

AGENDA

BERKELEY CITY COUNCIL MEETING

**Tuesday, September 30, 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 and virtual attendance. Attend this meeting remotely using [Zoom](#). 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: 160 974 5944**. 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.*

Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via [internet video stream](#). All Council meetings are recorded.

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.*

1. Dinh Le, Berkeley Resident and Pedestrian Fatality

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 Sanctuary City Ordinance – Council Referral; Adding Berkeley Municipal Code Chapter 13.114**
From: City Attorney
Recommendation: Adopt the second reading of Ordinance No. 7,984–N.S. adopting a Sanctuary City Ordinance (BMC 13.114) to codify the City’s sanctuary policy into the Berkeley Municipal Code.
First Reading Vote: All Ayes.
Financial Implications: Staff time
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of July 8, 2025 (regular), July 22, 2025 (closed and regular), July 23, 2025 (regular), and July 29, 2025 (special and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 3. Authorize Acceptance of Proposition 47 Cohort 5 Grant and Execution of Related Agreements**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to: Accept the Proposition 47 Cohort 5 grant award of \$8,000,000 from the Board of State and Community Corrections (BSCC); Execute any resultant agreements and amendments; and Appropriate the funds for eligible project activities through the Annual Appropriations Ordinance (AAO) consistent with the grant budget.
Financial Implications: See report
Contact: Carianna Arredondo, City Manager's Office, (510) 981-7000
- 4. 2026 Tax Rate: Transportation Network Company User Tax**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the 2026 tax rate (effective January 1, 2026) for the transportation network company at the following rates: 62 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 30 cents for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 5. Application to the Behavioral Health Continuum Infrastructure Program (BHCIP) Round 2: Unmet Needs**
From: City Manager
Recommendation: Adopt a Resolution to: 1) Authorize the City of Berkeley (City) to apply to the California Department of Health Care Services for Bond BHCIP Round 2 grant funds in an amount not to exceed \$6,947,050; and 2) Authorize the City Manager, or designee, to execute the Program Funding Agreement and any related documents necessary to secure and administer the grant; and 3) Acknowledge that the City will comply with every term and condition of the Program Funding Agreement; and 4) Designate the City Manager, or designee, as the City's Authorized Signatory for all Program documents.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
- 6. Contract No. 32300180 Amendment: GoGo Technologies, Inc. for Provision of Transportation Services for Seniors and the Disabled**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32300180 for an additional \$150,000 with GoGo Technologies, Inc. for the purpose of providing a 24/7 concierge call center that arranges rides with Uber and Lyft for the City's seniors and disabled community. The contract amendment's not-to-exceed amount will be increased to \$500,000 for the period July 1, 2025, through June 30, 2026.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

- 7. Contract No. 32300207 Amendment: Easy Does It for Provision of Wheelchair Van Service for Seniors and Disabled Riders**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32300207 for an additional \$75,000 with Easy Does It for the purpose of providing lift-equipment accessible wheelchair van services to the City of Berkeley's wheelchair riders. The contract's not-to-exceed amount will be increased to a total of \$250,000 for the period of July 1, 2025, to June 30, 2026.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
- 8. Revenue Grant Agreement: Funding Support from the California Department of Public Health to Enhance Disease Intervention Workforce Development**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to accept funds from the California Department of Public Health (CDPH) in the projected amount of \$523,953 to execute a revenue agreement, contract, and any necessary amendments and extensions.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
- 9. Donation: Memorial Bench at Berkeley Marina in Memory of Michael W. Orton**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in memory of Michael W. Orton.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Purchase Order with Coast Counties Peterbilt for Seven 2026 Model Peterbilt 520 Rear-Loader Refuse Trucks with McNeilus Bodies**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with Coast Counties Peterbilt for seven 2026 Peterbilt Model 520 rear-loader refuse trucks with McNeilus bodies, in an amount not to exceed \$3,800,000.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300

Council Consent Items

- 11. Recreation and Community Facility Improvement Measures** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee)*
From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Tregub (Co-Sponsor), Councilmember Blackaby (Co-Sponsor)
Recommendation: Refer to the City Manager the assessment of potential revenue measures to finance capital improvements for certain recreational and community-serving city facilities that have completed the conceptual or design phase and return to the city council with recommendations for placing such measures on the November 2026 midterm election ballot.
Policy Committee Recommendation: To send the item to Council with a positive recommendation.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 12. Resolution Supporting California Proposition 50, the Election Rigging Response Act; Which Would Authorize California to Adopt Temporary Congressional Maps in Response to These Partisan Actions While Reaffirming the State’s Commitment to Independent, Non-partisan Redistricting By Preserving the Citizens Redistricting Commission for the Decennial Process After the 2030 Census**
From: Councilmember Tregub (Author), Councilmember Lunaparra (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Blackaby (Co-Sponsor)
Recommendation: Adopt a Resolution supporting Proposition 50, the Election Rigging Response Act, which would authorize California to adopt temporary congressional maps in response to partisan mid-decade redistricting efforts in other states while preserving the independent Citizens Redistricting Commission for the 2030 census process.
Financial Implications: Staff time
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140
- 13. Berkeley Art Center’s Fall 2025 Community Dinner: Relinquishment of Budget Office Funds**
From: Councilmember O’Keefe (Author), Mayor Ishii (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember – including \$500 from Councilmember O’Keefe and \$250 from Mayor Ishii – to the Berkeley Art Center (BAC), a 501(c)(3) non-profit organization, for their Fall 2025 Community Dinner, a fundraiser to support BAC’s artistic and cultural programming, and to welcome BAC’s new Executive Director, Gisela Insuaste, with funds relinquished to the City’s general fund for this purpose from the discretionary Council office budgets of Councilmember O’Keefe and Mayor Ishii, and from any other Councilmembers who would like to contribute. The event will take place on Thursday, October 16, 2025 at 6:00pm at the Berkeley Art Center.
Financial Implications: See report
Contact: Shoshana O’Keefe, Councilmember, District 5, (510) 981-7150

Council Consent Items

- 14. Sacred Rest Drop-in Center Landline: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Lunaparra (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Lunaparra's discretionary fund and funds from any other Councilmembers who would like to contribute, to Village of Love for a landline at the Sacred Rest Drop-In Center with funds relinquished to the City's general fund for this purpose.
Financial Implications: See report
Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170
- 15. Refer to the City Manager in Collaboration with the City Attorney's Office to Develop Proposed Increases to the Shared Micromobility Program Fees**
(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee)
From: Councilmember Lunaparra (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Humbert (Co-Sponsor), Councilmember Tregub (Co-Sponsor)
Recommendation: Refer to the City Manager in collaboration with the City Attorney's Office to develop proposed increases to the shared micromobility program fees and return to Council within 120 days. The proposed amendments should evaluate adjustments to the following fee categories: Application fee; Operating fee; Fee per vehicle; Fee per ride.
Policy Committee Recommendation: To send the item to Council with a positive recommendation.
Financial Implications: See report
Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. 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.

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

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

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking during a public hearing, 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.

When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

16. Changes to the Planning and Development Fee Schedule

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution amending Resolution No. 71,834-N.S. to make revisions to the Land Use Planning section of the Planning and Development Department fee schedule, effective November 1, 2025, to add new fees for Zoning reviews of Middle Housing projects and for arborist consultations when required.

Financial Implications: See report

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

Action Calendar – New Business

17. Resolution Calling on the California State Legislature to Amend Government Code Section 12519 to Allow Heads of Civilian Oversight Agencies to Directly Request Investigative Assistance from the Attorney General's Office

From: Director of Police Accountability

Recommendation: Adopt a Resolution calling on the California State Legislature to Amend Government Code Section 12519 to allow heads of civilian oversight agencies to directly request investigative assistance from the Attorney General's office.

Financial Implications: See report

Contact: Hansel Aguilar, Office of Director of Police Accountability, (510) 981-4950

18. Resolution Directing 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

From: Director of Police Accountability

Recommendation: Adopt a Resolution directing 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.

Financial Implications: See report

Contact: Hansel Aguilar, Office of Director of Police Accountability, (510) 981-4950

Information Reports

19. **Landmark Preservation Ordinance Notice of Decision: 2201-2205 Blake Street/#LMSAP2024-0004**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
20. **Landmark Preservation Ordinance Notice of Decision: 2939 Dwight Way/#LMIN2020-0007**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
21. **Audit Recommendation Status - Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities**
From: City Manager
Contact: Jennifer Louis, Police, (510) 981-5900

Public Comment – Items Not Listed on the Agenda

Adjournment

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

Archived indexed video streams are available at: berkeleyca.gov/council-agendas.
Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street, and through the City's online records portal: <https://records.cityofberkeley.info/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at: berkeleyca.gov/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 September 18, 2025.*

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk

## Communications

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

**Item #12: Resolution Supporting California Proposition 50, the Election Rigging Response Act; Which Would Authorize California to Adopt Temporary Congressional Maps in Response to These Partisan Actions While Reaffirming the State's Commitment to Independent, Non-partisan Redistricting By Preserving the Citizens Redistricting Commission for the Decennial Process After the 2030 Census**

1. Jack Kurzweil (2)
2. Melanie Lawrence and John Smail

3. Harriet Charney

**Frontage Road**

4. Debbie

**BPD Radio Communications**

5. Naveen Gattu

6. ScanBerkeley

**Kaiser Midwives**

7. Neel Arant

**Marin Ave and Cragmont Ave Safety Concern**

8. Robin McGill and Justin Wiley

9. Jennie Hicks & Ian Wulfson

**FITES Support**

10. John-Mario Arcilla Sevilla

**Honey Bee Swarm Calls**

11. Mateo Kaiser

**Housing Concern**

12. CRD Contract Center (3)

**More Building in Berkeley**

13. Lynn Cooper

**Ohlone Greenway Modernization**

14. Clifford Fred

**Facilities Funding Measure**

15. Gael Alcock

**Parks Tax**

16. Gael Alcock

**Vacant, Blighted Properties**

17. Ory Sandel

**Harrison St.**

18. David Lerman (2)

19. Peter Radu

**2128 Oxford St.**

20. Margots999

**Mills Act**

21. Jeffrey Baker

**Health Concerns**

22. Joel Eng

**New Zoning**

23. Foster Curry

24. Mandy Aftel

**Affordable Housing for First Responders**

25. David Lerman

**Street Sweeping**

26. David Lerman

**Citation Appeal Response**

27. David Weintraub

**Berkeley Reparations Budget Allocation**

28. Monique Allen

**Civic Joy Fund**

29. Eric Friedman

**BPD Surveillance Cameras**

30. Taj Herzer-Baptiste

**Draft Bicycle Plan**

31. Henry DeNero on behalf of the Berkeley FireSafe Council

**Exhibit Opening and Proclamation**

32. Clementina Duron and Beatriz Leyva-Cutler

**Construction Settlement/Repairs**

33. Hector91 Phuentes (8)

34. Cindy Morgan

35. John Dunlap

**Formal Complaint**

36. Littleton S. Irby

37. Melanie E. Beasley (2)

38. Scott Gilman

39. Christina Pallmann

**Recertification Concern**

40. Hector91 Phuentes

## **Renovation Scheduling**

41. Alexander Merenkov (4)

## **Forwards**

42. Russbumper

## **Middle East Conflict**

43. Jack Kurzweil

44. Russbumper

45. Nicoletta Karam (2)

46. Liz Bernstein

## **E-Scooters & E-Bikes**

47. Carol Denney

48. Summer Brenner

49. John Harris

50. Rebecca Dahlberg

51. Melanie Lawrence & John Smail

52. Robert Borghese

## **Newsletter**

53. Berkeley Art Center

54. Downtown Berkeley Association

## **SB79**

55. John Rice

## **URL's**

56. Russbumper (3)

## **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. 7,984-N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 13.114 TO CODIFY THE CITY'S  
LONGSTANDING SANCTUARY POLICY

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

Section 1: That the Berkeley Municipal Code shall be amended to add Section 13.114 to read as follows:

**Chapter 13.114**

**SANCTUARY CITY ORDINANCE**

**Sections:**

**13.114.010 - Findings and Declarations**

**13.114.020 - Definitions**

**13.114.030 - Prohibition on Use of City Resources**

**13.114.040 - Reporting and Transparency**

**13.114.050 - Exceptions to Prohibitions; Ordinance Not to Conflict with Federal Law.**

**13.114.060 - Enforcement; No Private Right of Action**

**13.114.070 - Severability**

**13.114.080 - Superseding of Prior Resolutions**

**13.114.090 - Effective Date**

**13.114.010 City Council Findings and Declarations**

- A. The City of Berkeley is home to people of diverse racial, ethnic, and national backgrounds, including a large immigrant population.
- B. Immigrants are valuable and essential members of the City of Berkeley community.
- C. A relationship of trust between the City of Berkeley's immigrant community and the City of Berkeley, its departments, programs, and personnel is central to the public safety of Berkeley residents.
- D. This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members may

fear approaching police when they are victims of or witnesses to crimes, or may fear seeking basic health services or attending school, to the detriment of public safety and the well-being of all Berkeley residents.

- E. Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.
- F. Multiple studies have proven that jurisdictions that do not assist in immigration enforcement 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.
- G. The City of Berkeley was the first City in the Nation to declare itself a City of Refuge in 1971 for Vietnam War conscientious objectors (Resolution 44,784-N.S.). In 1986, the City became a City of Refuge for immigrants who sought sanctuary in Berkeley religious institutions (Resolution No. 52,596-N.S.). The City reaffirmed its City of Refuge status in 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.), 2017 (Resolution No. 68,131-N.S.), and most recently, 2025 (Resolution No. 71,658-N.S.). Berkeley was also 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.
- H. The City now wishes to enact an ordinance consistent with Resolution No. 71,658 and its longstanding sanctuary policy and status as a City of Refuge.

**13.114.020 Definitions.**

For purposes of this Chapter, the following words and phrases are defined as follows:

- A. “Citizenship or Immigration Status” means all information regarding citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, including visa status, and/or the time or manner of a person’s entry into the United States.

- B. "City" means the City of Berkeley.
- C. "City Agency" means every City department, agency, division, commission, council, committee, board, other body, or person established by authority of voter initiative, ordinance, Charter, executive order, or City Council order.
- D. "City Personnel" means all persons employed by, appointed by, or serving any City Agency, including through a contract for services.
- E. "City Resources" means City funds, facilities, property, equipment, or personnel.
- F. "Immigration Authority" means any person or agency engaging in "Immigration Enforcement," including but not limited to the U.S. Department of Homeland Security or its component agencies, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or U.S. Citizenship and Immigration Services.
- G. "Immigration Enforcement" means (1) any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law against natural persons, including but not limited to efforts to require the registration of individuals based on their Citizenship or Immigration Status; or (2) any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a natural person's presence in, entry to, reentry to, or employment in, the United States or failure to register based on their Citizenship or Immigration Status.
- H. "Protected Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including but not limited to a person's name, birthdate, Social Security Number or Individual Taxpayer Identification Number, telephone number, home or work address, driver's license number, place of birth, or biometric information.

**13.114.030 Prohibition on Use of City Resources.**

The following restrictions on the use of City Resources shall apply relating to Immigration Enforcement:

- A. No City Agency or Personnel shall use any City Resources to assist any Immigration Authority with Immigration Enforcement.

- B. No City Agency or Personnel shall deny access to any City services or benefits to residents based on Citizenship or Immigration Status.
- C. The prohibitions set forth in 13.114.030 (A) and (B) shall include but not be limited to:
1. Assisting or cooperating with any Immigration Authority's investigation, detention, or arrest relating to Immigration Enforcement, including but not limited to any such actions in schools, after-school programs, hospitals, health centers, places of worship, non-profits, or city vendors, whether such actions are public or clandestine;
  2. Identifying, investigating, interrogating, arresting, transferring, detaining, or continuing to detain a person for a purpose relating to Immigration Enforcement;
  3. Inquiring into, requesting, or collecting information about the Citizenship or Immigration Status, country of origin, nationality, or place of birth of any individual, unless that information is required (i) to provide a City service or (ii) for City employment verification;
  4. Disseminating or disclosing Protected Personal Information to Immigration Authorities in connection with Immigration Enforcement without a valid judicial warrant or subpoena issued by a court of competent jurisdiction;
  5. Complying with any civil immigration warrant or request to detain, transfer, or notify any federal authority about the release of any individual;
  6. Making individuals in City custody available to Immigration Authorities for interviews;
  7. Performing any functions of an immigration officer pursuant to Section 1357(g) of Title 8 of the United States Code;
  8. Consenting to an Immigration Authority's search of non-public areas of City property or non-public records, absent a valid judicial warrant or judicial subpoena issued by a court of competent jurisdiction.
    - a. City Agency or Personnel shall immediately notify their supervisor of any request by an Immigration Authority to access any non-public City property or records.

- D. No City Agency or Personnel shall refer a person asking questions about their own Citizenship or Immigration Status to an Immigration Authority or any other government agency. Instead, the City Agency or Personnel 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.

**13.114.040 Reporting and Transparency.**

- A. City Agencies shall document in writing all requests for information or assistance (1) made by a City Agency or Personnel to an Immigration Authority; or (2) received by a City Agency or Personnel from an Immigration Authority, if the City Agency or Personnel responded to the request. The requests that must be documented under this section include, but are not limited to, requests for immigration detainers, transfers, interviews, interrogations, notifications, Protected Personal Information, or the Citizenship or Immigration Status of any individual.
- B. The documentation shall include but not be limited to the date, job title of requester or person to whom request was made, agency of requester or to which request was made, nature of the information disclosed or sought, a copy of a warrant, if any, and the response to the request, if any.
- C. City Agencies shall maintain these records for two years and make them available to the City Manager or City Attorney upon request.
- D. All City Agencies shall report in writing to the City Council any request described in subsection A within ten (10) business days of the request, with instruction to report such request as an Information Item on the next available agenda for a regular meeting of the City Council. The Berkeley Police Department shall include an aggregated annual summary of requests reported to City Council in its regular Annual Report.
- E. The Information Item described in subsection D shall include all the information listed in subsection B; however, it shall be redacted as necessary to avoid compromising an active investigation or invading the privacy of any individual, consistent with the California Public Records Act.

**13.114.050 Exceptions to Prohibitions; Ordinance Not to Conflict with Federal Law.**

The prohibitions in Section 13.114.030 of this Ordinance shall not apply where the individual to whom such information pertains provides his or her consent (or if such individual is a minor, the consent of that person's parent or guardian), where the information or disclosure is necessary to provide a City service, or where otherwise required by state or federal law, including but not limited to Section 1373 of Title 8 of the U.S. Code.

**13.114.060 Enforcement; No Private Right of Action.**

- A. In undertaking the adoption and enforcement of Chapter 13.114, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.
- B. This Chapter shall be implemented and overseen through existing administrative policies and procedures applicable to City operations and services.
- C. The City Manager may establish rules and regulations governing the implementation of this Chapter, including but not limited to rules governing the reporting of violations of Section 13.114.030.

**13.114.070 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

**13.114.080 Superseding of Prior Resolutions.**

This Chapter shall supersede Resolution Nos. 44,784-N.S., 52,596-N.S., 63,711-N.S., 67,325-N.S., 67,598-N.S., 67,763-N.S., 68,131-N.S., and 71,658-N.S., to the extent there is a conflict between the provisions of these Resolutions and the provisions of this Chapter.

**13.114.090 Effective Date.**

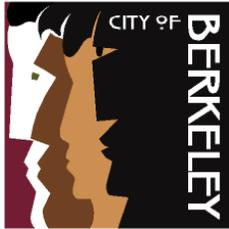
This ordinance shall become effective thirty (30) days after its adoption.

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

At a regular meeting of the Council of the City of Berkeley held on September 9, 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  
September 30, 2025

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Mark Numainville, City Clerk  
Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of July 8, 2025 (regular), July 22, 2025 (closed and regular), July 23, 2025 (regular), and July 29, 2025 (special and regular).

CONTACT PERSON

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

Attachments:

1. July 8, 2025 – Regular City Council Meeting
2. July 22, 2025 – Special Closed City Council Meeting
3. July 22, 2025 – Regular City Council Meeting
4. July 23, 2025 – Regular City Council Meeting
5. July 29, 2025 – Special City Council Meeting
6. July 29, 2025 – Regular City Council Meeting

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, July 8, 2025**  
**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
 TELECONFERENCE LOCATION - MESRUTIYET CAD. NO:52 TEPEBASI 34430  
 ISTANBUL, TURKEY

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](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/1600604713>. 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: 160 060 4713**. 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](mailto: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:** 6:06 p.m.

**Present:** Kesarwani, Taplin, Bartlett, Tregub, O’Keefe, Lunaparra, Humbert, Ishii

**Absent:** Blackaby

Councilmember Blackaby present at 7:04 p.m.

**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:

1. Recognition of Disability Pride Month, July 2025
2. Recognition of National Breast Feeding Month, August 2025

### City Manager Comments:

1. The City Manager requested that as part of the action on Item 20, an item be added to the July 22, 2025 regular meeting agenda to hold a public hearing on the intent to vacate a portion of Carleton Street.

