment, which was built before the house was completed in 1929. However, available records are unclear on this point.

<sup>xxiv</sup> Amelia Sanborn Allen, "Birds of the Berkeley Hillside," in *The Condor* Vol. XVII (March 1915), p. 78.

<sup>xxv</sup> Amelia Sanborn Allen, *Chasing Wrens* (Berkeley: Gillick Press, 1945).

<sup>xxvi</sup> Ibid, p. 78.

<sup>xxvii</sup> Cornelia Stratton Parker, *An American Idyll: The Life of Carleton H. Parker* (Boston, 1919): pp. 90-91.

<sup>xxviii</sup> Berkeley Urban Conservation Survey, Folder 1862, BAHA.

<sup>xxix</sup> Lesley Emmington Jones, *Frederick Law Olmsted's Berkeley Legacy - Piedmont Way and The Berkeley Property Tract* (Berkeley: Berkeley Architectural Heritage Association, 1995).

<sup>xxx</sup> Ibid.

<sup>xxxi</sup> City of Berkeley Landmark, June 7, 1999.

<sup>xxxii</sup> Interview of Mrs. Cornelia Stratton Parker by J.R.K. Kantor, University Archivist and Panoramic Hill resident who lived in 38 Mosswood Road from 95-1957 and interviewed Mrs. Parker during the period of 1962 until her death some years later.

<sup>xxxiii</sup> 1920 United States Federal Census, Alameda County, City of Berkeley, California, Enumeration District 174.

<sup>xxxiv</sup> Allen, p. 78; Early undated photograph of "Berkeley Highlands - Side Hill Homes" (Berkeley Architectural Heritage Association, Archives).

<sup>xxxv</sup> Interview of Frances Fischer, current owner of 11 Mosswood Road by Karen McNeill, June 28, 2004.

NPS Form 10-900-a  
(8-88)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 8 Page 25

<sup>xxxvi</sup> Siegel and Strain, Architects, "Historic Structure Report: University of California, Berkeley, California Memorial Stadium," prepared for the University of California Office of Planning, Design, and Construction, September 23, 1999, pp. 16-23.

<sup>xxxvii</sup> Ibid., pp. 21-32.

<sup>xxxviii</sup> Susan Cerny, "Berkeley Observed; Memorial Stadium – controversial from the start", *Berkeley Daily Planet*, September 2, 9, 12 of 2003.

<sup>xxxix</sup> City of Berkeley Landmark, June 7, 1999.

<sup>xl</sup> Riess, p. 106.

<sup>xli</sup> Interview of Robert Breecker, current owner of 76 Arden Road, by Janice Thomas, 10/15/04.

<sup>xlii</sup> City of Berkeley Use Permit #5089, 1/2/63.

<sup>xliii</sup> City of Berkeley Use Permit #5021, 7/3/73.

<sup>xliiv</sup> City of Berkeley Use Permit #132.

NPS Form 10-900-a  
(8-88)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park ServiceNational Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 9 Page 1

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National Park Service

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Section number 9 Page 2

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National Park Service

National Register of Historic Places  
Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 9 Page 3

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NPS Form 10-900-a  
(8-86)

OMB Approval No. 1024-0018

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Panoramic Hill, Alameda County, CA

Section number 10 Page 1

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### VERBAL BOUNDARY DESCRIPTION

See Sketch Map.

AUG 11 2005

### BOUNDARY JUSTIFICATION

Panoramic Hill is geographically distinguished by Strawberry Canyon to the north and Hamilton Gulch to the south. The hill's borders are naturally articulated. Situated in the East Bay Hills, the hillside's predominant orientation is west.

The lower elevations of the hillside neighborhood have a concentration of houses, garages, and landscape features that fit all of the criteria of the proposed historic district. Although a few structures built at higher elevations would meet all of the criteria, they lie within an area that was largely developed after the historical period in question.

United States Department of the Interior  
National Park Service

## National Register of Historic Places Continuation Sheet

Section number \_\_\_\_ Page

**Panoramic Hill Historic District  
Photographic Directory:**

**5 x 7 - Black and White Fiber-Reprints**

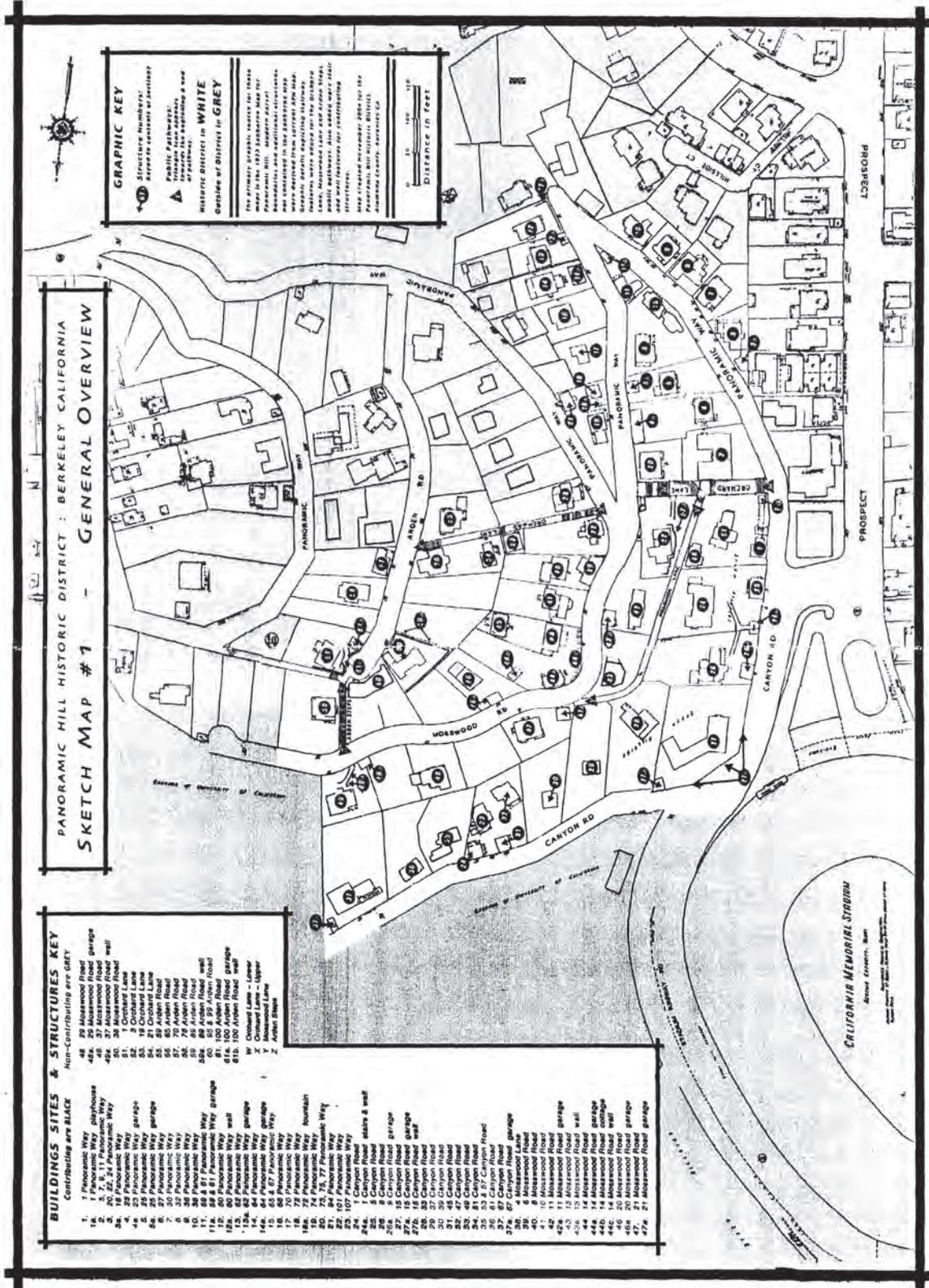
The information in 3, 4, 5 below applies to all 5 x 7 - black and white fiber reprints:

- 3. Photographer: Fredrica Drotos
- 4. Date of Photograph(s): 2004
- 5. Location of Original Negative(s): 16 Mosswood Road, Berkeley, California

Key: R indicates the photograph is a fiber reprint

Direction of Camera:

- 4.1. (R) East
- 11.1. (R) Northeast
- 11.2. (R) North
- 23.3. (R) Southwest
- 27.1. (R) Southeast
- 31.1. (R) Southeast
- 39.2. (R) South
- 42.1. (R) Northwest
- 49.1. (R) Northeast
- 61.a.1. (R) North
- z.1. (R) South
- v.2.(R) Northwest
- v.3.(R) West
- v.6. (R) Northwest
- v.7. (R) South



PANORAMIC HILL HISTORIC DISTRICT: BERKELEY CALIFORNIA  
SKETCH MAP #1 - GENERAL OVERVIEW

- BUILDINGS SITES & STRUCTURES KEY**  
Contributing are BLACK  
Non-contributing are GREY
- 1 Panoramic Way telephone
  - 18 Panoramic Way
  - 20, 21, 24 Panoramic Way
  - 28, 18 Panoramic Way
  - 48 Panoramic Way garage
  - 58 Panoramic Way garage
  - 7, 30 Panoramic Way
  - 9, 36 Panoramic Way
  - 10, 38 Panoramic Way
  - 11A, 58 & 81 Panoramic Way garage
  - 12, 60 Panoramic Way well
  - 13, 62 Panoramic Way
  - 14A, 44 Panoramic Way garage
  - 15, 64 Panoramic Way
  - 16, 66 Panoramic Way
  - 17, 70 Panoramic Way
  - 18, 74 Panoramic Way
  - 19, 76 Panoramic Way
  - 20, 78 Panoramic Way
  - 21, 80 Panoramic Way
  - 22, 101 Panoramic Way
  - 23, 82 Panoramic Way
  - 24, 84 Panoramic Way
  - 24A, 1 Canyon Road
  - 24B, 1 Canyon Road walls & well
  - 25, 2 Canyon Road
  - 25A, 3 Canyon Road garage
  - 26, 5 Canyon Road
  - 27A, 15 Canyon Road garage
  - 27B, 16 Canyon Road well
  - 28, 17 Canyon Road
  - 29, 37 Canyon Road
  - 30, 39 Canyon Road
  - 31, 41 Canyon Road
  - 32, 43 Canyon Road
  - 33, 45 Canyon Road
  - 34, 47 Canyon Road
  - 35, 49 Canyon Road
  - 36, 51 Canyon Road
  - 37A, 53 & 57 Canyon Road
  - 37B, 55 Canyon Road
  - 38, 59 Canyon Road
  - 39, 61 Canyon Road
  - 40, 63 Canyon Road
  - 41, 65 Canyon Road
  - 42, 67 Canyon Road
  - 42A, 11 Mosswood Road garage
  - 42B, 12 Mosswood Road well
  - 43, 13 Mosswood Road
  - 44, 14 Mosswood Road
  - 44A, 15 Mosswood Road garage
  - 44B, 16 Mosswood Road well
  - 44C, 17 Mosswood Road
  - 44D, 18 Mosswood Road
  - 45, 19 Mosswood Road
  - 45A, 20 Mosswood Road garage
  - 46, 21 Mosswood Road
  - 47, 23 Mosswood Road garage

**GRAPHIC KEY**

Structure Numbers:  
A Contributing structures  
B Non-contributing structures

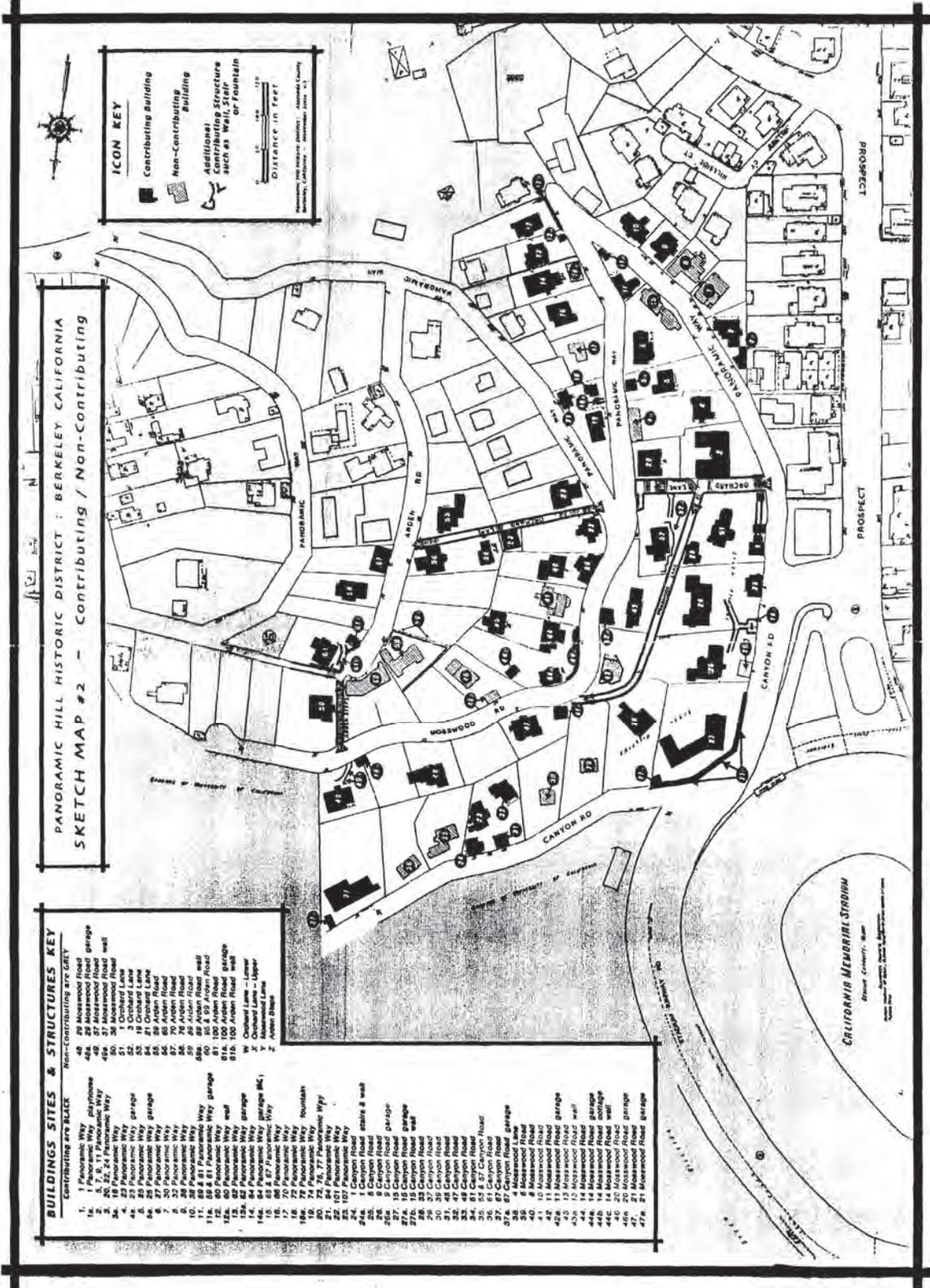
Graphic Symbols:  
1 Building footprint  
2 Foundation  
3 Foundation  
4 Foundation  
5 Foundation  
6 Foundation  
7 Foundation  
8 Foundation  
9 Foundation  
10 Foundation  
11 Foundation  
12 Foundation  
13 Foundation  
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37 Foundation  
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39 Foundation  
40 Foundation  
41 Foundation  
42 Foundation  
43 Foundation  
44 Foundation  
45 Foundation  
46 Foundation  
47 Foundation

**HISTORIC DISTRICTS IN WHITE**  
Outside of District in GREY

The primary graphic codes for these districts are as follows:  
A Contributing structures  
B Non-contributing structures  
C Contributing structures  
D Non-contributing structures  
E Contributing structures  
F Non-contributing structures  
G Contributing structures  
H Non-contributing structures  
I Contributing structures  
J Non-contributing structures  
K Contributing structures  
L Non-contributing structures  
M Contributing structures  
N Non-contributing structures  
O Contributing structures  
P Non-contributing structures  
Q Contributing structures  
R Non-contributing structures  
S Contributing structures  
T Non-contributing structures  
U Contributing structures  
V Non-contributing structures  
W Contributing structures  
X Non-contributing structures  
Y Contributing structures  
Z Non-contributing structures

**DISTANCE IN FEET**  
0 10 20 30

CALIFORNIA MEMORIAL STRAUB  
Berkeley, California, 1901



PANORAMIC HILL HISTORIC DISTRICT : BERKELEY CALIFORNIA  
SKETCH MAP #2 - Contributing / Non-Contributing

- BUILDINGS SITES & STRUCTURES KEY**
- Contributing sites are BLACK  
Non-contributing structures are GREY
1. Panoram Hill site
  2. Panoram Hill site
  3. Panoram Hill site
  4. Panoram Hill site
  5. Panoram Hill site
  6. Panoram Hill site
  7. Panoram Hill site
  8. Panoram Hill site
  9. Panoram Hill site
  10. Panoram Hill site
  11. Panoram Hill site
  12. Panoram Hill site
  13. Panoram Hill site
  14. Panoram Hill site
  15. Panoram Hill site
  16. Panoram Hill site
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  37. Panoram Hill site
  38. Panoram Hill site
  39. Panoram Hill site
  40. Panoram Hill site
  41. Panoram Hill site
  42. Panoram Hill site
  43. Panoram Hill site
  44. Panoram Hill site
  45. Panoram Hill site
  46. Panoram Hill site
  47. Panoram Hill site



PANORAMIC HILL HISTORIC DISTRICT : BERKELEY CALIFORNIA  
SKETCH MAP #3 - B&W Photo Locations

- BUILDINGS SITES & STRUCTURES KEY**  
Contributing are BLACK  
Non-Contributing are GREY
- 1 Panoramic Way, garage
  - 14 Panoramic Way, garage
  - 15 Panoramic Way, garage
  - 16 Panoramic Way, garage
  - 17 Panoramic Way, garage
  - 18 Panoramic Way, garage
  - 19 Panoramic Way, garage
  - 20, 21, 24 Panoramic Way, garage
  - 22 Panoramic Way, garage
  - 23 Panoramic Way, garage
  - 24 Panoramic Way, garage
  - 25 Panoramic Way, garage
  - 26 Panoramic Way, garage
  - 27 Panoramic Way, garage
  - 28 Panoramic Way, garage
  - 29 Panoramic Way, garage
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  - 31 Panoramic Way, garage
  - 32 Panoramic Way, garage
  - 33 Panoramic Way, garage
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  - 40 Panoramic Way, garage
  - 41 Panoramic Way, garage
  - 42 Panoramic Way, garage
  - 43 Panoramic Way, garage
  - 44 Panoramic Way, garage
  - 45 Panoramic Way, garage
  - 46 Panoramic Way, garage
  - 47 Panoramic Way, garage
  - 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000







Office of the City Manager

INFORMATION CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: Notice of Decision: 2138 Cedar Street/#LMSAP2024-0008

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on April 1, 2025.

BACKGROUND

Berkeley Municipal Code Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by April 15, 2025. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation and discretionary alteration reviews by staff and LPC provide opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Anne Hersch, Land Use Planning Manager, Planning and Development, 510-981-7413

Attachments:

1: Notice of Decision – #LMSAP2024-0008/2138 Cedar Street



L A N D M A R K S  
 P R E S E R V A T I O N  
 C O M M I S S I O N

N o t i c e o f D e c i s i o n

**DATE OF BOARD DECISION: March 6, 2025**  
**DATE NOTICE MAILED: March 31, 2025**  
**APPEAL PERIOD EXPIRATION: April 15, 2025**  
**EFFECTIVE DATE (Barring Appeal or Certification): April 16, 2025<sup>1</sup>**

**2138 Cedar Street – North Grace Church**

**Structural Alteration Permit (#LMSAP2024-0008) to complete landscape improvements at City Landmark property.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the Structural Alteration Permit request.

- **Property Owner:** Christ Church East Bay  
 2138 Cedar Street  
 Berkeley, CA 94709
- **Project Applicant:** Eron Ferreira  
 Kylor Construction, Inc.  
 2115 San Miguel Drive  
 Walnut Creek, CA 94596

**ZONING DISTRICT:** Restricted Multi-family Residential (R-2A)

<sup>1</sup> Pursuant to BMC Chapter 3.24, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2024-0008  
2138 Cedar Street  
Mailed: March 31, 2025  
Page 2 of 4

**ENVIRONMENTAL REVIEW STATUS:** The project is categorically exempt from further environmental review in accordance with CEQA Guidelines Section 15331 for *Historical Resource Restoration/Rehabilitation*.

**The application materials for this project is available online at:**

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects> or  
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

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**FINDINGS AND CONDITIONS OF APPROVAL AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 8-0-0-0** (Note: one vacancy)

**YES:** CRANDALL, ENCHILL, FINACOM, LEUSCHNER, MONTGOMERY, ORBSUCH, PLESE, SCHWARTZ

**NO:** NONE

**ABSTAIN:** NONE

**ABSENT:** NONE

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$1,500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less. Signatures collected per the filing requirement in BMC Section 3.24.300.A may be counted

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2024-0008  
2138 Cedar Street  
Mailed: March 31, 2025  
Page 3 of 4

towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.

- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$6,000.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the Structural Alteration Permit will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2024-0008  
2138 Cedar Street  
Mailed: March 31, 2025  
Page 4 of 4

- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the Commission Secretary at (510) 981-7410 or [lpc@berkeleyca.gov](mailto:lpc@berkeleyca.gov). All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3<sup>rd</sup> Fl., during regular business hours.

**ATTACHMENTS:**

- 1. Findings and Conditions
- 2. Project Plans and Materials Information



**ATTEST:** \_\_\_\_\_

Fatema Crane, Secretary  
Landmarks Preservation Commission

cc: City Clerk  
Eron Ferreira, Kylor Construction, Inc., 2115 San Miguel Drive, Walnut Creek, CA 94596  
Christ Church East Bay, 2138 Cedar Street, Berkeley, CA 94709

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FINDINGS AND CONDITIONS  
MARCH 6, 2025

## 2138 Cedar Street – Grace North Church

### Structural Alteration Permit #LMSAP2025-0002

#### PROJECT DESCRIPTION

Structural Alteration Permit to complete landscape improvements at City Landmark property.

#### CEQA FINDINGS REQUIRED UNDER CEQA

1. The discretionary design review for this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

#### FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS

Regarding the Secretary of the Interior’s Standards (SOI) for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The proposed project does not require a change of use.
2. The project will retain the historic character of the property and will avoid removal of distinctive materials and the alteration of features that characterize the property.
3. The new hardscape and landscape features will not resemble or replicate designs from the property’s historic Craftsman period. These new features are contemporary and will not result in a false sense of historical development.
4. Changes to the property that may have acquired significance in their own right are not affected by this project. The area of proposed work in the northside yard setback has not been found to exhibit historical significance.
5. Distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize this property, such as Craftsman building design of the church, will be substantially retained and preserved with this limited-scope project.

6. As conditioned herein, if deteriorated historic features will be affected by this request, then they would be repaired or replaced to match the materials, design, and finishes of the original items.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require any chemical or physical treatments to be undertaken using the gentlest means possible.
8. The project does not have the potential to affect any archaeological resources because the applicant proposes a limited scope of excavation.
9. The proposed new work is designed with complimentary, high-quality materials in simplified, contemporary style employing colors and finishes that harmonize with the historic design elements of the building. Owing to these aspects, new work will be sufficiently differentiated from the historic design.
10. If the proposed improvements were removed in the future, they would not permanently impair the integrity or essential form of the subject building.

#### **FINDINGS REQUIRED UNDER LANDMARKS PRESERVATION ORDINANCE**

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1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that the proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve the characteristics and features specified in the designation for this property. Specifically:
  - A. The proposed project will not adversely affect the architectural design of the City Landmark Grace North Church property. The proposal consists of landscape and ADA improvements that would not alter the main church building that was designed by renown Berkeley architect James L. Plachek. The area of work has been found to poses design significance.
  - B. The special character of the subject property may lie in its Craftsman building design. This project would not adversely affect these qualities because it is limited to exterior site improvements which are confided to a limited area of the property.

## STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

### 1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### 2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

### 3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

### 4. Exercise and Lapse of Permits

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has:  
(1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

### 5. Indemnification Agreement

The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements

(collectively, “Claims”) arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee’s duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City. (City Attorney).

## 6. Halt Work/Unanticipated Discovery of Tribal Cultural Resources

In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

## 7. Archaeological Resources *(Ongoing throughout demolition, grading, and/or construction)*

Pursuant to CEQA Guidelines Section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.

- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

**8. Human Remains** (*Ongoing throughout demolition, grading, and/or construction*)

In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1). If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

**9. Paleontological Resources** (*Ongoing throughout demolition, grading, and/or construction*)

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

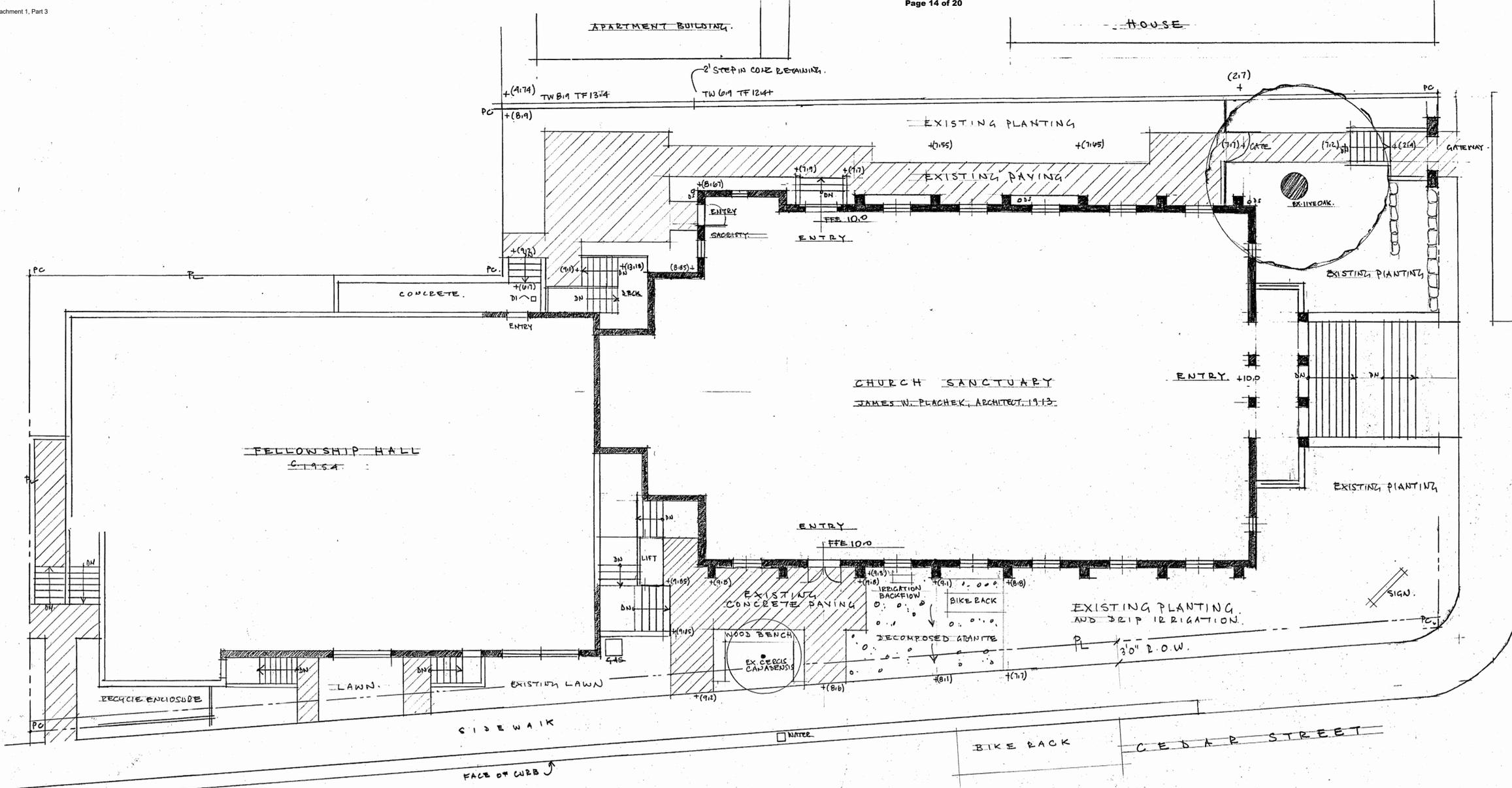
## **ADDITIONAL CONDITIONS**

The following additional conditions are attached to this Permit:

- 10.** No changes can be made to these approved plans without prior approval.
- 11. CITY PERMITS.** This Structural Alteration Permit (SAP) approval is contingent upon approval of the any requisite Zoning Permit and Public Work Permit for the project scope.
- 12. PLANS COMPLIANCE.** Construction and building permit plans shall substantially conform to the Structural Alteration Permit (SAP) project plans received December 19, 2024

- 13. REPAIR AND REPLACEMENT OF CHARACTER-DEFINING FEATURES.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
- 14.** Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
- 15. DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit hardscape details for review and approval by the Landmarks plan checker.
- 16. LIGHTING.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- 17. LANDSCAPE PLANS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit a Landscape Plan including the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape Building Permit drawings.
- 18. LANDSCAPE IRRIGATION.** The applicant shall provide irrigation for all landscaped areas; automatic irrigation and drainage facilities shall be adequate to assure healthy growing conditions for plants. This shall be called out on Landscape building permit drawings.
- 19. CURB CUTS.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.
- 20.** The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
- 21.** The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
- 22.** All Building Permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.