**Public Comment on Non-Agenda Matters:** 10 speakers.

**Public Comment by Employee Unions (first regular meeting of the month):** 1 speaker.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 37 speakers.

**Action:** M/S/C (Taplin/Lunaparra) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

## Consent Calendar – Continued Business

### A. **Zoning Ordinance and General Plan Amendments Relating to Middle Housing** *(Continued from June 26, 2025)*

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,978-N.S. amending Berkeley Municipal Code Title 23 (Zoning Ordinance) and the Zoning Map, for the purposes of encouraging development of “middle housing” in areas currently zoned R-1, R-1A, R-2, R-2A and MU-R (“low-density residential districts”), with an effective date of November 1, 2025.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,978–N.S., including supplemental material received from the City Manager in Supplemental Communications Packet 2.

## Consent Calendar

### 1. **Amendments to Ordinance Prohibiting the Sale or Use of Coordinated Pricing Algorithms (BMC 13.63) to Suspend Effective Date Until March 2026**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,974–N.S to amend the Ordinance Prohibiting the Sale or Use of Coordinated Pricing Algorithms (BMC 13.63) to suspend the effective date until March 1, 2026.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: Farimah Brown, City Attorney, (510) 981-6998

**Action:** Adopted second reading of Ordinance No. 7,974–N.S.

### 2. **FY 2026 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,975–N.S. setting the FY 2026 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.06695 (6.695 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.10132 (10.132 cents) per square foot of improvements.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,975–N.S.

## Consent Calendar

- 3. FY 2026 Tax Rate: Fund Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,976–N.S. setting the FY 2026 tax rate for funding Firefighting, Emergency Medical Response and Wildfire Prevention (Measure FF) in the City of Berkeley at the annual tax rate of \$0.1299 (12.99 cents) per square foot of improvements.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted second reading of Ordinance No. 7,976–N.S.
- 4. FY 2026 Annual Appropriations Ordinance**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,977–N.S. adopting the FY 2026 Annual Appropriations Ordinance (AAO) in the amount of \$829,213,359 (gross appropriations) and \$687,764,462 (net appropriations).  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Paul Buddenhagen, City Manager, (510) 981-7000  
**Action:** Adopted second reading of Ordinance No. 7,977–N.S.
- 5. At-Will Designation: Assistant City Attorney**  
**From: City Attorney**  
**Recommendation:** Adopt (1) first reading of an Ordinance amending Berkeley Municipal Code Section 4.04.120(A) to designate the unrepresented classification of Assistant City Attorney as at-will and adopt a Resolution amending the Unrepresented Employee Manual and all other pertinent documents to effectuate the change.  
**Financial Implications:** None  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted first reading of Ordinance No. 7,979–N.S. Second reading scheduled for July 22, 2025. Adopted Resolution No. 71,864–N.S.

## Consent Calendar

### 6. **Contracts for Financial Consulting Services**

**From: City Manager**

**Recommendation:** Adopt three Resolutions authorizing the City Manager to approve contracts and any amendments with the following firms that provide temporary governmental financial consulting services as required by the Finance Department.

1. Contract No. 32200214 Amendment: RLH & Associates. in an amount not to exceed \$300,000; and

2. Contract No. 32500185 Amendment: Ezer Consulting, LLC in an amount not to exceed \$150,000; and

3. Contract: GD Financials in an amount not to exceed \$150,000

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 71,865–N.S. (RLH & Associates), Resolution No. 71,866–N.S. (Ezer Consulting), Resolution No. 71,867–N.S. (GD Financials).

### 7. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 8, 2025**

**From: City Manager**

**Recommendation:** Approve the request for proposals or invitation for bids 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

**Action:** Approved recommendation.

### 8. **Grant Application: California Fire Safe Council (CFSC) Grant to Continue Funding an Alameda County Coordinator**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or his designee to apply for and accept a grant, and any amendments for not more than \$225,000 per year in Fiscal Year (FY) 25, FY26 and FY27, from the California Fire Safe Council (CFSC) Grant to contract a county coordinator to serve Alameda County communities, provide resources and education on wildfire safety, promote collaboration, assist local groups with funding opportunities, and aid multi-jurisdictional planning.

**Financial Implications:** See report

Contact: David Sprague, Fire, (510) 981-3473

**Action:** Adopted Resolution No. 71,868–N.S.

## Consent Calendar

- 9. Amend SEIU-CSU MOU Exhibits A-D with Updated Hourly Pay Rates**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending the Service Employees International Union (SEIU) Local 1021, Service Employees International Union Local 1021 Community Services & Part-Time Recreation Leaders Association (“Union”) Memorandum of Understanding (“MOU”) Exhibits A, B, C, and D (Salary Ranges) with updated hourly pay rates.  
**Financial Implications:** See report  
Contact: Janelle Rodrigues, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 71,869–N.S.
- 10. Amend SEIU-MC Section 32 Probationary Period for Public Safety Dispatcher I and Public Safety Dispatcher II**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending the Service Employees International Union (SEIU) Local 1021, Maintenance and Clerical (“Union”) Memorandum of Understanding (“MOU”) Section 32 Probationary Period for Public Safety Dispatcher I (“PSD I”) and Public Safety Dispatcher II (“PSD II”).  
**Financial Implications:** See report  
Contact: Janelle Rodrigues, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 71,870–N.S.
- 11. Construction Contract: Team Ghilotti for the South Cove West Lot Repaving Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the rescoped South Cove West Lot Repaving Project (Bid Specification No. 25-11687-C); and 2. Accepting the bid of TEAM GHILOTTI as the lowest responsive and responsible bidder on the Project; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with TEAM GHILOTTI, for the South Cove West Lot Repaving Project, in an amount not to exceed \$1,884,641, which includes a contract amount consisting of base bid of \$1,667,141, additive alternative A2 in the amount of \$50,500, and a 10% contingency in the amount of \$167,000.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 71,871–N.S.

## Consent Calendar

- 12. Lease Amendment with Yoonaco, Inc. (Hana Japan) at 235 University Avenue**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending the City's improved property lease with Yoonaco, Inc. (Hana Japan) for property at 235 University Ave to extend the initial lease term through June 30, 2026, replace the five-year extension option with a one-year extension option, maintain the rent at the current rate of \$7,868 per month for the lease term, and remove the daily operating requirement for the first floor of the property.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted first reading of Ordinance No. 7,980–N.S. Second reading scheduled for July 22, 2025.
- 13. Contracts for Plan Checking Services**  
**From: City Manager**  
**Recommendation:** Adopt three Resolutions authorizing the City Manager to execute contracts and any amendments for plan checking services for three-year terms with the following firms:  
1. Coastland | DCCM for an amount not to exceed \$1,000,000  
2. Telesis Engineers for an amount not to exceed \$1,500,000  
3. West Coast Code Consultants for an amount not to exceed \$2,000,000  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted Resolution No. 71,872–N.S. (Coastland | DCCM), Resolution No. 71,873–N.S. (Telesis Engineers), Resolution No. 71,874–N.S. (West Coast Code).
- 14. Contract No. 32810081 Amendment: FirstCarbon Solutions, Inc. for California Environmental Quality Act Compliance for the Solid Waste & Recycling Transfer Station Replacement Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the existing contract with FirstCarbon Solutions, Inc. for the Solid Waste & Recycling Transfer Station Replacement Project compliance with the California Environmental Quality Act. The Contract will be increased from \$650,000 to \$725,000.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,875–N.S.

## Consent Calendar

- 15. Contracts: Don's Tire Service Inc. and Morgan Tire of Sacramento Inc.**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to:
1. Execute a contract with any amendments with Don's Tire Service Inc. to provide tire services for a three-year period from August 1, 2025, to August 1, 2028, in an amount not to exceed \$400,000, with an option to extend for two additional one-year terms, with service rates to be adjusted annually in accordance with the Consumer Price Index.
  2. Execute a contract with any amendments with Morgan Tire of Sacramento Inc. to provide tire services for a three-year period from August 1, 2025, to August 1, 2028, in an amount not to exceed \$400,000, with an option to extend for two additional one-year terms, with service rates to be adjusted annually in accordance with the Consumer Price Index.
- Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,876–N.S. (Don's Tire Service), Resolution No. 71,877–N.S. (Morgan Tire).
- 16. Contract: Kept Companies Inc. dba Fleetwash Inc. for Vehicle Washing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Kept Companies Inc., dba Fleetwash Inc., to provide vehicle washing services for a three-year period from July 1, 2025 to July 1, 2028 in an amount not to exceed \$300,000, with an option to extend for two additional one-year terms with service rates to be adjusted annually in accordance with the Consumer Price Index.
- Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,878–N.S.
- 17. Contract: Kerex Engineering, Inc. for FY 2025 Drainage Improvements (Specification No. 23-11561-C & 25-11677-C)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution:
1. Approving plans and specifications for the FY 2025 Drainage Improvements Project;
  2. Accepting the bid of Kerex Engineering, Inc. as the lowest responsive and responsible bidder; and
  3. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until project completion, in accordance with the approved plans and specifications in an amount not to exceed \$4,397,236.
- Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,879–N.S.

## Consent Calendar

- 18. Contract: Technology, Engineering, and Construction, Inc. for Tank Maintenance, Repairs, and Certification Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a three-year contract and any amendments with Technology, Engineering, and Construction, Inc. doing business as TEC Accutite, to provide underground and aboveground tank maintenance and certification at various City facilities and locations for a total not to exceed of \$200,000 for a three-year term with an option of two one-year extensions, for a maximum term of five years.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,880–N.S.
- 19. Contract: United Storm Water, Inc. for On-Call Storm Water Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a three-year contract and any amendments with United Storm Water Inc. to provide on-call stormwater maintenance at various City facilities and locations for a total not to exceed of \$200,000, with an option of two one-year extensions, for a maximum term of five years.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,881–N.S.
- 20. Intent to Vacate A Portion of Carleton Street From Westerly Terminus Extending 381.23 Feet Easterly**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution declaring intent to vacate a 381.23-linear-foot (27,449 square foot) portion of the public right-of-way on Carleton Street, located at the westerly terminus of Carleton Street, and conveying the City's interests in the vacated right of way to Bayer Healthcare LLC ("Bayer") for the purposes of relieving the City of associated maintenance costs and improving Bayer's site circulation and security.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,882–N.S. and added an item to the July 22, 2025 meeting agenda to hold a public hearing on the intent to vacate a portion of Carleton Street from westerly terminus extending 381.23 feet easterly.

## Consent Calendar

- 21. Purchase Order: SCL, Safety-Kleen Systems Inc. and Lube Buster Inc. for Vehicle Lubricant Materials**  
**From: City Manager**  
**Recommendation:** Adopt three Resolutions authorizing the City Manager to:
1. Execute a purchase order with SCL to provide vehicle lubricant materials for a three-year period from August 1, 2025 to August 1, 2028, in an amount not to exceed \$140,000 with an option to extend for two additional one-year terms, with an annual service rates to be adjustment in accordance with the Consumer Price Index.
  2. Execute a purchase order with Safety-Kleen Systems Inc. to provide vehicle lubricant materials for a three-year period from August 1, 2025 to August 1, 2028, in an amount not to exceed \$140,000 with an option to extend for two additional one-year terms, with an annual service rates adjustment in accordance with the Consumer Price Index.
  3. Execute a purchase order with Lube Buster Inc. to provide vehicle lubricant materials for a three-year period from August 1, 2025 to August 1, 2028 in an amount not to exceed \$140,000, with an option to extend for two additional one-year terms, with an annual rates adjustment in accordance with the Consumer Price Index.
- Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,883–N.S. (SCL), Resolution No. 71,884–N.S. (Safety-Kleen), Resolution No. 71,885–N.S. (Lube Buster).
- 22. Reinstating Street Sweeping on the 2900 Block of Regent Street**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution to reinstate mechanical street sweeping on the 2900 block of Regent Street, between Russell Street and Webster Street, in response to a community member petition per recommendation by the City’s Transportation and Infrastructure Commission.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,886–N.S.
- 23. Appointment of Patricia Fontana-Narell to the Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution approving the recommendation for appointment of Patricia Fontana-Narell to the Mental Health Commission. Patricia Fontana-Narell will be a representative of the Special Public Interest Category, family member, beginning her 3-year term on July 9, 2025 and end on July 8, 2028.  
**Financial Implications:** None  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400  
**Action:** Adopted Resolution No. 71,887–N.S.

## Council Consent Items

24. **Letter in Support of Continued Funding for Berkeley**  
**From: Councilmember Taplin (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Tregub (Co-Sponsor), Mayor Ishii (Co-Sponsor)**  
**Recommendation:** Adopt a letter in support of expanding funding for the Berkeley Rides for Seniors & The Disabled (BRSD) to continue open enrollment for Berkeley residents and distribute to Supervisor Nikki Fortunato Bas.  
**Financial Implications:** None  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation.
25. **Port Chicago Alliance: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**  
**From: Councilmember Taplin (Author)**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Taplin, to support the Port Chicago Alliance in celebration and execution of Port Chicago Remembrance Weekend.  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Councilmembers Humbert, Bartlett, and Tregub added as co-sponsors. Adopted Resolution No. 71,888–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Humbert - \$250; Councilmember Lunaparra - \$250; Councilmember Kesarwani - \$100; Councilmember O’Keefe - \$250; Councilmember Tregub - \$100; Councilmember Bartlett - \$250; Mayor Ishii - \$250.

Recess 7:55 – 8:00 p.m.

## Action Calendar – Public Hearings

**26. Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code for Consistency with State Law and Technical Edits (SLTE 2025)**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance amending the following sections of the Berkeley Municipal Code (BMC) to maintain consistency and accuracy:

3.24.110 Landmarks, historic districts and structures of merit- Designation – Criteria for consideration

23.106.030 Floor Area, Gross

23.202.030 Additional Permit Requirements (Residential)

23.204.030 Additional Permit Requirements (Commercial Districts)

23.206.030 Additional Permit Requirements (Manufacturing Districts)

23.302.020 General Use Regulations

23.304.070 Unenclosed Accessory Structures in Residential Districts

23.326.030 Demolition of Residential Units

23.326.050 Demolition of Accessory Buildings

23.326.070 Demolition of Non-Residential Buildings

**Financial Implications:** None

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

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Taplin/Tregub) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Tregub/O’Keefe) to adopt first reading of Ordinance No. 7,981–N.S. Second reading scheduled for July 22, 2025.

**Vote:** All Ayes.

**27. \*\*\*Removed from the Agenda by the City Manager\*\*\* Approval and Levy of 2018 Clean Stormwater Fee in FY 2026**

**From: City Manager**

Contact: Terrance Davis, Public Works, (510) 981-6300

**Public Comment – Items Not Listed on the Agenda - 0 speakers.**

## Adjournment

**Action:** M/S/C (Humbert/Taplin) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 8:08 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on July 8, 2025.

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Rose Thomsen, Deputy City Clerk

## **Communications**

### **Daylighting**

1. Mark Brucker

### **SB 692**

2. Molly Miller

### **Escalation Request**

3. Ahmed Elghiyati (2)

### **Further Building**

4. Kit Vanbuskirk

### **Measure FF**

5. Commission on Aging

### **Platform Screen Doors**

6. June Ruyle

### **EMBER**

7. Kelly Kenny
8. Berkeley FireSafe Council
9. Barbara Freeman (2)

### **New Parking Meters**

10. Judith L. Bloom

### **AC Transit Feedback**

11. Omowale Fowles

### **Wyman's Jewelz**

12. Ivory Lewis

### **39th Annual Berkeley Juneteenth Festival**

13. Delores Nochi Cooper

### **Formal Complaint**

14. Jamie Passanisi

**Kala Art Institute**

15. Ellen Lake

**Ohlone Park**

16. Nicolas Alexander

17. Sahil Shah

18. Erik Dreher

19. Kristin Leimkuhler

20. Bonnie Borucki

21. Ellen Lewis

22. Isaac Nicholson

23. Rebecca Wolf-Prusan

24. James Loza

25. Dan Cutter

**Encampments**

26. Molly Miller

27. Stephen Most

28. Eric Friedman

29. Elana Auerbach

**Homelessness Concerns**

30. David Freeling

**Streets, Bikes, Bollards, Etc.**

31. Diana

32. Shirley Kirsten (3)

33. Nicole Adams

34. Ciara Corrales

**Safety Concerns**

35. Sheila Goldmacher

36. James McFadden

37. Paola Laverde

**Model House**

38. Gael Alcock (2)

**Cannabis Tax**

39. Jim Wilk (2)

**Children's Hospital Oakland**

40. Aladrian Hillmon

**Fuel Break**

41. Bob Flasher

**Ashby BART Housing**

42. Gregory Kalkanis

**Spam Concern**

43. Amina & Chris

**Traffic Laws**

44. Molly Reno

**Protest Concern**

45. Raymond Barglow (2)

**Public Facilities**

46. Lori Roth

47. Leon Berkowitz

**Venture Capital**

48. David Lerman

**Youth Advisory Collective**

49. Layla Jurow

**RV Regulations**

50. Eric Friedman

**Homeless Policy Concern**

51. David Lerman

**E-Scooter**

52. Robert Borghese (9)

**URL's**

53. Barbara Freeman

**Supplemental Communications and Reports 1**

**Item #A: Zoning Ordinance and General Plan Amendments Relating to Middle Housing (*Continued from June 26, 2025*)**

54. Gabriel Abud

55. Melanie Lawrence & John Smail

56. Theo Gordon

57. Tristan Meyer

58. Susan Taylor

59. Clifford Fred

60. Kamala Visweswaran

61. Margot Smith

62. Lisa Grosch

63. Janeece Cristales

64.4 Similarly worded form letters “I support...”

65.9 Similarly worded form letters “As a committed supporter...”

## Supplemental Communications and Reports 2

### Item #A: Zoning Ordinance and General Plan Amendments Relating to Middle Housing (*Continued from June 26, 2025*)

66. Supplemental agenda material submitted by the Planning and Development

Department

67. Victor Ichioka

68. Andy Kivel

69. Claire Kahane

70. Rick Smith

71. Mimi Mougovan

72. Tony Corman

73. David Simpson

74. Vicki Sommer

75. Diana Rossi

76. Dean Metzger (2)

77. Eduardo Teixeira

78. Carol Hirth

79. Constance Rivemale

80. Councilmember Rashi Kesarwani

81. Irene Rice

82. Donna DeDiemar

83. Pam Zelnik

84. Anne Weinberger

85. Mary Lee Noonan

86. Diane Sosnoski

87. Leila Moncharsh and Isaac Warshauer on behalf of the Berkeley Architectural Heritage Association Preservation Committee

88. Dona Bretherick

## Supplemental Communications and Reports 3

### Item #A: Zoning Ordinance and General Plan Amendments Relating to Middle Housing (*Continued from June 26, 2025*)

89. Laura Klein

90. Judy Bebelaar

91. Peggy Radel

92. Janice Schroeder

93. Mara Gutierrez

94. May Palmer

95. Chris Konnerth

96. Katherine Ramage

97. David Rice

98. Dr. Bruce Feingold (2)

99. Rebecca Tuden

100. Robert Godes (2)
101. Christina Vecchiato
102. David Meyer
103. David A. Coolidge (2)
104. John Oram
105. Tamara Birdsall
106. Crystal Brunzell
107. Alison Lingo
108. Mary Staats
109. Summer Brenner
110. Isaac Warshauer
111. Susan McKearnan
112. Kristine Fowler
113. Stephanie Thomas
114. Darlene Pratt
115. Grace Munakata
116. Scott Hambly (2)
117. John Smail & Melanie Lawrence
118. Dolores Konn
119. Fred Krieger
120. Marjorie Winter
121. Darrell Owens
122. Diane Sosnoski
123. Bailey Smith (2)
124. Joel Myerson (2)
125. Madeleine Feingold
126. Doris Fulder
127. Raissa Lerner
128. Micky Duxbury
129. Tobey M. Wiebe
130. S. Entwistle
131. Donna DeDiemar on behalf of Rob Wrenn
132. Margaret Torn (3)
133. Erin Diehm (2)
134. Christopher Hamilton (2)

## Action Calendar

### Item #26: Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code for Consistency with State Law and Technical Edits (SLTE 2025)

135. Presentation submitted by the Planning Department

**BERKELEY CITY COUNCIL  
SPECIAL MEETING MINUTES**

**TUESDAY, JULY 22, 2025**

**5:30 P.M.**

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

TELECONFERENCE LOCATION - 5617 NW JETTY AVE, LINCOLN CITY, OR 97367

TELECONFERENCE LOCATION - MARINA DEL SOL C-202, IXTAPA, ZIHUATANEJO  
DE AZUETA, 40884, GUERRERO, MÉXICO

TELECONFERENCE LOCATION - TÜRKMEN MAH. ÜNLÜ SOK. NO. 6 KUŞADASI,  
AYDIN, TÜRKIYE

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.*

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1612349631>. 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: **161 234 9631**. 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](mailto: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:** 5:42 p.m.

**Present:** Kesarwani, Taplin, Tregub, O'Keefe, Blackaby, Lunaparra, Humbert, Ishii

**Absent:** Bartlett

**Public Comment - Limited to items on this agenda only – 0 speakers**

## CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

### 1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

**Negotiators:** Paul Buddenhagen, City Manager, David White, Deputy City Manager, Shana Amenaghawon, Interim Budget Manager, Janelle Rodrigues, Human Resources Director, Monica Walker, Human Resources Manager, Chaka Young, Employee Relations Manager

**Employee Organizations:** Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Chief Fire Officers Association Local 1227 I.A.F.F., Berkeley Fire EMS Professionals Association, Berkeley Police Association; SEIU 1021 Community Services and Part-Time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, IBEW Local 1245, Public Employee Union Local 1, Unrepresented Employees

**Action:** No reportable action taken.

## OPEN SESSION:

No reportable action taken.

## Adjournment

**Action:** M/S/C (Humbert/Taplin) to adjourn the meeting.

**Votes:** Ayes – Kesarwani, Taplin, Tregub, O'Keefe, Blackaby, Lunaparra, Humbert, Ishii.  
**Noes – None; Abstain – None; Absent – Bartlett.**

Adjourned at 6:10 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on July 22, 2025.

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Mark Numainville, City Clerk

## MINUTES BERKELEY CITY COUNCIL MEETING

**Tuesday, July 22, 2025  
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
TELECONFERENCE LOCATION - 5617 NW JETTY AVE, LINCOLN CITY, OR 97367  
TELECONFERENCE LOCATION - MARINA DEL SOL C-202, IXTAPA, ZIHUATANEJO  
DE AZUETA, 40884, GUERRERO, MÉXICO  
TELECONFERENCE LOCATION - TÜRKMEN MAH. ÜNLÜ SOK. NO. 6 KUŞADASI,  
AYDIN, TÜRKIYE

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

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## Preliminary Matters

**Roll Call:** 6:37 p.m.

**Present:** Kesarwani, Taplin, Tregub, O'Keefe, Blackaby, Lunaparra, Humbert, Ishii

**Absent:** Bartlett

Councilmember Bartlett present at 6:45 p.m.

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

### Ceremonial Matters:

1. Recognition of July 17, 2025 as Port Chicago Remembrance Day
2. Adjourn in memory of Marie Gunter, Sustainability Advocate
3. Adjourn in memory of George Leitmann, UC Berkeley Professor
4. Adjourn in memory of Rita Maran, former Peace & Justice Commissioner

### City Manager Comments:

The City Manager requested that the Council move Item 11 to the Action Calendar.

**Public Comment on Non-Agenda Matters:** 4 speakers.

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 6 speakers.

**Action:** M/S/C (Humbert/Tregub) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

## Consent Calendar

- 1. At-Will Designation: Assistant City Attorney**  
**From: City Attorney**  
**Recommendation:** Adopt second reading of Ordinance No. 7,979–N.S amending Berkeley Municipal Code Section 4.04.120(A) to designate the unrepresented classification of Assistant City Attorney as at-will.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** None  
Contact: Farimah Brown, City Attorney, (510) 981-6950  
**Action:** Adopted second reading of Ordinance No. 7,979–N.S.
- 2. Lease Amendment with Yoonaco, Inc. (Hana Japan) at 235 University Avenue**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,980–N.S. amending the City’s improved property lease with Yoonaco, Inc. (Hana Japan) for property at 235 University Ave to extend the initial lease term through June 30, 2026, replace the five-year extension option with a one-year extension option, maintain the rent at the current rate of \$7,868 per month for the lease term, and remove the daily operating requirement for the first floor of the property.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted second reading of Ordinance No. 7,980–N.S.
- 3. Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code for Consistency with State Law and Technical Edits (SLTE 2025)**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,981–N.S. amending the following sections of the Berkeley Municipal Code (BMC) to maintain consistency and accuracy:  
3.24.110 Landmarks, historic districts and structures of merit- Designation – Criteria for consideration  
23.106.030 Floor Area, Gross  
23.202.030 Additional Permit Requirements (Residential)  
23.204.030 Additional Permit Requirements (Commercial Districts)  
23.206.030 Additional Permit Requirements (Manufacturing Districts)  
23.302.020 General Use Regulations  
23.304.070 Unenclosed Accessory Structures in Residential Districts  
23.326.030 Demolition of Residential Units  
23.326.050 Demolition of Accessory Buildings  
23.326.070 Demolition of Non-Residential Buildings  
**First Reading Vote:** All Ayes.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Adopted second reading of Ordinance No. 7,981–N.S.

## Consent Calendar

- 4. Appointment of Emergency Standby Officers**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution confirming the appointment of newly nominated standby officers for the Mayor and City Council to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 70,833-N.S.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Adopted Resolution No. 71,889–N.S. as revised in Supplemental Communications Packet #1 by the City Manager.
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 22, 2025**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids that will be or 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  
**Action:** Approved recommendation.
- 6. Reallocation of FY 2025 Youth Resiliency Funding**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or designee to reallocate Youth Equity Partnership (YEP) funds awarded through the FY 2025 - 2028 community agency contracting process to the Berkeley Public Schools Fund, Contract No. 32500058, and amend the Schools Fund’s existing contract as follows: 1. Remove the Black Girls United (BGU) program from the contract (at the contractor’s request). 2. Reallocate \$20,000 of the BGU funding to the Longfellow Identity Affirming Programs (LIAP) for FY 2026 through FY 2028, increasing their total annual allocation from \$25,300 to \$45,300. 3. Return the remaining \$27,817 initially awarded to BGU, annually, to the General Fund for FY 2026 - 2028.  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 71,890–N.S.

## Consent Calendar

### 7. Revenue Grant Agreements: Funding Support from Alameda County to Conduct Public Health Services

**From: City Manager**

**Recommendation:** Adopt three Resolutions authorizing the City Manager or designee to submit grant agreements to Alameda County, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the following three revenue agreements:

1. Berkeley High School and Berkeley Technology Academy Health Center Programs in the projected amount of \$187,926 for Fiscal Year 2026.
2. School Linked Health Services Program (Measure A Funding) in the projected amount of \$200,011 for Fiscal Year 2026.
3. Tobacco Prevention Program in the projected amount of \$82,600 for Fiscal Year 2026.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 71,891–N.S. (Health Center Programs); Resolution No. 71,892–N.S. (School Linked); Resolution No. 71,893–N.S. (Tobacco Prevention).

### 8. Revenue Grant Agreements: Funding Support from the State of California to Conduct Public Health Services

**From: City Manager**

**Recommendation:** Adopt three Resolutions authorizing the City Manager or designee to submit grant agreements to the State of California, to accept the grants, and execute any resultant revenue agreements and amendments to conduct public health promotion, protection, and prevention services for the following three revenue agreements:

1. Maternal, Child and Adolescent Health (MCAH) Program, in the projected amount of \$377,000 for Fiscal Year 2026. See match information in Fiscal Impacts section below.
2. Tobacco Trust Fund: There is no match required, and this contract is expected to be for \$600,000 for Fiscal Year 2026 through Fiscal Year 2027.
3. Women, Infant, Children Program There is no match required, and this contract is expected to be for \$2,557,619 for Federal Fiscal Year 2026 through Federal Fiscal Year 2028.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 71,894–N.S. (MCAH); Resolution No. 71,895–N.S. (Tobacco Trust Fund); Resolution No. 71,896–N.S. (Women, Infant, Children Program).

## Consent Calendar

- 9. Supplemental Military Leave Compensation Policy**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending Resolution No. 63,646–N.S. to the City’s Supplemental Military Leave Compensation Policy to be retroactively effective from July 1, 2025, going forward in order to provide supplemental wages for employees called to involuntary active military service.  
**Financial Implications:** See report  
Contact: Janelle Rodrigues, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 71,897–N.S.
- 10. 2024 Annual Military Equipment Report (Assembly Bill 481)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the 2024 Annual Military Equipment Report.  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Adopted Resolution No. 71,898–N.S.
- 11. Surveillance Technology Ordinance Submission for Berkeley City Jail Surveillance System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Accepting the attached Surveillance Acquisition Report for the Berkeley City Jail Surveillance System, pursuant to Berkeley Municipal Code (B.M.C.) Chapter 2.99. 2. Accepting the attached Surveillance Use Policy: Use of Internal Video Surveillance System (BPD Policy 1306).  
**Financial Implications:** See report  
Contact: Jennifer Louis, Police, (510) 981-5900  
**Action:** Moved to Action Calendar. 2 speakers. M/S/C (O’Keefe/Taplin) to adopt Resolution No. 71,899–N.S.  
**Vote:** All Ayes.
- 12. Appointment of Ian Hunt to the Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution approving the recommendation for appointment of Ian Hunt to the Mental Health Commission. Mr. Hunt will represent the Special Interest Category (consumer), beginning his 3-year term on July 23, 2025, ending on July 22, 2028.  
**Financial Implications:** See report  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400  
**Action:** Adopted Resolution No. 71,900–N.S.

## Consent Calendar

### 13. **Police Accountability Board Report: Fair and Impartial Policing Implementation** (Reviewed by the Public Safety Committee) (Item contains supplemental material)

#### **From: Police Accountability Board**

**Recommendation:** Approve the following recommendations and instruct the Berkeley Police Department (BPD) and Police Accountability Board (PAB) to proceed with their implementation:

Recommendations to the Berkeley Police Department: 1. Three-prong approach. a. Definition of Low-Level Traffic Infractions: A definition consistent with SB 50 should be adopted. b. Primary Collision Factors: This prong should specify the mode of the party at fault. c. Community Reports: Under the category of "a variety of unsafe driving incidents," policies should be put in place that specify which calls for service will result in law enforcement action. That specification should be derived from an analysis of the 13% of calls from community members that resulted in a citation or arrest, as per the City Auditor's July 2021 report. d. Community Caretaking: This prong needs more specificity, and its components should be based on Berkeley data rather than national statistics, as is done for Prong 1 (Primary Collision Factors). Specifically, the analysis should examine which other factors (non-PCFs) are highly associated with severe and fatal collisions in Berkeley. The open-ended quality of this prong may contribute to more non-safety-related stops than is called for in the Council directive. If more specificity is not possible or feasible, this prong should be eliminated. e. Reporting: Future BPD updates on FIP implementation should include statistical information enabling an analysis of the impact of the three-prong approach on reducing or eliminating stops for low-level offenses—a primary focus of the Council directive—in a manner that supports an overall assessment and an understanding of the approach's impact on reducing racial disparities in traffic stops. 2. Evidence-based definition for stops of criminal suspects: a. Establish an evidence-based definition for stops of criminal suspects. b. Explain how precision-based policing, feedback loops, and accountability measures referenced in BPD FIP implementation updates relate to this recommendation and addresses the directive to establish an evidence-based definition for stopping criminal suspects. 3. Enhanced implicit bias training: Per the Council's directive, ensure that BPD personnel receive intensive annual training dedicated to implicit bias. 4. EIS: Pending the deployment of a new Early Intervention and Risk Management system, EIS audits should be focused on officers who are outliers on the variables stipulated in the Department's EIS, with a particular focus on racial disparities in stops, arrests, and searches. A designated PAB Member should serve as an observer in this process, as has been informally agreed to. Future audit reports should include the scope of what was reviewed and a clear statement of findings within the confines of officer confidentiality. 5. Written consent searches: Future reporting to the council should include the number of consent searches conducted per reporting period and their effect on racial disparities in searches, compared to consent search numbers before implementation. 6. Warrantless searches of people on supervised release: Future FIP updates should identify the impact of the new BPD Policy 311.6 on the numbers of searches and arrests of people on probation and parole and the racial disparities in them. 7. Profiling by proxy: Future BPD updates should specify what

## Consent Calendar

instructions dispatchers are given on profiling by proxy, and any impact the instruction and corresponding Communications Manual amendments have had on racial disparities in departmental response to calls for service. 8. Business cards: Ensure that business cards are distributed as mandated by the Council directive. 9. Make resources on police-civilian encounters publicly available, such as through RAHEEM.org.

Recommendations to the Police Accountability Board:

1. Scenario-based training: The 2021 Council specifically referred to the PAB oversight of the implementation of a scenario-based training component in the existing officer training required by the California Penal Code. This topic will be agendized for discussion at a future PAB meeting, including the appropriateness of, and ability of the PAB to oversee departmental training. 2. Crisis Intervention Team (CIT): The 2021 Council item refers to the PAB accelerating CIT activity. This will be discussed in future PAB meetings.

Recommendations to the Berkeley City Council:

1. Establish metrics to assess the success of implementing FIP directives. Currently, the BPD appears to be focused entirely on policy, and on tests of bias, as evidenced in its recently published Annual Report. The PAB has focused instead on outcomes, addressing the key question of whether racial disparities have decreased in any of the areas subject to FIP directives. 2. Eliminate reporting requirements for recommendations that the PAB ascertains have been fully implemented. 3. Require BPD to report biannually on: a. Traffic stops by each prong of their 3-prong framework and by race within each prong. b. Stop, search, and arrest data by probation/parole status and race. c. Calls for service by the race of the reporter and reportee.

*Policy Committee Recommendation: To send item to City Council with a qualified positive recommendation highlighting the refined actions agreed upon by PAB and BPD as captured in their joint letter, and to close the Fair and Impartial Policing (FIP) Task Force referral from the February 23, 2021 City Council meeting, with the understanding that the specific recommendations in that referral have been completed, although work on fair and impartial policing will continue.*

**Financial Implications:** See report

Contact: Hansel Aguilar, Commission Secretary, (510) 981-4950

**Action:** Approved recommendation as recommended by the Public Safety Committee.

## Council Consent Items

**14. Resolution in Support of California Senate Bill 81 (Arreguín) Health and Care Facilities: Information Sharing to Amend Sections 56.05 and 56.10 of the Civil Code, and to Add Chapter 1.5 to Division 2 of the Health and Safety Code, Relating to Health and Care Facilities**

**From: Councilmember Tregub (Author), Mayor Ishii (Co-Sponsor), Councilmember Humbert (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor)**

**Recommendation:** Adopt a Resolution in support of California State Senate (SB) Bill 81 (Arreguín), Healthcare Provider Entities: Information Sharing amend Sections 56.05 and 56.10 of the Civil Code, and to add Chapter 1.5 (commencing with Section 1249) to Division 2 of the Health and Safety Code, relating to health and care facilities, and declaring the urgency thereof, to take effect immediately; 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. SB 81 would mandate healthcare facilities to develop protocols for monitoring and receiving visitors, as well as designating certain areas as nonpublic in order to maintain a secure environment aligned with the facility's mission and commitment to patient care. Additionally, the bill would prohibit immigration enforcement agents from entering nonpublic areas of a facility without a valid judicial warrant or court order. It would also protect patient information by barring the disclosure of a person's current or past immigration status or place of birth for purposes related to immigration enforcement.

**Financial Implications:** Staff time.

Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

**Action:** Adopted Resolution No. 71,901–N.S. as revised in Supplemental Communications Packet #1 by Councilmember Tregub.

## Action Calendar – Public Hearings

### 15. Ordinance Vacating a Portion of Carleton Street from Westerly Terminus Extending 381.23 Feet Easterly

**From: City Manager**

**Recommendation:**

1. Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance vacating a 381.23-linear-foot (27,449 square foot) portion of the public right-of-way on Carleton Street, located at the westerly terminus of Carleton Street.
2. Schedule a public hearing and second reading of the Ordinance for the July 29, 2025, Council meeting.
3. Upon conclusion of the second reading of the Ordinance, authorize the City Manager to execute a deed quit claiming that portion of the right-of-way of Carleton Street and conveying to the adjacent property owner, Bayer Healthcare LLC ("Bayer").

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**Public Testimony:** The Mayor opened the public hearing. 13 speakers.

M/S/C (Blackaby/Humbert) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Taplin/Kesarwani) to adopt the first reading of Ordinance No. 7,982–N.S. Public hearing and second reading scheduled for July 29, 2025.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, O’Keefe, Blackaby, Humbert, Ishii; Noes – None; Abstain - Lunaparra.

Recess 8:42 p.m. – 8:59 p.m.

### 16. Memorandum of Understanding (MOU) Compendium: Agreements with Other Law Enforcement Agencies and Private Organizations

**From: City Manager**

**Recommendation:**

Conduct a public hearing, and upon conclusion, adopt a Resolution:

1. Approving the attached Compendium reflecting the current operational agreements between the Berkeley Police Department and other law enforcement agencies and private organizations.
2. Accepting the attached Suspicious Activity Report (SAR).
3. Accepting the attached Mutual Aid requests and responses report as submitted in accordance with existing City Council directives.

**Financial Implications:** See report

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

**Public Testimony:** The Mayor opened the public hearing. 9 speakers.

M/S/C (Taplin/Tregub) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Blackaby/Humbert) to adopt Resolution No. 71,902–N.S.

**Vote:** All Ayes.

## Action Calendar – New Business

### 17. Surveillance Technology Ordinance Submission for External Fixed Surveillance Cameras (Flock Safety Condor Video Cameras)

**From:** City Manager

**Recommendation:** Adopt a Resolution: 1. Accepting the attached Surveillance Acquisition Report for the Flock Safety Condor video cameras, pursuant to Berkeley Municipal Code (B.M.C.) Chapter 2.99.

2. Re-affirming the associated Berkeley Police Department (BPD) Use Policies (BPD Policy 351: External Fixed Video Surveillance Cameras and BPD Policy 1304: Surveillance Use Policy—External Fixed Video Surveillance Cameras), which were previously approved by Council on June 13, 2023.

**Financial Implications:** See report

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

**Action:** M/S/C (Humbert/Taplin) to suspend the rules and extend the meeting to 12:00 a.m.

**Vote:** All Ayes.

**Action:** M/S/C (Blackaby/Kesarwani) to suspend the rules and extend the meeting to 12:30 a.m.

**Vote:** All Ayes.

**Action:** M/S/Failed (Tregub/Ishii) on the severed portion of the motion to change the retention period to 90 days in the policy.

**Vote:** Ayes – Bartlett, Tregub, Lunaparra, Ishii; Noes – Kesarwani, Taplin, O’Keefe, Blackaby, Humbert.

**Action:** 20 speakers. M/S/C (Tregub/Ishii) to:

1) adopt Resolution No. 71,903–N.S. accepting the attached Surveillance Acquisition Report for the Flock Safety Condor video cameras, pursuant to Berkeley Municipal Code (B.M.C.) Chapter 2.99. and re-affirming the associated Berkeley Police Department (BPD) Use Policies (BPD Policy 351: External Fixed Video Surveillance Cameras and BPD Policy 1304: Surveillance Use Policy—External Fixed Video Surveillance Cameras), which were previously approved by Council on June 13, 2023; and

2) As part of Item 17, the Berkeley City Council directs the City Manager to address each of the elements below:

#### 1. Biannual (Twice Per Year) Audit Report

The Berkeley Police Department’s Biannual Surveillance Technology Report, presented each November, shall include, but not be limited to the following information from the preceding review period as an additional privacy safeguard:

a. Confirm that BPD doesn’t enter any direct data sharing agreements or give direct access to outside agencies. A log of any instance of when surveillance video and/or audio data has been shared, including date, time, reason for search, and any recipient agencies.

## Action Calendar – New Business

### 2. The Council supports the following recommendations of the Berkeley Police Accountability Board (PAB):

- a. Use Policies Section 351.4.2/1304.2: “Video surveillance systems and recordings are subject to the Berkeley Police Department’s Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials, unless required by federal law.”
- b. Use Policies Section 351.4.2/1304.2: “Video recordings shall not be disclosed to law enforcement agencies from other states if the purpose of the request is to support the enforcement of laws that restrict or criminalize reproductive rights or rights regarding the provision or receipt of gender-affirming care.”
- c. The Sanctuary City Ordinance, scheduled for a Council vote in Fall 2025, will likely, among other topics, address how the City of Berkeley handles and reports requests from federal immigration authorities, vendors, or any non-local agencies to access data for federal immigration enforcement purposes, as well as the recipients of such reports. Additionally, in the event a Federal Agency is given BPD-owned data stored with Flock the Berkeley Police Chief or designee will notify the City Manager, City Attorney, and City Council within 72 hours of the discovery of the incident.
- d. Add a new section to the Fixed Video Surveillance Policy requiring BPD to observe certain safeguards with respect to surveillance camera data from the Berkeley Police Department’s ALPR policy (Section 1304.12).

### 3. Additional Safeguards

- a. The Berkeley City Council reaffirms its intention to approve contracts that are in full compliance with Berkeley City Law, including but not limited to subject BPD policies and the to-be-delivered Sanctuary City Ordinance. As a matter of course, the Berkeley City Council directs the City Manager to ensure that no proposed contractual clauses with Flock for proposed Flock Safety Condor Video Cameras are, or could potentially be, in conflict with Berkeley City Law, prior to final approval of the contract by the Berkeley City Council. For example, Sections 4.3 and 5.3 of Flock boilerplate contractual language appears to contradict city policy. These and other provisions are to be discussed during contract negotiations.
- b. The City of Berkeley reaffirms the City Manager’s authority, which may be delegated to the Berkeley Police Chief, to pause or end the deployment of the subject equipment at any time and for any cause. The City Council shall be, within 48 hours, notified of any such decision to pause or end its deployment.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, O’Keefe, Blackaby, Humbert, Ishii; Noes – Lunaparra.