**23.** The applicant shall hold harmless, defend, and indemnify the City and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.



WALNUT STREET

**Schedule of Drawings**

- L1. Cover Sheet / Existing site conditions.
- L2. Proposed Improvements.
- L3. Cedar Street Entry Terrace.
- L4. Construction Details.
- L5. Planting Plan.
- L6. Lighting Plan.

**Christ Church East Bay. Landscape Renovation.**  
Parties involved.

**Church Representative:**  
Jim Wesolowski  
Treasurer  
Christ Church East Bay, 2138 Cedar St. Berkeley CA. 94709  
E: jim@christchurcheastbay.org  
Tel: 703 346 8382

**Landscape architect:**  
Hugo Larman  
Landscape architect. License LA # 3595  
604 Key Route Blvd. Albany CA. 94706  
E: larman.landscape@gmail.com  
Tel: 510 725 5250

**General contractor:**  
Eron Ferreira  
Kylor Construction Inc. License CSLB # 1086273  
1155C Arnold Drive, Martinez, CA 95596  
E: kylorcon3@gmail.com  
Tel. 925 408 5560

**Lighting Design:**  
Lumen Works.  
Thomas J. Skradski.  
3410 Lakeshore Ave. # 201, Oakland, CA 94610  
E: tskradski@lumenworks.com  
Tel. 510 816 7600

**Engineering:**  
GTC GeoTrinity Consultants Inc. # C 48655  
7770 Pardee Lane, Suite 101  
Oakland, CA 94621

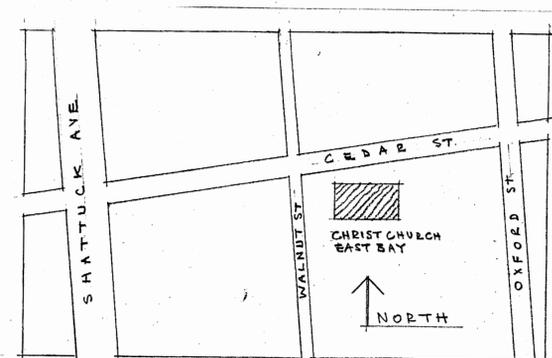
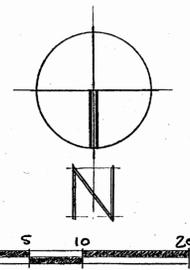
**Historic Preservation:**  
Interactive Resources  
117 Park Place, Richmond, CA. 94801  
Tom Butt, FAIA  
Tel. 510 236 7435

**Recourse conservation:**

Project shall conform to State of California and Berkeley Municipal codes for recycling and reuse. 100% of excavated soil and land-clearing debris, concrete and asphalt to be recycled and/or salvaged for reuse. (CGBS 4.408.1, 5.408.3 and BMC 19.37.040)

**Fire Prevention:**

- **Building classification per CBC chapter 3.**  
The building is a church / 303.4 Assembly Group A3.
- **Building construction type per CBC chapter 6.**  
Construction type V under section 602.5 of CBC.  
Exterior: Stucco over wood.  
Interior: Lath and plaster.  
Roof: Asphalt shingle over timber trusses.  
Floor: Wood.
- **Fire sprinkler system:**  
Non existing.
- **Fire Alarm:**  
Automatic alarm monitored by Bay Alarm
- **List of applicable codes:**  
2022 California Building Code. 2022 Existing Building Code. 2022 California Electrical Code. 2022 California Fire Code. 2022 Berkeley Municipal Code.



VICINITY MAP



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CALIFORNIA CA 94709

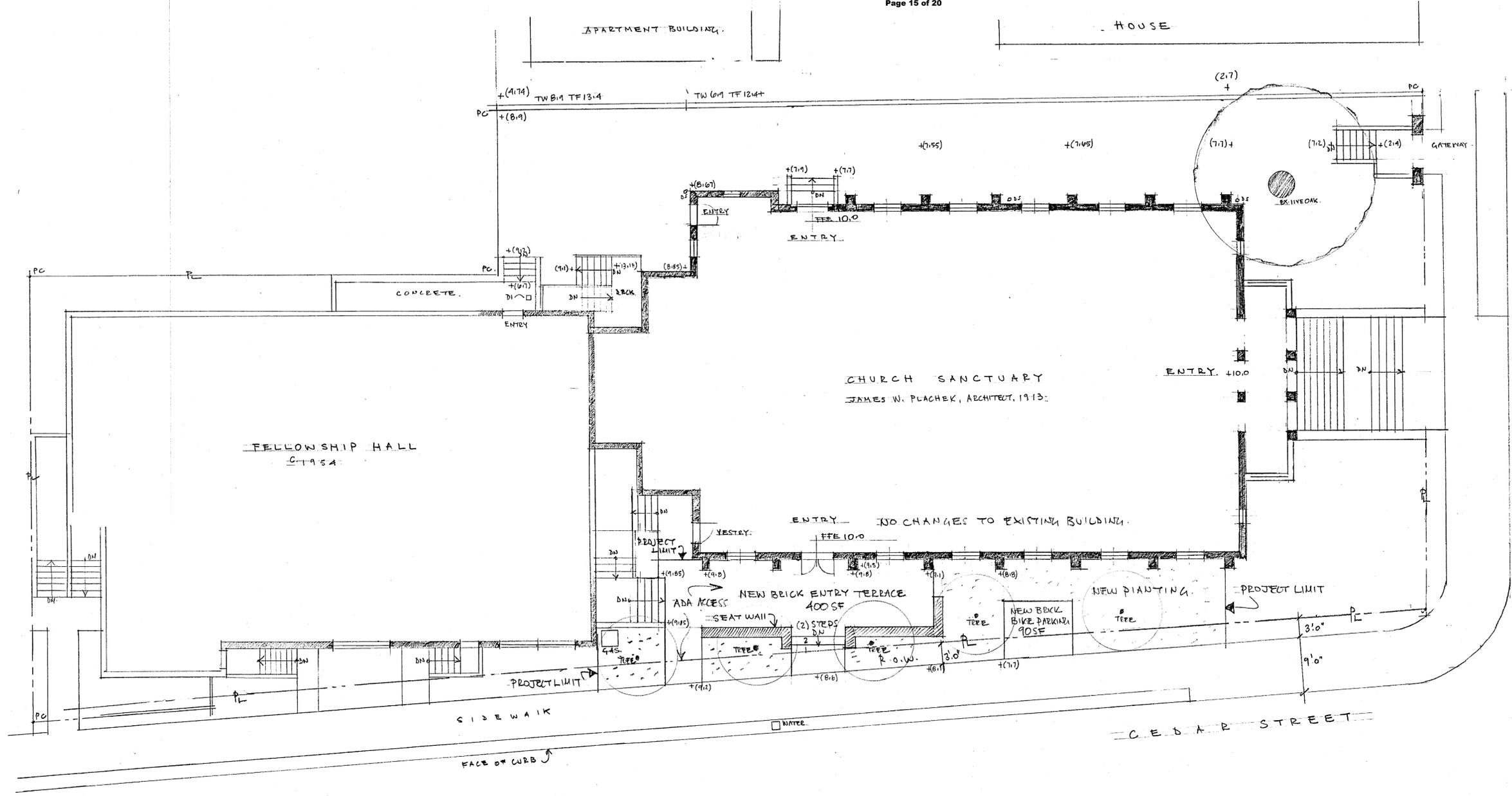
TITLE COVER SHEET

DATE 7/22/24 PLAN # L1 SCALE 1/8"

REVISED 11/14/24

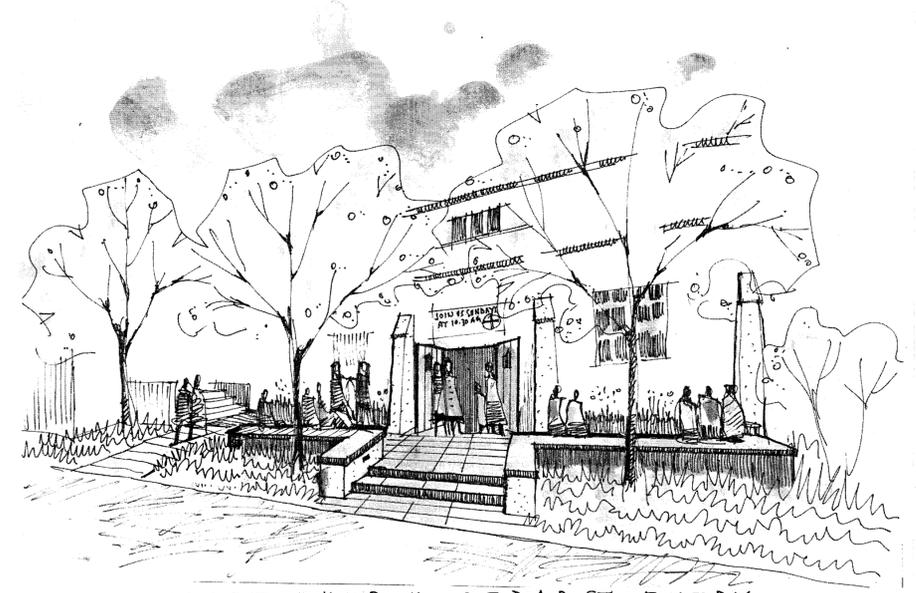
APARTMENT BUILDING

HOUSE

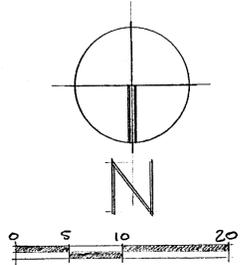


WALNUT STREET

CEDAR STREET



CHRIST CHURCH, CEDAR ST. ENTRY.



CHRIST CHURCH

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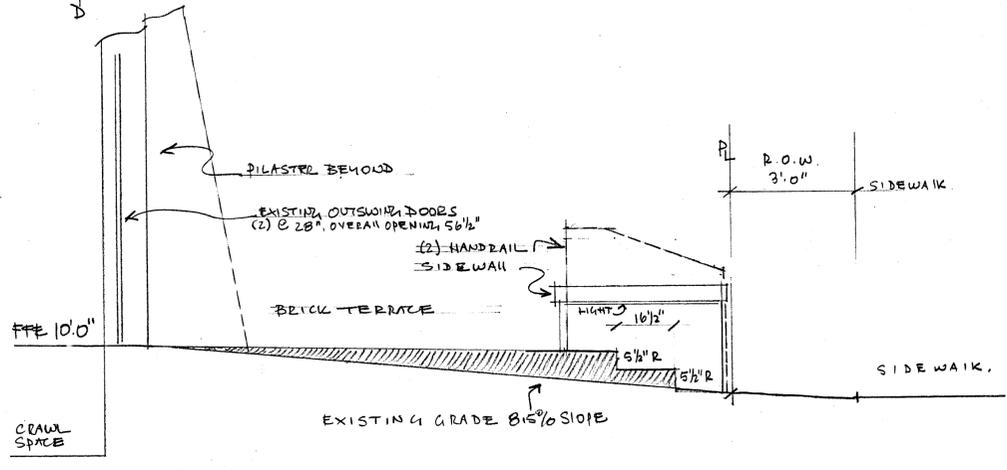
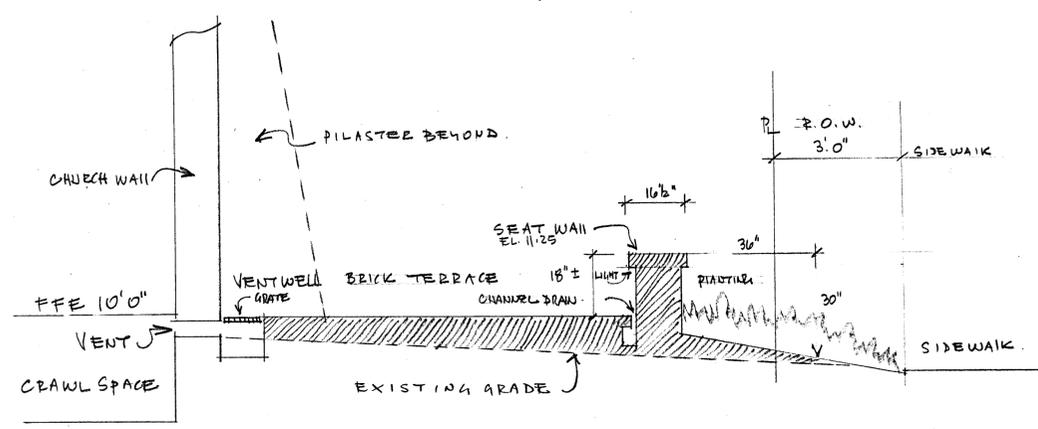
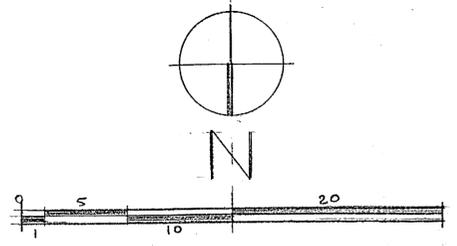
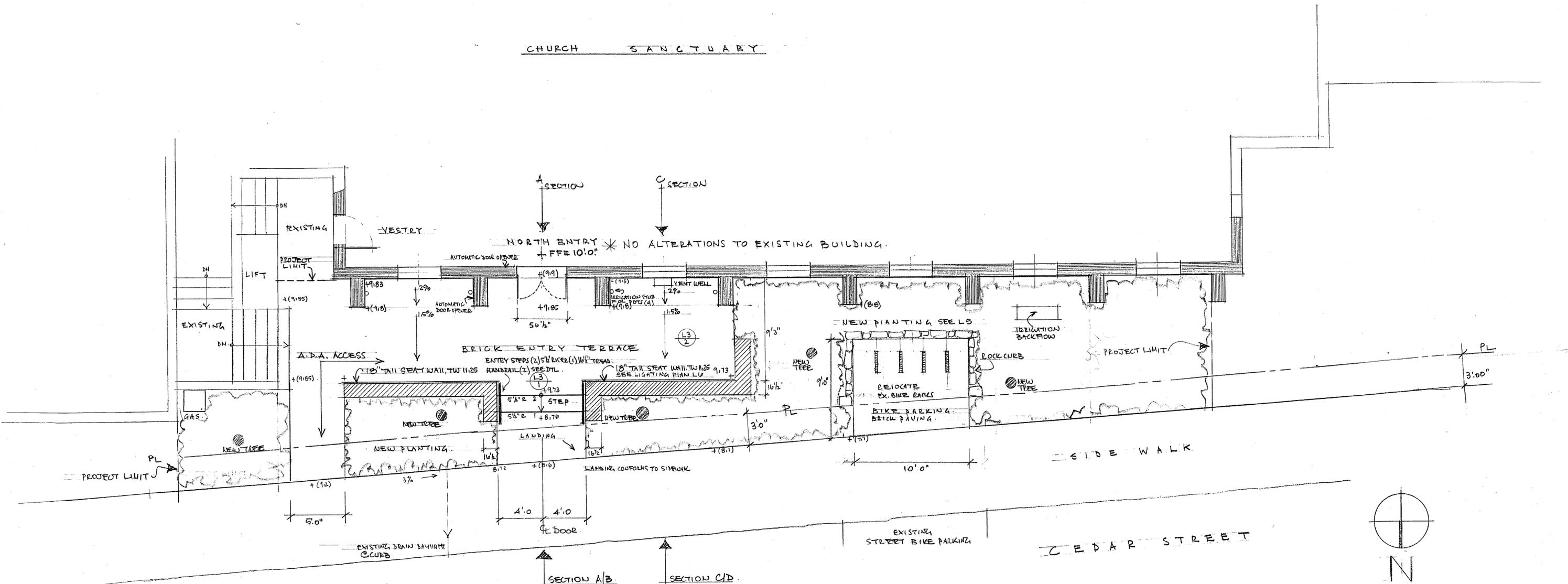
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TITLE PROPOSED IMPROVEMENTS  
CEDAR ST. ENTRY TERRACE

DATE 11/14/24 PLAN # LZ SCALE 1/8"

REVISED

CHURCH SANCTUARY



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TITLE CEDAR ST. ENTRY TERRACE

DATE NOV 11, 24 PLAN # L3 SCALE 1/4"

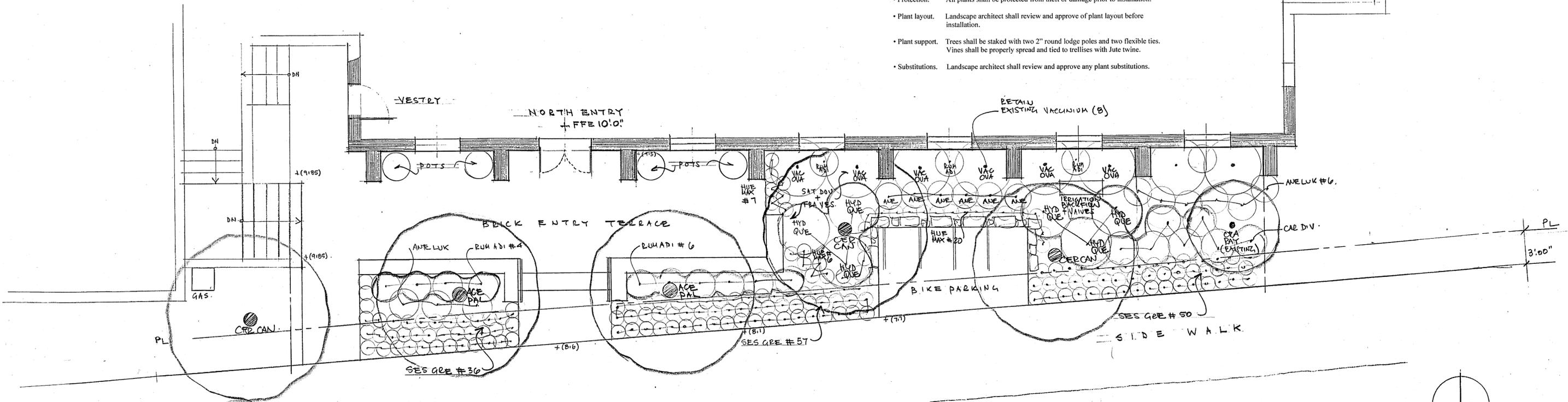
REVISED \_\_\_\_\_



CHURCH SANCTUARY

Planting Notes.

- Soil preparation. Planting areas shall be evenly graded and free of weeds and debris. Planting beds shall be cultivated with 15% organic compost to a depth of 8". Planting holes into existing grades shall be x 1.5 width of root ball and amended with 15% organic compost by volume.
- Mulch. All planting areas shall be dressed with a 2-3" deep layer of organic mulch.
- Existing trees. Existing trees shall be protected from damage. Soil within root crown area shall not be cultivated or disturbed. No irrigation within a ten feet of the root crown of California Live Oak trees.
- Nursery stock. All plants shall arrive on site fully rooted and in healthy condition. Damaged, diseased, pot bound, under or oversized plants shall be rejected.
- Nursery ties. All nursery plant ties and tags shall be removed.
- Watering. All plants shall be kept adequately watered before, during and after planting prior to activation of automatic irrigation system.
- Protection. All plants shall be protected from theft or damage prior to installation.
- Plant layout. Landscape architect shall review and approve of plant layout before installation.
- Plant support. Trees shall be staked with two 2" round lodge poles and two flexible ties. Vines shall be properly spread and tied to trellises with Jute twine.
- Substitutions. Landscape architect shall review and approve any plant substitutions.

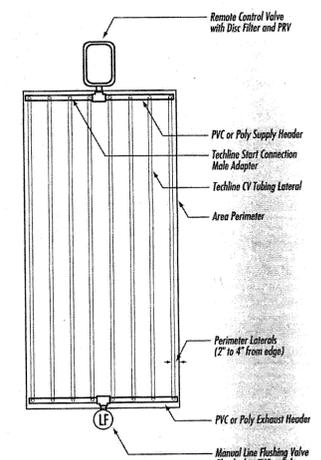


Irrigation Notes.

- Re use existing components: Automatic irrigation timer, Backflow preventor, Automatic drip irrigation valves.
- Replace existing drip laterals with Netafim Techline drip tubing / 0.6 GPH inline emitters.
- Install tubing parallel rows 14" apart. Install tubing 1/2" below surface of soil
- Provide dedicated drip circuit for trees and pots on entry terrace.

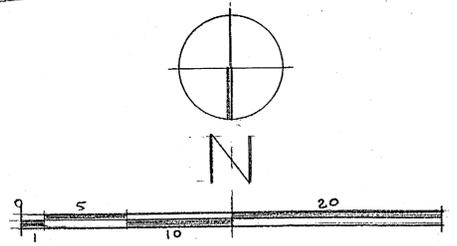
NETAFIM TECHLINE® CV DESIGN GUIDE

TECHNICAL DATA Techline CV End Feed Layout



| CODE                | BOTANICAL                           | COMMON                        | SIZE    | QTY | REMARKS                  |
|---------------------|-------------------------------------|-------------------------------|---------|-----|--------------------------|
| <b>Tree</b>         |                                     |                               |         |     |                          |
| ACE PAL             | Acer palmatum                       | Japanese Maple                | 24" box | 2   | Flanking Entry Steps     |
| CER CAN             | Cercis canadensis                   | Eastern Redbud                | 24" box | 3   |                          |
| <b>Shrub</b>        |                                     |                               |         |     |                          |
| CEA RAY             | Ceanothus 'Ray Hartman'             | Ray Hartman California Lilac  |         | 0   | Existing                 |
| HYD QUE             | Hydrangea quercifolia 'Pee Wee'     | Pee Wee Oak Leaf Hydrangea    | 15 gal  | 6   |                          |
| IRS PUR             | Iris Pacific Coast Hybrid 'Purple'  | Purple Pacific Coast Iris     | 1 gal   | 12  |                          |
| VAC OVA             | Vaccinium ovatum                    | Evergreen or Wild Huckleberry |         | 0   | Existing                 |
| <b>Ground cover</b> |                                     |                               |         |     |                          |
| ERI KAR             | Erigeron karvinskianus 'Moerheimii' | Pink Santa Barbara Daisy      | 4" pot  | 8   |                          |
| FRA CAL             | Fragaria vesca ssp. californica     | Woodland Strawberry           | 4" pot  | 32  | groundcover under shrubs |
| HEU MAX             | Heuchera maxima                     | Island Alum Root              | 1 gal   | 34  |                          |
| SAT DOU             | Clinopodium douglasii               | Yerba Buena                   | 4" pot  | 32  | groundcover under shrubs |
| <b>Perennial</b>    |                                     |                               |         |     |                          |
| ANE                 | Anemone 'Wild Swan'                 | Wild Swan Japanese Anemone    | 1 gal   | 6   |                          |
| ANE LUK             | Anemone 'Lucky Charm'               | Lucky Charm Japanese Anemone  | 1 gal   | 9   |                          |
| <b>Grass</b>        |                                     |                               |         |     |                          |
| CAR DIV             | Carex divulsa                       | Grassland Sedge               |         | 1   |                          |
| Ses Gre             | Sesleria                            | Greenlee's Moor Grass         | 4" pot  | 144 |                          |
| <b>Fern</b>         |                                     |                               |         |     |                          |
| RUM ADI             | Rumohra adiantiformis               | Leather Fern                  | 1 gal   | 14  |                          |

CEDAR STREET



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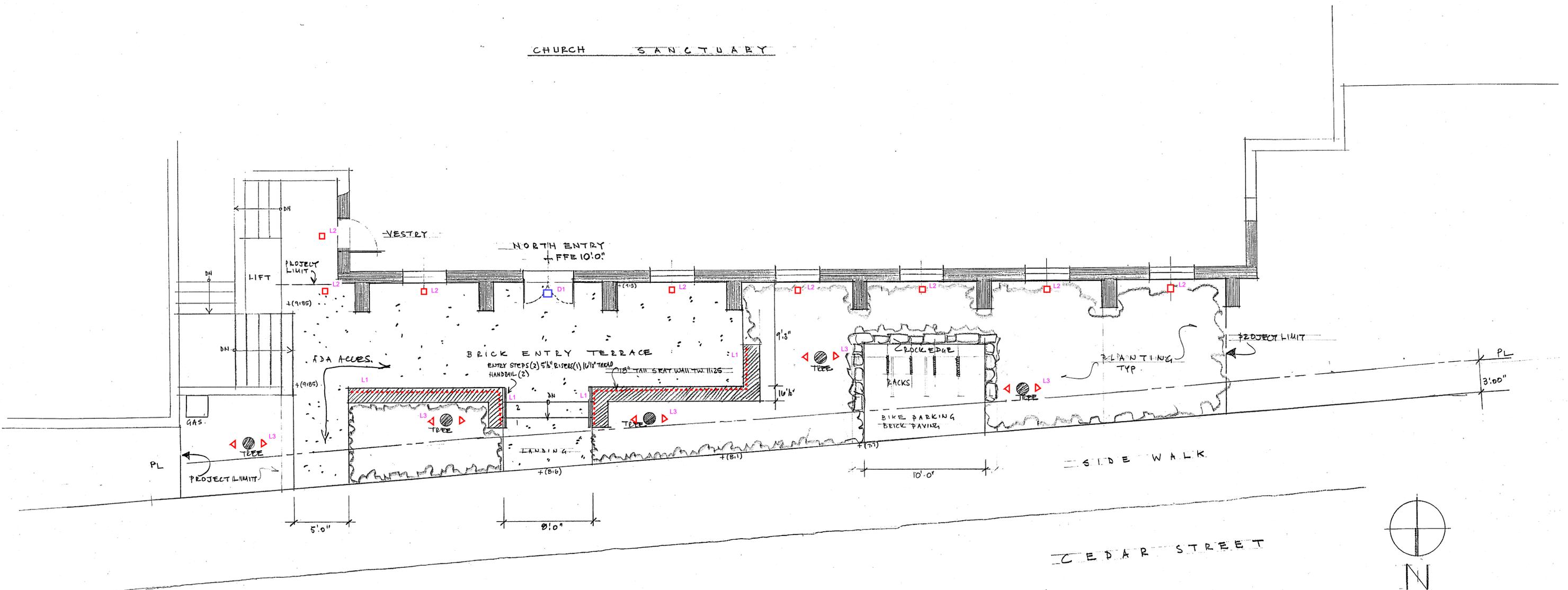
CLIENT CHRIST CHURCH EAST BAY  
2135 CEDAR STREET  
BERKELEY  
CALIFORNIA CA 94709

TITLE PLANTING PLAN  
+ IRRIGATION NOTES

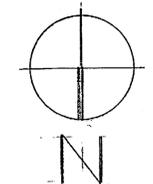
DATE 11/12/29 PLAN # L5 SCALE 1/4"

REVISED

CHURCH SANCTUARY



CEDAR STREET



NOTE:  
 1. All tree uplights to be on a separate timer and turned off at 10 p.m.  
 2. All other lights, D1, L1, and L2, to be on an astronomical timer and turn on at dusk and turn off at dawn. These lights are also on emergency power.



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BERKELEY  
CALIFORNIA CA 94709

TITLE ENTRY TERRACE  
LIGHTING PLAN

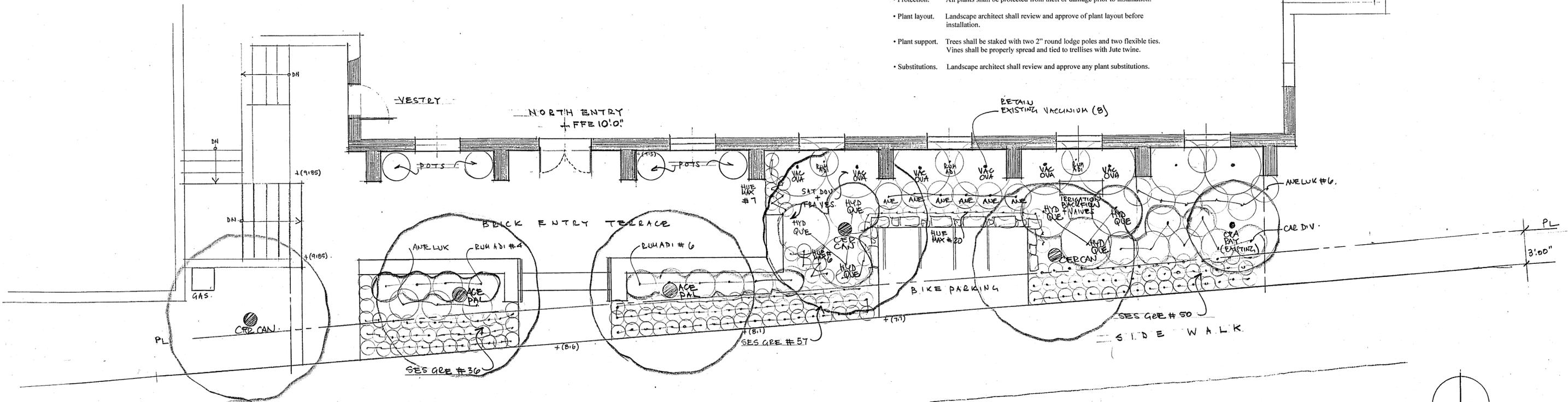
DATE PLAN # L0 SCALE 1/4"

REVISED \_\_\_\_\_

CHURCH SANCTUARY

Planting Notes.

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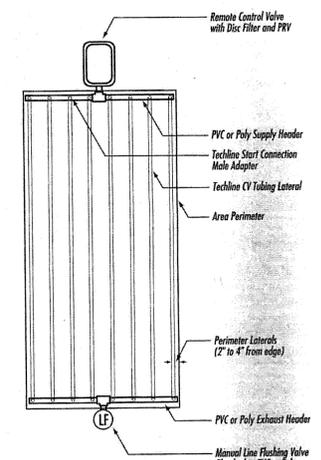


Irrigation Notes.

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- Install tubing parallel rows 14" apart. Install tubing 1/2" below surface of soil
- Provide dedicated drip circuit for trees and pots on entry terrace.

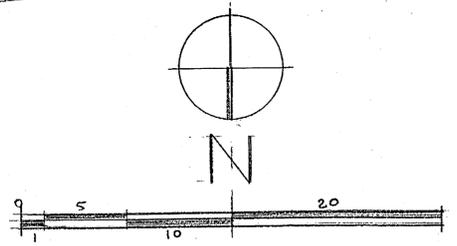
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TECHNICAL DATA Techline CV End Feed Layout



| CODE                | BOTANICAL                           | COMMON                        | SIZE    | QTY | REMARKS                  |
|---------------------|-------------------------------------|-------------------------------|---------|-----|--------------------------|
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| HYD QUE             | Hydrangea quercifolia 'Pee Wee'     | Pee Wee Oak Leaf Hydrangea    | 15 gal  | 6   |                          |
| IRS PUR             | Iris Pacific Coast Hybrid 'Purple'  | Purple Pacific Coast Iris     | 1 gal   | 12  |                          |
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| <b>Ground cover</b> |                                     |                               |         |     |                          |
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| <b>Grass</b>        |                                     |                               |         |     |                          |
| CAR DIV             | Carex divulsa                       | Grassland Sedge               |         | 1   |                          |
| Ses Gre             | Sesleria                            | Greenlee's Moor Grass         | 4" pot  | 144 |                          |
| <b>Fern</b>         |                                     |                               |         |     |                          |
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CEDAR STREET



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2135 CEDAR STREET  
BERKELEY  
CALIFORNIA CA 94709

TITLE PLANTING PLAN  
+ IRRIGATION NOTES

DATE 11/12/29 PLAN # L5 SCALE 1/4"

REVISED \_\_\_\_\_



Office of the City Manager

INFORMATION CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: Notice of Decision: 2231 McKinley Avenue/#LMIN2024-0005

INTRODUCTION

The attached Notice of Decision (NOD) for the Landmarks Designation is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance Section 3.24.160, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has designated the subject property as a City Landmark.

BACKGROUND

Berkeley Municipal Code Section 3.24.300 provides that the City Council is the hearing body for any appeal to review any action of the Commission in granting or denying designation status. The code also provides that the City Council may file its own appeal to review the decision on its merits. An individual Council member may file such an appeal, without prejudice, by providing a written statement clearly and concisely setting forth the grounds upon which the appeal is based. Alternatively, the Council as a whole may vote to appeal the decision; to do so, this Information Item must be moved to the Action calendar and a motion must pass to appeal the LPC decision. Either form of Council appeal or a public appeal must be presented to the City Clerk within 15 days from the mailing of the NOD, i.e., by April 15, 2025. Council review of any appeal by any party stays all proceedings in the matter until the appeal is resolved.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to certify or appeal the decision to grant designation status, setting the matter for public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this designation action.

CONTACT PERSON

Anne Hersch, Land Use Planning Manager, Planning and Development, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN2024-0005/2231 McKinley Avenue



L A N D M A R K S  
 P R E S E R V A T I O N  
 C O M M I S S I O N

Notice of Decision

**DATE OF BOARD DECISION: March 6, 2025**  
**DATE NOTICE MAILED: March 31, 2025**  
**APPEAL PERIOD EXPIRATION: April 15, 2025**  
**EFFECTIVE DATE (Barring Appeal or Certification): April 16, 2025<sup>1</sup>**

**2231 McKinley Avenue – Chan-Lee Residence**

**Landmark application #LMIN2024-0005 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1903 (APN 057-2018-023-00)**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the granted the following designation: **City Landmark**

- **Applicant/Property Owners:** Christopher Heine & Wilhelmina Marxer  
 2231 McKinley Avenue  
 Berkeley, CA 94703

**ZONING DISTRICT:** Restricted Two-Family Residential (R-2)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15061.(b)(3) Review for Exemptions.

**The application materials for this project is available online at:**

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects> or  
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

<sup>1</sup> Pursuant to BMC Chapter 3.24, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0005**  
**2231 McKinley Avenue**  
March 31, 2025  
Page 2 of 4

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**FINDINGS AND CONDITIONS OF APPROVAL AND APPLICATION MATERIALS ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 8-0-0-0** *(Note: one vacancy)*

**YES:** CRANDALL, ENCHILL, FINACOM, LEUSCHNER, MONTGOMERY, ORBUCH, PLESE, SCHWARTZ

**NO:** NONE

**ABSTAIN:** NONE

**ABSENT:** NONE

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$1,500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less. Signatures collected per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$6,000.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0005**  
**2231 McKinley Avenue**

March 31, 2025

Page 3 of 4

If no appeal is received, the landmark permit will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMIN2024-0005  
2231 McKinley Avenue

March 31, 2025

Page 4 of 4

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

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Questions about the project should be directed to the Commission Secretary at (510) 981-7410 or [lpc@berkeleyca.gov](mailto:lpc@berkeleyca.gov). All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3<sup>rd</sup> Fl., during regular business hours.

**ATTACHMENTS:**

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1. Findings for Approval
  2. Application Materials



**ATTEST:** \_\_\_\_\_

Fatema Crane, Secretary  
Landmarks Preservation Commission

cc: City Clerk

Christopher Heine & Wilhelmina Marxer, 2231 McKinley Avenue, Berkeley CA 94703

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# FINDINGS FOR DESIGNATION

MARCH 06, 2025

## 2231 McKinley Avenue – The Chan-Lee Residence

**Landmark application #LMIN2024-005 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1903-04 (APN: 057-2018-023-00)**

### PROJECT DESCRIPTION

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City Landmark designation of the property at 2231 McKinley Avenue

### CEQA FINDINGS

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1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

### LANDMARK PRESERVATION ORDINANCE FINDINGS

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1. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A.1.(b) of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the property at 2231 McKinley Avenue meet the historic value criterion for City Landmark designation associated with the challenges Asian Americans, particularly of Chinese ancestry faced during the period before the end of the Chinese Exclusion Act in 1943 and the later passage of the Fair Housing Act in 1968. Purchased by the Chan-Lee family in 1923 in a predominately white neighborhood, their occupation, including alterations made to the house to personalize it and to accommodate their multi-generational household embodies the history of housing challenges for Chinese and Chinese Americans in Berkeley. The period of significance begins with the Chan-Lee family purchase of the residence in 1923 and ends in 1968, when the family moved away from the property. Its historic materials like its rear cottage, exterior wood shingle exterior, and turreted bay window convey its historic significance, which is further expressed in changes made to the property to accommodate the Chan-Lee family including the main residence's two-story addition and the distinctive keyhole entry.

## FEATURES TO BE PRESERVED

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This designation shall apply to the subject property and the following distinguishing features of the shall be preserved, and missing features shall be restored to the extent possible:

### Property

- Location at the east side of McKinley Avenue.
- Setting in a neighborhood adjacent to Berkeley's Civic Center, comprised largely of single-family residences.
- Spatial relationship between main residence and rear cottage.

### Main Residence

- Primary elevation (west) elevation on McKinley Avenue.
- Front gable roof with prow and angled window.
- Deep bracketed eaves.
- Exterior wood-shingle finish.
- Splayed turreted bay window.
- Half width porch with distinctive keyhole entry.
- Original wood windows.
- Decorative leaded glass windows.
- Hipped-roof dormers at south elevation.
- Bay window with dentil detail at south elevation.
- Shed roof dormer at north elevation.
- Two-story rear addition.
- Steel casement windows at two-story addition.

### Cottage

- Location at northwest corner of property, separated from the main residence.
- One-story massing.
- Dormer window above main entry.
- Original wood windows.
- Wood shingle exterior with decorative cut details at base that continue for the first third of the exterior.

# PRESERVATION ARCHITECTURE

August 26, 2024 rev. December 26, 2024

## CHAN-LEE RESIDENCE 2231 McKinley Ave., Berkeley City of Berkeley Landmark Application Report

### Introduction

The following report summarizes the history and describes the character of the property and existing main and secondary residences at 2231 McKinley Ave. (APN 57-2018-23) in central Berkeley (figs.1-3). This effort's purposes are to recognize the historic importance of this residence to its owners, neighbors and to the City of Berkeley by applying for City of Berkeley Landmark status.

The primary subject of this application is the main house (2231 McKinley), with general and supporting reference to the detached cottage at the rear (2231-1/2 McKinley). The intent of this documentation is to provide thorough background information identifying the historical significance of this residential property, with a focus on building exteriors.

Towards which, this historical documentation is based on substantive previous work on and attention to historic Berkeley architecture by the author; historical research, including at the Berkeley Architectural Heritage Association and the Berkeley History Center, whose 2023 exhibition *Touching Ground, Putting Down Roots: Chinese in Berkeley*, included 2231 McKinley Ave. and which provided impetus for the current effort as well as the identification of and consultation with the Chan-Lee family historian<sup>1</sup>; deed research; historic censuses (heritagequest.com & mychinaroots.com @SFPL.org), Alameda County telephone directories (@SFPL.org & LOC.org) and newspapers (@CDNC.org); as well as site visits to record the subject property, its buildings and setting.

The updated report provides several additions per planning staff comments, specifically the inclusion of several historic photos provided by the family historian to the current property owners and landmark applicants (figs.21-27). These additional images provide glimpses of the house over time while reinforcing the Chan-Lee family's connection to their house and its neighborhood. A pair of Sanborn maps have also been added with which to illustrate the changing status of the subject house within its immediate setting (figs.28-29). The following points additionally respond to planning staff comments:

- The application factually states that, given its 1903 origins, this house is one of the earliest in the neighborhood. No claim is made that it is the earliest. In this vicinity, the earliest surviving residences date to the 1890s, including 2212 and 2228 McKinley, directly across the street and which were evidently once on larger parcels. As stated, this subdivision was mapped in 1902, so most of its parcels were not available for development prior to then. Thus, 1903 is an early date of origin in this neighborhood and it is therefore one of the earliest homes in the neighborhood.
- The application plainly states the circumstances underlying Chinese-American ownership in the ongoing context of racial discrimination. Moreover, this application does not depend on these underlying historical considerations as we bank on the unique quality of the property's historic architecture.
- The Chan-Lees were responsible for the alterations to the front of this house, including its unique and expressive keyhole entry, which is a direct embodiment of their ownership and occupancy.

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<sup>1</sup> Aimee Baldwin, who has generously shared family biographies yet has not directly authorized their inclusion in this public record.

## Evaluation Summary

Under this landmark application, the residence at 2231 McKinley is given the name Chan-Lee for its longtime owners, whose multi-generational Chinese-American family did not originate the main house yet acquired the property and its residences early on then developed it into the unique, centrally located residential property that survives today.

Architecturally, 2231 McKinley is a uniquely crafted turn-of-the-20th century house, its stylistic period and concomitant label a Shingled Craftsman yet with a degree of exuberance carried over from the late-19th century Victorian period, specifically its turreted bay and prow window; in addition to a wide range of Craftsman style details, from its keyhole entry portal, deeply overhanging bracketed wooden eaves, quality wood sidewall shingling and leaded windows. With such distinctive architectural character plus compatible changes and additions and to which the rearward cottage contributes, 2231 McKinley Ave. individually stands out amidst other contemporaneous homes in its early 20th century central Berkeley setting.

Historically, the subject residential property is associated with the trajectory of Chinese immigration and integration in California in general and Berkeley and the Bay Area in particular.

Though unusual to cite novels as an evaluative reference, the history of the Chan-Lee family has a directly parallel history conveyed in the work of the important Berkeley author Maxine Hong Kingston, whose Chinese-American relations she so engagingly documented in her books and which stories make plain the fortitude and essentiality of early Chinese immigrants to California (and the west) and, despite unremitting racial impediments, make excruciatingly clear how deeply Californian many Chinese-American families were and are.<sup>2</sup> The history of the Chan-Lee family is a piece of that California history and the Berkeley home they acquired and engendered directly expresses the 20th century segment of Chinese-Californian history.

By the 1920s, when the Chan-Lees acquired the 2231 McKinley property, they were already a multi-generational California family. Even then, there was a lack of acceptance, which reality is demonstrated by the family historian's understanding that the 1920s neighbors did not agree on having Chinese-Americans as neighbors but for one unidentified person who supported them and in-so-doing apparently mollified others. In spite of their hesitance to accept, based on the 1920 census, a majority of those neighbors were also immigrants – English, Irish, Danish/Norwegian, French, Swedish, Austrian and Canadian, as or more recent to CA than the Chan-Lees – yet every one of whose “race” was also uniformly census-listed as “white,” whereas the very few Chinese-American residents in the vicinity were labeled as “CH”.

As such, this house represents the determination of one community of American immigrants, amongst a broad spectrum of immigrants, who had to confront racial bias in order to make lives in the place where their community and families already belonged.

The 2231 McKinley residential property therefore has a history that is not apparent on the surface, that surface being an early 20th-century Craftsman residence, to which the Chan-Lee family substantially contributed, including its keyhole entry portal and porch, which 1920s work also created or expanded the expressive corbelled roofline, the integration of which in-and-of-itself demonstrates

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<sup>2</sup> Maxine Hong Kingston, *The Woman Warrior*, 1975; *China Men*, 1977; from *Maxine Hong Kingston*, The Library of America, New York, NY, 2022.

the family's cultural values and active participation. That many members of the family, before and since, sustained notable lives and livelihoods in the Bay Area and California provides further substantive demonstration of the extent to which they belonged.

Thereby, the underlying history of the Chan-Lee family's California trajectory lies below the surface of this property and deepens its historical meaning relative to the distinctive historic architecture of the property and its residential buildings.

As documented herein, the main residence at 2231 McKinley Ave., along with its contributing site and cottage, are City of Berkeley Landmark-eligible on the basis of:

- The unique and outstanding architectural character as well as being one of the earliest surviving homes in its neighborhood (*LPO criteria A1c*);
- As this residential property provides direct evidence for historical patterns of racial discrimination giving way, as well as to the Chan-Lee family's deep integration in regional and California history (*LPO criterion A2 and A3*);
- And as 2231 McKinley Ave. architecturally expresses and embodies the turn-of-the-20th century while additionally providing evidence of the complex layering of Berkeley's multi-ethnic culture and communities over the course of the 20th century – primarily with the presence of the Chan-Lee family yet, adding further complexity, secondarily with its subsequent part in a late-1960s counter-cultural community, thus embodies and expresses Berkeley's social, cultural and political histories, the property additionally meets *LPO criterion A4*.

Furthermore, the main residence along with its contributing site and cottage are eligible as a City of Berkeley Structure of Merit as:

- The 2231 McKinley Ave. residence is contemporary and compatible with a designated landmark within its neighborhood (*LPO criteria 2a and 2b*);
- The 2231 McKinley Ave. residence is an example of unique and outstanding architectural design (*LPO criterion 2c*);
- The subject residential property has historical significance relative to the City of Berkeley and to its neighborhood (*LPO criterion 2d*).

### Summary History

The 2231 McKinley Ave. residence and its detached cottage were first constructed in 1903-04, the site having been acquired in 1903 and its owner first directory-listed in 1904, when the address was 2231 Mary St., which address changed to McKinley in honor of U.S. President William McKinley (b.1843), who was assassinated in 1901. The subsequent change to McKinley first appeared in directory listings in 1905.

Following his 1903 acquisition from J. A. Marshall, whose *Resubdivision of Block 12 of the McGee Tract* map dates to 1902, Arthur E. Searle (1873-1959) constructed the house and cottage, where he lived until 1906 prior to building and moving to a second home for his new family nearby (2338 McGee, 1907). In those years, Searle was directory-listed as a carpenter so, despite the lack of a permit or other records directly indicating its designer and/or builder, Searle was evidently the owner-builder of 2231 Mary/McKinley.

Neither has a deed from Searle to its next owner been found, yet its next owner appears to have been Lewis Manvordir (nd – i.e., no known dates) and who, in March 1908, sold the property to

Thomas F. Dyer (b.1833, Maine) and Lora Dyer Merrill (nd), father and daughter. Several other Berkeley property transactions involving Dyer are in evidence, yet minimal additional info has been located for either except for census listings for Thomas F. Dyer, who resided in Tuolumne County, CA (1860, occupation miner), San Francisco (1900, manufacturer of musical instruments) and San Rafael (1910, retired). Given that Californian trajectory, including mention upon the passing of Dyer's brother that James A. Dyer – with whom Thomas Dyer lived first in S.F. then in San Rafael – was a California pioneer, the same would evidently be true of Thomas. Nonetheless, minimal historical information about Dyer and, even less so, his daughter arises. There is, however, no evidence that either of the Dyers resided in Berkeley so they absently held title to the property until 1922, when they sold to Harry and Mary Chan of Berkeley. At that same time, the Chans garnered a deed of trust for the property, with realtor Addie D. Jungck listed as the trustee, the lender the same Lewis Manvordir who transacted the property back in 1908. Both Jungck and Manvordir were directory-listed in the real estate business in Mill Valley in the 1920s and 30s.

Harry and Mary Chan, the former identified as a farmer and rancher in the 1920 census and 1920-23 directories, respectively (and who in 1923 resided at 1933 Grant St. in Berkeley), deeded the property in 1923 to May Chan (b.1886, Napa) and her husband, On Lum Lee (b.c1862, China) – the latter, by then, a successful seafood merchant. Harry Chan and May Chan were very likely though indefinitely related as both were born and raised in Napa, from where the American side of the Chan family hailed, and where Harry Chan's farming and ranching were presumably located.<sup>3</sup>

With their large family, the Lees moved from San Francisco to their newly acquired home in Berkeley and where their last daughter was born in 1925. May and On Lee passed away in 1927 and 1928, respectively, leaving their family and home in the hands of their eldest son, On Lun Lee (1903-1965) and, after their marriage in 1931, his wife, Alice Dong Lee (b.1907). Prior to which, in 1930, the Lee household consisted of 12 members that ranged in age from 2 to 26 and included 4 sisters, 4 brothers, 2 spouses plus 2 youngsters. Those 8 descendants of On and May Lee (5 children did not survive to adulthood) were On Lun, Quong, Rowland C., Roger Y., Helen, Grace, Shirley M. and Linnie S.

As family members in part moved on, On Lun and Alice Dong Lee reared and raised 4 of their own children, the first born in 1932, the last in 1940, who were each listed at 2231 McKinley in the 1940 census along with 3 of On Lun's siblings, Rowland, Roger and Linnie. By 1950, On Lun and Alice Dong Lee and their 4 children resided at the McKinley Ave. residence.

Following On Lun's passing in 1965, Alice remained at their residence until 1968, whereafter the property was handed down to the next generation and who did not subsequently reside on the property yet retained ownership until 1994, when the 2231 McKinley Ave. property passed out of the Chan-Lee family, the seller Brenda Lee Wong, the youngest of On Lun and Alice's children.

While no original records are available, there are a range of early permits that outline the chronological history of this house. The first available permit record dates to 1922, when Harry Chan permitted alterations to the house that included changes to the front entry porch and door as well as

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<sup>3</sup> The familial relation between May Chan and Harry Chan is not specifically known yet is presumably not coincidental. The large Chan and Lee families makes research into those families inconclusive. Nonetheless, it is presently presumed that Harry Chan (b.1889) was a younger brother or cousin of May Chan and who, for whatever reason – as May Chan was U.S. born so could and did transact property – was an intermediary in the sale of the McKinley Ave. property.

the addition of a detached garage. Both of those changes are in evidence in the 1929 Sanborn, the extent of the front entry change by comparison to the 1911 Sanborn (figs.4-5). Thus, the existing front entry porch with its arched portal was added in 1922-23. Permits in 1929 under the name Mrs. On Lee included a bedroom and bath addition, presumably the 2-story rear addition, which appeared in the 1950 Sanborn (and for which there is no other potential record while that work was completed after preparation of the 1929 Sanborn map). Though the 1911 and 1929 Sanborn maps indicated that the house was 1-story and the latter included a small 2-story rear addition, and the 1950 Sanborn again indicated that the house was 1-story (fig.6) – even the 1981 Sanborn identified the residence as 1-story (fig.7) – the 1950 map showed the larger 2-story rear addition in evidence today. That addition is and most certainly was dependent on the second floor access via the main house, so what was an original attic had by 1950 been made into a second habitable floor, very likely much earlier and in order to accommodate the large number of family members.

There are no permit records from the 1930s and 1940s. During the 1950s, alterations were permitted for O. L. Lee both in 1954 and 1958, the earlier the installation of roofing including redwood gutters, the later repairs to the front stairs and porch, roofing and gutters, the garage and the rear cottage. There were again no permits from the 1960s and 1970s, the last under the Lee family for plumbing and/or mechanical work in 1987 and for the identified owner, Victor Lee of El Cerrito.

Based on this information, the front of the original 1-story, Craftsman style house was altered by 1923 when the entry porch and the southwest corner of the house (and possibly the addition of one or both of the southern dormers) were added. A garage was also then built yet removed c1980. By 1929, the 2-story rear addition was built and the house expanded into the attic, creating the 2-story configuration in evidence today – presumably also including the north side dormers. The extant rear cottage does not appear to have changed, though the 1958 permit indicates that there was substantive repair work to its exterior. Altogether, the house and cottage appear today as they did by the late-1950s, though without garage.

Between 1968 and 1994, the residence and cottage were evidently rented, though no specific tenants of that period have been identified. Nonetheless, in the late 1960s and early 1970s, 2231 McKinley Ave. was apparently a part of a counter-cultural commune, referred to as the Dragon's Eye, the "eye" of which was the adjacent property at 2233 McKinley. In that unique period, the Lees – specifically Brenda Lee Wong and Victor Wong – retained ownership so were evidently indirectly a part of that communal cultural experience.<sup>4</sup>

In 1994, Brenda Lee Wong was the seller of 2231 McKinley Ave., the buyers Nina and Morgan Fichter.

In sum, the extant 2231 McKinley Ave. property and residences are an embodiment of a Chinese-American family with pioneer roots in California. From those early pioneers, the Chan-Lee family grew and forged a northern California presence in the S.F. Bay Area and, in the 1920s, in Berkeley. At that time, of some 650 households in the surrounding neighborhoods, the 1920 census recorded one Chinese-American owner. Within that racial hierarchy, the Chan-Lees established a 20th century household highly representative of Berkeley.