## Information Reports

### 18. Reimagining Public Safety Status Report

**From:** City Manager

Contact: Carianna Arredondo, City Manager’s Office, (510) 981-7000

**Action:** Received and filed.

## Information Reports

19. **Restaurant Inspection Audit Status Report**  
**From: City Manager**  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400  
**Action:** 3 speakers. Moved to Action Calendar. Discussion held.
20. **Landmark Preservation Ordinance Notice of Decision: 2009 Tenth Street/#LMSAP2025-0003**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
21. **Landmark Preservation Ordinance Notice of Decision: 2035 Francisco Street/#LMIN2024-0003**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
22. **City Auditor Fiscal Year 2026 Audit Plan**  
**From: Auditor**  
Contact: Jenny Wong, Auditor, (510) 981-6750  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 3 speakers.**

## Adjournment

**Action:** M/S/C (Tregub/Taplin) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 12:10 a.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on July 22, 2025.

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Mark Numainville, City Clerk

## Communications

### Harrassment Concern

1. Cielo Sambas (2)

### Brown Act

2. Inger Acking
3. David Meyer
4. Mary Anne Morgan

5. Jackie Schmidt-Posner
6. Barbara Anscher

**Geneva's Path**

7. Deb Spaulding Graham
8. Andrew Graham

**Dogs at Caesar Chavez Park**

9. Maureen Daggett

**Ohlone Concerns and Encampments**

10. Yasemin Sussman
11. Tom Attar (2)
12. Nicholas Alexander (3)
13. Xavier Linn
14. Roger Hallsten
15. Rochelle T.
16. Jessica Fain
17. Daniel Jurnove
18. Kathy Dittmer
19. Karl Torke
20. David Mateer
21. Martin Seldin
22. Lj Cranmer
23. Dan Cutter (2)
24. Yael Galinson
25. Jia Liang
26. David Tepper

**Berkeley Waterfront and Park Fees**

27. Margie Winter (2)
28. Elisha Greenwell
29. Iliana Montauk (2)
30. Rachel Bradley
31. Juliane Kowski
32. Robert Crosman
33. Deborah Green

**Takara Sake Plant**

34. Cecelia Mautner

**Road Damage**

35. Jia Liang

**Homelessness Concerns**

36. Andrea Ricci
37. Maris Arnold

38. Kathleen Krier

**Half Price Books**

39. Simi Dhillon

**Sidewalk Repair**

40. Todd Andrew

**City Services Concerns**

41. Rebecca Young

**Berkeley's City Budget**

42. David Lerman

**Granicus Concern**

43. Alex Taylor

**Filming Concern**

44. Liying Tao

**EMBER**

45. Mary-Louise Hansen

46. Geoff Lomax

**Blight in Berkeley**

47. Cecelia Mautner

**8<sup>th</sup> and Harrison**

48. Elana Auerbach

**Home Security Concern**

49. Seth Crabtree

**The Bay Baby Book Project Donation**

50. Seena Hawley

**Parking Concerns and Pedestrian Safety**

51. Shirley Kirsten (3)

52. Parking & Transportation

53. Bill Pottinger

**Online Bill Payments**

54. Jeffrey Frey

**E-Scooters**

55. Robert Borghese (6)

56. Robert Byler (3)

57. John Roveron Ravano

**ODPA Statement**

58. Office of the Director of Police Accountability

**Middle East Conflict**

59. Mohammed Hassan

**Forwards**

60. Elana Auerbach (2)

**URL's**

61. Inetjalopy

62. Russbumper

63. Jai

**Supplemental Communications and Reports 1**

**Item #4: Appointment of Emergency Standby Officers**

64. Revised agenda material submitted by the City Clerk's Department

**Item #14: Resolution in Support of California Senate Bill 81 (Arreguín) Health and Care Facilities: Information Sharing to Amend Sections 56.05 and 56.10 of the Civil Code, and to Add Chapter 1.5 to Division 2 of the Health and Safety Code, Relating to Health and Care Facilities**

65. Revised agenda material submitted by Councilmember Igor Tregub, Mayor Adena Ishii, Councilmember Humbert, and Councilmember Lunaparra

**Supplemental Communications and Reports 2**

**Item #17: Surveillance Technology Ordinance Submission for External Fixed Surveillance Cameras (Flock Safety Condor Video Cameras)**

66. Office of the Director of Police Accountability on behalf of the Police Accountability Board (2)

67. Judy Bertelsen

68. Pamela Tellew

69. Tobey Wiebe

70. Margot Smith

71. Sally Nelson

72. Cindy Shamban

**Supplemental Communications and Reports 3**

**Item #15: Ordinance Vacating a Portion of Carleton Street from Westerly Terminus Extending 381.23 Feet Easterly**

73. Presentation submitted by the Public Works Department

74. Susan Schwartz on behalf of the Friends Five Creeks

**Item #17: Surveillance Technology Ordinance Submission for External Fixed Surveillance Cameras (Flock Safety Condor Video Cameras)**

75. Presentation submitted by the Police Department

76. A.S. Ikeda

77. Kelly Hammargren

**Item #19: Restaurant Inspection Audit Status Report**

78. Lara Hornbeck

79. John Elrich

80. Rudabeh Pakravan

**Item #22: City Auditor Fiscal Year 2026 Audit Plan**

81. Presentation submitted by the City Auditor's Office

**MINUTES  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Wednesday, July 23, 2025  
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
TELECONFERENCE LOCATION - MARINA DEL SOL C-202, IXTAPA, ZIHUATANEJO  
DE AZUETA, 40884, GUERRERO, MÉXICO

TELECONFERENCE LOCATION - 5617 NW JETTY AVE, LINCOLN CITY 97367  
TELECONFERENCE LOCATION - TÜRKMEN MAH. ÜNLÜ SOK. NO. 6 KUŞADASI,  
AYDIN, TÜRKIYE

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](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/1609419872>. 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: 160 941 9872**. 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](mailto: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:** 6:07 p.m.

**Present:** Kesarwani, Taplin, Tregub, Blackaby, Lunaparra, Humbert, Ishii

**Absent:** Bartlett, O'Keefe

Councilmember Bartlett present at 6:10 p.m.

**Public Comment:** 1 speaker.

## Action Calendar – Public Hearings

- 1. Landmarks Preservation Commission Appeal: 2425 Durant, Landmark application #LMIN2024-0008**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing, and upon conclusion adopt a Resolution upholding the appeal and reversing the Landmarks Preservation Commission (LPC) decision to designate the subject property as a City Landmark.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

**Public Testimony:** The Mayor opened the public hearing. 5 speakers.  
M/S/C (Humbert/Taplin) to close the public hearing.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – O'Keefe.

**Action:** M/S/C (Kesarwani/Taplin) to adopt Resolution No. 71,904–N.S., including the supplemental material received from the City Manager in the Supplemental Communications Packet 2, upholding the appeal and reversing the Landmarks Preservation Commission (LPC) decision to designate the subject property as a City Landmark.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – O'Keefe, Blackaby.

Councilmember Blackaby absent 7:35 p.m. – 7:37 p.m.

## Action Calendar – Public Hearings

**2. Landmarks Preservation Commission Appeal: 2138 Kittredge, Landmark application #LMIN2024-0006**

**From: City Manager**

**Recommendation:** Conduct a public hearing, and upon conclusion adopt a Resolution upholding the appeal and reversing the Landmarks Preservation Commission (LPC) decision to designate the subject property as a City Landmark.

**Financial Implications:** None

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

**Public Testimony:** The Mayor opened the public hearing. 3 speakers.

M/S/C (Taplin/Tregub) to close the public hearing.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – O’Keefe.

**Action:** M/S/C (Tregub/Humbert) to adopt Resolution No. 71,905–N.S. upholding the appeal and reversing the Landmarks Preservation Commission (LPC) decision to designate the subject property as a City Landmark.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – O’Keefe.

Recess 8:09 p.m. – 8:20 p.m.

**3. Zoning Adjustment Board Appeal: 2655 Shattuck, Use Permit #ZP2024-0057**

**From: City Manager**

**Recommendation:** Conduct a public hearing, and upon conclusion adopt a Resolution denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision to approve Use Permit #ZP2024-0057 to demolish a one-story, 8,185-square-foot, non-residential building and construct an eight-story (85 feet), 84,399-square-foot mixed-use residential building containing 97 dwelling units (including ten Very Low-Income Density Bonus qualifying units), 2,117 square feet of ground-floor commercial space and 41 vehicle parking space, on a 23,527 square foot lot.

**Financial Implications:** None

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

**Public Testimony:** The Mayor opened the public hearing. 19 speakers.

M/S/C (Taplin/Humbert) to close the public hearing.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – O’Keefe.

**Action:** M/S/C (Kesarwani/Humbert) to adopt Resolution No. 71,906–N.S. denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision to approve Use Permit #ZP2024-0057 to demolish a one-story, 8,185-square-foot, non-residential building and construct an eight-story (85 feet), 84,399-square-foot mixed-use residential building containing 97 dwelling units (including ten Very Low-Income Density Bonus qualifying units), 2,117 square feet of ground-floor commercial space and 41 vehicle parking space, on a 23,527 square foot lot.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Blackaby, Lunaparra, Humbert, Ishii; Noes – None; Abstain – None; Absent – O’Keefe.

## Adjournment

**Action:** M/S/C (Taplin/Tregub) to adjourn the meeting.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Blackaby, Lunaparra, Humbert, Ishii;  
Noes – None; Abstain – None; Absent – O’Keefe.

Adjourned at 10:03 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on July 23, 2025.

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Mark Numainville, City Clerk

## Communications

**Item #3: Zoning Adjustment Board Appeal: 2655 Shattuck, Use Permit #ZP2024-0057**

1. Marianne Sluis

## Supplemental Communications and Reports 1

**Item #3: Zoning Adjustment Board Appeal: 2655 Shattuck, Use Permit #ZP2024-0057**

2. Jonathan Streeter
3. Elizabeth Ditmars

## Supplemental Communications and Reports 2

**Item #1: Landmarks Preservation Commission Appeal: 2425 Durant, Landmark application #LMIN2024-0008**

4. Supplemental agenda material submitted by the Planning & Development Department

**Item #1: Landmarks Preservation Commission Appeal: 2425 Durant, Landmark application #LMIN2024-0008**

**Item #2: Landmarks Preservation Commission Appeal: 2138 Kittredge, Landmark application #LMIN2024-0006**

5. Thalia Lubin (2)
6. Ellen Goldblatt
7. Sharon Entwistle
8. Harry Delmer
9. Emily Fox
10. Joan Hart
11. Virginia Jansen
12. Bill Grove
13. Doris Fulder Nassiry
14. Maxine Risley
15. Leah Shelleda
16. Deborah Finch
17. Jerri Holan

18. Tobey M. Wiebe
19. Leila Moncharsh on behalf of the Berkeley Architectural Heritage Association
20. Isaac Warshauer on behalf of the Berkeley Architectural Heritage Association (4)
21. John Brennan
22. Gillian Bagwell
23. Dahlia Armon
24. Stephanie Manning
25. Dan Slobin
26. Phil Allen
27. John Hitchen
28. Harvey Smith
29. Krishna Shekhawat
30. Michael Barglow

**Item #3: Zoning Adjustment Board Appeal: 2655 Shattuck, Use Permit #ZP2024-0057**

31. Elizabeth Riddle
32. Mark Goudy
33. Charlotte Shimura
34. Sally Bean

### **Supplemental Communications and Reports 3**

**Item #1: Landmarks Preservation Commission Appeal: 2425 Durant, Landmark application #LMIN2024-0008**

35. Presentation submitted by the Planning & Development Department

**Item #2: Landmarks Preservation Commission Appeal: 2138 Kittredge, Landmark application #LMIN2024-0006**

36. Presentation submitted by the Planning & Development Department

**Item #3: Zoning Adjustment Board Appeal: 2655 Shattuck, Use Permit #ZP2024-0057**

37. Presentation submitted by the Planning & Development Department
38. Charles Kassier
39. Nicholas Eckenwiler on behalf of the California Housing Defense Fund

**Item #1: Landmarks Preservation Commission Appeal: 2425 Durant, Landmark application #LMIN2024-0008**

**Item #2: Landmarks Preservation Commission Appeal: 2138 Kittredge, Landmark application #LMIN2024-0006**

**Item #3: Zoning Adjustment Board Appeal: 2655 Shattuck, Use Permit #ZP2024-0057**

40. Robert Kehlmann
41. Gale Garcia
42. Gerhard Blendstrup
43. Dan Slobin
44. Ann Pagliaro
45. Judith Thomas
46. Paul T. Roberts
47. Robert Johnson
48. Deborah Green (2)

- 49. Holly M. Smith
- 50. Jane McKinne-Mayer
- 51. Steven Schuyler
- 52. Lorraine Lerman
- 53. Amy Di Costanzo
- 54. Brandon Ice
- 55. Lynn Zamarra
- 56. Jane Goodwin
- 57. Hal and Turi Reynolds

**Miscellaneous**

- 58. Ryan Lau on behalf of AC Transit

**MINUTES  
SPECIAL MEETING OF THE  
BERKELEY CITY COUNCIL**

**Tuesday, July 29, 2025  
4:00 PM**

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

TELECONFERENCE LOCATION - TÜRKMEN MAH. ÜNLÜ SOK. NO. 6 KUŞADASI,  
AYDIN, TÜRKIYE

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](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/1601268556> 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: 160 126 8556**. 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](mailto: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:** 4:14 p.m.

**Present:** Kesarwani, Taplin, Tregub, O’Keefe, Blackaby, Lunaparra, Humbert, Ishii

**Absent:** Bartlett

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 2 speakers.

**Action:** M/S/C (Blackaby/Tregub) to adopt the Consent Calendar in one motion.

**Vote:** Ayes – Kesarwani, Taplin, Tregub, O’Keefe, Blackaby, Lunaparra, Humbert, Ishii;  
Noes – None; Abstain – None; Absent – Bartlett.

## Consent Calendar

### 1. **Grant Award: Byrne State Crisis Intervention Program (SCIP) Cohort 2 Funding – Acceptance of Grant and Execution of Related Documents**

**From:** City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to accept the Byrne State Crisis Intervention Program (SCIP) grant award of \$1,000,000 from the Board of State and Community Corrections (BSCC); execute any resultant agreements and amendments; appropriate the funding for eligible project activities consistent with the City's Gun Violence Intervention and Prevention Program (GVIPP); approve the establishment and funding allocation for a temporary Crime Analyst position (not to exceed two years); and to amend Contract No. 32500002 with Live Free USA to expand violence intervention services.

**Financial Implications:** See report

Contact: Carianna Arredondo, City Manager's Office, (510) 981-7000

**Action:** Adopted Resolution No. 71,907–N.S.

## Action Calendar – New Business

### 2a. **Presentation: Comprehensive Summary of Berkeley’s Homeless Response**

**From:** City Manager

Contact: Peter Radu, City Manager's Office, (510) 981-7000, Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

**Action:** Presentation continued to a future meeting.

## Action Calendar – New Business

### 2b. Homeless Response Team: Opportunities Exist to Strengthen Procedures and Better Track Outcomes

**From: Auditor**

**Recommendation:** We recommend City Council request that the City Manager report back during the audit follow-up period in Fall 2026, and annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Homelessness Response Team and the City Manager’s Office. The audit includes six recommendations to improve coordination with service providers, strengthen data procedures, expand and standardize outcome reporting, enhance public transparency, and assess staffing resources needed to support these efforts. The City Manager’s Office agreed to our findings and recommendations. Please see our report for their complete response.

**Financial Implications:** See report

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

**Action:** Item continued to a future meeting.

## Adjournment

**Action:** M/S/C (O’Keefe/Tregub) to adjourn the meeting.

**Vote:** Ayes – Kesarwani, Taplin, Tregub, O’Keefe, Blackaby, Lunaparra, Humbert, Ishii;  
Noes – None; Abstain – None; Absent – Bartlett.

Adjourned at 5:21 p.m.

I hereby certify that the foregoing is a true and correct record of the special meeting held on July 29, 2025.

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Mark Numainville, City Clerk

## Communications

- None

## Supplemental Communications and Reports 1

- None

## Supplemental Communications and Reports 2

- None

## Supplemental Communications and Reports 3

## Action Calendar – New Business

**Item #2a: Presentation: Comprehensive Summary of Berkeley’s Homeless Response**

1. Presentation submitted by the City Manager's Office

**Item #2b: Homeless Response Team: Opportunities Exist to Strengthen Procedures and Better Track Outcomes**

2. Presentation submitted by the City Auditor's Office
3. Fran Haselsteiner (3)

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, July 29, 2025**  
**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702  
TELECONFERENCE LOCATION - TÜRKMEN MAH. ÜNLÜ SOK. NO. 6 KUŞADASI,  
AYDIN, TÜRKIYE

ADENA ISHII, MAYOR

Councilmembers:

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## Preliminary Matters

**Roll Call:** 6:06 p.m.

**Present:** Kesarwani, Taplin, Tregub, O’Keefe, Blackaby, Lunaparra, Humbert, Ishii

**Absent:** Bartlett

Councilmember Bartlett present at 6:11 p.m.

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

**Ceremonial Matters:** None

### City Manager Comments:

The City Manager removed Item 14 regarding Urban Ore from the agenda. The City Manager recommended that Council only take up Title 23 amendments in Item 28 and defer the Title 21 amendments to a later date.

### City Auditor Comments:

The City Auditor provided a presentation following up on the recommendations in the Financial Conditions Audit.

**Public Comment on Items not Listed on the Agenda:** 10 speakers

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 8 speakers.

**Action:** M/S/C (Taplin/Humbert) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

## Consent Calendar

- 1. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of June 3, 2025 (closed and regular), June 9, 2025 (closed), June 17, 2025 (regular), June 24, 2025 (special and regular), June 26, 2025 (special), and June 30, 2025 (closed).  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Approved the minutes as submitted.
- 2. Amending the City Council's Policy for the General Fund Reserves**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution amending the City Council's Policy for the General Fund Reserves and rescind Resolution No. 69,440-N.S.  
**Financial Implications:** see report  
Contact: David White, City Manager's Office, (510) 981-7000, Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted Resolution No. 71,908–N.S.
- 3. Contract No 32400009 Amendment: Stella Courier, LLC. for Mail Services and Mail Room Coverage**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No: 32400009 with Stella Courier, LLC., to provide mail services to the City's satellite locations, and as-needed mail room coverage, increasing the amount by \$180,000 for an amended total amount not to exceed \$360,000 over an additional two-year period starting August 1, 2025 through July 31, 2027.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted Resolution No. 71,909–N.S.
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 29, 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  
**Action:** Approved recommendation.

## Consent Calendar

- 5. Contract: InfoSend for Bill Printing and Mailing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments which align with the City of Brawley's existing contract and any amendments, with InfoSend to provide Bill Printing and Mailing Services from July 30, 2025 until June 30, 2026 in an amount not to exceed \$150,000 with an option to renew in increments of two (2) years, in alignment with the City of Brawley contract for an additional \$100,000. The total contract value through September 2028 is not to exceed \$250,000.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Adopted Resolution No. 71,910–N.S.
- 6. Designate the Line of Succession for the Director of Emergency Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an emergency, and rescinding Resolution No. 70,729-N.S.  
**Financial Implications:** None  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 71,911–N.S.
- 7. Contract with Wildfire Defense to Serve as the Alameda County Coordinator**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution:  
1. Authorizing the City Manager or designee to execute a contract with Wildfire Defense to serve as the Alameda County Coordinator for coordination with local agencies, fire safe councils, and wildfire mitigation community groups for the initial period August 1, 2025, through June 30, 2026, in an amount not to exceed \$155,500, and to apply for and receive future grant funding in collaboration with Berkeley Fire Department staff to maintain the position through 2028; and  
2. Authorizing the City Manager or designee to execute any amendments for not more than \$225,000 per year in Fiscal Year (FY) 25, FY26, and FY27, upon receiving additional California Fire Safe Council (CFSC) grants to continue contracting Wildfire Defense to serve Alameda County communities, provide resources and education on wildfire safety, promote collaboration, assist local groups with funding opportunities, and aid multi-jurisdictional planning.  
**Financial Implications:** None  
Contact: David Sprague, Fire, (510) 981-3473  
**Action:** Adopted Resolution No. 71,912–N.S.