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<sup>4</sup> 2231 McKinley Ave. was associated with a communal and countercultural community – i.e., commune – in the late 1960s and early 70s, though to what direct extent is not at this juncture clear. Based on limited records and research on the topic, the adjacent property at 2233 McKinley was more clearly a communal residence.

Despite the anti-Chinese and anti-Asian racism that prevailed throughout the 19th and 20th century United States, the Chans and Lees created successful opportunities in California.<sup>5</sup> Family history records that Chan Kay Choy facilitated ranching and owned a dry good store in Napa in the mid-to-late 1800s. Chan's son-in-law, Lee Yum, first labored in shellfishing in San Pablo and, later, San Francisco bays, then with his brothers grew their San Francisco seafood business, which survived into the 1940s in Oakland. In the 1910s, prior to moving to Berkeley, Lee Yum and May Chan contracted building construction and May Chan also independently acquired San Francisco real estate.<sup>6</sup>

According to the family history, their move to Berkeley was in part in order to send their sons to UC Berkeley, the Berkeley location facilitating that ambition. As intended, each of their 4 sons attended UCB. Though the eldest, On Lun, withdrew in order to head the household in the wake of their parents' deaths, Rowland and Roger each graduated, Rowland going on to be medical doctor, Roger an architect.

As the present effort is largely focused on architectural history, Roger Yuen Lee (1920-1981), the youngest son of Lee Yum and May Lee, is of additional pertinence as he became a successful architect recognized for his contributions to Modern architectural design. The following is a brief bio for Roger Lee via the Environmental Design Archives of his alma mater, UC Berkeley, where the Lee collection consists of photographs and drawings for more than 175 projects:<sup>7</sup>

“Roger Lee received his BA in Arts and Architecture from the University of California, Berkeley with top design honors in 1941. Between 1941 and 1945 he worked with William Hays and Howard Moise on U.S. Post Offices and served as an Assistant Engineer with the U.S. Engineers office in Honolulu, working on various defense projects. Following the war he briefly worked with a number of firms in the Los Angeles area and then returned to the Bay Area in 1947.

Lee was noted for the grace and clarity of his residential designs and in 1957, the London Architectural Review recognized him as one of forty U.S. architects who have "made personal contributions to American Architecture." In 1964 he moved his practice to Hawaii. During the course of his California practice, he designed nearly 100 residences, and a small number of apartments, housing projects, recreational facilities, and churches.”

As Roger Lee was raised and long resided at the 2231 McKinley residence, where architectural interventions are in evidence – including modern steel windows at the rear and the unique layout at the house's northeast corner – it is definitely tempting to consider that he may have had a hand in the design evolution of the house.

And yet another family member raised at 2231 McKinley Ave. became a SF Bay Area architect of note, Gerald K. “Jerry” Lee (1934-2012).

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<sup>5</sup> In her historical novel *China Men*, in a chapter titled “The Laws,” Maxine Hong Kingston scrupulously records the exclusionary laws, from 1878-1978, against Chinese-Americans (from *Kingston*, Library of America, pp.327-334). Such laws included the Immigration Act of 1924, which limited the number of immigrants allowed entry into the United States through a national origins quota and completely excluded immigrants from Asia (from <https://history.state.gov/milestones/1921-1936/immigration-act>), accessed August 2024.

<sup>6</sup> “Building Contracts,” *San Francisco Call*, 17 May 1912, p15; “Real Estate Transactions,” *San Francisco Call*, 6 August 1914, p15.

<sup>7</sup> From *Roger Lee Collection* @ <https://ced.berkeley.edu/collections/lee-roger>.

## Summary Descriptions

The 2231 McKinley Ave. residence (figs.8-18) is 2-stories raised above a crawl space delineated by a continuous water table, its frontward second story a finished attic level within the gabled roof and a full 2-stories at the rear, under which is a partial basement. The house has front and rear entries, the front via a pathway from the sidewalk directly to a set of wood steps up to an entry porch and door, the rear at the reentrant northeast corner, again with a short set of steps down to grade where there is a second set of steps to the basement.

At the front, the first story exterior features a 5-sided northwest corner bay window with a turreted and splayed roof. At the southwest corner is an open porch with a keyhole-like entry portal atop the wood front steps. Porch posts are also shingled, their bases splayed as is the low-shingled and wood-capped porch railings at front and side.

At the upper front, a distinctive pair of windows are angled and pointed and recessed into the front gable with rounded side walls, the windows double hung with leaded glass upper lites, the overhanging upper gable pointed in the form of a prow. Those front-gabled roof edges are trimmed with wood shingles.

The entire exterior is gathered and unified under a deep and continuous eave at the roof edge with corbels and a shingled frieze at the front that returns around the south side to the central bay window and terminates behind the front bay window to the north.

At the south side, behind the porch, there are 2 side-by-side pairs of casement windows with leaded lites. A pair of hipped roof dormer windows at the south side roof have deep overhanging eaves, the frontward dormer narrower than the rear and with leaded glass in the upper window.

A boxy shed-roofed dormer at the north side roof aligns with and frames into the 2-story rear addition. The north side dormer and rear addition are of a piece so were evidently added at the same time. Thus, the second story represents both the original 1903 home as well as its larger 1920s version.

At the reentrant northeast corner, the continuous overhanging eave deepens and is supported by slender angled brackets. The central south side bay window at the first story is angled with a trio of windows in its broad south face along with windows in both angled faces, each again double hung windows with leaded upper lites.

Exterior walls are shingled, doors and windows are wood except for steel sash units at the rear addition, of which there are 6 sets – 4 up and 2 down – and another at the north wall adjacent to the rear door. Window and door casings are molded wood. Sloped roofs are distinctively clad in hexagonal asphalt shingles. The flat roofed north side bay and rear add have a continuous crown molding at top of wall/roof edge.

All of the above-described exterior forms, features and materials are historically characteristic of the 2231 McKinley Ave. residence.

In addition, the rearward cottage, (presumably) erected at the time of the main house and with its own wood-shingled architectural character, generally contributes to the historical character of the overall property (figs.19-20). This single-story (over crawl space) hipped-roof cottage stands in the

northeast corner of the property and is entered via a set of steps up to a small, covered porch at its south side, directly above which is a shed-roofed dormer. It has a wood door and a mix of wood windows with molded trims and wood sills. Exterior walls are sided with wood shingles, a number of courses of which are sawtooth-cut. There is a continuous water table at the first floor level, where the shingles splay outward to form a dripline. Roof overhangs have exposed wood framing and the roofing is composition shingle. All exposed wood is painted.

Again, the form and materials described above additionally constitute the cottage's contributing historical characteristics.

### **Evaluation of Significance**

Based on the above historical documentation, the following addresses the subject property's basis for consideration of City of Berkeley Landmark designation (per Section 3.24.110 Landmarks, Historic Districts and Structures of Merit Designation Criteria for Consideration).

*A. Landmarks and historic districts. General criteria which the commission shall use when considering structures, sites and areas for landmark or historic district designation are as follows:*

1. Architectural merit:

- a. Property that is the first, last, only or most significant architectural property of its type in the region;*
- b. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder; or*
- c. Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.*

The 1903-04 residences at 2231 and 2231-1/2 McKinley are not the first, last, only or most significant architecturally in Berkeley. Neither are they prototypical nor a best surviving work of a designer-builder, etc. Alternatively, in its immediate context, the main residence is an outstanding surviving example of its turn-of-the-20th century blending of Victorian and Craftsman architectural design.

Its historic architectural value is therefore on the basis of its unique and outstanding architectural character as well as being one of the earliest surviving homes in its neighborhood. Altogether, the 2231 McKinley Ave. property is highly representative of its turn-of-the-20th century period and to which period it stands as an anchor. Consequently, 2231 McKinley Ave. meets *LPO criteria A1c*.

2. *Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City;*

3. *Educational value: Structures worth preserving for their usefulness as an educational force;*

As detailed herein, the cultural value of 2231 McKinley Ave. is its multi-generational association with a Chinese-American family whose early 20th century acquisition and ownership broke barriers in this Berkeley neighborhood.

Similarly, this residential property provides direct evidence for historical patterns of racial discrimination giving way, as well as to the Chan-Lee family's deep integration in regional and California history.

Therefore, 2231 McKinley Ave. meets *LPO criterion A2 and A3*.

*4. Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States. History may be social, cultural, economic, political, religious or military;*

Located in the most central Berkeley neighborhood with its surviving and unique early 20th century residential buildings, yet where many physical changes have and will continue to alter the built environment, the 2231 McKinley Ave. property architecturally expresses and embodies the turn-of-the-20th century while additionally providing evidence of the complex layering of Berkeley's multi-ethnic culture and communities over the course of the 20th century – primarily with the presence of the Chan-Lee family yet, adding further complexity, secondarily with its subsequent part in a late-1960s counter-cultural community.

As 2231 McKinley Ave. embodies and expresses Berkeley's social, cultural and political histories, the property additionally meets *LPO criterion A4*.

*5. Any property which is listed on the National Register described in Section 470A of Title 16 of the United States Code.*

2231 McKinley Ave. is not listed on the National Register.

As follows, the subject property readily meets Berkeley's Structure of Merit criteria.

*B. Structures of merit. Criteria which the commission shall use when considering a structure for structure of merit designation are as follows:*

- 1. General criteria shall be architectural merit and/or cultural, educational, or historic interest or value. If upon assessment of a structure, the commission finds that the structure does not currently meet the criteria as set out for a landmark, but it is worthy of preservation as part of a neighborhood, a block or a street frontage, or as part of a group of buildings which includes landmarks, that structure may be designated a structure of merit.*
- 2. Specific criteria include, but are not limited to one or more of the following:*
  - a. The age of the structure is contemporary with (1) a designated landmark within its neighborhood, block, street frontage, or group of buildings, or (2) an historic period or event of significance to the City, or to the structure's neighborhood, block, street frontage, or group of buildings.*

- b. *The structure is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block, street frontage, or group of buildings.*

The subject building is contemporary and compatible with a designated landmark within its neighborhood, the 1895 residence at 2418 California St., so meets *LPO criteria 2a and 2b*.

- c. *The structure is a good example of architectural design.*

As summarized above, the 2231 McKinley Ave. residence is an example of unique and outstanding architectural design so readily meets *LPO criterion 2c*.

- d. *The structure has historical significance to the City and/or to the structure's neighborhood, block, street frontage, or group of buildings.*

As demonstrated herein, the subject residential buildings have historical significance relative to the City of Berkeley and to its neighborhood, so further meets *LPO criterion 2d*.

Additionally, 2231 McKinley retains its integrity (integrity being a measure of a property's extant state relative to its origins and identified significance) of location and setting, design, materials, workmanship, feeling and association, all of which are substantially intact relative to the original and early property. While the 1903 residence was altered and expanded in the 1920s, those changes are compatible with, appropriate to and, at this juncture, an integral part of the historic residence.

In conclusion, the residential property and buildings at 2231 McKinley Ave. in Berkeley are eligible for designation as a City of Berkeley Landmark (or Structure of Merit), primarily on the basis of its historic architectural character, secondarily for its cultural values, the primary resource consisting of the main residence at 2231 McKinley and to which the rearward cottage and site contribute.

Signed:



Mark Hulbert  
Preservation Architect & Historic Resources Consultant

attached: figs.1-29 (pp.11-30)

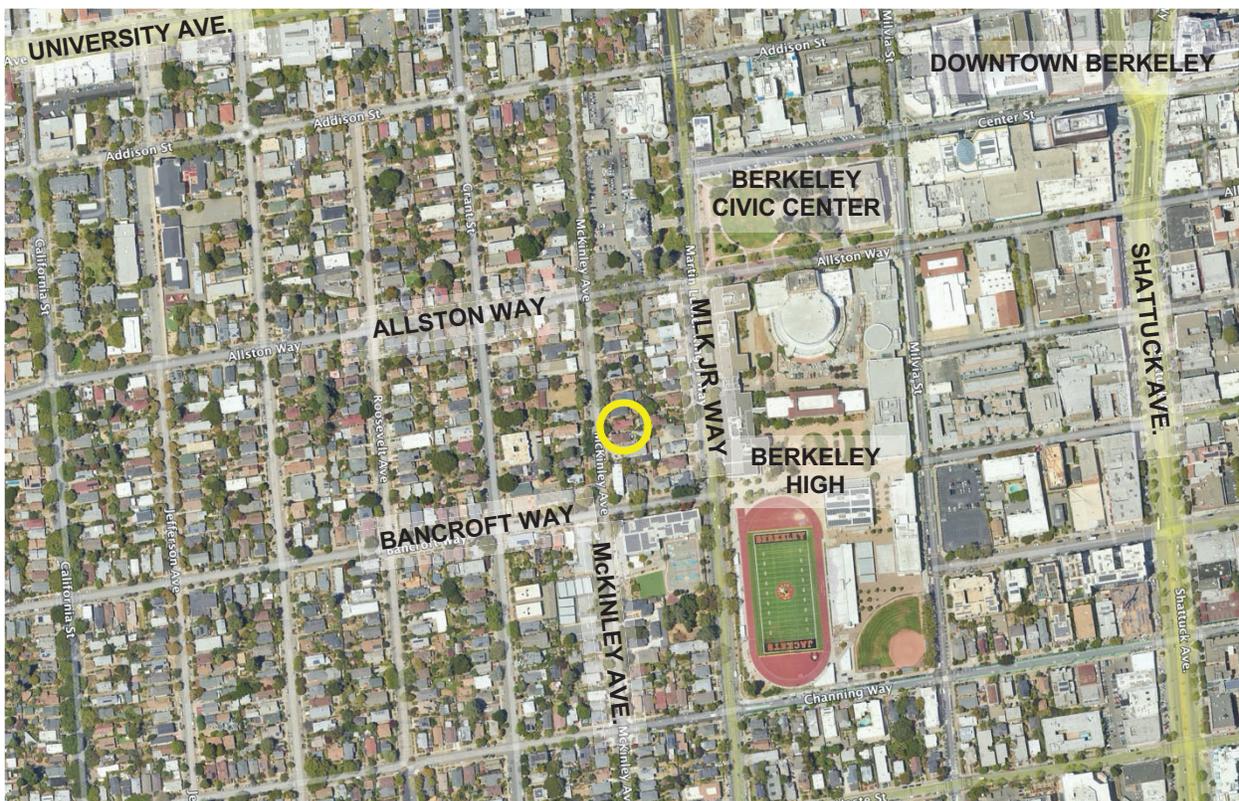


Fig.1 – 2231 McKinley Ave. (circled) – Location aerial (Google Earth 2024, north is up)



Fig.2 – 2231 McKinley Ave. (highlighted) – Site aerial (Google Earth 2024, north is up)

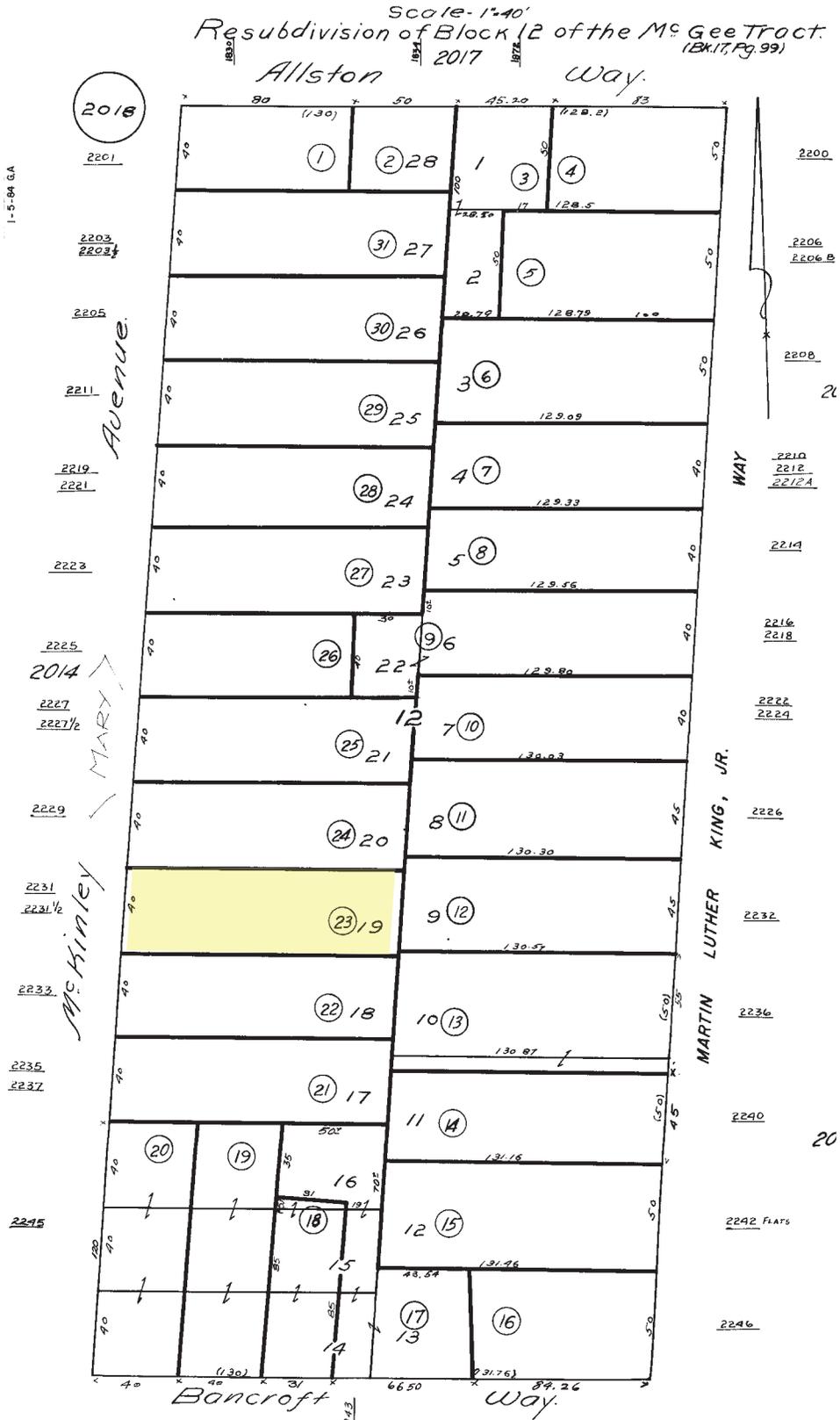


Fig.3 – 2231 McKinley Ave. (lot 19, highlighted) – from Assessor's parcel map

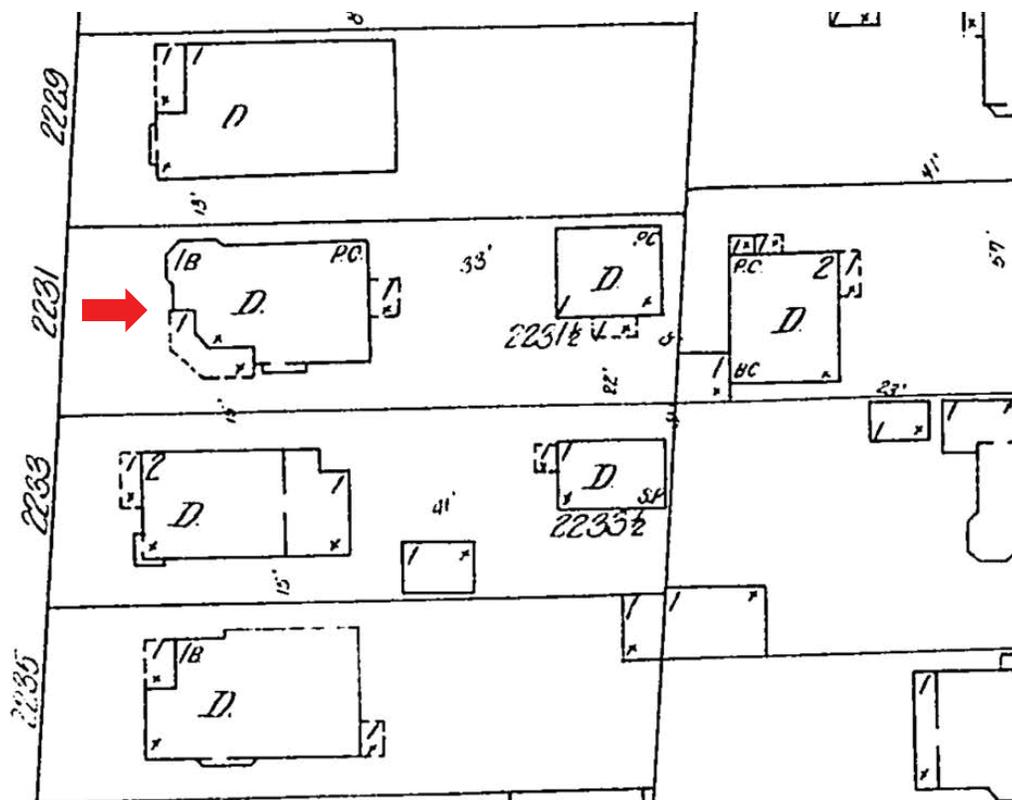


Fig.4 – 2231 McKinley Ave. (arrow) – from 1911 Sanborn map (sfpl.org)

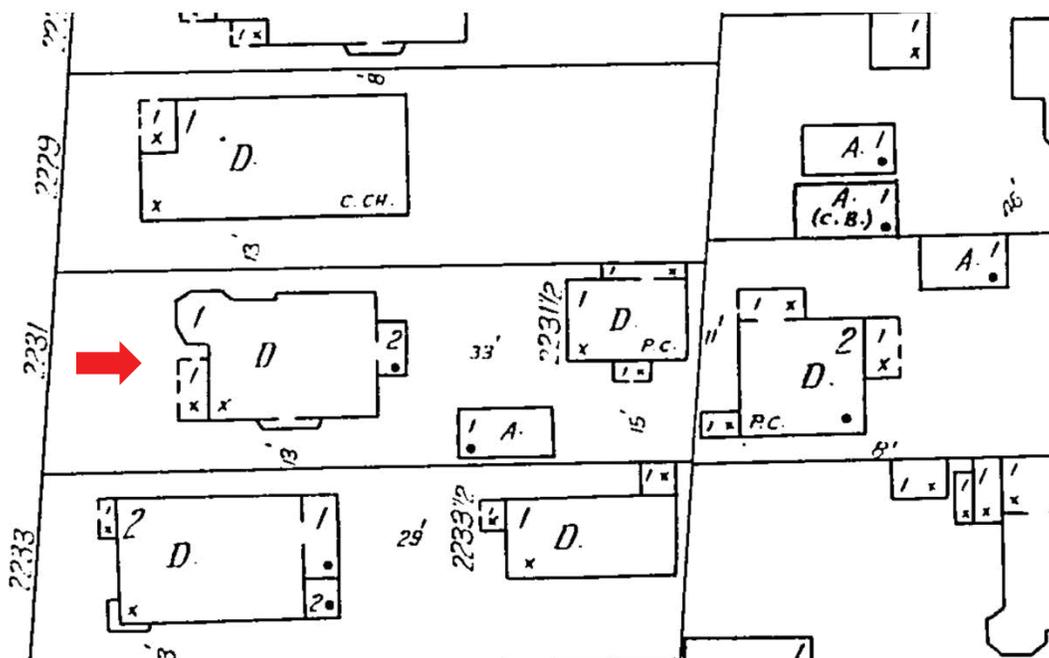


Fig.5 – 2231 McKinley Ave. (arrow) – from 1929 Sanborn map (sfpl.org)

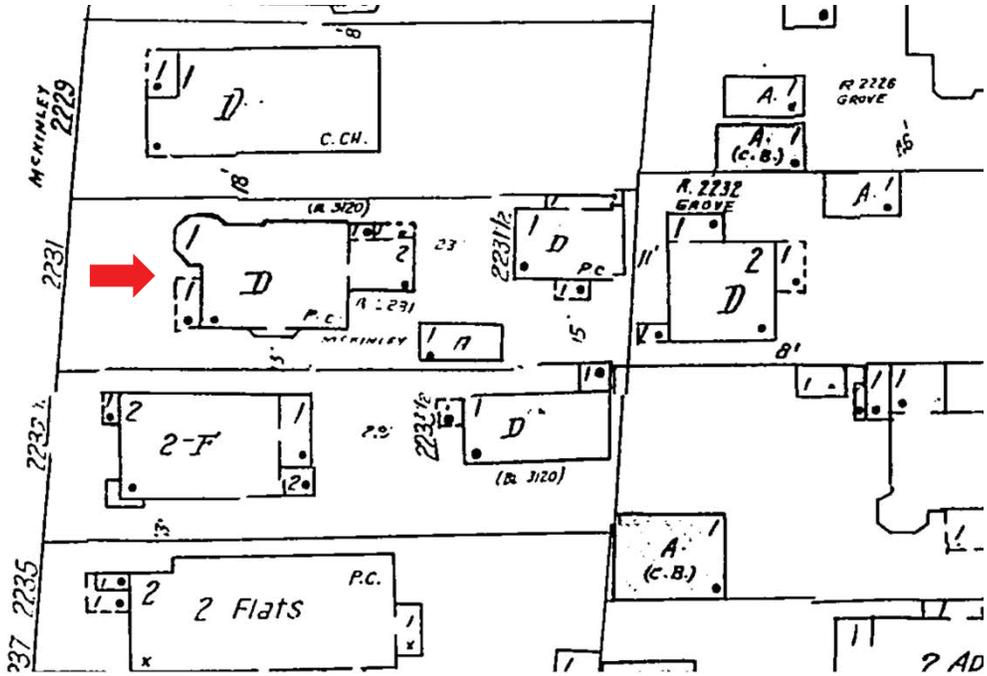


Fig.6 – 2231 McKinley Ave. (arrow) – from 1950 Sanborn map (sfpl.org)

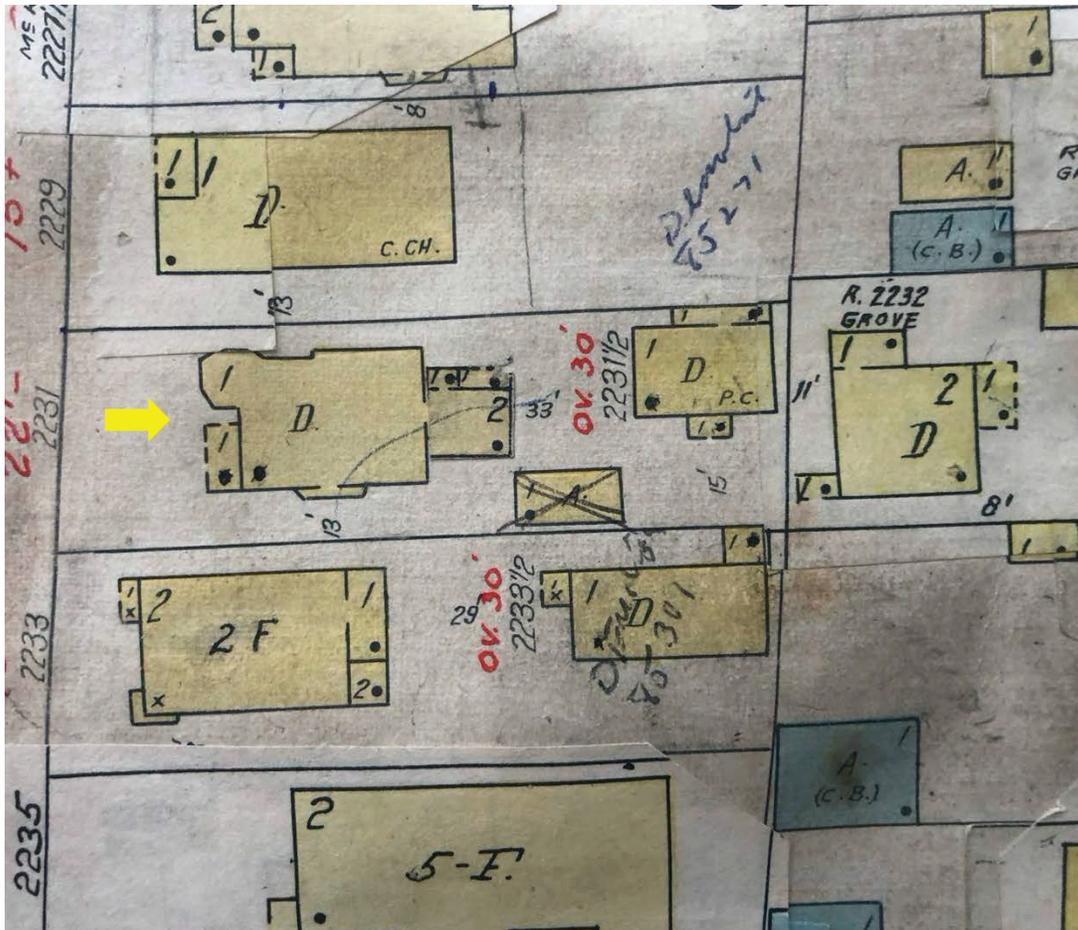


Fig.7 – 2231 McKinley Ave. (arrow) – from 1981 Sanborn map (Berkeley planning)



Fig.8 – 2231 McKinley Ave. – Front (west) from street (figs.9-21, MH 2023-24)



Fig.9 – 2231 McKinley Ave. – North side and front (west)

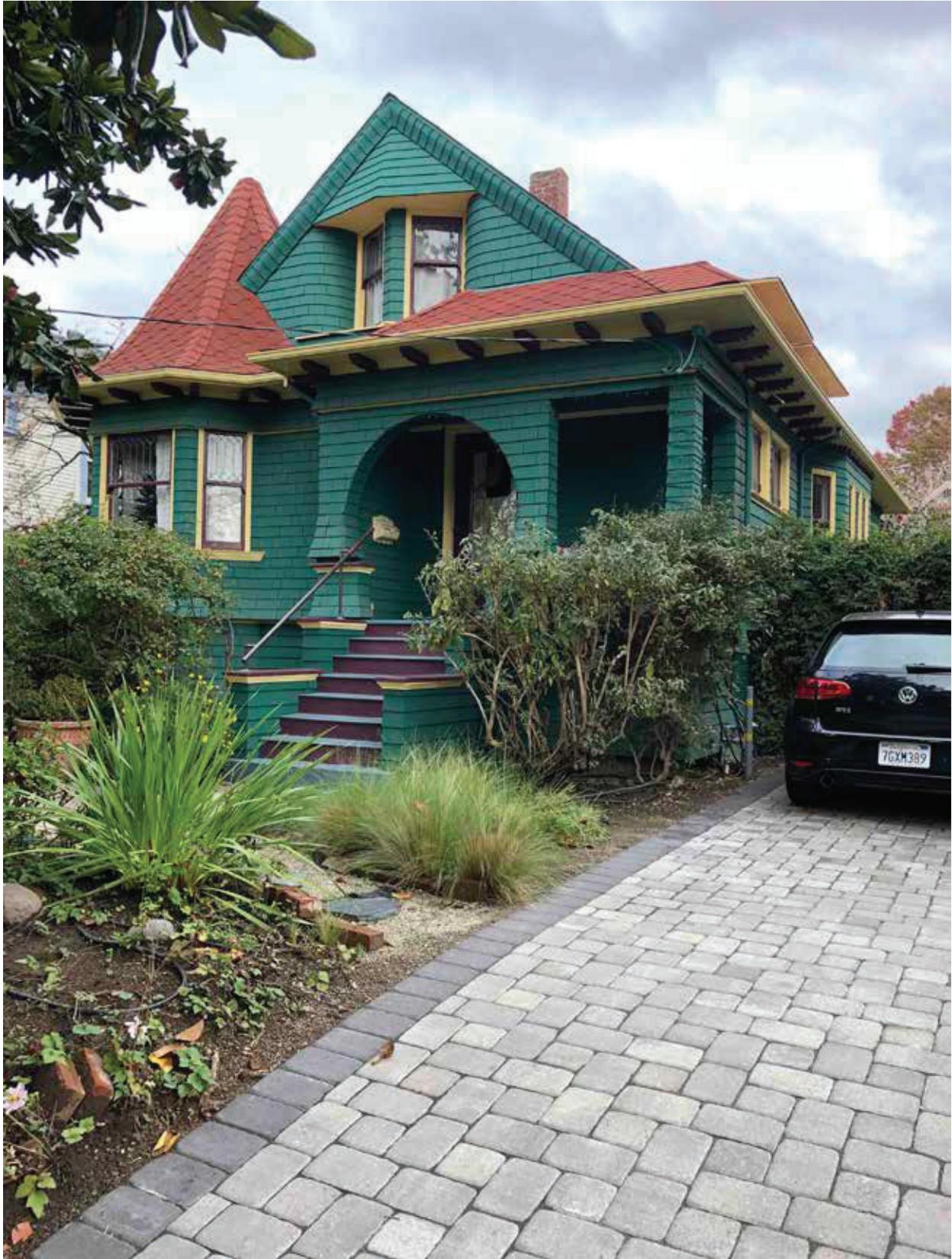


Fig.10 – 2231 McKinley Ave. – South side and front (west)



Fig.11 – 2231 McKinley Ave. – Front porch



Fig.12 – 2231 McKinley Ave. – South side, looking northeast



Fig.13 – 2231 McKinley Ave. – South side, looking west



Fig.14 – 2231 McKinley Ave. – South side, looking north



Fig.15 – 2231 McKinley Ave. – Rear (east)

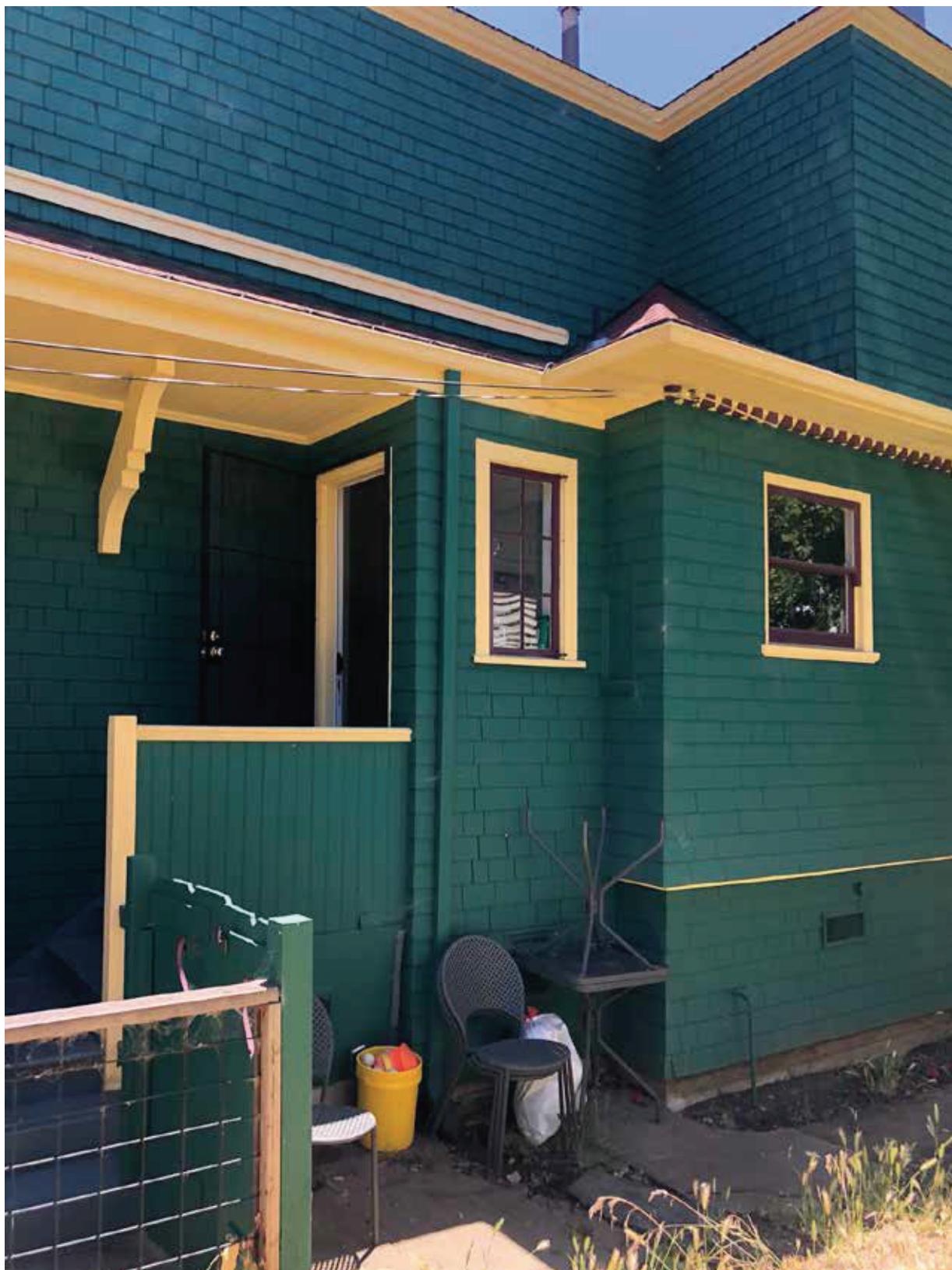


Fig.16 – 2231 McKinley Ave. – North side, west corner



Figs.17-18 – 2231 McKinley Ave. – North side, west corner



Figs.19-20 – 2231-1/2 McKinley Ave. – Cottage and rear yard, looking east



Quong                      May Chan                      LEE Yum                      On      ~1905

Fig.21 – The Chan-Lees, c1905



Fig.22 – 2231 McKinley Ave. – c1920s



Roger Lee (1920-1981)  
architect

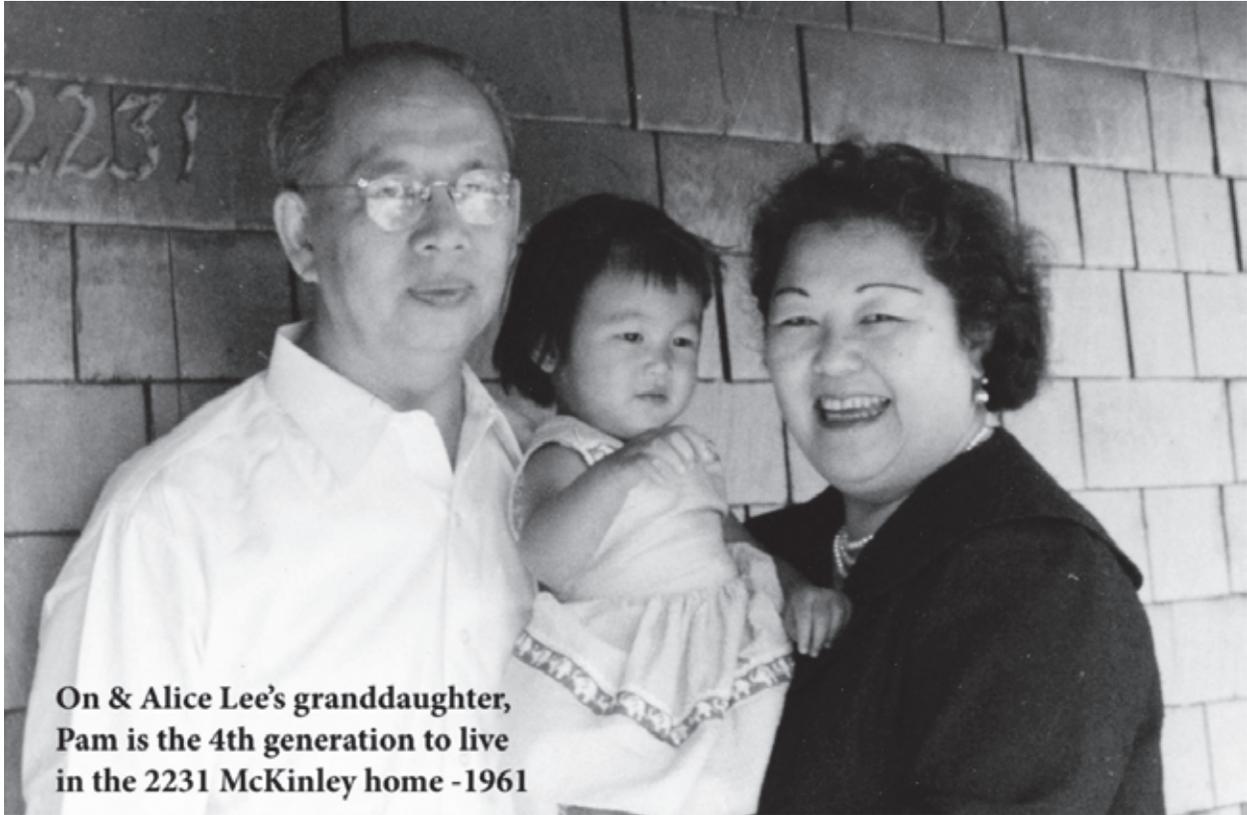


Linnie, Roland & Roger Lee - 1938  
3 of LEE Yum's children



Brenda Wayne Alice Jerry Ron & On Lee  
1955

Figs.22-25 – The Lee family at 2231 McKinley Ave., Berkeley



**On & Alice Lee's granddaughter,  
Pam is the 4th generation to live  
in the 2231 McKinley home -1961**



**Brenda & brother  
Ron Lee- 1965**

Figs.26-27 – The Lee family at 2231 McKinley Ave., Berkeley



Fig.28 – 2231 McKinley Ave. (arrow) – from 1911 Sanborn map (loc.org)

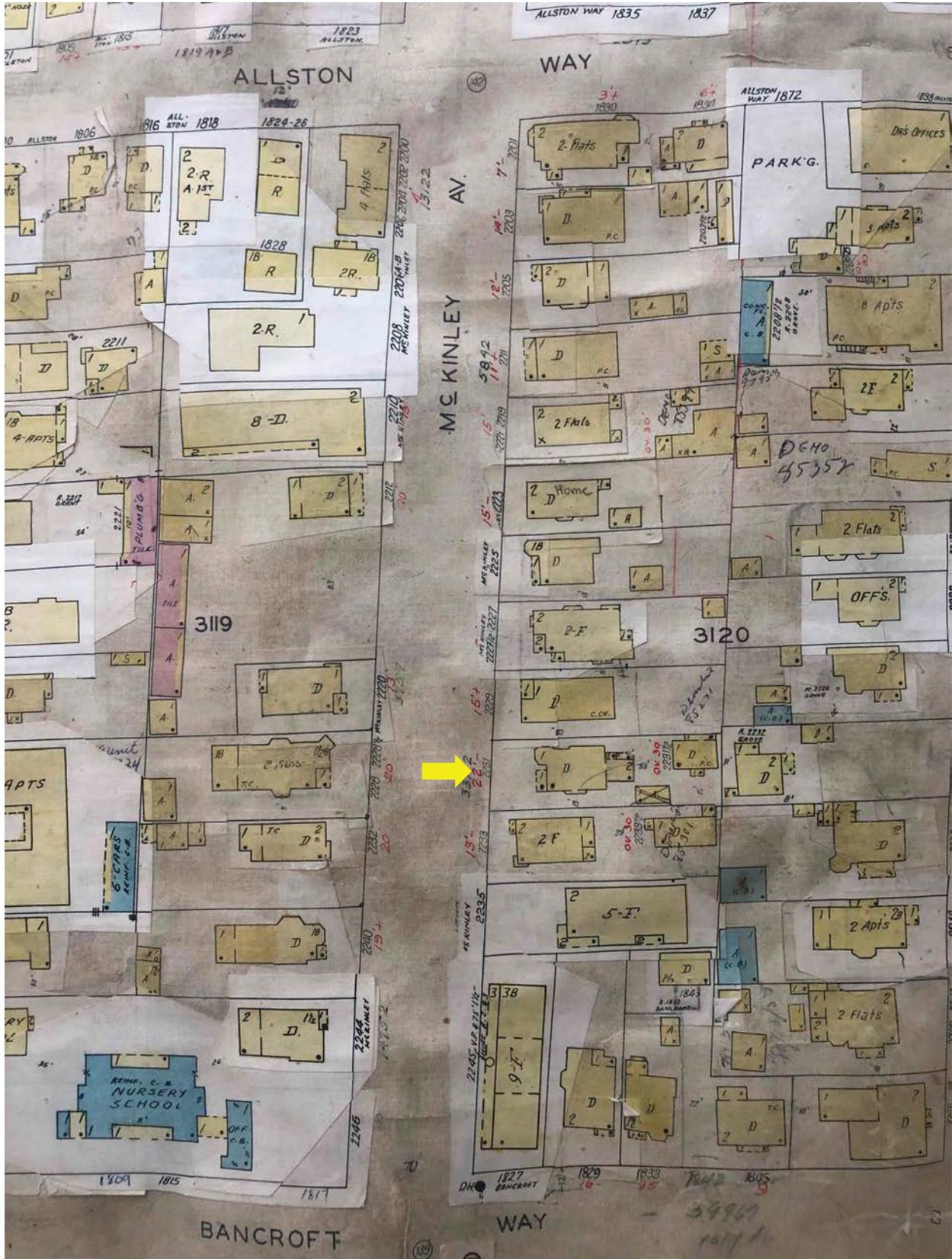


Fig.29 – 2231 McKinley Ave. (arrow) – from 1981 Sanborn map



Office of the City Manager

INFORMATION CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: Notice of Decision: 2425 Durant Avenue/#LMIN2024-0008

INTRODUCTION

The attached Notice of Decision (NOD) for the Landmarks Designation is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance Section 3.24.160, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has designated the subject property as a City Landmark. Pursuant to Government Code section 65913.10, because there is a vested preliminary application for a housing development project on the subject property, the Landmark designation will apply only to the property, not to the housing project.

BACKGROUND

Berkeley Municipal Code Section 3.24.300 provides that the City Council is the hearing body for any appeal to review any action of the Commission in granting or denying designation status. The code also provides that the City Council may file its own appeal to review the decision on its merits. An individual Council member may file such an appeal, without prejudice, by providing a written statement clearly and concisely setting forth the grounds upon which the appeal is based. Alternatively, the Council as a whole may vote to appeal the decision; to do so, this Information Item must be moved to the Action calendar and a motion must pass to appeal the LPC decision. Either form of Council appeal or a public appeal must be presented to the City Clerk within 15 days from the mailing of the NOD, i.e. by April 15, 2025. Council review of any appeal by any party stays all proceedings in the matter until the appeal is resolved.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than

their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to certify or appeal the decision to grant designation status, setting the matter for public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this designation action.

CONTACT PERSON

Anne Hersch, Land Use Planning Manager, Planning and Development, 510-981-7410

Attachments:

1: Notice of Decision – #LMIN2024-0008/2425 Durant Avenue



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

---

Notice of Decision

**DATE OF BOARD DECISION: March 6, 2025**  
**DATE NOTICE MAILED: March 31, 2025**  
**APPEAL PERIOD EXPIRATION: April 15, 2024**  
**EFFECTIVE DATE (Barring Appeal or Certification): April 16, 2025<sup>1</sup>**

## 2425 Durant Avenue – Laura Tull Property

**Landmark application #LMIN2024-0008 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1886 and 1905-1906 (APN 055-1878-007-01)**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the granted the following designation:

- **City Landmark designation**

- **Applicant:** Anthony Bruce, Berkeley Architectural Heritage Association  
P.O. Box 1137  
Berkeley, CA 94701
- **Property Owner:** 2425 Durant Avenue LLC  
P.O. Box 9541  
Berkeley, CA 94709

**ZONING DISTRICT:** Residential Mixed Use (R-SMU)

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<sup>1</sup> Pursuant to BMC Chapter 3.24, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0008**  
**2425 Durant Avenue**  
March 31, 2025  
Page 2 of 4

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15061.(b)(3) Review for Exemptions.

**The application materials for this project is available online at:**

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects> or  
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

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**FINDINGS AND CONDITIONS OF APPROVAL AND APPLICATION MATERIALS ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 8-0-0-0** (*Note: one vacancy*)

**YES:** CRANDALL, ENCHILL, FINACOM, LEUSCHNER, MONTGOMERY, ORBUCH, PLESE, SCHWARTZ

**NO:** NONE

**ABSTAIN:** NONE

**ABSENT:** NONE

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$1,500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less. Signatures collected per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2024-0008**  
**2425 Durant Avenue**  
March 31, 2025  
Page 3 of 4

- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$6,000.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the landmark permit will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMIN2024-0008  
2425 Durant Avenue  
March 31, 2025  
Page 4 of 4

constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

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Questions about the project should be directed to the Commission Secretary at (510) 981-7410 or [lpc@berkeleyca.gov](mailto:lpc@berkeleyca.gov). All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3<sup>rd</sup> Fl., during regular business hours.

**ATTACHMENTS:**

- 
1. Findings for Approval
  2. Application Materials



**ATTEST:** \_\_\_\_\_  
Fatema Crane, Secretary  
Landmarks Preservation Commission

cc: City Clerk  
Anthony Bruce, Berkeley Architectural Heritage Association, P.O. Box 1137, Berkeley, CA 94701  
2425 Durant Avenue LLC, P.O. Box 9541, Berkeley, CA 94709

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# FINDINGS FOR DESIGNATION

MARCH 06, 2025

## 2425 Durant Avenue – Laura Tull Property

**Landmark application #LMIN2024-0008 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1886 and 1905-1906 (APN: 055-1878-007-01)**

### PROJECT DESCRIPTION

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City Landmark designation of the property at 2425 Durant Avenue

### CEQA FINDINGS

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1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

### LANDMARK PRESERVATION ORDINANCE FINDINGS

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1. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A.1.(a) of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the property at 2425 Durant Avenue meets the architectural merit criterion for City Landmark designation as an example of an early residence from Berkeley's first subdivisions and one of the oldest remaining examples from this period of development. The third house built in the Beaver Tract, 2421 Durant Avenue is the oldest remaining example from this period of development. The property, developed over twenty years, includes examples of Stick style, Shingle, and Colonial Revival architecture that are worth preserving for the exceptional values they add as part of the neighborhood fabric. 2421 Durant Avenue, in particular, is one of the few remaining houses built in the Stick style in the University campus area. 2425 Durant Avenue, an example of Colonial Revival architecture with Shingle style elements, was designed by locally prominent architect, William H. Wharff, and appears to be one of his few remaining examples of pre-1906 work. The period of significance begins with its construction in 1886 and spans until 1906, when the cottage building was complete.
2. Pursuant to BMC Section 3.24.110.A.4, Commission finds that the property at 2425 Durant Avenue meets the historic value criterion for City Landmark designation as representative of an early pattern of residential development that began following the first subdivision, College Homestead Association Tract in 1866. The property's later evolution, including the 1905 construction of the flats at 2425 Durant Avenue and the

two-story cottage in 1906 is representative of the continuing residential development in the area during that period that coincided with the growth of the University.

## FEATURES TO BE PRESERVED

This designation shall apply to the subject property and the following distinguishing features of the property shall be preserved, and missing features shall be restored to the extent possible:

### Property

- Location at north side of Durant Avenue.
- Setting in a mixed-use neighborhood adjacent to the University of California, Berkeley campus.
- Spatial relationship between the two main residences – 2421 Durant Avenue and 2425 Durant Avenue and the rear cottage and ancillary building.

### 2421 Durant Avenue

- Primary elevation (south) elevation on Durant Avenue.
- Distinctive tower roof
- Horizontal and vertical band details (stickwork)
- Decorative trusses
- Fan bracket details
- Decorative wood spandrel on primary elevation
- Decorative trim above window openings
- Dormer windows
- Exterior wood siding and shingle details
- Original half-glaze front doors

### 2425 Durant Avenue

- Primary (south) elevation on Durant Avenue
- Shingle wood exterior
- Dormer windows
- Two-story bay window on south elevation
- Shingled porch with simple frieze at south elevation

### Cottage

- Primary (south) elevation at rear of 2421 Durant Avenue
- Shingle wood exterior
- Double-hung wood windows



Planning and Development Department  
Land Use Planning Division

**CITY OF BERKELEY**  
*Ordinance #4694 N.S.*  
**LANDMARK APPLICATION**

**Laura Tull Property**  
**2425 Durant Avenue**  
**Berkeley, California**



*Figure 1. Two of the three residential structures that comprise the Laura Tull Property. Anthony Bruce, 2024*

1. **Street Address:** 2425 Durant Avenue (2421–2427 Durant Avenue)  
**City:** Berkeley      **County:** Alameda      **ZIP:** 94704
2. **Assessor's Parcel Number:** 055-1878-00701  
**Block and lot:** Block 1, Lot 19 and east half of Lot 18    **Tract:** Beaver Tract Block No. 1  
**Dimensions:** 75 feet x 130 feet  
**Cross Streets:** Telegraph Avenue and Dana Street
3. **Is property on the State Historic Resource Inventory?** No.  
**Is property on the Berkeley Urban Conservation Survey?** Yes  
**Forms #:** 17975-1 and 17975-2
4. **Application for Landmark Includes:**
  - a. **Building(s):** Yes    **Garden:** Yes    **Other Feature(s):** No
  - b. **Landscape or Open Space:** Yes      **Natural:** No      **Designed:** Yes
  - c. **Historic Site:** No
  - d. **District:** No
  - e. **Other:** Entire property
5. **Historic Names:** Cyrus H. Street House; Laura Tull Flats; Laura Tull Cottage (3 structures)  
**Commonly Known Name:** not known
6. **Date of Construction:** 1886 (Street House); 1905 (Tull Flats); 1906 (Tull Cottage)  
**Factual:** Yes      **Approximate:** No  
**Source of Information:** *Berkeley Advocate*, January 1887; City of Berkeley Building Permit Application #379, April 29, 1905; *Berkeley Reporter*, September 1906
7. **Architect:** unknown [Ira A. Boynton?] (1886); William H. Wharff (1905); unknown (1906)
8. **Builder:** Carlos R. Lord (1886); A. Cross & Son (1905); unknown (1906)
9. **Style:** Stick-Style (1886); Colonial Revival (1905); brown-shingle (1906)
10. **Original Owners:** Berkeley Village Improvement Association/James L. Barker (1886); Laura Tull (1905); Laura Tull (1906)  
**Original Use:** single-family residence (1886); flats (1905); single-family residence (1906)
11. **Present Owners:** Qian Wang of Collabhome, through 2425 Durant Ave., LLC  
**Present Occupant:** unknown
12. **Present Use:** Residential, multiple  
**Current Zoning:** R-SMU    **Adjacent Property Zoning:** R-SMU, C-T
13. **Present Condition of Property:**  
**Exterior:** excellent    **Interior:** excellent    **Grounds:** excellent  
**Has the property's exterior been altered?** Minimally

## 14. Description

The Laura Tull Property consists of four structures that stand on the parcel with the County Assessor’s address of 2425 Durant Avenue: the Stick-Eastlake style Street House from 1886, the shingled Colonial Revival Tull Flats from 1905, the Tull Cottage from 1906, and a large pre-1911 shed. All three are arranged on a large lot with a 75-foot street frontage and a 130-foot depth.