## Consent Calendar

- 8. Submitting Application for Permanent Local Housing Allocation Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or designee to apply for and accept funds from the State of California's Permanent Local Housing Allocation Program, in an amount not to exceed \$849,945.  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 71,913–N.S.
- 9. Mental Health Services Act Fiscal Year 2026 Annual Update**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the Mental Health Services Act (MHSA) Fiscal Year 2026 Annual Update, which identifies uses of funds for mental health programming, and forwarding the Annual Update to appropriate State officials.  
**Financial Implications:** See report  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 71,914–N.S. as revised in Supplemental Communications Packet #1 by the City Manager.
- 10. Adopt Resolution Approving Publicly Available Pay Schedule**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving a publicly available pay schedule effective July 29, 2025, pursuant to the Public Employee's Retirement Law (PERL), Public Employees' Pension Reform Act of 2013 (PEPRA), and Title 2 of the California Code of Regulations (CCR).  
**Financial Implications:** See report  
Contact: Janelle Rodrigues, Human Resources, (510) 981-6800  
**Action:** Adopted Resolution No. 71,915–N.S.
- 11. Contract: Infobond Inc. Leveraging the Omnia Partners Cooperative Contract for Information Technology Security Products, Licenses, and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with Infobond, Inc. ("Infobond") for the purchase of information technology security products, licenses, support and services utilizing the Omnia Partners contract #01-154 for a total not to exceed value of \$1,000,000 commencing on July 1, 2025 through June 30, 2027.  
**Financial Implications:** See report  
Contact: Kevin Fong, Information Technology, (510) 981-6500  
**Action:** Adopted Resolution No. 71,916–N.S.

## Consent Calendar

- 12. Contract No. 32300096 Amendment: SCS Engineers for Landfill Post-Closure Maintenance and Monitoring Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300096 with SCS Engineers for maintenance, monitoring, and compliance services related to the closed landfill at Cesar Chavez Park, increasing the contract amount by \$1,834,000 for a total not to exceed amount of \$4,078,022.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,917–N.S.
- 13. Trillium Compressed Natural Gas (CNG) 5-year Sole Source License and Operating Agreement**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a 5-year sole source license and operating agreement for compressed natural gas with Trillium CNG for the five-year period between FY2026 and FY2031, for a not-to-exceed amount of \$250,000.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,918–N.S.
- 14. Contract Amendment No. 32100070: Urban Ore, Inc. for Salvage Operations at the City of Berkeley Transfer Station**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment No. 32100070 with Urban Ore, Inc. for salvage operations of reusable materials at the City's Transfer Station, increasing the contract by \$75,000 from \$189,848 to \$264,848, for a new not to exceed amount of \$264,848 and extending the term through June 30, 2027.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Item removed from the agenda by the City Manager.
- 15. Authorization to Apply for CalRecycle Waste Reduction, Reuse, Recycling, and Composting Grants and Payment Programs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit grant applications, accept grant funds, and execute any resulting grant agreements, amendments and expenditure reports with the Department of Resource Recycling and Recovery (CalRecycle) for grant and payment programs related to waste reduction, reuse, recycling, and composting.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,919–N.S.

## Consent Calendar

- 16. Contract: Environmental Logistics, Inc. and Advanced Chemical Transport, LLC for On-Call Hazardous Waste Management**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to:  
1. Execute a three-year contract and any amendments with Environmental Logistics, Inc. to provide on-call hazardous waste disposal at various City facilities and locations for a total not to exceed of \$200,000 for an initial three-year term from August 1, 2025, to August 1, 2028, with an option of two one-year extensions, for a maximum term of five years. The service rates will be adjusted annually in accordance with the Consumer Price Index and the terms of the agreement.  
2. Execute a three-year contract and any amendment with Advanced Chemical Transport, LLC to provide on-call hazardous waste disposal at various City facilities and locations for a total not to exceed of \$150,000 for an initial three-year term from August 1, 2025, to August 1, 2028, with an option of two one-year extensions, for a maximum term of five years. The service rates will be adjusted annually in accordance with the Consumer Price Index and the terms of the agreement.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,920–N.S. (Environmental Logistics), and Resolution No. 71,921–N.S. (Advanced Chemical Transport).
- 17. Approval and Levy of 2018 Clean Stormwater Fee in FY 2026**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the proposed adjusted fees for the 2018 Clean Stormwater Fee and ordering the levy of the fees in Fiscal Year 2026.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,922–N.S.
- 18. Contracts: Matrix HG Inc. and Prime Mechanical Service for Heating, Ventilation, and Air Conditioning (HVAC) Maintenance and Repair**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to:  
1. Execute a contract with any amendments with Matrix HG Inc. to provide HVAC repairs and maintenance services for a three-year period from September 1, 2025 to August 31, 2028, in an amount not to exceed \$150,000, with an option to extend for two additional one-year terms.  
2. Execute a contract with any amendments with Prime Mechanical Service to provide HVAC repairs and maintenance services for a three-year period from September 1, 2025 to August 31, 2028, in an amount not to exceed \$150,000, with an option to extend for two additional one-year terms.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 71,923–N.S. (Matrix HG), and Resolution No. 71,924–N.S. (Prime Mechanical).

## Consent Calendar

**19. Updated Sewer System Management Plan**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the update of the Sewer System Management Plan, as mandated by the State Water Resources Control Board.

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 71,925–N.S.

**20. Project Implementation Staffing for Measure FF, the SAFE STREETS Initiative**

**From: City Manager**

**Recommendation:** Adopt a Resolution to amend the FY 2026 budget to authorizing the City Manager to add three permanent full-time employees, expending \$932,630.73, to support the implementation of prioritized projects associated with Measure FF, the SAFE STREETS Initiative.

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 71,926–N.S.

## Consent Calendar

**21. Contract: Aurora Environmental Services Inc., GSI Environmental Inc., Northgate Environmental Management Inc., and WSP Global Inc. for On-Call Environmental Consulting**

**From: City Manager**

**Recommendation:** Adopt four Resolutions authorizing the City Manager to:

1. Execute a three-year contract and any amendments with Aurora Environmental Services Inc. to provide on-call environmental consulting at various City facilities and locations for a total not to exceed amount of \$50,000 for an initial three-year term from August 1, 2025, to August 1, 2028, with an option of two one-year extensions for a maximum term of five years. The service rates will be adjusted annually in accordance with the Consumer Price Index and the provisions of the agreement.
2. Execute a three-year contract and any amendments with GSI Environmental Inc. to provide on-call environmental consulting at various City facilities and locations for a total not to exceed amount of \$50,000 for an initial three-year term from August 1, 2025, to August 1, 2028, with an option of two one-year extensions for a maximum term of five years. The service rates will be adjusted annually in accordance with the Consumer Price Index and the provisions of the agreement.
3. Execute a three-year contract and any amendments with Northgate Environmental Management Inc. to provide on-call environmental consulting at various City facilities and locations for a total not to exceed amount of \$75,000 for an initial three-year term from August 1, 2025, to August 1, 2028, with an option of two one-year extensions for a maximum term of five years. The service rates will be adjusted annually in accordance with the Consumer Price Index and the provisions of the agreement.
4. Execute a three-year contract and any amendments with WSP Global Inc. to provide on-call environmental consulting at various City facilities and locations for a total not to exceed of \$325,000 for an initial three-year term from August 1, 2026, to August 1, 2029, with an option of two one-year extensions for a maximum term of five years. The service rates will be adjusted annually in accordance with the Consumer Price Index and the provisions of the agreement.

**Financial Implications:** See report.

Contact: Terrance Davis, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 71,927–N.S. (Aurora), Resolution No. 71,928–N.S. (GSI), Resolution No. 71,929–N.S. (Northgate), and Resolution No. 71,930–N.S. (WSP).

## Consent Calendar

### 22. **Contracts: Dream Ride Elevator and Metro Elevator for Maintenance, Repairs and Emergency Response Services for Citywide Elevators**

**From: City Manager**

**Recommendation:** Adopt two Resolutions authorizing the City Manager to:

1. Execute a contract with any amendments with Dream Ride Elevator to provide maintenance, repairs, and emergency response services for citywide elevators for a three-year period from September 1, 2025, to August 31, 2028, in an amount not to exceed \$175,000, with an option to extend for two additional one-year terms. Rates will be adjusted annually in accordance with the Consumer Price Index (CPI) per the terms of the RFO and the contractor's responses.

2. Execute a contract with any amendments with Metro Elevator to provide maintenance, repairs and emergency response services for citywide elevators for a three-year period from September 1, 2025, to August 31, 2028, in an amount not to exceed \$175,000, with an option to extend for two additional one-year terms. Rates will be adjusted annually in accordance with the Consumer Price Index (CPI) per the terms of the RFO and the contractor's responses.

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 71,931–N.S. (Dream Ride), and Resolution No. 71,932–N.S. (Metro).

### 23a. **City Compliance with Web Content Accessibility Guidelines (WCAG)**

**From: Commission on Disability**

**Recommendation:** The Berkeley City Council shall refer to the City Attorney the requirement to include a clause in all relevant City of Berkeley contracts that obligates City vendors to supply digital content, intended for or likely to be posted to the City website, that is compliant with the Web Content Accessibility Guidelines (WCAG) standard mandated by the U.S. Department of Justice. WCAG defines web content technical standards that, when implemented, meet legal requirements of the Americans with Disabilities Act (ADA).

In addition, relevant City staff should be informed of WCAG requirements, and systems put in place to ensure that documents available on the City of Berkeley website, whether submitted by vendors or created by City staff, meet current WCAG standards. When the City is informed that documents posted to its website do not meet current WCAG standards, remediation is recommended to be made within 30 days.

**Financial Implications:** See report

Contact: Thomas Gregory, Commission Secretary, (510) 981-6300

**Action:** See action for Item 23b.

## Consent Calendar

### 23b. Companion Report: City Compliance with Web Content Accessibility Guidelines (WCAG)

**From: City Manager**

**Recommendation:** The City Manager recommends that Council refrain from referring the Commission on Disability's report recommendation from the report titled, "City Compliance with Web Content Accessibility Guidelines (WCAG)," to the City Attorney's Office at this time to give staff and the Commission on Disability additional time to develop a mutually agreeable path forward.

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**Action:** Approved recommendation in Item 23b.

## Council Consent Items

### 24. Berkeley Nightlife Council *(Reviewed by the Land Use, Housing & Economic Development Committee)*

**From: Councilmember Taplin (Author)**

**Recommendation:** Adopt a Resolution to form the Berkeley City Council Nightlife Sub-Committee, convened by the District 2 council office to return recommendations for the formation, structure, and scope of operation of a Berkeley Nightlife Council (Night Council) to support nighttime economic activity, cultural programming, and community safety in city commercial districts.

*Policy Committee recommendation: Send the item to the City Council with a qualified positive recommendation that Council adopt the item with the caveat that the City Attorney's Office review the ad-hoc committee for Brown Act implications.*

**Financial Implications:** None

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

**Action:** Councilmember O'Keefe added as a co-sponsor. Adopted Resolution No. 71,933–N.S. as recommended by the Land Use, Housing & Economic Development Committee and as revised in Supplemental Communications Packet #2 by Councilmember Taplin.

## Council Consent Items

25. **Berkeley Green New Deal: Workforce Development** (*Reviewed by the Land Use, Housing, & Economic Development Committee*)  
**From: Councilmember Taplin (Author), Councilmember Lunaparra (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Tregub (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager a feasibility analysis and request for recommendations for possible models to either establish a green workforce development board within the City of Berkeley or strengthen the alignment between City of Berkeley and community partner programs and the Alameda County Workforce development board to create pathways to gainful employment in green industries and accelerate the transition to a fossil-free local economy.  
*Policy Committee Recommendation: Send the item to the City Council with a qualified positive recommendation that Council adopt the item and that the item be revised to include a referral to the budget process, clarify and make explicit that the full-time employee (“FTE”) is either an in-house City of Berkeley employee or is a privately funded employee not on the City’s payroll, and include a privately funded alternative to a full-time City employee when creating the budget referral.*  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120  
**Action:** Approved recommendation as recommended by the Land Use, Housing & Economic Development Committee and as revised in Supplemental Communications Packet #1 by Councilmember Taplin.
26. **Resolution in Support of California Senate Bill 627 (Wiener, Arreguín, Pérez), the No Secret Police Act, to Prohibit Non-Essential Face Covering for Law Enforcement and Require Officer Identification During Operations**  
**From: Councilmember Tregub(Author), Councilmember Humbert (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution in support of California State Senate Bill (SB) 627 (Wiener, Arreguín, Pérez), the No Secret Police Act, which would prohibit law enforcement officers from covering their faces during operations (with exceptions for medical and fire-related protection), and require visible identification on uniforms in the state of California; and distribute copies to the California Governor Gavin Newsom, Senators Scott Wiener, Jesse Arreguín, and Sasha Renée Pérez, Assemblymember Buffy Wicks, California Senate President pro tempore Mike McGuire, and California Assembly Speaker Robert Rivas to advocate for its passage.  
**Financial Implications:** See report  
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140  
**Action:** Councilmember Kesarwani added as a co-sponsor. Adopted Resolution No. 71,934–N.S.

## Council Consent Items

27. **Berkeley's First Sun Day Event: 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 \$500 per Councilmember including \$500 from Councilmember Humbert to the Berkeley Rotary Club for the purpose of covering costs associated with hosting Berkeley's inaugural "Sun Day" renewable energy festival on Sunday, September 21, 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  
**Action:** Councilmembers Tregub, O'Keefe, and Lunaparra added as co-sponsors. Adopted Resolution No. 71,935–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Mayor Ishii - \$250; Councilmember Lunaparra - \$200; Councilmember O'Keefe - \$500; Councilmember Bartlett - \$250; Councilmember Blackaby - \$250; Councilmember Taplin - \$250; Councilmember Tregub - \$250.

## Action Calendar – Public Hearings

28. **Accessory Dwelling Units (ADUs): Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs, and Amendments to Title 23 (Zoning) to Comply with State Law and Encourage ADU Development**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing, and upon conclusion, adopt the first reading of an Ordinance to 1) amend Title 21 (Subdivisions Ordinance) to implement Assembly Bill (AB) 1033 by establishing local regulations for the separate sale of ADUs as condominiums; and 2) amend Title 23 (Zoning) to bring the City's ADU regulations into compliance with recent changes to State law, to incorporate feedback from the California Department of Housing and Community Development (HCD), and encourage ADU development.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400  
**Public Testimony:** The Mayor opened the public hearing. 4 speakers. M/S/C (Taplin/Lunaparra) to close the public hearing.  
**Vote:** All Ayes.  
**Action:** M/S/C (Kesarwani/Lunaparra) to adopt the first reading of Ordinance No. 7,983–N.S. amending Title 23 of the Berkeley Municipal Code as recommended by the City Manager with the amendments listed below:

## Action Calendar – Public Hearings

- Remove reference to Title 21 in Section 23.306.040(C)(2).
- Incorporate amendments from Councilmember Blackaby as published in Supplemental Communications Packet #2, except to change the height standard for detached ADUs to 20 feet.
- Incorporate Councilmember Kesarwani's proposed amendment adding a footnote to Table 23.306-1 defining New Construction.

Second reading scheduled for September 9, 2025.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, Lunaparra, Humbert, Ishii; Noes – None; Abstain – O'Keefe, Blackaby.

### 29. Ordinance Vacating a Portion of Carleton Street from Westerly Terminus Extending 381.23 Feet Easterly

**From:** City Manager

**Recommendation:** 1. Conduct a public hearing and upon conclusion, adopt the second reading of the Ordinance voted upon at the July 22, 2025 City Council meeting vacating a 381.23-linear-foot (27,449 square foot) portion of the public right-of-way on Carleton Street, located at the westerly terminus of Carleton Street. 2. Upon adoption of the second reading of the Ordinance, authorize the City Manager to execute a deed quit claiming that portion of the right-of-way of Carleton Street and conveying to the adjacent property owner, Bayer Healthcare LLC ("Bayer").

**Financial Implications:** See report

Contact: Terrance Davis, Public Works, (510) 981-6300

**Public Testimony:** The Mayor opened the public hearing. 25 speakers.

M/S/C (Taplin/Blackaby) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Taplin/Humbert) to adopt the second reading of Ordinance No. 7,982–N.S.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Tregub, O'Keefe, Blackaby, Humbert, Ishii; Noes – None; Abstain – Lunaparra.

## Information Reports

### 30. Status Report - Berkeley's Financial Condition (FY 2012 – FY 2021): Pension Liabilities and Infrastructure Need Attention

**From:** City Manager

Contact: David White, City Manager's Office, (510) 981-7000, Henry Oyekanmi, Finance, (510) 981-7300

**Action:** Received and filed.

## Action Calendar – Public Hearings

31. **Commission on Labor Fiscal Year 2026 Work Plan**  
**From: Commission on Labor**  
Contact: Emily Rose, Commission Secretary, (510) 981-5400  
**Action:** Received and filed.
32. **Annual Report on Landmarks Preservation Commission Actions**  
**From: Landmarks Preservation Commission**  
Contact: Anne Hersch, Commission Secretary, (510) 981-7400  
**Action:** Received and filed.
33. **Zero Waste Commission Fiscal Year 2025-26 Work Plan**  
**From: Zero Waste Commission**  
Contact: Julia Heath, Commission Secretary, (510) 981-6300  
**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda - 6 speakers.**

## Adjournment

**Action:** M/S/C (Taplin/Tregub) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 9:25 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on July 29, 2025.

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Mark Numainville, City Clerk

## Communications

### Ingram Letter

1. Richard Pettler

### EMBER

2. Susanne Kalter DeWitt

### E-Scooters

3. Robert Borghese (2)

### Plaque Project

4. Sharon Entwistle

**Lineage Repair Work**

- 5. Eric Friedman

**Ohlone Greenway Park**

- 6. Transition Berkeley Members of the Board: Sylvia Soriano, Linda Currie, Bonnie Borucki, Pierre Thiry, Lori Hines, Ben Rosenthal, Jenifer Azulay, Ginny Hanger
- 7. Lucia Hammond (4)
- 8. Peter Radu
- 9. Lj Cranmer
- 10. Erik Dreher
- 11. Seth Kimball
- 12. Allison Bond
- 13. Melanie Lawrence

**Public Resource for Honey Bee Swarm**

- 14. Mateo Kaiser

**Brown Act**

- 15. Jennifer Knight
- 16. Chris Goldin
- 17. Micky Duxbury
- 18. Michael Tompkins

**Cyclist Concerns**

- 19. Stephanie Allan

**Public Comeback**

- 20. Steve Tracy

**Pest Treatment**

- 21. Alex Merenkov
- 22. Alesia Williams
- 23. Building & Safety Division, Rental Housing Safety Program

**Missing Middle**

- 24. Dylan Miley (2)
- 25. Olivia Burger (2)

**MLK and Virginia Street**

- 26. Sunny

**Parking Spot Near School Concern**

- 27. Jordan Pierson

**Claremont Ave Pedestrian**

- 28. Ben Gerhardstein on behalf of Walk Bike Berkeley

29. Elise Proulx

**Soft Story Ordinance**

30. Todd Andrew (2)

**“Help the Decent People”**

31. Tajai Calip

**Middle East Conflict**

32. Nikki Kofsky

**Supplemental Communications and Reports 1**

**Item #9: Mental Health Services Act Fiscal Year 2026 Annual Update**

33. Revised agenda material submitted by the Health, Housing, & Community Services Department

**Item #14: Contract Amendment No. 32100070: Urban Ore, Inc. for Salvage Operations at the City of Berkeley Transfer Station**

34. Kat Larowe on behalf of the Commission on Labor

**Item #25: Berkeley Green New Deal: Workforce Development (Reviewed by the Land Use, Housing, & Economic Development Committee)**

35. Supplemental agenda material submitted by Councilmember Terry Taplin

**Supplemental Communications and Reports 2**

**Item #24: Berkeley Nightlife Council (Reviewed by the Land Use, Housing & Economic Development Committee)**

36. Supplemental agenda material, submitted by Councilmember Terry Taplin

**Item 28: Accessory Dwelling Units (ADUs): Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs, and Amendments to Title 23 (Zoning) to Comply with State Law and Encourage ADU Development**

37. Supplemental agenda material, submitted by Councilmember Rashi Kesarwani

38. Supplemental agenda material, submitted by Councilmember Brent Blackaby

39. Supplemental agenda material, submitted by Councilmember Cecilia Lunaparra

40. Tess Fruge (2)

41. Jeanne Clinton

42. Ben Domingue

43. Eric Johnson

**Supplemental Communications and Reports 3**

**Item #24: Berkeley Nightlife Council (Reviewed by the Land Use, Housing & Economic Development Committee)**

44. Jeffrey Church

## Action Calendar – Public Hearing

### **Item #28: Accessory Dwelling Units (ADUs): Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs, and Amendments to Title 23 (Zoning) to Comply with State Law and Encourage ADU Development**

- 45. Presentation submitted by the Planning & Development Department
- 46. Rent Stabilization Board
- 47. Janice Schroeder
- 48. Valerie Knepper
- 49. Lee Bishop
- 50. Veronica Tamsitt

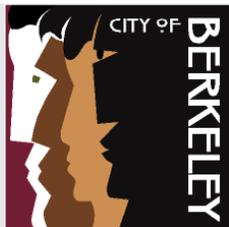
### **Item #29: Ordinance Vacating a Portion of Carleton Street from Westerly Terminus Extending 381.23 Feet Easterly**

- 51. Beth Roessner
- 52. David Bowman

### **Miscellaneous**

- 53. Gary and Anita Ingram





Office of the City Manager

CONSENT CALENDAR

September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Carianna Arredondo, Assistant to the City Manager, Reimagining Public Safety

Subject: Authorize Acceptance of Proposition 47 Cohort 5 Grant and Execution of Related Agreements

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to:

- Accept the Proposition 47 Cohort 5 grant award of \$8,000,000 from the Board of State and Community Corrections (BSCC);
- Execute any resultant agreements and amendments; and
- Appropriate the funds for eligible project activities through the Annual Appropriations Ordinance (AAO) consistent with the grant budget.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive up to \$8,000,000 in Proposition 47 Cohort 5 funding from the BSCC. This is a no-match grant with no impact on the City's General Fund.

Funding will support the implementation of the Berkeley CareBridge Program for three (3) years. The Berkeley CareBridge Program is a post-arrest diversion and reentry initiative for individuals experiencing homelessness and behavioral health needs.

Planned grant allocations include:

- Transitional housing, case management, and peer navigation services: \$6,256,700
- Daily meal provision: \$500,000
- Program evaluation and data infrastructure: \$424,290
- Indirect costs (not to exceed 15% of total award): \$472,142
- Project management and grant administration: \$306,868

The grant could be cancelled by BSCC during the grant period if insufficient funds are not available through the Proposition 47 grant program, which is funded by the annual transfer of savings generated by Proposition 47. On or before July 31 of each fiscal year, the California Department of Finance will calculate the State savings associated with Proposition 47, which will determine whether sufficient funds are available for funding Berkeley CareBridge during the three-year period.

Budget changes beyond June 30, 2026, will be included in subsequent year budgets, contingent on Council budget approval. Should future funding not be available through the BSCC grant, staff would either seek alternate funding to continue the program or dissolve the program due to insufficient funding.

#### CURRENT SITUATION AND ITS EFFECTS

On June 23, 2025, the City of Berkeley submitted a competitive application to the BSCC for Proposition 47 Cohort 5 funding.

The proposed Berkeley CareBridge Program would provide a post-arrest diversion pathway for unhoused individuals with mental health and/or substance use disorders. The program includes a six-month transitional housing model paired with comprehensive wraparound services. Participants would receive individualized case management, behavioral health and substance use treatment, civil legal support, and connections to housing and job readiness services.

The anticipated grant term is from October 1, 2025, to June 30, 2029, including a three-month startup phase and a six-month closeout and evaluation period.

The City submitted the application under the authority of the City Manager per Administrative Regulations 1.16 and 1.17, as no local match is required. However, City Council authorization is required to accept the grant award and execute the agreement with the State of California.

#### BACKGROUND

Proposition 47 reclassified certain non-violent offenses and established a grant program to support treatment-based alternatives to incarceration. The BSCC administers these funds to local governments implementing restorative, trauma-informed, and rehabilitative services for justice-involved individuals.

The Berkeley CareBridge Program was developed through a multi-departmental effort led by the City Manager's Office, in collaboration with key departments including the Health, Housing, and Community Services Department and Police Department, service providers, and members of the Proposition 47 Local Advisory Committee (LAC). The program design aims to fill longstanding gaps in housing, treatment, and reentry support for justice-involved individuals experiencing homelessness and behavioral health needs.

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

Authorizing acceptance of the Proposition 47 grant award will enable the City to implement a critical post-arrest diversion and reentry program that addresses the root causes of justice involvement among unhoused individuals. The Berkeley CareBridge Program aligns with the City's Reimagining Public Safety goals and builds upon existing infrastructure to deliver coordinated, trauma-informed, and culturally responsive services to a highly vulnerable population. Acceptance of the Proposition 47 Cohort 5 grant will enable the City to implement the Berkeley CareBridge Program. Council authorization ensures that the City can accept the funds, implement the program, and appropriate funds via the AAO process. This approach secures external resources to address root causes of justice involvement and homelessness while minimizing fiscal impact to the General Fund.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Carianna Arredondo, Assistant to the City Manager, Reimagining Public Safety, 510-981-6903

Peter Radu, Assistant to the City Manager, Neighborhood Services, 510-981-7045

Jennifer Louis, Chief of Police, 510-981-5700

Scott Gilman, Director of Health, Housing, and Community Services, (510) 981-5400

Attachments:

1: Resolution

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

AUTHORIZING ACCEPTANCE OF A \$8,000,000 GRANT FROM THE BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC) THROUGH PROPOSITION 47 COHORT 5, AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS

WHEREAS the City of Berkeley desires to participate in the Proposition 47 Grant administered by the Board of State and Community Corrections (hereafter referred to as BSCC); and

WHEREAS, Proposition 47 reclassified certain non-violent offenses and established a state-administered grant program to support local efforts that reduce recidivism and improve access to mental health, substance use disorder treatment, housing, and other supportive services; and

WHEREAS, on June 23, 2025, the City submitted a Proposition 47 Cohort 5 grant application to the Board of State and Community Corrections (BSCC) requesting \$8,000,000 to support program implementation; and

WHEREAS, the grant will fund transitional housing, behavioral health and substance use treatment, civil legal support, peer navigation, meals, and program administration; and

WHEREAS, the anticipated grant term is from October 1, 2025, through June 30, 2029, and includes a three-month startup period and a six-month closeout and evaluation period; and

WHEREAS, the City Manager is authorized under Administrative Regulations 1.16 and 1.17 to apply for no-match grants; however, City Council approval is required to accept the grant and execute related agreements; and

WHEREAS, the proposed activities are in alignment with the City's strategic goals around public health, safety, and equity, and acceptance of the grant will not impact the City's General Fund; and

WHEREAS, the City Manager's Office will oversee program implementation in coordination with relevant City departments, service providers, and the Local Advisory Committee (LAC).

NOW, THEREFORE, BE IT RESOLVED that the City Manager, or their designee, be authorized on behalf of the City Council to submit the grant proposal for this funding and sign the Grant Agreement with the BSCC, including any amendments thereof.

BE IT FURTHER RESOLVED that the City Manager is authorized to appropriate the full grant amount into the Fiscal Year 2026–2029 budgets and allocate funding to eligible project activities, including staffing, transitional housing, program operations, and evaluation.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to abide by the terms and conditions of the Grant Agreement as set forth by the BSCC.





Office of the City Manager

CONSENT CALENDAR  
September 30, 2025

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Henry Oyekanmi, Director, Finance Department  
Subject: 2026 Tax Rate: Transportation Network Company User Tax

RECOMMENDATION

Adopt first reading of an Ordinance setting the 2026 tax rate (effective January 1, 2026) for the transportation network company at the following rates: 62 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 30 cents for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 62 cents for each non-pooled prearranged trip and 30 cents on each user for each pooled prearranged trip will generate resources that are estimated at \$1,128,971 for the General Fund.

CURRENT SITUATION AND ITS EFFECTS

The 2025 tax of 58.277 cents tax per each non-pooled prearranged trip and the 28.457 cents tax per each pooled prearranged trip is being adjusted by the per capita Personal Income Growth factor in California of 6.440%, as the voters approved the greater of the Personal Income Growth in the state of California of 6.440% or Consumer Price Index in the immediate San Francisco Bay Area of 1.300%.

BACKGROUND

On November 3, 2020, over 66% of Berkeley voters approved Measure GG which authorized a transportation network company user tax for prearranged trips for private and pooled trips for general municipal services in the City until January 1, 2041.

In accordance with Berkeley Municipal Tax Code 7.71.030, the tax may be increased or decreased annually in May, according to the greater of the increase or decrease in the cost of living in the immediate San Francisco Bay Area or personal income growth in the state of California, as verified by official United States economic report.

Transportation Network Company User Tax

CONSENT CALENDAR  
September 30, 2025

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

ALTERNATIVE ACTIONS CONSIDERED

The fiscal impact on general municipal services of forgoing an adjustment to the fiscal year's transportation network company user tax would be a reduction of \$68,307 in estimated collections.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7301

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 62 CENTS FOR PRIVATE TRIPS AND 30 CENTS FOR POOLED TRIPS

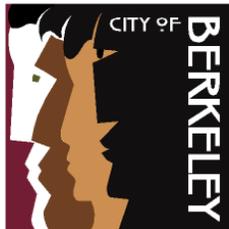
BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. In accordance with Berkeley Municipal Tax Code 7.71.030, the 2026 Tax Rate, effective January 1, 2026, to fund general municipal services is set at 62 cents for private trips and 30 cents for pooled trips.

Section 2. This tax rate will result in estimated total collections of \$1,128,971.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR  
September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

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

Subject: Application to the Behavioral Health Continuum Infrastructure Program (BHCIP) Round 2: Unmet Needs

RECOMMENDATION

Adopt a resolution to:

- 1) Authorize the City of Berkeley (City) to apply to the California Department of Health Care Services for Bond BHCIP Round 2 grant funds in an amount not to exceed \$6,947,050.
- 2) Authorize the City Manager, or designee, to execute the Program Funding Agreement and any related documents necessary to secure and administer the grant.
- 3) Acknowledge that the City will comply with every term and condition of the Program Funding Agreement.
- 4) Designate the City Manager, or designee, as the City's Authorized Signatory for all Program documents.

FISCAL IMPACTS OF RECOMMENDATION

If awarded funding, the City is required to provide at least a 10% match. BHCIP applications that incorporate higher matching percentages will score higher than those with lower ones. Based on our available funding, we propose an approximately 21% cash match for a total of \$1,850,000. The cash match amount will be comprised of 70% Mental Health Services Act Funds (\$1,300,000 in Fund 315) and 30% Opioid Settlement Funds (\$550,000 in Fund 137). In addition, the appraised equity in real property in the existing building at 2636 Martin Luther King Jr. Way will be reported as an in-kind contribution, further increasing the total match. Funding to cover costs associated with the application will be recommended for appropriation through the first amendment to the FY2026 appropriations ordinance. No General Fund dollars will be requested for this project. No new staff or program costs outside the construction costs are associated with this project.

### CURRENT SITUATION AND ITS EFFECTS

Currently, the existing building located at 2636 Martin Luther King Jr. Way is unusable due to unsafe building conditions and cannot be certified by the county for any treatment purposes without major structural changes. All outpatient adult mental health clinic appointments must currently occur at the building next door, 2640 Martin Luther King Jr. Way. That building is currently at capacity and cannot serve additional clients in one-on-one therapy or group treatment settings. Berkeley Adult Mental Health clients are primarily vulnerable populations, who often face challenges such as a history of (often chronic) homelessness, justice system involvement, high risk of institutionalization, substance use disorders, and severe mental health challenges.

If the City is awarded BHCIP funding to renovate 2636 Martin Luther King Jr. Way, Adult Mental Health will obtain eight new outpatient treatment rooms and one flexible group treatment and/or peer respite space. If the City is awarded BHCIP Round 2 funds, the State Department of Health Care Services requires that a 30-year deed restriction be recorded on the property at 2636–2640 Martin Luther King Jr. Way. This restriction will ensure the property continues to be operated for behavioral health services and will limit the City's ability to repurpose or dispose of the site for other purposes during that period. With this additional facility space, peer respite and group treatment services will be increased, providing care to more individual clients, and expanding offerings for existing clients. The new building would also include storage space for medical records. If the City is awarded funding to renovate this building, its capacity for providing mental health treatment to vulnerable City residents will nearly double by increasing daily available treatment slots from the current maximum of 19 to a total of 35 while reducing staff travel time in the field. This increase in availability of on-site services will advance the City's Strategic Plan Priority of championing and demonstrating social and racial equity.

### BACKGROUND

On May 30, 2025, the California Department of Health Care Services issued the Bond BHCIP Round 2 Request for Applications, which requires a governing-body resolution with specific language. Renovation of 2636 Martin Luther King Jr. Way will leverage BHCIP funds to bring an unusable building back into productive service. 2636 Martin Luther King Jr. Way has been unusable as office space since June 2025 due to lead paint and mold, and it has been unusable as a treatment space since the Americans with Disabilities Act (ADA) was signed into law in July 1990 because it has never conformed to ADA accessibility standards.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Staff will work with the project architect and Public Works to identify cost-effective measures that reduce greenhouse-gas emissions, improve energy efficiency, and manage construction waste in line with adopted City climate-action policies. As a restoration of an existing urban site, the project will not negatively impact the natural

habitat and will likely qualify for a categorical exemption under CEQA Guidelines 15301 (Existing Facilities) or 15302 (Replacement or Reconstruction).

RATIONALE FOR RECOMMENDATION

Securing up to \$4,670,000 in State capital funding will rehabilitate the City-owned building at 2636 Martin Luther King Jr. Way, expand behavioral-health services, and leverage existing local resources. Delaying or declining the application would result in the building remaining vacant and unusable, prolong service gaps and could forfeit a competitive funding opportunity.

ALTERNATIVE ACTIONS CONSIDERED

The City could forgo application for Bond BHCIP Round 2 funding, in which case the City would have insufficient funds to renovate 2636 Martin Luther King Jr. Way and expand behavioral health services or utilize existing building infrastructure.

CONTACT PERSON

Catherine Roseman, Community Services Specialist III, HHCS, 510-981-5232

Attachments:

1: Resolution

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

CITY OF BERKELEY APPLICATION AND PARTICIPATION IN THE BEHAVIORAL HEALTH CONTINUUM INFRASTRUCTURE PROGRAM (BHCIP) – BOND ROUND 2: UNMET NEEDS

WHEREAS, The California Department of Health Care Services (DHCS) issued a Request for Applications dated May 30, 2025 for Bond BHCIP Round 2 (2025): Unmet Needs; and

WHEREAS, the City of Berkeley Adult Mental Health facility at 2636 Martin Luther King Jr. Way is currently unusable, and staff are unable to provide mental health services at that location; and

WHEREAS, the City of Berkeley desires to apply for Program grant funds and will submit an application for Program grant funds to DHCS; and

WHEREAS, renovating the facility will restore it to safe, code-compliant condition, add eight outpatient treatment rooms and one flexible peer-respite / group treatment room; and

WHEREAS, if the City is awarded Program funds, it will contribute a local match equal to at least ten percent of the total project cost, using Mental Health Services Act funds and opioid-settlement proceeds, and the appraised value of the City-owned property at 2636 Martin Luther King Jr. Way will be reported as an in-kind contribution to further increase the total match; and

WHEREAS, as a condition of receiving Bond BHCIP Round 2 funds, the Department of Health Care Services requires that a 30-year deed restriction be recorded on the property at 2636–2640 Martin Luther King Jr. Way, ensuring the site is operated for behavioral health services during that period; and

WHEREAS, the Program guidelines require the City Council to authorize submission of the application and to designate an authorized representative to execute all documents related to the grant.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or designee, is authorized to submit an application to the California Department of Health Care Services for Bond BHCIP Round 2 Program funds in an amount not to exceed \$6,947,050.

BE IT FURTHER RESOLVED that, if the application is approved, the City Manager, or designee, is authorized to execute the Program Funding Agreement and any other documents required by the State, including amendments, and to execute and record a 30-year deed restriction encumbering the property at 2636–2640 Martin Luther King Jr. Way as required by the Program.

BE IT FURTHER RESOLVED that the City shall comply with every term and condition of the Program Funding Agreement; all activities, expenditures, information, and timelines represented in the application shall be enforceable through that Agreement, and grant funds shall be used only for costs allowable under the Program.

BE IT FURTHER RESOLVED that, upon award, the City will provide a local cash match of approximately 21% of the total project cost, to be satisfied with Mental Health Services Act capital-facilities funds (Fund 315), National Opioid Settlement proceeds (Fund 137), and the appraised value of the City-owned property at 2636 Martin Luther King Jr. Way will be reported as an in-kind contribution to further increase the total match.





Office of the City Manager

CONSENT CALENDAR  
September 30, 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

Subject: Contract No. 32300180 Amendment: GoGo Technologies, Inc. for Provision of Transportation Services for Seniors and the Disabled

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32300180 for an additional \$150,000 with GoGo Technologies, Inc. for the purpose of providing a 24/7 concierge call center that arranges rides with Uber and Lyft for the City's seniors and disabled community. The contract amendment's not-to-exceed amount will be increased to \$500,000 for the period July 1, 2025, through June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

The total amount of the contract amendment with GoGo Technologies, Inc. is \$150,000, which results in a total contract amount not-to-exceed \$500,000. This contract is funded by Measure BB Direct Local Distribution funding, which is distributed by the Alameda County Transportation Commission for Fiscal Year 2026 (FY2026).

CURRENT SITUATION AND ITS EFFECTS

Uber and Lyft are transportation network companies that provide on-demand curb to curb transportation. Most Uber and Lyft services are accessed through a smartphone and require the need to download an Uber/Lyft application and navigate the application in order to request a ride. GoGo Technologies allows seniors to use Uber and Lyft without the need for a smartphone and provides a 24/7 call center with an automated and operator assisted system for customers enrolled in Berkeley Rides for Seniors & the Disabled program.

Riders have reported appreciation for GoGo rides as they find the service to be more individualized, efficient and the service is available 24/7.

BACKGROUND

GoGo Technologies has been providing 24/7 concierge call center services for the coordination of Uber and Lyft rides to seniors since 2016. They tailor their services to the needs of seniors; for example, by matching a senior with mobility limitations with a

driver and car that meets their special needs, and by having operators monitor the rides and providing necessary alerts to family members and emergency contacts. GoGo Technologies, Inc. is the only 24/7 call center concierge service for the provision of Uber and Lyft rides that tailors their services specifically to seniors and people with disabilities. On March 14, 2023 the Berkeley City Council adopted Resolution No. 70,713-N-S approving Contract No. 32300180.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Since 2015, there has been a consistent and significant decrease in the number of permitted taxi companies and taxi drivers in the City of Berkeley. In 2015, we had 59 taxi companies and 110 taxi drivers, compared to 20 taxi companies and 24 taxi drivers in operation currently.

With continued diminishing numbers of taxi cabs and taxi cab drivers, this trend will impact the City's ability to provide an on-demand transportation service to our seniors and disabled community. Partnering with GoGo Technologies, Inc. will ensure that the City continues to provide on-demand transportation services that our seniors and disabled community members can depend upon.

ALTERNATIVE ACTIONS CONSIDERED

The City could decide not to adopt this resolution which would lead to fewer transportation options for Berkeley's senior and the disabled community.

CONTACT PERSON

Oanh Guise, Interim Aging Services Division Manager, HHCS, 981-5113

Attachments:

1: Resolution

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

CONTRACT NO. 32300180 AMENDMENT: GOGO TECHNOLOGIES, INC. FOR  
PROVISION OF TRANSPORTATION SERVICES FOR SENIORS AND THE  
DISABLED

WHEREAS, on April 1, 2023, the City of Berkeley entered into Contract No. 32300180 with GoGo Technologies, Inc. for the provision of a 24/7 call center to arrange rides with Uber and Lyft for customers of Aging Services Division's Berkeley Rides for Seniors & the Disabled program in amount not to exceed \$350,000 for the period of April 1, 2023 to June 30, 2026; and

WHEREAS, in 2024, Alameda County residents passed Measure BB authorizing an extension and augmentation of Measure B transportation sales tax which sunset in 2023; and

WHEREAS, Measure BB provides an allocation to City of Berkeley to fund transportation services for seniors and the disabled; and

WHEREAS, GoGo Technologies, Inc. is a 24/7 concierge call center that arranges rides with Uber and Lyft; and

WHEREAS, Measure BB funding for GoGo Technologies, Inc. is available in the Fiscal Year 2026 budget; and

WHEREAS, Measure BB funding is available in the Fiscal Year 2026 budget in Fund 136.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is authorized to execute an amendment to Contract No. 32300180 for an additional \$150,000 with GoGo Technologies, Inc. for the purpose of providing a 24/7 concierge call center that arranges rides with Uber and Lyft for the City's seniors and disabled community. The contract amendment's not-to-exceed amount will be increased to \$500,000 for the period July 1, 2025 through June 30, 2026. A record signature copy of said contract and any amendments shall be on file in the office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
September 30, 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  
Subject: Contract No. 32300207 Amendment: Easy Does It for Provision of Wheelchair Van Service for Seniors & Disabled Riders

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute an amendment to Contract No. 32300207 for an additional \$75,000 with Easy Does It for the purpose of providing lift-equipment accessible wheelchair van services to the City of Berkeley’s wheelchair riders. The contract’s not-to-exceed amount will be increased to a total of \$250,000 for the period of July 1, 2025, to June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funding source for the additional \$75,000 for the Easy Does It contract amendment is from Measure BB Direct Local Distribution funding distributed by the Alameda County Transportation Commission for Fiscal Year 2026 (FY2026).

CURRENT SITUATION AND ITS EFFECTS

Easy Does It provides lift-equipment accessible wheelchair van service to those wheelchair customers enrolled in Berkeley Rides for Seniors & the Disabled program. The service shall include 7 days-a-week same-day and advanced scheduled curb-to-curb, and when necessary, door-to-door and door through door service. Customers are transported to destinations within the City of Berkeley and for those with medical appointments within 15 miles of the jurisdictional boundaries of Berkeley, including Oakland, Richmond, Walnut Creek, San Rafael, Fremont and San Francisco.