**The Stick-style Street House** is two stories with a third story tucked under the roof and within a tower that rises over the entrance. The design is “Stick,” as much—but not all—of the framing is echoed on the exterior with vertical boards (the “sticks”). Besides the decorative sticks, the house sports a good deal of Victorian-era “gingerbread.” It is surfaced mainly in channel-rustic siding. (Figs. 2, 3, 4, 5)



*Fig. 2 The Cyrus Street House, built in 1886. Note the carriage house at the right. O. V. Lange photo from Beautiful Berkeley, 1889.*



*Fig. 3 The Street House in 1939. Donogh File, Berkeley Architectural Heritage Association.*

*Fig. 4 The Street House. Anthony Bruce, 2024.*



*Fig. 5 The Street House in 1974. Elizabeth Crews photo, Berkeley Architectural Heritage Association.*

Defining the two stories, a frieze runs around the house, its upper horizontal piece at the level of the second-story window sills. Within the frieze band are narrow vertical strips of wood, evenly spaced. The frieze is repeated beneath the bay window at the front of the house.

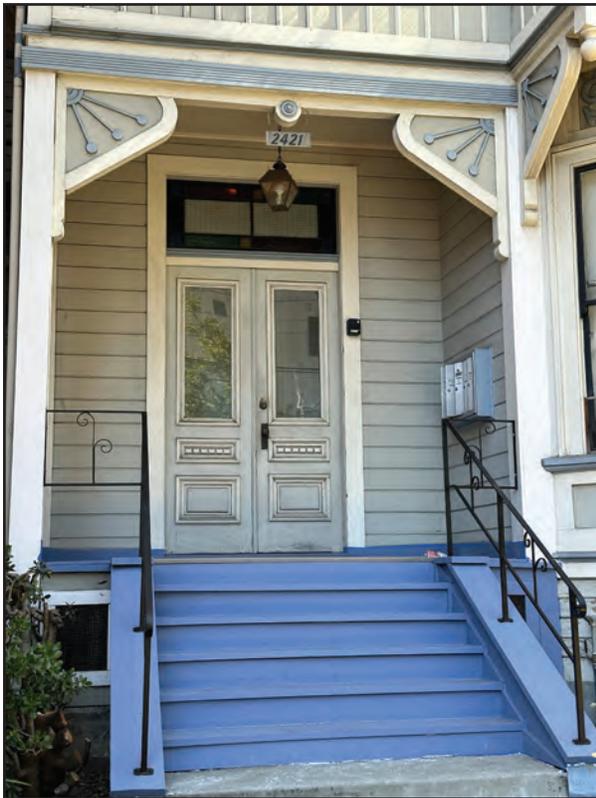
The east two thirds of the street façade is taken up with a gable-roofed two-story section that projects a few feet from the main body of the house. There is a pair of tall, narrow double-hung-sash windows in the center of the second story; the pair is crowned by an elaborate mold-

ing. Below is a large slanted bay that is the full width of this section. The center of the bay is on the same plane as the wall of the second story, and the double-hung window in the center is so broad as to be almost square. Above the window, and set within stick framing, are two identical scroll-sawn panels. (*Fig. 6*) Each is a confection of curlicues with a built-up circular motif in the center. The same panels appear above the narrower windows on the slanted sides of the bay. Here they are almost hidden from view by fan-like brackets that give the im-



*Fig. 6 Scrollsawn ornament in the panels above the windows in the bay. Anthony Bruce, 2024.*

pression of supporting the second story. (*Fig. 7*) Three sun-rays ornament the surface of the fans. Drop ornaments accentuate the two corners. The wall section within the gable is surfaced with fish-scale shingles. Curved brackets support the eaves at the corners. A Stick-style ornamental device fills in the upper part of the gable and is set at the outer edge of the eaves, its shadows cast against the wall increasing its three-dimensional effect.



*Fig. 8 Street House entrance. Anthony Bruce, 2024.*



*Fig. 7 The fan-like brackets at the window bay. Anthony Bruce, 2024.*

The entrance is to the left of the bay window; an inset porch, reached by stairs, leads to the front door. (*Fig. 8*) More of the fan ornaments define the upper corners of the porch. The entrance is a double door, each with a window panel above and wooden panels below. A transom window above of patterned glass is framed with bright-colored glass pieces. The entrance side of the front façade is designed to resemble a tower. The second story has a single tall, narrow window, and supported above is a narrow roof overhang. Rising above is the pièce de résistance: the tower top with a high pyramid-shaped roof. Originally, the wooden roof shingles were applied in bands of different shaped shingles and the bands were painted alternately light and dark colors. (*Fig. 2*) It is now covered with composition roofing. The roof is pierced by dormers on the south and west sides. The windows are tall and narrow with the upper sash ending in an angle arch. The dormers are topped by simple gable roofs. The visible east side of the house continues the materials and motifs of the façade. (*Fig. 9*) Toward the rear of the house, a decorative gable

(the end of a cross gable) rises above an original pair of second-floor windows. These have since been joined by a small window to the left of these. A similar window arrangement is on the first floor. A chimney (one of at least two) rises on the east side, serving a fireplace in the front parlor. It was seismically retrofitted and either rebuilt or the bricks surfaced in stucco. Four diamond-shaped three-dimensional floral pieces (terra cotta? metal?) on the lower part of the chimney were retained, but the heavy, corbeled chimney top (*Fig. 2*) was removed in the retrofit.

There is a two-story projecting bay on the west opposite the gable on the east. This bay most likely corresponds with the placement of the dining room. The part of the house that is visible from the street contains the first floor public rooms. Slightly inset from the west and east walls is another section almost as large as the front half. Its roof does not rise as high as the front and has small windows tucked under the roof overhang on the second floor. This is the less-ornamented utilitarian wing that would have contained the original kitchen. At the very back is a one-story enclosed utility porch with a hip roof. (*Fig. 11*)

The Street House was converted to six apartments in 1943. Interior details, such as elaborate mid-Victorian window frames, wainscoting, fireplaces, and colorful patterned fireplace and hearth tiles, were retained in the conversion. (*Fig. 10*)



*Fig. 9. The front and east elevation of the Street House  
Anthony Bruce, 2024.*



*Fig. 10 Fireplace in former back parlor. Online rental listing photo.*

*Fig. 11 The rear wing of the Street House and utility porch; western section of the garden; and front of the Tull Cottage (partly hidden behind a camellia). Photo from a real estate rental listing online.*



**The two-story Colonial Revival Laura Tull Flats** stands on the eastern half of the property, and was assigned the two addresses of 2425 and 2427 Durant. (*Fig. 12*) It was built as two full-floor flats. Befitting the Colonial Revival style, the building is boxy in shape and has a hip roof with hip-roof dormers. As a Colonial Revival variant, it is sheathed in wood shingles (painted). The eaves are broad and a plain frieze about the same width of the eaves runs beneath. A simple molding unites the two elements. A two story slanted bay fills the lefthand portion of the front elevation. The bay ends before it reaches the frieze and it is topped by slightly pitched roof. A similar two-story bay stands near the rear of the west elevation.

This Colonial Revival house is almost completely devoid of Classical ornamentation except at the two entrance porches. Here the hip roof over each porch is supported by two square posts and two squared pilasters against the wall of then house. These are all designed as abstracted Classical columns with fluting, built-up bases, and moldings at the top that are suggestive of capitols. The entrance porch leading to the second floor is on the right of the street façade. The steps and porch floor are brick. (*Fig. 14*) The entrance to the main floor is on the west. The steps are wood. (*Fig. 15*)

All windows are double-hung sash. Each story on the Durant front has a pair of windows and three windows in the slanted bay. The frames around windows and doors have mitered corners. This quality detail is carried out on the interior, lending a graciousness to the rooms. When the building was converted to



*Fig. 12 The Laura Tull Flats, 2425-27 Durant Avenue. Anthony Bruce, 2024.*



*Fig. 13 The Tull Flats in 1939. Donogh Real Estate File, Berkeley Architectural Heritage Association.*



Fig. 14 The Laura Tull Flats, showing the east side of the building. Anthony Bruce, 2024.

eleven apartments in 1944, most of the original woodwork and doors were retained, including the “tiger maple” fireplace mantel that Olive Maddock proudly showed her tenants when they arrived at her door to pay rent. (Fig. 16)

The third and newest residential building on the property is **the Laura Tull Cottage** at 2423 Durant Avenue, built in 1906. The two-story dwelling sits at the northwest corner of the property behind the Street House. It is not vis-



Fig. 15 The west side of the Tull Flats, showing entrance to the first floor and the front and side bays. Anthony Bruce, 2024.

Fig. 16 The “tiger maple” mantel in the former first-floor flat of the Tull Flats. From an online rental site.

ible from the street. Photos showing only part of the structure can be found on online real estate listings. It appears to be a simple, shingled Craftsman-style dwelling with a gable roof running the length of the house. There is a possible sleeping porch at the west end that may have a hip roof, judging from an interior photo.

The windows are mostly double-hung sash with similar mitered frames to those on the Tull Flats (did the same contractor build both?). The window frames have an additional flared molding at the top, most often associated with Colonial Revival buildings. Windows in the sleeping porch are single-pane and almost square. Entrance doors feature a vertical light with a substantial sill-like molding beneath the glass. The front porch is entered by a flight of wooden steps at the right. A bulkhead wraps around the other two sides, and two square posts, with moldings at top and bottom, support a simple roof. Two angled braces, jutting from the side of the house, also act as supports.

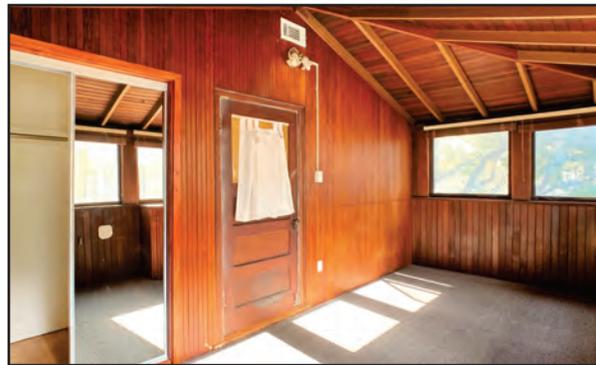
The Tull Cottage was converted to upstairs and downstairs flats in 1928. An exposed wooden stairway on the east side of the building leads to the entrance to the upstairs flat (2423-A Durant Avenue). The interior features Colonial Revival style door and window trim, and an unpainted wood sleeping porch room with exposed rafters.

There is a fourth structure on the property—a **one-story shed** of wood-frame construction—at the northeast corner. As is the case with the cottage, the shed is not visible from the street. Sanborn maps and an aerial view online show it as a long, gable-roofed structure, with a north-south orientation. The shed was standing as early as 1911, and was most likely built before 1909. It is located in the spot where the two-story carriage house once stood.

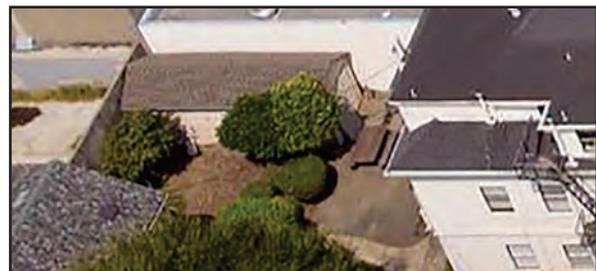
The structures on the Tull Property are meticulously maintained, both inside and outside. Viewed from the street, the buildings are enhanced by flower beds, shrubs, and manicured



*Fig. 16 Main entrance to the Tull Cottage. From an inline rental site.*



*Fig. 15 Sleeping porch room at the west end of the second floor of the Tull Cottage. From an online rental site.*



*Fig. 16. The Shed at the northeast corner of the Tull Property, partially hidden by shrubbery. From an online rental site.*

lawns. The landscaping in the rear includes lawn, shrubs, large camellias, ferns, flowering plants, and a live oak, which stands between the back of the Street House and the front of the Tull Cottage. Old-fashioned concrete walkways wend their way through the property connecting the structures. As evidenced by photographs taken of the property through the years, a garden setting has been an important feature of the property to the various owners.

### Features to Be Preserved

The structures that comprise the Tull Property have been maintained in excellent condition over the last 137 years, and the buildings retain most of their original features, which are each essential to the whole. Therefore, most of the features of the Tull Property are significant, including, but not limited to:

- the original windows, framing, and sills
- the siding
- the roof types
- the dormers on the Tull Flats
- the bay windows
- the ornament on the Street House
- the stained glass window in the Street House
- the ornament on the Street House
- the pillars on the Tull Flats
- the tower on the Street House
- the front doors on all three houses
- the concrete garden walkways



Fig. 17 The Laura Tull Property. Photo from an online rental site.

## 15. History

### Beaver Tract Block No. 1.

San Francisco capitalist George W. Beaver owned block eleven of the College Homestead Association Tract, subdivided in 1866 by the trustees of the College of California. This was Berkeley's first subdivision, created to raise funds to support the construction of the college campus. In 1884, Beaver re-subdivided the northern half of his property bounded by Dana, Bancroft, Telegraph, and Durant, as the Beaver Tract Block No. 1. Acting as his agent, Berkeley pioneer James L. Barker filed the subdivision map with the county.

The first house built (sold immediately to Matthew Gilbert Upton, editor of the *San Francisco Bulletin*, and is no longer extant) in the new Beaver Tract stood at 2419 Durant Avenue. It was built in 1884 by the Berkeley Village Improvement Association, owned by James L. Barker who was instrumental in the development of Berkeley. James L. Barker was a San Francisco businessman when, in 1867, he invested his profits in a large tract of land west of Shattuck Avenue that he purchased from Francis Kittredge Shattuck. He induced the Central Pacific Railway to build a spur line

into downtown Berkeley in 1876; he helped found Berkeley's first newspaper, the *Advocate*, in 1877. And the following year he was signer of Berkeley's incorporation papers and delivered them to Sacramento. In 1877 he built his own large Italianate residence on his land, facing Dwight Way (demolished by Herrick Hospital in 1976). He opened his real estate development company at Shattuck and Dwight Way in 1880 ("Plans furnished and houses built for cash or on installment."). Barker's company built many houses in his own tract and elsewhere in Berkeley. Both his Barker Block and India Block are City of Berkeley Landmarks.

The second house to be built in the subdivision was the residence of Mrs. Martha L. Crow, built in 1885. It stood at Durant and Dana.

#### **The Street House (2421 Durant Avenue).**

The third house to be built in the Beaver Tract still stands at 2421 Durant Avenue. It is the picture-perfect Stick-Eastlake style Cyrus Street House, and is one of the few houses in Berkeley remaining from the 1880s. Prominent



*Fig. 19 Cyrus Holiday Street with his four sons and a grandson. Photo found online.*



*Fig. 18 The Upton and Street houses seen standing together, facing Durant Avenue on Block 1 of the Beaver Tract. To the right is the Congregational Church (Clinton Day, architect, 1883) at Durant and Dana.*

*Louis L. Stein Collection, Berkeley Historical Society.*

Berkeley contractor Carlos R. Lord began construction of the house in the summer of 1886. It was built by James L. Barker's Berkeley Village Improvement Association. It is difficult to determine whether the Upton and Street houses were built as speculative ventures (both seem too grand for "spec" houses), or whether the clients commissioned the houses through Barker's company. (*Fig. 18*)

The first residents of 2421 Durant never owned the house, but continued to lease the property from the Berkeley Village Improvement Association. By at least October of 1887, Cyrus Holiday Street (1844–1913), his wife, and their four sons were in residence in the new house, if they had not, in fact, moved in upon completion of the house.

A few years after the house was built, it was sold to Reuben Rickard, a successful mining engineer and a well-known Berkeleyan at the time. The Rickard family lived in a gracious Italianate house set in a large garden at Bancroft and College. Reuben Rickard was President of the Berkeley Board of Trustees twice in the 1890s. He died in 1896 on a mining business trip to Australia. Although his descendants continued to own the house on Durant until 1904, they did not reside in it.

Cyrus Street (*Fig. 19*) was considered a leader in the advancement of California, and was an ardent promoter of world peace. He and his wife Ann were natives of Iowa who came to California in 1874. Cyrus' main occupation was always real estate, in San Francisco and later as secretary of the Berkeley Improvement Company on Center Street, however in 1881 he helped organize the Immigration Association of California, which brought over 200,000 settlers from around the country to California. He was a co-founder of *The Argonaut*, a leading California literary and political magazine which was published until 1956. Later in life, Cyrus Street worked for world peace. He was editor of the magazine, *The United Nations*, and was one of the founders (and vice-president) in 1912 of the Organization of the International Association of the Friends of Peace.

Tragedy struck within a few months of the family's move to the Durant house: Ann Honn Street died in November of 1887. The Street boys were not without a mother for long, as their father married Mary Samantha Honn, Ann's sister, the following year. The Street family lived in the Durant House until about 1895. While there, Cyrus worked in real estate in San Francisco and was secretary of the Berkeley Improvement Company.

After residing in San Francisco for about five years, the Streets were back in Berkeley, this time in another rented house at 1517 Shattuck Avenue. In this home, Cyrus Street died in 1913 and Mary died in 1917. This is the same 1902 house that was later remodeled into Chez Panisse.

Meanwhile on Durant Avenue, the former Street home was sold in August 1904 to Mrs. Laura Yetter Tull, whose husband Lewis Reuben Tull had died the year before. The Tulls lived in Napa where Lewis was the proprietor of a produce market. They most likely had moved to Berkeley in 1900 so their daughter Henrietta Marilla could attend the University (she was



*Fig. 20 Henrietta Marilla Tull Austin. 1906 Blue and Gold.*

Class of 1906). (*Fig. 20*) As was common for widowed women, Laura Tull invested in real estate and moved from the family's apartment at 2320 Bancroft to the commodious house at 2421 Durant.

### **The Tull Flats (2425 and 2427 Durant) and Tull Cottage (2423 Durant).**

The following year (1905), Mrs. Tull commissioned architect William Wharff to design a large brown-shingle house (2425 and 2427 Durant) consisting of two flats on what had been the garden and driveway of 2421 Durant. She moved into the upper flat and her daughter moved into the lower flat after the building was completed that fall. The next year (1906), Mrs. Tull built a two-story cottage at the back of the property (2423 Durant). This seems to have been intended as the home for mother and daughter.

In 1910, Henrietta married Dr. Walter Pike Austin, a University of California graduate, in a ceremony at her mother's home, with nearly 100 friends and relatives in attendance. The couple settled in Salinas, where Walter practiced dentistry.

A year before her death in 1926, Laura Tull converted the rear cottage, at 2423 Durant, into a duplex. Henrietta inherited the property on Durant, and moved there after her husband died in 1928, living in the lower of the rear flats. In the fall of 1943, Henrietta Austin converted the Street House (which had remained until then a single-family residence) into six apartments through a federal government Home Owner's Loan Corporation loan, likely for government-approved wartime housing. The following year, through the loan, Mrs. Austin



Fig. 21 Olive G. Maddock, fifth owner of the property. Photo found online.

made eleven apartments in what had been two flats at 2425 Durant. According to one student tenant who resided in the house in the 1980s, the house at 2425 “was cut up into apartments to house Berkeley scientists during World War II, who may have helped work on the A-bomb.” The architect for the conversion

was Loy Chamberlain, who was from an old Berkeley musical family and had grown up a few blocks away on Ellsworth Street.

#### **Post-War Years Under Olive Maddock.**

The next chapter of the property began after the end of WWII when Miss Olive G. Maddock moved from the state of Washington to Berkeley and into the lower flat of the rear cottage, which Henrietta had vacated in favor of one of the new apartments at 2425 Durant. Olive Maddock was a secretary at various companies, eventually working as Executive Secretary at the Head-Royce School. (Fig, 21) A year after Henrietta Austin’s death in 1972, Miss Maddock became the next owner of the entire property, and moved into the manager’s flat at 2425 Durant. Perhaps her eventual ownership was arranged with Henrietta. They would have known each other for thirty years, and perhaps Henrietta considered that Olive would be a careful custodian of the property. She later told of free speech activist Mario Savio having been a tenant. Miss Maddock died in 1998.

#### **Restoration.**

In 2000, Jason Wallace, the then-owner of the property, received an honor from the Berkeley Architectural Heritage Association (BAHA). A few years earlier, in 1995, a three-alarm fire had caused over \$100,000 worth of damage to the Street House. Wallace’s subsequent restoration was recognized with a Preservation Award from

BAHA along with this citation, “The house was built in 1886 on speculation and is one of the few surviving Stick style houses with a tower in Berkeley. It stands between Telegraph and Dana, a block that has seen much more demolition than preservation, and was featured on the cover of BAHA’s 1990 calendar ‘Proud Survivors.’ It was damaged by fire and has now been returned to its former glory.”

#### **Present Day.**

Fast forward to August 13, 2024 when *SF YIMBY* published a story about a planned 20-story apartment building designed by “Yes Duffy” an “activist-architect” for this site on Durant Avenue. The article states, “Three existing residential buildings owned by 2425 Durant Ave., LLC, will need to be demolished. Rhoades Planning Group, a prominent Berkeley-based land use consultancy firm, is responsible for the application.” The article is, indeed, referring to the Street House and the two buildings built by Laura Tull, although the *YIMBY* writer seems to think they were all built in 1925! What a pronouncement, especially after the property has received such loving care for the past 137 years!



## 16. Significance

The Laura Tull Property, which is significant as a residential enclave and peaceful green oasis situated only three doors from busy commercial Telegraph Avenue, meets several of the criteria for designation as a City of Berkeley Landmark.

**Educational Value.** The Laura Tull Property is an instructive reflection of the changes in the Beaver Tract and along Telegraph Avenue between the time the Street House was built in 1886 and when the flats and cottage were built. The area had been a neighborhood of mostly single-family homes, and Telegraph, itself, was residential. This began to change with the construction of the Marshall Block at Telegraph and Bancroft in 1904, at the northeast corner of the Beaver Tract. The filling in of the Tull Property with, first, the flats in 1905 and then the cottage in 1906 reflects the emerging urban character of the area south of the campus at that time. The structures on the property have not changed in exterior appearance since 1906 and have been continuously maintained. The Tull Property remains today as an intact piece of Berkeley's urban history.

The Cyrus Street House is one of only three intact single-family residences on the north side of Durant Avenue between Milvia and College. All three survivors were built during the early years of the South Campus neighborhood when Durant Avenue was a street of family homes. The others are the Cornelius Beach Bradley House (Edgar A. Mathews, 1897), 2639 Durant Avenue (City of Berkeley Landmark); and the Marshall Albee House (c. 1902), at 2415 Durant Avenue.

**Architectural Merit.** The Street House is significant for being one of the few Berkeley houses remaining from the 1880s, as well as one of the few remaining houses that was designed in the Stick-Eastlake style. Many of the 1880s houses were built in the area south of the University campus and have not survived the tre-



*Fig. 22 The Michael Curtis House, 1505 Hopkins, built by Lord & Boynton in 1888 (demolished). O.V. Lange photo, Beautiful Berkeley, 1889.*

mendous changes in this section of town in the 20th Century. Even in the 21st Century these early houses are not safe from destruction. For example, the University tore down the Warren Cheney House (1885) for a temporary parking lot in 2010.

The house is an excellent local example of a Stick-Eastlake style residence. Its distinctive tower gives verve to the design and prominence to the house.

**Cultural Value.** The Street House is also significant for its connection to important Berkeley figures. Cyrus Holiday Street, the first resident, was a leader in the world peace movement; Reuben Rickard, second owner of the property, was a mayor of Berkeley; Mario Savio, a later resident of one of the Tull Property houses, was important in the Free Speech movement at the University of California in 1964; and Berkeley pioneer James L. Barker, the builder of the Street House are all figures of prominence. The Street House is a rare documented example of the type of house built by Barker's real estate company, the Berkeley Village Improvement Association. James L. Barker was a civic-minded businessman who did much for Berkeley. Two of his commercial buildings are City of Berkeley Landmarks.

The Street House is also significant as possibly being the work of Berkeley architect Ira A. Boynton. The construction notices that appeared in the *Berkeley Advocate* rarely included the name of the architect or designer, and the notices for the construction of the Street House were no exception. It is fortunate that the name of the contractor, Carlos Lord, was mentioned. According to the *Advocate*, Mr. Barker's first house in the Beaver Tract, the Upton House of 1884 next door, was built by "Mr. Boynton." A few years later Ira Boynton and Carlos Lord formed the contracting partnership of Lord & Boynton, and as such were the builders of the Michael Curtis House on Hopkins Street in Per-

alta Park in 1888 (*Fig. 22*). The Curtis House is almost identical to the Street House, and with Boynton's previous connection to Barker, it suggests that Boynton may have been the designer of the Street House. Ira A. Boynton's Brackenridge, Luttrell, and Payson houses are all City of Berkeley Landmarks.

The Laura Tull Property on Durant Avenue, and the buildings thereon, give interest and historical texture to this Southside urban streetscape. The Laura Tull Property is very much worthy of landmark designation and preservation.

**17. Historic Value—** City: Yes Neighborhood: Yes  
**Architectural Value—** City: Yes Neighborhood: Yes

**18. Is the property endangered?** Yes! There was a proposal to demolish the Laura Tull Property published in the August 13, 2024 edition of *SF YIMBY*.

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**20. Recorder:** Anthony Bruce for the Berkeley Architectural Heritage Association,  
P.O. Box 1137, Berkeley, California 94701  
baha@berkeleyheritage.com; 510-841-2242

**21. Date:** October-November 2024

**22. Addenda:**

“The Berkeley Building and Improvement Association [sic] is preparing plans for a modern dwelling which will be built on the Beaver tract, near the Congregational church. It will cost about \$3,500.”

*Berkeley Advocate*, July 24, 1886

“C. R. Lord has taken the contract to build a house for Mr. J. L. Barker on Durant avenue, near the Congregational Church. It will cost about \$3,500, and from the plans, we judge it will be one of the handsomest in that already beautiful neighborhood.”

*Berkeley Advocate*, August 14, 1886

## Berkeley Advocate

OFFICIAL TOWN PAPER  
PUBLISHED WEEKLY

H. N. MARQUAND, Proprietor  
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Saturday January 1, 1887

An automatic postal box is being put up on the lamp post in Brooklyn. By dropping a coin through the proper slit a postal card and pencil are brought up so that a note may be at once written. If a postage stamp is wanted the dropping of two pennies will bring that to view. Postal folder envelopes are also supplied in the same manner. These convenient boxes are already in use in London.