BACKGROUND

Easy Does It has been providing lift-equipment with accessible wheelchair van service to the City’s wheelchair van program customers since 2005. Easy Does It is the only local lift-equipment accessible wheelchair van service provider and provides an essential service to the City’s wheelchair customers. On April 11, 2023, the Berkeley City Council adopted Resolution No. 70,755 approving Contract No. 32300207 with Easy Does It for the provision of accessible wheelchair van services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Easy Does It provides an essential transportation service to wheelchair-bound Berkeley community members.

ALTERNATIVE ACTIONS CONSIDERED

If the City could not contract with Easy Does It to provide wheelchair van transportation to senior and disabled community members, this would lead to a significant gap in transportation services that would not be provided to senior and disabled community members in Berkeley.

CONTACT PERSON

Oanh Guise, Interim Aging Services Division Manager, HHCS, 981-5113

Attachments:

1: Resolution

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

CONTRACT NO. 32300207 AMENDMENT: EASY DOES IT FOR PROVISION OF ACCESSIBLE WHEELCHAIR VAN SERVICE FOR SENIORS & DISABLED

WHEREAS, on July 1, 2023, the City of Berkeley entered Contract No. 32300207 with Easy Does It for the provision of accessible wheelchair van services to riders of the Aging Services Division's Berkeley Rides for Seniors & the Disabled program in an amount not to exceed \$250,000 for the period of July 1, 2023 through June 30, 2026; and

WHEREAS, in 2014, Alameda County residents passed Measure BB authorizing an extension and augmentation of Measure B transportation sales tax which sunset in 2023; and

WHEREAS, Measure BB provides an allocation to the City of Berkeley to fund transportation services for seniors and the disabled; and

WHEREAS, Measure BB funding is available in the Fiscal Year 2026 budget in Fund 136; and

WHEREAS, Easy Does It provides an average of 1,800 lift accessible wheelchair van rides each year to the City of Berkeley's wheelchair riders; and

WHEREAS, Easy Does It has been providing lift equipment accessible wheelchair van service to the City of Berkeley's wheelchair customers since 2005.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is authorized to execute an amendment to Contract No. 32300207 for an additional \$75,000 with Easy Does It for the purpose of providing lift equipment accessible wheelchair van services to the City of Berkeley's wheelchair riders. The contract amendment's not-to-exceed amount will be increased to a total of \$250,000 for the period of July 1, 2025, to June 30, 2026. A record signature copy of said contract and amendments shall be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR  
September 30, 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

Subject: Revenue Grant Agreement: Funding Support from the California Department of Public Health to Enhance Disease Intervention Workforce Development

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to accept funds from the California Department of Public Health (CDPH) in the projected amount of \$523,953.

FISCAL IMPACTS OF RECOMMENDATION

For Fiscal Year 2026 (FY2026) (Fund 336), the City of Berkeley is expected to receive \$58,217 from CDPH, with an additional \$116,434 annually from FY2027 to FY2030. This grant, which is not currently included in the adopted FY2026 budget, is subject to Council approval as part of the budget and the Annual Appropriations Ordinance for each fiscal year. There is no match requirement for this funding. However, the City does provide general funds to support the Communicable Disease Prevention and Control Program within the Health, Housing, and Community Services (HHCS) Department's Public Health Officer Unit (PHOU).

CURRENT SITUATION AND ITS EFFECTS

The grant funding is intended to strengthen disease prevention, increase the capacity for disease investigation, ensure appropriate treatment, connect individuals to care, monitor disease trends, and rapidly respond to outbreaks of STIs, HIV, HCV, mpox, and other emerging sexually transmissible diseases. This is achieved through the development and expansion of the Disease Intervention Specialist workforce.

While rates of gonorrhea, syphilis, and chlamydia in Berkeley have remained relatively stable from 2020 to 2024, limited capacity has hindered active case finding and community outreach. The proactive efforts of Disease Intervention Specialists are crucial for identifying, tracking, and controlling outbreaks, thereby enhancing public health by reducing transmission and ensuring timely treatment. This grant is a Strategic Plan Priority Project, advancing the city's goal to attract and retain a talented and diverse government workforce.

BACKGROUND

The City of Berkeley receives funding from many sources annually to complete work related to improving the health of the community. As a local health jurisdiction, the City receives specific funding from the State of California to meet core public health objectives. The Public Health Officer Unit in the Health, Housing, and Community Services Department is committed to providing services to the community to promote equitable, healthy environments and prevent the spread of disease.

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

These funds support essential services related to the City's mandates as a public health jurisdiction and local initiatives designed to address health inequities in Berkeley and improve the health of Berkeley residents.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify an alternative action that would be consistent with the City's goals of preventing the spread of disease and promoting healthy, equitable environments.

CONTACT PERSON

Alexandra Deitch, Sr. Health Services Program Specialist, HHCS, 510-981-5379

Attachments:

1: Resolution

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

GRANT AGREEMENT: CALIFORNIA DEPARTMENT OF PUBLIC HEALTH FOR  
DISEASE INTERVENTION SPECIALIST WORKFORCE DEVELOPMENT

WHEREAS, the City of Berkeley Department of Health, Housing and Community Services (HHCS) provides a broad range of needed public health program services to the community; and

WHEREAS, HHCS, Public Health Officer Unit works to prevent and protect residents from communicable diseases, promote healthy, equitable environments and behaviors, and prevent illness, disability, and premature death; and

WHEREAS, the City of Berkeley Department of Health, Housing and Community Services seeks to eliminate health inequities; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund essential health services; and

WHEREAS, it is state-mandated as a local health jurisdiction to provide prevention and control of communicable diseases such as sexually transmitted infections (STI), HIV, Hepatitis C, and mpox; and

WHEREAS, this California Department of Public Health funding will support workforce development efforts aimed at preventing, investigating, monitoring, and controlling communicable diseases.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is hereby authorized to accept grant funds from the California Department of Public Health in the projected amount of \$523,953.





Office of the City Manager

CONSENT CALENDAR  
September 30, 2025

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at Berkeley Marina in memory of Michael W. Orton

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Berkeley Marina in memory of Michael W. Orton.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2026.

CURRENT SITUATION AND ITS EFFECTS

The family of Michael W. Orton wishes to donate a memorial bench in their memory to be placed at the Berkeley Marina with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes it a priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations,

including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

RATIONALE FOR RECOMMENDATION

The City's Parks Donation Policy provides a mechanism whereby families can donate a memorial bench that both honors a family member and provides the public with a needed amenity.

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 510-981-6700  
Alexandra Endress, Waterfront Manager, 510-981-6737

Attachments:  
1: Resolution

RESOLUTION NO. \_\_\_\_\_ -N.S.

DONATION: MEMORIAL BENCH AT THE BERKELEY MARINA IN MEMORY OF  
MICHAEL W. ORTON

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the family of Michael W. Orton wishes to donate a memorial bench in their memory to be placed at the Berkeley Marina with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110- and will be appropriated in FY 2026.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in memory of Michael W. Orton is hereby accepted.





Office of the City Manager

CONSENT CALENDAR  
September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Purchase Order with Coast Counties Peterbilt for Seven 2026 Model Peterbilt 520 Rear-Loader Refuse Trucks with McNeilus Bodies

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a purchase order with Coast Counties Peterbilt for seven 2026 Peterbilt Model 520 rear-loader refuse trucks with McNeilus bodies, in an amount not to exceed \$3,800,000.

FISCAL IMPACTS OF RECOMMENDATION

The FY26 Adopted Public Works Department Equipment Maintenance (Fund 672) Budget includes \$1,000,000 of the funding required for this purchase. The \$2,800,000 balance of funding necessary will be added via Annual Appropriations Ordinance #1.

CURRENT SITUATION AND ITS EFFECTS

Several existing refuse trucks are reaching the end of their useful life and require replacement. This purchase will replace seven Rear Loader Refuse Collection Trucks that entered service in 2017. Since these trucks take at least 18 months to build, it is prudent of the Department to purchase them in advance to ensure continuity of service. The City's competitive bidding requirements for this purchase has been satisfied through the utilization of Sourcwell Contract No.032824-PMC.

Replacement trucks are needed by the Public Works Department to provide refuse, recycling, and green waste collection services in the City. This purchase order will support the City's fleet and is aligned with the City's Strategic Plan Priorities, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

The City Charter allows the City to purchase goods without undergoing a competitive bid process if the City utilizes pricing obtained by another entity through a competitive process. On February 8, 2024, Sourcwell released Request for Proposal No. 032824 for Class 4-8 Chassis and Cabs with Related Equipment, Accessories and Services. The solicitation was released for approximately fifty days, and thirty-five proposals were submitted. Upon review of

proposals, the Sourcewell Proposal Evaluation Committee selected Peterbilt Motors Company as the best most responsive proposer to meet the specifications thusly awarding Contract No. 032824-PMC.

On July 5, 2024, Peterbilt entered into a contract for 2026 Peterbilt Model 520 rear-loader refuse trucks with McNeilus bodies. Article 5, Section A of the referenced contract states that the contract will be extended to other California local and state governmental entities wishing to use the pre-negotiated prices and terms of this contract.

Throughout the year, Public Works purchases vehicles and equipment via cooperative contracts to ensure City departments receive the best pricing. These vehicles are specialized and require specialized equipment and installation. Once the new trucks have arrived, the replaced trucks will be sent to auction and have an estimated auction value of \$20,000 per truck. Auction proceeds of the auctioned equipment are returned to the Equipment Maintenance Fund to support future vehicle purchases.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City prioritizes procuring the most environmentally clean, most efficient vehicles available and will continue transitioning from diesel to renewable fuels toward an all-electric fleet, where technically feasible. These proposed new trucks will be fueled by renewable diesel and will be replaced at the end of their life with electric vehicles if available at that time. The Transfer Station requires significant charging infrastructure investments to accommodate electric heavy vehicles in the future. This is a component of the Zero Waste Strategic Plan which is currently under development.

#### RATIONALE FOR RECOMMENDATION

Purchasing 2026-model rear-loader refuse trucks is the most cost-effective option versus extending the life of older units, which is cost-prohibitive due to parts and downtime. The seven current 2017-model rear-loaders are due for replacement and are almost 10 years old which is the predicted lifespan of the truck. These refuse trucks have reached the end of their useful life due to high usage and expected wear and tear while operational. The most cost-effective action is to replace the seven current 2017-model year refuse trucks with 2026-model refuse trucks. These 2026-model refuse trucks have warranties that will additionally lower the cost of maintenance and repair throughout their useful life.

These vehicles require specialized supplies, equipment, and installation to ensure that they meet public safety and operational requirements. Piggybacking on pricing obtained through another public agency's competitive bidding process ensures that the City receives the most competitive pricing.

ALTERNATIVE ACTIONS CONSIDERED

Delaying the purchase of these refuse vehicles was considered but that action would increase the preventive maintenance and repair costs due to standard wear and tear. The refuse trucks would be inoperable while they undergo repairs with an increase in downtime as the refuse trucks age, which would cause an impact to community service and staff overtime. Purchasing used refuse trucks was also considered but that was determined to be high-risk. Delaying replacing the refuse trucks until a future fiscal year would additionally lead to delays in refuse collection.

Alternative refuse truck models were considered. However, purchasing the 2026 Peterbilt Model 520 rear-loader refuse trucks with McNeilus bodies, was found to be the lowest cost and highest value. Benefits of purchasing this type and model of refuse truck include the local repair shop support for both the cab and the truck body, thereby reducing potential downtime. The trucks are also equipped with Paccar PX-9 engines, which have an overall lower maintenance cost and should generate additional savings.

CONTACT PERSON

Joy Brown, Operational Manager, (510) 981-6629  
Leticia Jauregui, Solid Waste & Recycling Manager, (510) 981-6362  
Don Colbert, Acting Equipment Supervisor, (510) 981-6467

Attachments:  
1: Resolution

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

PURCHASE ORDER: COAST COUNTIES PETERBILT FOR SEVEN PETERBILT  
MODEL 520 REAR LOADERS WITH MCNEILUS BODIES

WHEREAS, seven rear loaders are needed by the City's Public Works Zero Waste Division; and

WHEREAS, vehicles must be replaced on a reasonable schedule to allow City employees to carry out their duties in a safe and effective manner; and

WHEREAS, unit numbers 06385, 06386, 06387, 06388, 06389, 06390 and 06391 are 2017 model refuse vehicles that are due for replacement and have reached the end of their useful life; and

WHEREAS, on February 8, 2024, Sourcewell released Request for Proposal No. 032824 for Class 4-8 Chassis and Cabs with Related Equipment, Accessories and Services. The solicitation was released approximately fifty days, and thirty-five proposals were submitted. Upon their review the Sourcewell Proposal Evaluation Committee selected Peterbilt Motors Company as the best most responsive proposer to meet the specifications thusly awarding Contract No. 032824-PMC; and

WHEREAS, the Peterbilt Motors Company authorized dealer for the City is Coast Counties Truck and Equipment CO. dba Coast Counties Peterbilt will take the lead in placing the order for the chassis and will provide service, pre-delivery inspection and preparation of the completed units for delivery to the City; and

WHEREAS, the rear loader bodies will be ordered by Coast Counties Peterbilt through Haaker Refuse Bodies, who is a McNeilus authorized dealer located in Hayward CA. Pricing for the bodies was applied from the Sourcewell McNeilus Financial dba McNeilus Truck & Mfg. Contract No. 032824-PMC; and

WHEREAS, for all contracts Sourcewell charges an administrative fee based upon the percentage of the sale, and that fee is paid by the Contractor directly to Sourcewell. For this purchase the fee will be paid by Peterbilt Motors Company and will not be passed onto the City.

WHEREAS, the Sourcewell contract bid procedures satisfy the procurement requirements of the City; and

WHEREAS, funds in the amount of \$2,800,000 are available in FY 2026.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for seven 2026 model Peterbilt 520 rear-loaders with bodies with Coast Counties Peterbilt in an amount not to exceed \$3,800,000.



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
DISTRICT 2

11

CONSENT CALENDAR  
September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Councilmember Bartlett (Co-Sponsor), Councilmember Igor Tregub (Co-Sponsor), Councilmember Brent Blackaby (Co-Sponsor)

Subject: Recreation and Community Facility Improvement Measures

RECOMMENDATION

Refer to the city manager the assessment of potential revenue measures to finance capital improvements for certain recreational and community-serving city facilities that have completed the conceptual or design phase and return to the city council with recommendations for placing such measures on the November 2026 midterm election ballot.

POLICY COMMITTEE RECOMMENDATION

On September 3, 2025, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Lunaparra/Humbert) to send item to Council with a positive recommendation. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

Should the revenue measures under consideration be approved by Berkeley voters in November 2026, the city would establish new dedicated funding streams for the construction of high-priority, design-complete recreational and community-serving projects. These revenues would directly address the city's most pressing unfunded capital needs, allowing shovel-ready projects to proceed without diverting limited General Fund resources or delaying other essential maintenance and operations.

The city currently faces over \$1,000,000,000 in unfunded infrastructure needs along with significant deferred maintenance liabilities across all infrastructure categories. Establishing a voter-approved revenue source would not only close funding gaps for these shovel-ready projects but also free up existing maintenance and operating funds for other critical priorities and reduce long-term fiscal strain.

Proactively funding these projects will:

- Prevent cost escalation from inflation and further facility deterioration
- Reduce emergency repair costs and operational disruptions



- Increase equitable access to modern, safe, and sustainable public facilities
- Demonstrate fiscal stewardship by aligning new revenues with clear, voter-endorsed capital priorities

By securing a dedicated, reliable revenue stream, the city can shift from a reactive approach to infrastructure investment to a proactive, strategic model that delivers tangible community benefits while measurably reducing the backlog of unfunded capital projects.

#### CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is confronting a stark disconnect between critical capital infrastructure needs and the funding available to address them. The city has over \$1,000,000,000 in unfunded infrastructure needs, which include streets, stormwater systems, municipal facilities and buildings, parks, and the waterfront.

To address some of these infrastructure needs, voters approved Measure FF in 2024, a \$267,000,000 special tax to fund street, sidewalk, and pedestrian path repair, repaving, and reconstruction, safety improvements, and environmental infrastructure.

Previously, voters approved Measure T1 in 2016, a \$100,000,000 bond measure to repair, renovate, replace, or reconstruct the city's aging infrastructure and facilities. This very successful bond program has funded 72 improvement projects to city facilities and parks. These projects include the North Berkeley Senior Center, the South Berkeley Senior Center, the Corporation Yard, the Adult Mental Health Building, the Live Oak Community Center, the Willard Clubhouse, the MLK Jr. Youth Services Center, the African American Holistic Resource Center, University Avenue in the Waterfront, the Berkeley Rose Garden, San Pablo Park, Grove Park, and numerous street improvement projects. The city has diligently reported on T1-funded facility improvements, which can be seen in more detail on the city's website:

<https://berkeleyca.gov/your-government/our-work/bond-revenue-measures/measure-t1>.

Outside of bond measures and grants, the funding for city buildings, parks, infrastructure in the waterfront, and the Transfer Station is limited to the following annual Capital Improvement Projects (CIP) allocations:

- **Parks Tax Fund** - \$2,750,000
- **General Fund** - \$1,500,000
  - \$1,100,000 for Public Works
  - \$400,000 for Parks, Recreation, and Waterfront



- **Zero Waste Fund** - \$1,160,000
- **Marina Fund** - \$350,000

These funding sources are typically used for smaller CIP or major maintenance projects associated with each fund. However, with the imminent completion of the Measure T1 bond program, there is no funding for a list of large critical city projects, including city buildings, parks, infrastructure in the waterfront, and the Transfer Station as shown below.

These projects should be prioritized for a 2026 revenue measure(s):

### ***Key City Facilities in Need of Improvements***

- **Frances Albrier Community Center**
  - Conceptual design completed.
  - Built in the 1970s, it suffers from failing Heating, Ventilation, and Air Conditioning (HVAC) and electrical systems, inadequate seismic resilience, outdated programming layouts, and serious accessibility deficiencies that limit its current and future use.
- **Maudelle Shirek Building (Old City Hall)**
  - Completed in 1909, the building has significant seismic issues that prevent it from being used except for short term uses. This historic structure urgently needs full seismic, systems, and accessibility upgrades and restoration of architectural features.
- **Veterans Building**
  - This historic structure urgently needs full seismic, systems, and accessibility upgrades and restoration of architectural features.
- **King and West Campus Pools**
  - Conceptual design completed.
  - These aging aquatic facilities suffer from chronic mechanical failures, leaks, crumbling decks, noncompliant locker rooms, and outdated filtration systems. They do not meet modern accessibility or safety standards and constant temporary repairs fail to address core infrastructure failures.
- **Transfer Station**
  - Long functionally outdated, the facility struggles with inefficient waste flow, deteriorated structural elements, poor stormwater handling, and operational



constraints. Without action, risk of regulatory noncompliance and operational failure continues to grow.

- 1947 Center Street Improvements
  - While Measure T1 will fund the window replacement project, numerous other building elements related to safety issues such as HVAC and elevator replacements are still needed in this crucial city facility.

#### ***Parks and Recreation Capital Projects***

- Dreamland Play Structure Replacement at Aquatic Park
  - Conceptual design completed.
- Sea Level Rise / Bike Park at University Avenue at the Berkeley Waterfront
  - Conceptual design completed.
- John Hinkel Park Scout Hut Reconstruction
  - Conceptual design completed.
- Glendale–La Loma Park 2-5 and 5-12 Play Area and ADA Pathway Upgrade
  - Design in progress.
- Cedar Rose Park 2-5 Play Structure Replacement
  - Design completed.
- San Pablo Park Drainage and Irrigation Improvement
- Shorebird Park Play Structure Replacement

#### ***Waterfront Capital Projects***

- J-Dock Replacement
- South Cove Seawall Replacement
  - Design in progress.

#### ***Adeline Corridor Improvements***

- Open Space and Street Improvements from Ashby Avenue to the Berkeley Border with Oakland
  - Conceptual design in progress.



### *Sidewalk 50/50 Program Upgrades*

- There is an existing 2-3 year list of 50/50 sidewalk replacements from home owners.

### *Americans with Disabilities Act (ADA) Upgrades*

- The citywide ADA Assessment is complete and needs funding to complete a portion of the work identified.

### *Stormwater System Capital Improvements*

- Potter Watershed Smaller Pressure Pipe and Storage in Aquatic Park Main Lagoon
  - Watershed Master Plan Recommended Tidal Resolution Option.

Many of the projects listed above have been conceptually designed using Measure T1, the General Fund, or the Parks Tax. Without a dedicated revenue source, these projects will remain stalled and physical and programmatic degradation will continue. This delays service delivery, increases long-term costs due to inflation and further deterioration, and erodes equity goals by depriving communities of safe and modern public infrastructure. The longer construction is deferred, the more expensive it becomes, increasing both the fiscal and social burden.

### BACKGROUND

Over the past decade, the City of Berkeley has undertaken significant planning and design work for several high-priority recreational and community-serving facilities. These projects have advanced into the design phase through a combination of local ballot measures, state and regional grants, and General Fund allocations - yet remain unfunded for construction.

### *Key City Facilities in Need of Improvements*

- **Frances Albrier Community Center**
  - The Frances Albrier Community Center in San Pablo Park is a key cultural and recreational anchor serving South Berkeley. Originally constructed in the early 1970s, the building suffers from aging mechanical systems, accessibility deficiencies, and layout limitations that no longer meet community program needs. Design funding was provided through a combination of Measure T1 Phase 1 and Phase 2 allocations and smaller contributions from the General Fund and Parks Tax (Measure F). The project has completed schematic design for two options: a renovation-only plan at approximately \$29,000,000 and a more extensive renovation with a new aquatics facility at approximately \$42,000,000.



Proposed capital improvements include full HVAC replacement, ADA upgrades, reconfigured community spaces, seismic strengthening, and integration with an adjacent pool facility.

- **Maudelle Shirek Building (Old City Hall)**

- Constructed in 1909, this designated historic landmark requires full seismic retrofitting, complete building systems replacement, ADA accessibility upgrades, and restoration of historic interior and exterior features. Preliminary assessments indicate the likely presence of lead-based paint, asbestos-containing materials, and potential Polychlorinated Biphenyls (PCBs), necessitating comprehensive abatement in compliance with the Occupational Safety and Health Act (OSHA), the Environmental Protection Agency (EPA), and California Department of Public Health (CDPH) regulations. This will require specialized contractors and environmental controls, extended construction timelines, and increased direct costs. Each year of delay will add significant escalation costs and risk further deterioration, increasing the scale of required intervention. The total investment is expected to exceed \$100,000,000 depending on the final scope, preservation requirements, and remediation needs.

- **Veterans Building**

- Constructed in 1928, this designated historic landmark requires full seismic retrofitting, complete building systems replacement, ADA accessibility upgrades, and restoration of historic interior and exterior features. This will require specialized contractors and environmental controls, extended construction timelines, and increased direct costs. Each year of delay will add significant escalation costs and risk further deterioration, increasing the scale of required intervention. The total investment is expected to exceed \$100,000,000, depending on the final scope, preservation requirements, and remediation needs.

- **King Pool and West Campus Pools**

- Both King Pool and West Campus Pool are over 60 years old and have reached the end of their useful life. They face chronic mechanical failures, water loss, outdated locker room facilities, and noncompliance with current ADA and aquatic safety standards. King Pool's replacement project (\$16,000,000) has completed the design phase funded largely by Measure T1 Phase 1 and 2 and supplemented by Parks Tax revenues for preliminary studies. West Campus Pool was the subject of earlier feasibility and conceptual planning efforts, but construction funding in the amount of \$16,500,000 has never been secured. Necessary capital improvements for both sites include full pool tank and deck replacement, new



filtration and heating systems, modern locker rooms, seismic upgrades, and improved spectator and team facilities.

- **Transfer Station**

- Berkeley's Solid Waste Transfer Station, located in West Berkeley, is decades old and in need of full modernization to meet operational, environmental, and regulatory standards. Preliminary studies have examined replacement or major rehabilitation scenarios, including integration of modern waste diversion facilities. Needed capital improvements include new tipping floor infrastructure, improved traffic circulation, stormwater management upgrades, and modern materials recovery equipment. Similar facilities in the region suggest costs could be between \$115,000,000 and \$120,000,000.

- **City Offices at 1947 Center Street**

- The building is in need of numerous upgrades to structural and seismic elements, HVAC, electrical, and plumbing systems, carpet and flooring, elevators, lighting, and hazardous materials mitigations.

### *Parks and Recreation Capital Projects*

- **Dreamland Play Structure Replacement at Aquatic Park (\$7,500,000)**

- This would replace the play structure, restroom, open space area, and amenities.

- **Sea Level Rise / Bike Park at University Avenue at the Berkeley Waterfront (\$6,250,000)**

- This would create a dedicated, professionally designed dirt, jump and skills course facility serving youth and adults; capital needs include grading, surfacing, drainage, and new amenities, as well as nature-based solutions for Sea Level Rise.

- **John Hinkel Park Scout Hut Project (\$3,150,000)**

- This would renovate the historic structure, incorporating seismic strengthening, roof replacement, and masonry restoration.

- **Glendale-La Loma Park 2-5 and 5-12 Play Area and ADA Pathway Upgrade (\$2,960,000)**

- This would modernize both age-group playgrounds, replace surfacing, and improve ADA connections throughout the site.

- **Cedar Rose Park 2-5 Play Structure Replacement (\$2,400,000)**



- This would replace aging, noncompliant play equipment and surfacing with new accessible structures and shade elements.
- **San Pablo Park Drainage and Irrigation Improvement (\$1,560,000)**
  - This would replace outdated irrigation systems, improve turf health, and address stormwater ponding issues that limit year-round field use.
- **Shorebird Park Play Structure Replacement (\$830,000)**
  - This was last replaced over thirty years ago and needs a full replacement.

### *Waterfront Capital Projects*

- **J-Dock Replacement (\$12,000,000)**
  - The J-Dock system at the Berkeley Marina was installed in 1975 and is long past its useful life, requiring numerous temporary repairs. This project will replace the entire J Dock system with a new concrete dock system with a projected lifespan of 60 years.
- **South Cove Seawall Replacement (\$5,780,000)**
  - The retaining seawall is a badly deteriorated sheet pile wall that retains the shoreline at the boat hoist area at the South Cove sailing docks (340 linear feet).

### *Adeline Corridor Specific Plan Improvements*

- Finalized in 2020, the Adeline Corridor Specific Plan calls for improvements to open space and streets from Berkeley's downtown to the Oakland border. The city has recently secured conceptual design funding for the area from Ashby Avenue to the Oakland border, and construction is estimated to be up to \$50,000,000. The city is seeking additional grant funding to finalize the design for this portion of the plan.

### *Sidewalk 50/50 Program Upgrades*

- There is an existing 2-3 year list of 50/50 sidewalk replacements requested from home owners. A \$2,000,000 allocation from T1 Phase 1 eliminated the waiting list, but this list has grown over the last five years and needs an infusion of funding to complete the work in a timely manner, estimated at \$5,000,000.

### *ADA Upgrades*



- The city has completed a Self-Evaluation and Transition Plan to comply with section 504 of the American with Disabilities Act. The plan has identified hundreds of millions in need of work to city infrastructure. This measure would request up to \$5,000,000 to begin to address these needs.

### *Stormwater System Capital Improvements*

- **Potter Watershed Smaller Pressure Pipe and Storage in Aquatic Park Main Lagoon**
  - The smaller pressure pipe would increase stormwater flow capacity to the Bay by 44%, allowing most runoff from a 10-year storm to bypass Aquatic Park and be discharged directly, while using the lagoon for temporary storage only during the largest events. This would reduce flooding, improve water quality by preventing trash and pollutants from entering the lagoon or Bay, and lessen the frequency of storm overflows into Aquatic Park. Est: \$50,000,000.

While Measures T1 and Parks Measures F and Y have been instrumental in advancing the design work, they were never intended to cover full construction costs for major facilities. Many of our funds support ongoing maintenance and small-scale capital renewal but cannot absorb multi-million-dollar replacements or modernizations. As a result, these design-complete projects remain unfunded for construction.

Without a dedicated revenue source, these facilities will continue to deteriorate, risking higher eventual replacement costs, service interruptions, and loss of critical community programming space.

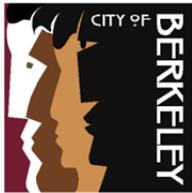
### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

### RATIONALE FOR RECOMMENDATION

The City of Berkeley's recreational, cultural, and community-serving facilities are vital public assets that sustain health, wellness, social cohesion, and equitable access to services. Many of these facilities — including King Pool, the Frances Albrier Community Center, the Maudelle Shirek Building, and others — have completed design work yet remain unfunded for construction. Advancing these projects is essential to prevent further deterioration, escalating repair costs, and lost service capacity.

The city faces a substantial and growing infrastructure funding gap. The Fiscal Year 2025–2029 Capital Improvement Program identifies more than \$241,600,000 in unfunded Parks, Recreation, and Waterfront Department projects alone, not including other citywide deferred maintenance liabilities. The Parks Tax (Measure F) is a critical maintenance funding tool, but it cannot absorb



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
 DISTRICT 2

the multi-million-dollar capital costs associated with full facility replacements or modernizations. At the same time, the city's structural General Fund deficit limits the availability of discretionary dollars for major capital construction. Without a dedicated revenue measure, these shovel-ready projects will remain stalled and service levels will continue to decline.

Placing a revenue measure before the voters in the November 2026 midterm election would align with the city's project timelines, public engagement needs, and ballot-cycle advantages, allowing for transparent community discussion and a realistic funding path.

This recommendation advances several City of Berkeley Strategic Plan goals:

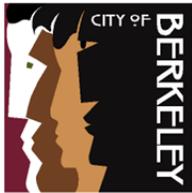
- **Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities**
  - By securing funding for design-complete projects, the city can deliver modern, accessible, and sustainable facilities that meet current and future community needs.
- **Champion and demonstrate social and racial equity**
  - Many of these projects, including the Frances Albrier Community Center and San Pablo Park improvements, directly serve historically underrepresented and underserved neighborhoods, ensuring equitable access to high-quality public spaces and programming.
- **Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment**
  - Modernized facilities will be designed to meet or exceed current environmental standards, incorporating energy-efficient systems, water conservation, green infrastructure, and resilient materials while improving public access to parks and waterfront areas that connect residents to the natural environment.

By moving forward with a dedicated funding assessment for these priority projects, the city will not only preserve critical public assets but also demonstrate a proactive, equity-focused, and environmentally responsible approach to infrastructure investment.

#### ALTERNATIVE ACTIONS CONSIDERED

Several alternatives to pursuing a dedicated revenue measure have been identified and evaluated:

- **Rely on Existing Funding Sources**
  - The city could continue to fund capital projects through existing revenue streams such as the Parks Tax (Measure F), the General Fund, and one-time grant opportunities. However, these sources are already committed to ongoing maintenance, operations, and smaller-scale improvements. They cannot absorb



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
 DISTRICT 2

the multi-million-dollar construction costs of the identified design-complete projects without displacing other critical priorities. This approach would likely delay these projects indefinitely, leading to further deterioration, higher eventual replacement costs, and continued service gaps.

- **Reallocate General Fund Resources**
  - Redirecting significant General Fund dollars to these capital projects would require substantial cuts to core services, including public safety, homelessness programs, and maintenance of existing infrastructure. Given the city's structural General Fund deficit, this alternative is fiscally unsustainable and would not provide a stable or dedicated source of capital funding.
- **Pursue External Grants and Partnerships Only**
  - While the city actively seeks state, federal, and philanthropic grants for capital improvements, these sources are highly competitive, time-limited, and rarely cover full project costs. They are best used as supplemental funding rather than as the sole source for major facility construction. Relying solely on grants would introduce significant uncertainty and delay with no guarantee that projects could move forward.
- **Defer or Reduce Project Scope**
  - Postponing or scaling back projects could reduce short-term costs but would also diminish long-term community benefits, fail to address underlying infrastructure deficiencies, and increase life-cycle costs due to deferred maintenance. In some cases, reduced scopes would compromise program functionality, accessibility, and environmental performance.

While each alternative offers some degree of fiscal relief or reduced complexity, none provide the long-term, dedicated funding necessary to advance multiple high-priority, design-complete projects in a coordinated, timely manner. A voter-approved revenue measure remains the most viable and equitable approach to delivering these critical community assets while protecting the city's broader fiscal health.

CONTACT PERSON

Councilmember Taplin, District 2, 510-981-7120, [TTaplin@berkeleyca.gov](mailto:TTaplin@berkeleyca.gov)

Attachments:

- 1: Civic Center Vision and Implementation Plan Staff Report (2020)
- 2: Maudelle Shirek Building Historic Structure Report (2020)
- 3: Fiscal Years 2025-2029 Capital Improvement Plan



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
DISTRICT 2

- 4: Parks, Recreation, and Waterfront Department Capital Improvement Project and Minor Maintenance Program Update (2025)
- 5: Status of the Southern Peninsula and the building at 199 Seawall Drive in the Berkeley Waterfront (2024)



**Igor Tregub**, Councilmember District 4

To: Honorable Mayor and Members of the City Council

From: Councilmembers Igor Tregub (Author), Cecilia Lunaparra (Co-Sponsor), Terry Taplin (Co-Sponsor), and Brent Blackaby (Co-Sponsor)

Subject: Resolution supporting California Proposition 50, the Election Rigging Response Act; which would authorize California to adopt temporary congressional maps in response to these partisan actions while reaffirming the state's commitment to independent, non-partisan redistricting by preserving the Citizens Redistricting Commission for the decennial process after the 2030 census

**RECOMMENDATION**

Adopt a Resolution supporting Proposition 50, the Election Rigging Response Act, which would authorize California to adopt temporary congressional maps in response to partisan mid-decade redistricting efforts in other states while preserving the independent Citizens Redistricting Commission for the 2030 census process.

**BACKGROUND**

The City of Berkeley has a long tradition of supporting democratic reforms and voter protections, including early adoption of ranked choice voting and local civil rights safeguards. In August 2025, President Donald Trump and Republican leaders in Texas enacted an unprecedented mid-decade congressional redistricting plan to secure additional partisan advantage. Similar mid-decade redraws are now being considered in Florida, Missouri, and other states.

These actions undermine the principle of representative democracy, threaten fair elections, and risk distorting the balance of power in Congress for years to come. The outcome of the 2026 U.S. House midterm elections will directly impact control of

Congress and critical national policies affecting California and Berkeley residents, including immigration, disaster relief, access to healthcare, and civil rights protections.

In response, the California Legislature and Governor Gavin Newsom have placed Proposition 50, the Election Rigging Response Act, on the November 4, 2025, ballot. Proposition 50 consists of a legislative package: Assembly Constitutional Amendment 8 (Rivas, McGuire), Senate Bill 280 (Cervantes, Pellerin), and Assembly Bill 604 (Aguiar-Curry, Gonzalez). Together, these measures establish a special election framework, authorize temporary congressional boundaries, and reaffirm California's long-term commitment to nonpartisan redistricting.

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

If passed, Proposition 50 would:

- Provide California with a lawful and transparent mechanism to respond to partisan mid-decade gerrymanders in other states;
- Protect California's representation in Congress and ensure Berkeley residents' voices are not diluted by unfair districting practices nationwide;
- Reaffirm the state's independent Citizens Redistricting Commission as the sole body responsible for post-2030 census district maps; and
- Reaffirm both statewide and local commitment to free, fair, and representative elections

This resolution aligns with Berkeley's longstanding values of electoral fairness, transparency, and civic engagement. Supporting Proposition 50 reflects the City Council's commitment to protecting democracy both locally and nationally.

### **FISCAL IMPACTS OF RECOMMENDATION**

Limited staff time is required to communicate the City's position to 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)

Shamaila Ahmed, Legislative Aide, Council District 4

[sahmed@berkeleyca.gov](mailto:sahmed@berkeleyca.gov)

**ATTACHMENTS**

Resolution

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

**RESOLUTION SUPPORTING CALIFORNIA PROPOSITION 50, THE ELECTION RIGGING RESPONSE ACT; WHICH WOULD AUTHORIZE CALIFORNIA TO ADOPT TEMPORARY CONGRESSIONAL MAPS IN RESPONSE TO THESE PARTISAN ACTIONS WHILE REAFFIRMING THE STATE'S COMMITMENT TO INDEPENDENT, NON-PARTISAN REDISTRICTING BY PRESERVING THE CITIZENS REDISTRICTING COMMISSION FOR THE DECENNIAL PROCESS AFTER THE 2030 CENSUS.**

**WHEREAS**, Berkeley has a long history of advancing reforms that strengthen democracy, including ranked choice voting and protections for civil rights; and

**WHEREAS**, These democratic ideals are now under direct threat from partisan efforts across the country to manipulate congressional districts for political gain; and

**WHEREAS**, President Donald Trump and Republican leaders in Texas have enacted an unprecedented mid-decade redistricting plan, signed into law in August 2025, to gain additional congressional seats; and

**WHEREAS**, Leaders in other states, including Florida and Missouri, are considering similar mid-decade redraws, threatening to undermine representative democracy and distort the balance of power in Congress; and

**WHEREAS**, The outcome of the 2026 U.S. House midterm elections will determine control of congress and shape critical policies affecting California and the nation, including immigration, disaster relief, access to healthcare, and civil rights protections; and

**WHEREAS**, In response, the California Legislature and Governor Gavin Newsom have called for a special election and placed Proposition 50, the Election Rigging Response Act, on the November 4, 2025, ballot; and

**WHEREAS**, This legislative package consists of Assembly Constitutional Amendment 8 (Rivas, McGuire), Senate Bill 280 (Cervantes, Pellerin) establishing the special election framework, and Assembly Bill 604 (Aguiar-Curry, Gonzalez) detailing the temporary district boundaries; and

**WHEREAS**, Proposition 50 would authorize California to adopt temporary congressional maps in response to these partisan actions while reaffirming the state's commitment to independent, non-partisan redistricting by preserving the Citizens Redistricting Commission for the decennial process after the 2030 census; and

**WHEREAS**, Proposition 50 has earned the support of Governor Gavin Newsom, House Democratic Leader Hakeem Jeffries, Speaker Emerita Nancy Pelosi, and the California Congressional Delegation; now, therefore, be it

**RESOLVED**, That the City Council of Berkeley supports Proposition 50, the Election Rigging Response Act; and

**FURTHER RESOLVED**, that the City Council of Berkeley condemns efforts to manipulate congressional district boundaries for partisan gain and reaffirms Berkeley's longstanding commitment to electoral fairness, transparency, and representative democracy.





CONSENT CALENDAR  
September 30, 2025

To: Honorable Mayor and Members of the City Council  
From: Councilmember Shoshana O'Keefe (Author), Mayor Adena Ishii (Co-Sponsor)  
Subject: Berkeley Art Center's Fall 2025 Community Dinner: Relinquishment of Budget Office Funds

RECOMMENDATION

Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember – including \$500 from Councilmember O'Keefe and \$250 from Mayor Ishii – to the Berkeley Art Center (BAC), a 501(c)(3) non-profit organization, for their Fall 2025 Community Dinner, a fundraiser to support BAC's artistic and cultural programming, and to welcome BAC's new Executive Director, Gisela Insuaste, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budgets of Councilmember O'Keefe and Mayor Ishii, and from any other Councilmembers who would like to contribute.

The event will take place on Thursday, October 16, 2025 at 6:00pm at the Berkeley Art Center.

BACKGROUND

Since 1967, the Berkeley Art Center has been a cornerstone of the Bay Area's vibrant arts community. Designed by Bay Area modernist architect Robert Ratcliff and built by the Rotary Club as a gift to the City, BAC was run by the Parks and Recreation Department for many years until it became a private nonprofit in the late 1970s. Under the leadership of visionary directors and curators, BAC established itself over the years as a destination for experimental contemporary art by Bay Area artists, featuring a diverse range of voices, materials, artistic styles, and social commentary. BAC has exhibited work by important local figures such as Robert Bechtle, Enrique Chagoya, Bill Fontana, Taraneh Hemami, Mildred Howard, Hung Liu, Jim Melchert, Chiura Obata, Sonya Rapoport, Katherine Sherwood, Peter Voukos, and Carrie Mae Weems, among many others.

Nestled in Live Oak Park, BAC offers an intimate platform for the public to engage with work by emerging and established contemporary artists, and champions artists and curators who are Black, Indigenous, POC, queer and trans, formerly incarcerated, and living with disabilities. Many Bay Area artists credit early BAC exhibitions as pivotal in their career development. BAC supports sustainability in the arts by compensating artists at competitive rates. Its programs include exhibitions, workshops, artist-conceived events, artist talks, curatorial walkthroughs, community dinners, and partnerships with community organizations.

With an annual budget of approximately \$300,000, BAC relies on a combination of City funding, private donations, grants, memberships, and special events to fund its operations and programs. Like many non-profit arts organizations in the Bay Area impacted by increasing expenses and reduced funding, BAC experienced challenges that led to changes in leadership, staff, and revenues. With the City's support, the Board of Directors addressed these issues by securing funding for current financial stability, streamlining administrative procedures and expenses, maintaining scheduled exhibitions, and hiring a gallery manager and new executive director.

Gisele Insuaste, an Oakland-based Latine artist with 20 years of experience in arts programming, most recently served as the education and public programs director at Kala Art Institute in Berkeley. Insuaste has taken the helm of this organization deeply rooted in Berkeley's cultural fabric, and has already begun to cultivate donor relationships, establish dynamic partnerships, and strengthen BAC's position as a hub for creativity, equity, and community engagement.

BAC's Fall 2025 Community Dinner features an inclusive gathering on the Live Oak Park bridge, under a canopy of redwoods, where two rich culinary traditions meet at one table. This multi-course, family-style dinner will offer a blend of Filipino cooking