Alameda is squealing like a pig under a gate over Oakland's craving for a consolidation of the three burgs—Berkeley, Oakland and Alameda—besides adjoining territory. Now comes Berkeley with blood in her eye, and notifies her to keep her hands off. Verily the two cities next door to the "Athens of the Pacific" don't want any closer acquaintance with her. —Exhausto.

**Frank Leslie's Popular Monthly.**

As a war in Europe may be announced any day by cable most people are interested to know something about the great states which will first be involved. "Francis Joseph I, and the Austria-Hungary Empire" by George M. Towle, gives, in Frank Leslie's Popular Monthly for January, a clear and well-written picture of one power. "When Great Britain Turk," by Occyanth, tells the story of another. "Footprints of Washington in 1763," written and illustrated by Mrs. O. Ingersoll Gero, is an attractive article of our own land and its greatest man. "Ivan the Terrible," is a sketch of a strange ruler of Muscovy. "Elsa in Eldersland" will charm the young. A new novel by Clarence M. Hounelle, "The Man of the Side," depicts a remarkable well, seizing the reader's attention by the apparently strange fortitude of the hero. Other stories will win readers, as will the account of "Hetz," Its Monuments and Memorials, and one of Meissen, where Dresden-China is Made. An article on the Specterum, "Sunlight Unraveled," by Arthur Abbot, is science made as interesting as a novel. The whole January number of this periodical, with its attractive reading and charming pictures, is a prize for young and old.

The Contra Costa Gazette vigorously protests against the proposition to annex a part of that county in case Oakland switches off from the interior. The Gazette remarks: "Thus it will be seen that after Oakland has helped herself to all she wants just at present, no one else Pleasanton is to come in for a big slice on the other, and there are several towns yet to hear from. We trust Livermore will be satisfied with Byron and Brentwood, and that Hayward will be sufficiently modest to ask for nothing more than the San Ramon valley. In the meantime let us all devoutly pray that Mt. Diablo be not taken up bodily and whisked off to West Berkeley for the better accommodation of Oakland sightseers."

### BERKELEY IMPROVEMENTS.

Some of our neighbors and a few home croakers have the idea that Berkeley is improving but slowly,—to correct any impression of this kind we have concluded to give a resume of the improvements during the past year and also of the numerous advantages of Berkeley enjoyed by no other town on the coast.

Our list of improvements and buildings is incomplete owing to the difficulty of obtaining information.

For the many poor streets in town we have put one ward of a policy to offer knowing as we do that every other town and city in the state is precisely in the same condition, and that no improvements in streets can be made excepting by the individual exertions of the property owners themselves, until the constitutionality of our present law is definitely settled by the Supreme Court.

The following is a list—incomplete, as we have already intimated—of the buildings erected and the improvements made in town during the past year, to wit:

- 1—6-room cottage, Oxford street, T. P. Du-naud, A. H. Broad, contractor \$1800.
- 1—7-room cottage, Haste street, Mrs. Cum-minus, A. H. Broad, contractor \$1,000.
- Observatory, University, Ch. A. H. Broad, contractor \$2,000.
- Addition to Gymnasium, University Cal. A. H. Broad contractor \$2,500.
- Improvements to North Hall and other buildings, A. H. Broad contractor \$2,000.
- 2-story, Center street, P. K. Shattuck, A. H. Broad contractor \$1,500.
- 2—4-room cottages, Blake street, P. K. Shat-tuck, A. H. Broad contractor \$3,400.
- 1—7-room cottage Dwight way, Geo. Edwards, A. H. Broad contractor \$3,400.
- Addition to house of Godfrey Rhodes, Oxford street, A. H. Broad contractor \$1,000.
- 1—4-room cottage, Parker street, Antonio Ahwinneno, A. H. Broad contractor \$925.
- 1—6-room cottage, A. H. Broad contractor \$3,000.
- 1—7-room house, Miss Fannie Stewart, North Berkeley, A. H. Broad contractor \$1,700
- 1—4-room cottage, Francisco street, C. Bam-craft, A. H. Broad contractor \$1,100.
- 1—7-room cottage, Baanarit way, J. M. Irenad, A. H. Broad contractor \$1,600.
- 2—5-room cottages, Alameda way between 5th and 8th streets, E. F. Niebaus, C. R. Lord, contractor \$3,000.
- Carpenter shop, University, Cal. C. R. Lord, contractor \$500.
- Dwelling, Walnut street, near Vine, Capt. McCreary, C. R. Lord contractor \$2,000.
- 1—two story house, Dwight way near Ells-worth street, Miss Mary McInnis, C. R. Lord contractor \$4,000.
- 1—8-room house, 8th street near University avenue, John Love contractor \$2,000.
- 1—cottage, Page street, R. H. Walton, J. R. Johnson contractor \$1,500.
- 1—7-room house 5th street near Holyoke, Anatole Mercet, E. R. Forsyth contractor \$1,800.
- 1—4-room cottage, 7th street, Andrew Moore, E. R. Forsyth contractor \$1,200.
- 1—6-room cottage, Bristol street, E. R. Nie-baus, C. R. Lord contractor \$3,500.
- 2—6-room houses, Addison street, near Oxford, J. L. Barker, C. R. Lord contractor \$3,000.
- 1—7-room cottage, Kews and Melvia streets, Mr. Loue, C. R. Lord contractor \$2,000.
- 1—10-room, 2 story house, Beaver tract, Dur-ant avenue, J. L. Barker, C. R. Lord con-tractor \$4,000.
- 1—12-room, 2 story house, Atherton street, Mrs. C. K. Beal, C. R. Lord contractor \$5,500.
- Block on Shattuck avenue consisting of 4 stores and living rooms on first floor and 16 rooms on second floor, L. Gottball, C. R. Lord contractor \$7,500.
- 1—5-room cottage, Delaware street, Jacob Rosenheim, C. K. Lord contractor \$1,500.
- 2—cottage, 5th street, near Holyoke, C. W. Davis \$5,000.
- Cottage on 4th street between Folsom and Holyoke, J. Pea, \$1,200

The University situated in our midst, with its excellent corps of professors and in-structors, its large and constantly increasing library, its magnificent buildings and grounds is a constant incentive to the best work in all our schools, both public and private, and the results speak for them-selves. The people of Berkeley recognizing the advantages of this institution and its connection with the public school system of the state have since the incorporation of the town, kept one of the teachers in the University upon the Board of Education. In no town of the state are so many advan-tages combined.

Rapid communication, equal to that of Oakland, with San Francisco renders Berke-ley with its other advantages a better place for homes than Oakland or any one of the several suburban towns. Fine building sites are now purchased at reasonable rates, with prices constantly appreciating.

In the foregoing we have endeavored to give our readers a slight account of the im-provements and advantages of Berkeley.

### UNIVERSITY REGENTS.

An adjourned meeting of the Board of Regents of the State University was held yesterday afternoon at the Mechanics' Institute. There were present Regents Winans, Wallace, Carr, Rodgers, Ains-worth, Hallidie and Stebbins. On motion of Regent Hallidie, Regent Wallace was called to the Chair.

The Finance Committee reported favorably upon the application of D. C. Melton for a loan of \$30,000 at 5 per cent, per annum for three years on real estate situated in San Francisco, and adjoining the Mechanics' Institute, val-ued at \$100,000. The Board authorized the loan.

The Finance Committee also reported a deficit of \$731.93 in the Land Fund, occasioned by the settlement with the Forster heirs, and recommended that the deficit be made good from the General Fund. It was so ordered.

Regent Winans, of the Land Commit-tee, stated that the Board had previously refused to accept \$8,000 in settlement from the Forster heirs and that after some two years loss of interest thereon they now accepted \$4,681.07 and offered a resolution to the effect that before a patent issue to the Forster heirs they shall be required to execute a release of all demands and liabilities that they may now entertain against the Regents. This resolution, he said, was made necessary by the fact that the Forster heirs had agreed to pay to the Regents \$4,681.07 in settlement of the claim against them but under protest. The resolution was adopted.

An application of Lieutenant Harrison to take the University cadets to Sacra-mento, in order to be present at the in-augural ceremonies, the cost to be \$1,200, was denied.

A motion was made by Regent Rodgers that application should be made to the Legislature to appropriate the following sum for use of the University during the ensuing year:

|                                                                    |         |
|--------------------------------------------------------------------|---------|
| For the mechanical department, for equipments, machinery, etc..... | \$2,000 |
| For the mining department.....                                     | 5,000   |
| For the viticultural department.....                               | 10,000  |
| For the biological department.....                                 | 6,000   |
| For the mineralogy and geology depart-ment.....                    | 1,750   |
| For the lecture room and other buildings                           | 3,450   |
| For insurance, extending over five years                           | 11,500  |
| For work on grounds, roads and tree planting.....                  | 10,000  |
| For plumbing and painting.....                                     | 10,000  |
| For stumps, brush and other trees and                              |         |

Fig. 23 "1—10-room, 2 story house, Beaver tract on Durant avenue, J. L. Barker, C. R. Lord, contractor \$4000." The Street House was included in a year-end list of all houses built in Berkeley in 1886. "Berkeley Improvements," Berkeley Advocate, January 1, 1887..

TOWN OF BERKELEY

Application for Building Permit, No. 377

Town of Berkeley,
COUNTY OF ALAMEDA,
STATE OF CALIFORNIA } ss.

The undersigned respectfully petitions, under the Ordinances of the Town of Berkeley, for a Permit to do the following work, viz:

To construct a 2 flat frame dwelling (2 stories) on north side of Durant Ave about 100 ft west of Telegraph Ave

and, being first duly sworn, deposes and says, that the true cost of the work contemplated to be done under this application is estimated to be \$ 5200.

That said building is to be used as dwelling
That the name of the Owner is Mrs. Laura Tull
Address Ingersoll

That the name of the Architect is W. Cross & Son
Address Berkeley

Subscribed and sworn to before me

APR 29 1905

C. S. Merrill
Town Clerk

W. Cross & Son

The applicant for the foregoing Building Permit, having paid the necessary fee in connection therewith, the Fire Chief of the Town of Berkeley is hereby authorized to issue the proper Permit in writing, in accordance with the provisions of the Ordinances of the said Town of Berkeley.

Fig. 24 City of Berkeley Building Permit Application No. 377, April 29, 1905.

contrary to their expectations, the month just ended exceeds that of June by twenty applications.

9-4-06

# Astonishing Activity in Local Building Market Makes Total of Contracts Let in August Exceed June's Record Run

reports

The greatest number of buildings permits ever issued in a single month in the history of Berkeley were granted by Town Building Inspector B. P. Bull for the month ending August 31. During the month of June 133 permits were issued and those who have been watching the progress of the town held their breath with astonishment at the record then made. Last month's record exceeds that of June by 20, giving a total of 152 building permits granted.

The fees, however, do not come up to that of the month of June, the reason for this being attributed to the fact that there have been no large building permits issued. In nearly every instance the cost of buildings specified do not exceed \$2500 and many are below that amount. This

\$1500; G. S. Hoover, cottage, Dana and Ward, \$2450; Mrs. L. Full, cottage, Durant ave., \$1620; H. P. Sheridan, dwelling, Ellis \$1350; G. P. Baxter, dwelling, Euclid ave., \$5595; D. Winter, dwelling, Edith and Vine, \$1900; W. E. McChesney, dwelling, 2605 Aetna, \$1000; Berkeley Construction Company, dwelling, Edith and Cedar, \$1400; E. Hinkwood, dwelling, Austin and Eighth, \$2000; A. Turpin, dwelling, Addison and Eighth, \$1800; Louis Carr, stores, 1723 Felton, \$1500; E. Judges, dwelling, 2408 Fulton, \$1500; L. L. Cushing (2), dwelling, Forest and Piedmont, each \$1762; N. Norwood, dwelling, Folger and San Pablo, \$1500; A. W. Carbus, dwelling, Fairview Tract, \$1760; G. Lieber, dwelling, Vine and Bonita, \$2500; A. W. Taylor, dwelling, Grove and Vine, \$3400; Mary Helm, dwelling, Grayson and Tenth

(Special Santa ing Mayo ley withd presidenc League c session strong m point of reasons the cont the disa from all result O ton, who moved u and Mr. presiden next to This act Mayor o play. F support easily station this he officers their na This ge Rickard hour an from th ousing

Fig. 25 "Mrs. L. Full [sic], cottage, Durant ave., \$1620." Mrs. Laura Tull's cottage, included in the list of Berkeley building contracts for August 1906. "Astonishing Activity in Local Building Market Makes Total of Contracts Let in August Exceed June's Record Run," Berkeley Reporter, September 4, 1906.



*Figs. 26, 27, 28, 29 Four photographs of the Cyrus Street House taken by Winfield Scott Wellington in June 1962. Wellington was a professor in the Decorative Arts Department at the University of California, as well as a practicing architect and furniture designer. In 1962 he photographed Victorian houses in the East Bay that he felt noteworthy.*

*Winfield Scott Wellington Collection, Berkeley Architectural Heritage Association*

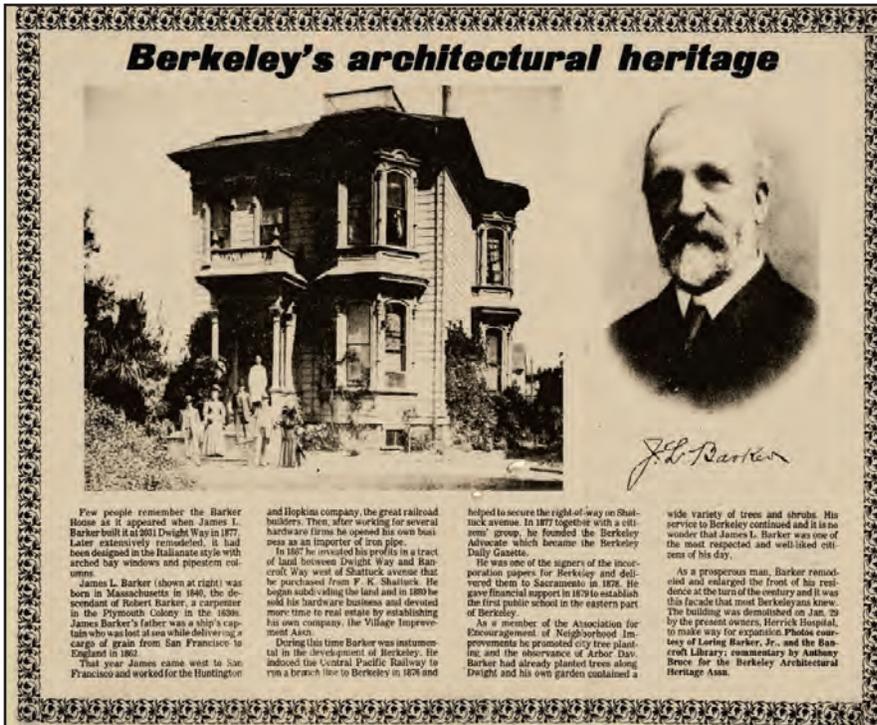


Fig. 30 Article by Anthony Bruce on James L. Barker from the Berkeley Daily Gazette, February 9, 1976.



Fig. 31 Article by Susan (Dinkelspiel) Stern Cerny featuring the Cyrus Street House from the Berkeley Voice, February 22, 1990.

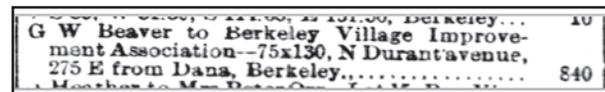


Fig. 32. Notice of James L. Barker's company purchasing from George W. Beaver the lot on Durant on which was built the Street House. Oakland Tribune, July 15, 1885.

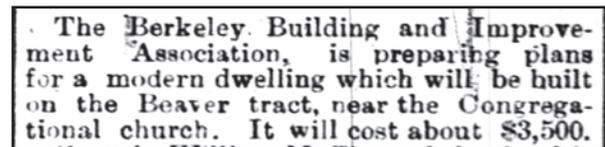


Fig. 33. Notice of James L. Barker's company planning the Street House. Oakland Tribune, July 20, 1886.

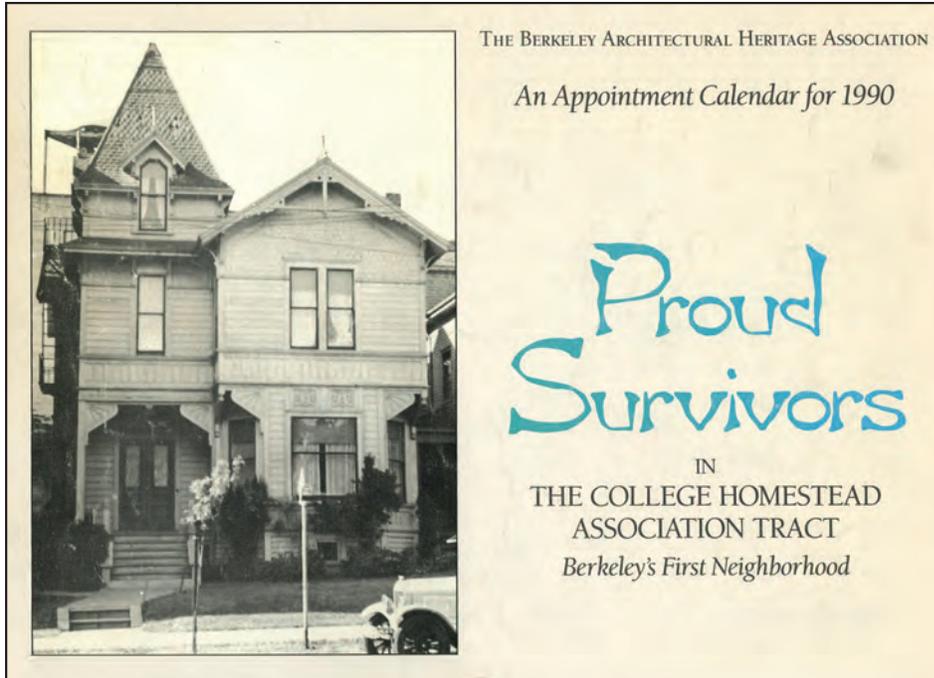


Fig. 34 The BAHA calendar for 1990, showing the Cyrus Street House on the cover.

Fig. 35 History of the College Homestead Association Tract from the BAHA calendar for 1990.

## THE COLLEGE HOMESTEAD ASSOCIATION TRACT

The College Homestead Association Tract is the first recorded subdivision in Berkeley. It was recorded in the County Recorder's Office on May 15, 1866 by the College of California, a small private college in Oakland that had purchased a large parcel of land in what is now Berkeley so that their campus could be moved out to the "country." Half their land was to be used for the campus; the other half was subdivided to create a surrounding campus community and to generate income for the construction of classroom buildings through the sale of lots. Discouraged in their fundraising efforts the trustees of the College joined forces with an agricultural college proposed by the State Legislature, and in 1868 the University of California was created. Today the northern half of the original College of California land is the University campus, while the southern half, the College Homestead Association Tract, is the area bounded by Bancroft and Dwight Ways and College and Shattuck Avenues, and is today's "south campus" neighborhood.

During the past 123 years the Tract has seen profound changes as one layer of buildings and uses has given way to another. It is not known when the first structure was built on the tract, but by 1868 the imposing residence of John H. Haste was standing at the corner of Dwight Way and Fulton. Lots were much larger then (to accommodate stables, windmills, and other outbuildings) and Mr. Haste's house stood on a typical parcel 150 feet wide by 300 feet deep, one eighth of a full block. The blocks themselves were larger, as neither Haste Street nor Durant Avenue were cut through until later. Settlement was sparse during the 1870s and 1880s due to the large size of the lots and the remoteness of Berkeley, and thus, the area retained a somewhat rural character. The houses that were built were generally Italianate or East-Lake in style and quite often cottage-scaled. It is impressive that several buildings from this early period have survived.

Between 1890 and 1910 the area was completely built up. Durant Avenue and

Haste Street were in place and the larger lots were re-subdivided into smaller ones. During this time the College Homestead Association Tract was a family neighborhood. Large homes shared the streetscape with Berkeley's churches, the occasional duplex or fraternity or sorority, at least two private schools, and the public McKinley School built in 1896 on Dwight Way. The favored residential styles in the 1890s were a gable-roofed transitional type, often with a shingled second story and minimal ornamentation, and, toward the end of the decade, elaborate Colonial Revivals, both white-painted and with natural shingles. After the turn-of-the-century less ornate contractor-built Colonial and Craftsman houses filled in the remaining lots. Donald Lawton, who grew up on Durant Avenue and whose father built several speculative houses in the Tract, describes a small town atmosphere of close knit families, front doors left unlocked, and children playing "One Foot Off the Gutter" on Durant Avenue or devouring a package of ice cream in the McCreary's carriage house.

Already by 1905 the neighborhood began to change. Without zoning controls, Telegraph Avenue became commercial; its streetcar line connecting downtown Oakland with the University created a natural environment for business. The grand homes were either torn down or moved away. Seneca Gale's house at Telegraph and Bancroft was moved twice to escape encroaching business blocks, before finally landing at Dwight Way and Dama. Senator Knowles' stately 1901 Colonial was moved a block off Telegraph and was finally demolished for further business expansion. Rising in their place on Telegraph were such large structures as the Carlton Hotel and the Granada Apartments. The establishment of a network of electric streetcar lines in the East Bay in 1903 opened up more desirable subdivisions distant from the center of town. Children grew up and moved away, the homes were sold, and the ever-growing student body at the University needed to be housed.

During the 1930s and 1940s the area reached an equilibrium. The commercial development of Telegraph Avenue was complete; a number of attractive apartment houses had been constructed on the few remaining lots; many of the residences had been converted to student rooming houses; and Berkeleyans recall the area in that era as the quintessential college neighborhood of big old houses on shady tree-lined streets. Change was limited to new institutional buildings which took the place of existing structures, but were well-designed and harmonious with their surroundings. However, things changed in the years after World War II. There was a decline in the use of public transportation, rooming houses were viewed as unsanitary firetraps, and the insertion of highrise dormitories on College Avenue altered the scale of the neighborhood. All this created an atmosphere where the old houses of the neighborhood's heyday were expendable.

Accelerated University expansion and misguided city planning and urban renewal have contributed significantly to the further transformation of the neighborhood. While many of the fine old residences are gone, the scattered clusters of houses that remain still evoke the memory of a college town. Most of the institutional buildings remain, although not all in their original uses. Telegraph remains intact, but lacks the cosmopolitan vibrancy it once had, the stores catering primarily to the tastes of the students who are now the almost exclusive residents of the College Tract.

Despite some of the profound changes that have taken place, the South Campus continues to be one of Berkeley's most interesting neighborhoods. Many of Berkeley's important landmarks are located here and the close proximity to the University gives these buildings a high visibility to residents and visitors alike. Today the "Proud Survivors" of the College Homestead Association Tract provide us with a visual continuity with the past and exist as a significant part of Berkeley's architectural heritage.

McCreary-Greer House (1901), 2318 Durant Avenue—June 1910



Environment and Climate Commission

INFORMATION CALENDAR  
April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Environment and Climate Commission (ECC)  
 Submitted by: Brianna McGuire, Chairperson, ECC  
 Subject: Environment and Climate Commission 2025 Work Plan

INTRODUCTION

The Environment and Climate Commission (ECC) is responsible for advising the City Council on matters related to environmental sustainability and climate change. ECC’s scope includes work to advance the goals of: advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice. The ECC works closely with the City of Berkeley’s Office of Energy & Sustainable Development (OESD).

CURRENT SITUATION AND ITS EFFECTS

The ECC has a broad scope and a responsibility to support and work closely with OESD staff. The ECC created subcommittees to work on the following projects:

| Project                                                                                                                           | Status       | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Decarbonization                                                                                                          | In Committee | Support OESD staff with feedback on building electrification programs, including Building Emissions Saving Ordinance (BESO), Berkeley Existing Buildings Electrification Strategy, Climate Equity Fund, Just Transition Fund, REACH Codes, and Building Performance Standards. Collaboration with Housing Advisory Committee as needed.                                                                                                                          |
| Community-informed Environmental Justice & Climate Metrics, and Principles of Just Transition, Vehicle Miles Traveled & Workforce | In Committee | Support and participate in 2025 efforts to develop an Environmental Justice Element for the General Plan and track the city’s climate goals using community-driven benchmarks (health-focused, emissions-based, qualitative measure, etc.).<br><br>Perform research and give feedback on the Just Transition principles, Vehicle Miles Traveled reduction, and development of a Workforce Development Board to suggest as amendments to the City’s General Plan. |

|                                |              |                                                                                                                                                                                                                                                                                                                                |
|--------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Community Outreach             | In Committee | In collaboration with OESD, plan community outreach campaigns, create materials, and support events that raise awareness of City activities, public programs, and local climate action opportunities. Make suggestions about possible website improvements. Raise awareness of climate activities/resources to Councilmembers. |
| Climate Emergency Preparedness | In Committee | In coordination with the Office of Emergency Services and Public Health Community Preparedness and Prevention Team, support the City with engagement on climate emergency education and resources including at Community Resilience Centers.                                                                                   |
| OESD Input & Support           | Ongoing      | Support OESD staff with feedback on programs, standards, and other initiatives, including the Climate Equity Fund, Climate Action planning, etc. Forward viable grant opportunities when appropriate.                                                                                                                          |

At its February 26, 2025 meeting the ECC approved the work plan to send to City Council as follows: Motion/second to approve the 2025 Workplan with minor revisions as discussed and recorded (McGuire, Binns). The motion carried 8-0-0-1; Ayes: Ranney, McGuire, Tahara, Guliasi, Kesselman, Binns, Athanasiou, Syed. Noes: None. Abstain: None. Absent: LaBonte.

**BACKGROUND**

First established in 2022, the ECC was formed by merging the Community Environmental Advisory Commission and the Energy Commission. ECC commissioners bring a wide range of expertise, with backgrounds in government, academia, nonprofit, and private sector environmental work, and include youth perspectives. These backgrounds inform the ECC’s work and help it to consider diverse and equitable approaches to addressing the City’s environmental challenges.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The ECC’s initiatives will improve environmental sustainability, reduce greenhouse gas emissions, and support a just transition.

**POSSIBLE FUTURE ACTION**

This work plan is intended to provide a guide to the work the ECC plans to take on in 2025. As additional items or issues arise, or are referred to the Commission from Council, the ECC will adjust this plan accordingly.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Future action items that the ECC may send to City Council could require staff time to develop, finalize, and/or implement. The ECC strives to ensure proposals provide

significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, social, and economic impacts.

CONTACT PERSON

Sarah Moore, Secretary, Environment and Climate Commission, [smoore@berkeleyca.gov](mailto:smoore@berkeleyca.gov)





INFORMATION CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board

Submitted by: Hansel A. Aguilar, Director of Police Accountability (DPA) &  
Secretary of the Police Accountability Board (PAB)

Subject: Police Accountability Board Recommendation: Former Board Member  
Recognition

**INFORMATION ONLY REPORT**

This report presents resolutions recognizing and expressing appreciation for the service and contributions of former Police Accountability Board (PAB) members. The PAB plays a vital role in promoting civilian oversight and police accountability in Berkeley, and these resolutions acknowledge the dedication and efforts of departing members. As an informational item, this report provides the resolutions for City Council's consideration.:

Resolutions Expressing Appreciation for Past Board Members:

1. *Resolution thanking Regina Harris for her service and commitment to civilian oversight (see Resolution Attached)*
2. *Resolution thanking Brent Blackaby for his service and commitment to civilian oversight (see Resolution Attached)*
3. *Resolution thanking John "Chip" Moore for his service and leadership in civilian oversight (see Resolution Attached)*
4. *Resolution thanking Alexander Mozes for his service and commitment to civilian oversight (see Resolution Attached)*
5. *Resolution thanking Michael Chang for his service and commitment to civilian oversight (see Resolution Attached)*
6. *Resolution thanking Nathan Mizell for his service and commitment to civilian oversight (see Resolution Attached)*
7. *Resolution thanking Ismail Ramsey for his service and commitment to civilian oversight (see Resolution Attached)*

- 8. *Resolution of thanking Deborah Levine for her service and commitment to civilian oversight (see Resolution Attached)*
- 9. *Resolution thanking Cheryl Owens for her service and commitment to civilian oversight (see Resolution Attached)*

**SUMMARY**

This report provides the resolutions for former Police Accountability Board Members.

The resolutions are in the following order:

- |                      |                    |                   |
|----------------------|--------------------|-------------------|
| 1. Regina Harris     | 4. Alexander Mozes | 8. Deborah Levine |
| 2. Brent Blackaby    | 5. Michael Chang   | 9. Cheryl Owens   |
| 3. John “Chip” Moore | 6. Nathan Mizell   |                   |
|                      | 7. Ismail Ramsey   |                   |

**FISCAL IMPACTS OF RECOMMENDATION**

There are no identifiable fiscal impacts associated with these recommendations.

**CURRENT SITUATION AND ITS EFFECTS**

The Police Accountability Board (PAB) currently has six seated members out of nine total positions and lacks an appointed alternate. Despite these vacancies, the PAB has remained committed to its mission of promoting police accountability and transparency. The resolutions being presented seek to formally recognize the dedication and contributions of PAB members since the Board’s inception. By highlighting their efforts, these resolutions aim to reinforce public awareness and engagement in the PAB’s work, strengthening community trust and support for civilian oversight.

**BACKGROUND**

The Police Accountability Board (PAB) is comprised of nine members. Each member was nominated by the Mayor or a City Councilmember and approved by the full Council. Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember’s term, whichever is earlier.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**RATIONALE FOR RECOMMENDATION**

The PAB presents these recommendations for the City Council, aimed at honoring and recognizing former Board Members service and contribution to the Police Accountability Board.

**CONTACT PERSON**

Hansel A. Aguilar, Director,

Office of the Director of Police Accountability (510) 981-4950



**RESOLUTION NO. 2025-0001**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING REGINA HARRIS FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Regina Harris served on the PAB from July 7, 2021 to February 5, 2025 and was one of the originally appointed members to serve on the PAB, provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during her tenure, Regina Harris demonstrated exemplary leadership and commitment to the Board's work, including serving as Vice Chair, where she played a crucial role in guiding discussions, facilitating meetings, and strengthening the Board's decision-making processes; and

WHEREAS, Regina Harris contributed significantly to key initiatives, including her participation in the Body-Worn Camera (BWC) subcommittee, where she provided insight and recommendations to enhance transparency and accountability in policing practices; and

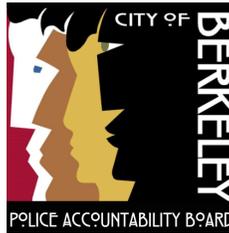
WHEREAS, Regina Harris was a steadfast advocate for community concerns, ensuring that the voices of Berkeley residents were represented in discussions on police oversight, policy development, and systemic reform; and

WHEREAS, her dedication, insight, and leadership have had a lasting impact on the Board's work and the broader goals of police accountability in the City of Berkeley;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Regina Harris for her outstanding contributions and unwavering commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Regina Harris for her leadership and service, recognizing her positive impact on the Board's initiatives and the Berkeley community.





**RESOLUTION NO. 2025-0002**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING BRENT BLACKABY FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Brent Blackaby served on the PAB from September 12, 2023 to December 6, 2024 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Brent Blackaby demonstrated a strong commitment to improving the mechanisms for recognizing positive contributions within the Berkeley Police Department, advocating for a revised commendations process that fairly and transparently acknowledges officers' notable efforts in serving the community; and

WHEREAS, his thoughtful approach to oversight and policy reform contributed to strengthening public trust in law enforcement accountability and reinforcing the PAB's role in fostering fair and effective police practices; and

WHEREAS, Brent Blackaby resigned from the PAB to continue his public service as a member of the Berkeley City Council, demonstrating his ongoing dedication to civic engagement and the betterment of the Berkeley community; and

WHEREAS, his tenure on the PAB left a lasting impact on its operations, setting a foundation for continued progress in police oversight and community relations;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Brent Blackaby for his outstanding service, leadership, and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Brent Blackaby for his efforts to enhance accountability, transparency, and positive engagement between law enforcement and the community.

BE IT FURTHER RESOLVED, this resolution be presented to Brent Blackaby as a token of our sincere appreciation and recognition for his invaluable service to police

RESOLUTION NO. 2025-0002

accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

Adopted on: 2/19/2025

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain | Absent |
|--------------|-----|----|---------|--------|
| Calavita     | x   |    |         |        |
| Cayetano     | x   |    |         |        |
| Leftwich     | x   |    |         |        |
| Williams     |     |    |         | x      |
| Wilson       | x   |    |         |        |

Total: 4 Ayes, 1 Absent

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*  
\_\_\_\_\_  
**Joshua Cayetano,**

Chair of the Police Accountability Board

2/19/2025

\_\_\_\_\_  
Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

*Hansel A. Aguilar*  
\_\_\_\_\_

**Hansel A. Aguilar,**  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

2/19/2025

\_\_\_\_\_  
Date



**RESOLUTION NO. 2025-0003**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING JOHN "CHIP" MOORE FOR HIS SERVICE AND LEADERSHIP IN CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, John "Chip" Moore served on the PAB from July 7, 2021 to February 5, 2025 and was one of the originally appointed members to serve on the PAB, demonstrating an unwavering commitment to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, John "Chip" Moore served two consecutive terms as Chair of the PAB, guiding the Board and the Office of the Director of Police Accountability through a crucial developmental phase; and

WHEREAS, under his leadership, the PAB successfully submitted its Permanent Regulations, which are currently undergoing the meet and confer process, ensuring a solid framework for civilian oversight and law enforcement accountability; and

WHEREAS, Chair Moore oversaw the finalization of the *BERKELEY POLICE DEPARTMENT TEXTING OFFENSES: An Independent Investigation by the Police Accountability Board* (commonly referred to as the Downtown Task Force Report), demonstrating his steadfast commitment to transparency and accountability in law enforcement oversight; and

WHEREAS, his tenure was marked by significant milestones that strengthened the Board's role in police accountability, setting a strong foundation for the newly elected Chair to build upon; and

WHEREAS, John "Chip" Moore's leadership, dedication, and expertise have left a lasting impact on the Board's work and the broader goals of police accountability in the City of Berkeley;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to John "Chip" Moore for his outstanding service, leadership, and commitment to the mission of civilian oversight.

RESOLUTION NO. 2025-0003

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to John "Chip" Moore for his exceptional contributions, recognizing his role in shaping a strong and effective oversight body.

BE IT FURTHER RESOLVED, this resolution be presented to John "Chip" Moore as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

Adopted on: 2/19/2025

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain | Absent |
|--------------|-----|----|---------|--------|
| Calavita     | x   |    |         |        |
| Cayetano     | x   |    |         |        |
| Leftwich     | x   |    |         |        |
| Williams     |     |    |         | x      |
| Wilson       | x   |    |         |        |

Total: 4 Ayes, 1 Absent

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*  
\_\_\_\_\_  
**Joshua Cayetano,**  
Chair of the Police Accountability Board

2/19/2025  
\_\_\_\_\_  
Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

*Hansel A. Aguilar*  
\_\_\_\_\_  
**Hansel A. Aguilar,**  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

2/19/2025  
\_\_\_\_\_  
Date



**RESOLUTION NO. 2025-0004**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING ALEXANDER MOZES FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Alexander Mozes served on the PAB from November 7, 2023 to February 5, 2025 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Alexander Mozes distinguished himself as a thoughtful and engaged member of the Board, contributing significantly to key discussions and policy initiatives; and

WHEREAS, Alexander Mozes conducted an independent and in-depth analysis of the Fair and Impartial Policing (FIP) report, providing valuable insights and recommendations that strengthened the Board's understanding and oversight of bias and policing practices in Berkeley; and

WHEREAS, Alexander Mozes was a vocal and thoughtful critic of the Specialized Care Unit (SCU), raising important considerations about its implementation, effectiveness, and alignment with the community's needs and expectations; and

WHEREAS, his dedication, analytical contributions, and unwavering commitment to meaningful oversight have had a lasting impact on the Board's work and the broader goals of police accountability in the City of Berkeley;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Alexander Mozes for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Alexander Mozes for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Alexander Mozes as a token of our sincere appreciation and recognition for his invaluable service to police

RESOLUTION NO. 2025-0004

accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

Adopted on: 2/19/2025

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain | Absent |
|--------------|-----|----|---------|--------|
| Calavita     | x   |    |         |        |
| Cayetano     | x   |    |         |        |
| Leftwich     | x   |    |         |        |
| Williams     |     |    |         | x      |
| Wilson       | x   |    |         |        |

Total: 4 Ayes, 1 Absent

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*

**Joshua Cayetano,**  
Chair of the Police Accountability Board

2/19/2025

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

*Hansel A. Aguilar*

**Hansel A. Aguilar,**  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

2/19/2025

Date



**RESOLUTION NO. [2025-0005]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING MICHAEL CHANG FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Michael Chang served on the PAB from July 1, 2021 to September 14, 2022 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Michael Chang served as the first Vice Chair and later became the second Chair of the PAB demonstrating exemplary leadership and commitment to the Board's work; and

WHEREAS, Michael Chang served on the initial iterations of the PAB's Regulations Subcommittee, contributing to the development of permanent regulations for handling complaints against sworn officers of the department; and

WHEREAS, Michael Chang stepped down from the PAB to continue his public service as Vice President of the Berkeley Board of Education;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Michael Chang for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Michael Chang for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Michael Chang as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 3/5/2025

RESOLUTION NO. [2025-0005]

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|--------------|-----|----|---------|
| Calavita     | x   |    |         |
| Cayetano     | x   |    |         |
| Leftwich     | x   |    |         |
| Williams     | x   |    |         |
| Wilson       | x   |    |         |

Total: 5 Ayes, 0 No

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*  
Joshua Cayetano,

Chair of the Police Accountability Board

3/5/2025

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

*Hansel A. Aguilar*

Hansel A. Aguilar,  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

3/5/2025

Date



**RESOLUTION NO. [2025-0006]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING NATHAN MIZELL FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Nathan Mizell served on the PAB from June 30, 2021 to December 7, 2022 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Nathan Mizell demonstrated his leadership as Vice Chair of the PAB where he played a crucial role in guiding discussions, facilitating meetings, and strengthening the Board's decision-making processes; and

WHEREAS, Nathan Mizell served on the PAB's Director Search Subcommittee, Fixed Surveillance Camera Policy Subcommittee, and Chief of Police Selection Process Subcommittee;

WHEREAS, Nathan Mizell stepped down from the PAB to serve on the Berkeley Rent Board;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Nathan Mizell for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Nathan Mizell for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Nathan Mizell as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 3/5/2025

RESOLUTION NO. [2025-0006]

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|--------------|-----|----|---------|
| Calavita     | x   |    |         |
| Cayetano     | x   |    |         |
| Leftwich     | x   |    |         |
| Williams     | x   |    |         |
| Wilson       | x   |    |         |

Total: 5 Ayes, 0 No

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*

**Joshua Cayetano,**  
Chair of the Police Accountability Board

3/5/2025

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



**Hansel A. Aguilar,**  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

3/5/2025

Date



**RESOLUTION NO. [2025-0007]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING ISMAIL RAMSEY FOR HIS SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Ismail Ramsey served on the Berkeley Police Review Commission; and

WHEREAS, Ismail Ramsey served on the PAB from June 10, 2021 to March 8, 2023 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during his tenure, Ismail Ramsey served as the inaugural Chair of the PAB, guiding the Board and the Office of the Director of Police Accountability through a crucial developmental phase; and

WHEREAS, Ismail Ramsey served on the PAB's Fair and Impartial Policing Implementation Subcommittee, Fixed Surveillance Camera Policy Subcommittee, and Controlled Equipment Use & Reporting Subcommittee, making meaningful contributions to their work; and

WHEREAS, Ismail Ramsey stepped down from the PAB to serve as U.S. Attorney for the Northern District of California, where he quickly made a significant impact in ensuring the safety of our Berkeley community and the broader region;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Ismail Ramsey for his outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Ismail Ramsey for his leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Ismail Ramsey as a token of our sincere appreciation and recognition for his invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of his contributions.

**Adopted on:** 3/5/2025

RESOLUTION NO. [2025-0007]

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|--------------|-----|----|---------|
| Calavita     | x   |    |         |
| Cayetano     | x   |    |         |
| Leftwich     | x   |    |         |
| Williams     | x   |    |         |
| Wilson       | x   |    |         |

Total: 5 Ayes, 0 No

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*

**Joshua Cayetano,**  
Chair of the Police Accountability Board

3/5/2025

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



**Hansel A. Aguilar,**  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

3/5/2025

Date



**RESOLUTION NO. [2025-0008]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING DEBORAH LEVINE FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Deborah Levine served on the PAB from June 16, 2021 to May 10, 2023 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during her tenure, Deborah Levine brought her expertise as a Criminal Law Attorney to the PAB, offering valuable insights that enriched the PAB's work; and

WHEREAS, Deborah Levine served on the PAB's Director Search Subcommittee, Mental Health Response Subcommittee, Drone Use Policy Subcommittee, Body-Worn Camera Policy Subcommittee, Conflict of Interest Subcommittee, and Chief of Police Selection Process Subcommittee; and

WHEREAS, Deborah Levine stepped down from the PAB upon the completion of her term;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Deborah Levine for her outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Deborah Levine for her leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Deborah Levine as a token of our sincere appreciation and recognition for her invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of her contributions.

**Adopted on:** 3/5/2025

RESOLUTION NO. [2025-0008]

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|--------------|-----|----|---------|
| Calavita     | x   |    |         |
| Cayetano     | x   |    |         |
| Leftwich     | x   |    |         |
| Williams     | x   |    |         |
| Wilson       | x   |    |         |

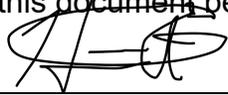
Total: 5 Ayes, 0 No

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano* \_\_\_\_\_ 3/5/2025  
**Joshua Cayetano,** \_\_\_\_\_  
 Chair of the Police Accountability Board Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

 \_\_\_\_\_ 3/5/2025  
**Hansel A. Aguilar,** \_\_\_\_\_  
 Director of Police Accountability & Secretary to the Police Accountability Board Date



**RESOLUTION NO. [2025-0009]**

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD AND THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY OF THE CITY OF BERKELEY THANKING CHERYL OWENS FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**

WHEREAS, the City of Berkeley is committed to transparency, accountability, and community engagement through the work of the Police Accountability Board (PAB); and

WHEREAS, Cheryl Owens served on the PAB from June 10, 2021 to March 10, 2023 and provided dedicated service to the mission of civilian oversight and police accountability in Berkeley; and

WHEREAS, during her tenure, Cheryl Owens served as the first subcommittee chair of Policy and Practices Subcommittee related to the Downtown Task Force and Bike Unit Allegations, establishing a crucial foundation for the subcommittee's work; and

WHEREAS, Cheryl Owens served on the Regulations Subcommittee, Fair and Impartial Policing Implementation Subcommittee, and the Policy and Practices Subcommittee related to the Downtown Task Force and Bike Unit Allegations; and

WHEREAS, Cheryl Owens brought her extensive experience as a civilian police career employee to the PAB, providing a unique perspective rooted in the City Charter and promoting collaboration among stakeholders; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses its deepest gratitude and appreciation to Cheryl Owens for her outstanding contributions and commitment to the mission of civilian oversight.

BE IT FURTHER RESOLVED, that the Board and the Office of the Director of Police Accountability extend their heartfelt thanks to Cheryl Owens for her leadership, advocacy, and dedication to advancing police accountability and community trust.

BE IT FURTHER RESOLVED, this resolution be presented to Cheryl Owens as a token of our sincere appreciation and recognition for her invaluable service to police accountability in the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for their awareness and acknowledgment of her contributions.

**Adopted on:** 3/5/2025

RESOLUTION NO. [2025-0009]

RESOLUTION VOTING RESULTS

| Board Member | Aye | No | Abstain |
|--------------|-----|----|---------|
| Calavita     | x   |    |         |
| Cayetano     | x   |    |         |
| Leftwich     | x   |    |         |
| Williams     | x   |    |         |
| Wilson       | x   |    |         |

Total: 5 Ayes, 0 No

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

*Joshua Cayetano*  
Joshua Cayetano,

Chair of the Police Accountability Board

3/5/2025

Date

I, Hansel A. Aguilar, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.



Hansel A. Aguilar,  
Director of Police Accountability &  
Secretary to the Police Accountability  
Board

3/5/2025

Date





INFORMATION CALENDAR

April 15, 2025

To: Honorable Mayor and Members of the City Council  
 From: Jenny Wong, City Auditor *zw*  
 Subject: City Auditor's Office 2024 Peer Review Results

INTRODUCTION

The Association of Local Government Auditors (ALGA) has again issued an opinion that the City Auditor's Office's internal quality control system was suitably designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2021 to October 31, 2024.

CURRENT SITUATION AND ITS EFFECTS

Auditors from Washington County, OR and Jackson County, OR completed an External Quality Control Review (peer review) of our internal quality control system. They followed the *ALGA Peer Review Guide* standards and guidelines in examining our system, including our efforts for ongoing monitoring and improvement.

The peer reviewers examined three audits from the peer-review period. They also reviewed a selection of our non-audit service assessments in which we evaluated the impact of those services on our audits and identified safeguards for maintaining independence. It is in the opinion of the peer review team that our internal quality control system was adequately designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* for the period of November 1, 2021 to October 31, 2024.

*Strengthening Auditor Accountability and Oversight*

The peer reviewers noted one area where our office can strengthen our internal control systems. The Payroll Audit Division is part of the City Auditor's office and performs important payroll functions. Audits require independence and the reviewers noted that due to independence issues, we are unable to conduct performance audits of payroll, which is an important city function. To ensure that the Payroll Audit Division operates effectively and complies with relevant standards, our office has periodically requested independent external

audits of the Division. There is currently an audit in progress that is due to be released later this year.

#### *City Auditor's Office Areas of Excellence*

The peer review team recognized our commitment to a high-standard of audit quality by identifying areas in which we excel:

- The office has an excellent tone at the top, and they were particularly impressed with the office's dedication to continuous improvement, staff support, and positive supervision.
- The office has very qualified audit staff and has ensured their skills are maintained through training.
- Audit workpapers were very organized and audit procedures were well documented and effectively indexed. They particularly appreciated that we develop an understanding of the needs of diverse stakeholders when conducting our audits.

The efforts of many led to the peer reviewer's positive opinion and our ability to demonstrate a commitment to audit excellence. I would like to thank the following for their current and past contributions:

- Ann-Marie Hogan, Former City Auditor whose unwavering belief in the value of *Government Auditing Standards* provided continuous support of a well-designed and effective internal quality control system.
- I would also like to thank my staff: Erin Mullin, Whistleblower Program Manager; Caitlin Palmer, Audit Manager; Pauline Miller, Auditor II; Kendle Kuechle, Auditor II; and Katie Wysong, Auditor I.

#### BACKGROUND

The Berkeley City Charter requires our audits to be performed in accordance with government auditing standards and those standards require that we undergo a peer review every three years. The City Auditor's Office has consistently passed peer reviews since its first review in 1997.

Government Auditing Standards help ensure that government auditors maintain competence, integrity, objectivity, and independence in planning, conducting, and reporting their work. Auditors enhance their credibility by following standards so their work leads to improved government management, decision making, and oversight.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The peer review team maintained workpapers in electronic format, which greatly reduced the use of paper and ink. There are no other identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

We will explore ways to address the challenge raised by the peer reviewers to allow for future audits of payroll in compliance with the *Government Auditing Standards*.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None known at this time.

CONTACT PERSON

Jenny Wong, City Auditor (510) 981-6750

Attachments:

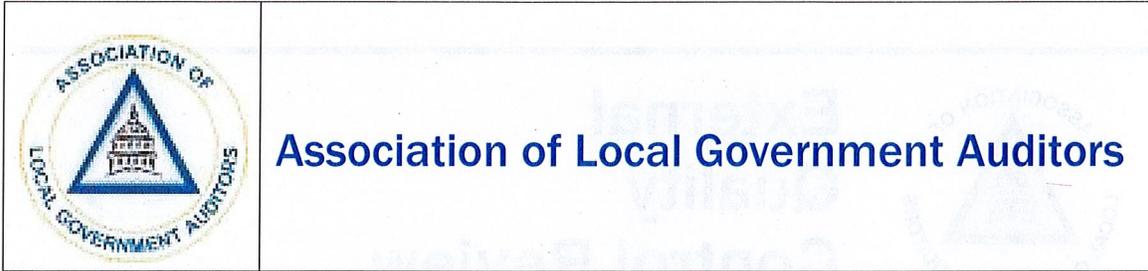
1: 2024 External Quality Control Review of the Berkeley City Auditor's Office Final Report



# External Quality Control Review

of the  
**Berkeley City Auditor's Office**

Conducted in accordance with guidelines of the  
**Association of Local Government  
Auditors**  
for the period November 1, 2021 to October 31, 2024



February 26, 2025

Ms. Jenny Wong  
Berkeley City Auditor  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

Dear Ms. Wong,

We have completed a peer review of the Berkeley City Auditor's Office for the period November 1, 2021 to October 31, 2024. In conducting our review, we followed the standards and guidelines contained in the *Peer Review Guide for Assessing Conformance with Government Auditing Standards* published by the Association of Local Government Auditors (ALGA).

We reviewed the internal quality control system of your audit organization and conducted tests to determine whether your internal quality control system was adequately designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* issued by the Comptroller General of the United States and applicable legal and regulatory requirements. Our procedures included:

- Reviewing the audit organization's written policies and procedures.
- Reviewing internal monitoring procedures.
- Reviewing a sample of engagements and working papers.
- Reviewing documents related to independence, training, and development of auditing staff.
- Interviewing audit staff and management to assess their understanding of and compliance with relevant quality control policies and procedures.

Due to variances in individual performance and judgment, compliance does not imply adherence to standards in every case but does imply adherence in most situations. Organizations can receive a rating of pass, pass with deficiencies, or fail. The City of Berkeley Auditor's Office has received a rating of pass.

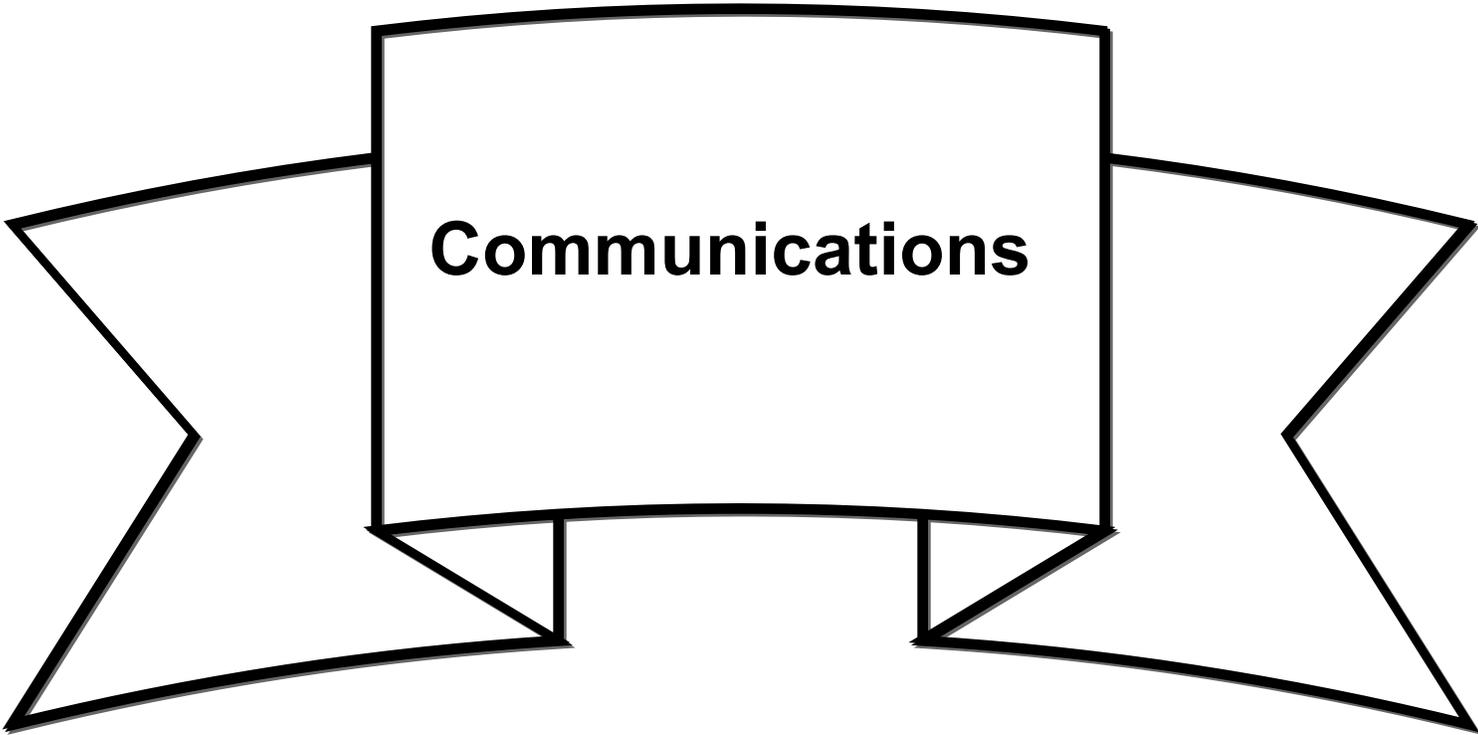
Based on the results of our review, it is our opinion that the Berkeley City Auditor's Office's internal quality control system was adequately designed and operating effectively to provide reasonable assurance of compliance with *Government Auditing Standards* and applicable legal and regulatory requirements for engagements during the period November 1, 2021 through October 31, 2024.

We have prepared a separate letter providing findings and recommendations to further strengthen your internal quality control system.

Kristine Adams-Wannberg  
County Auditor  
Washington County, Oregon

Nicole Rollins  
County Auditor  
Jackson County, Oregon





# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

## **City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
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## **Records Online**

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF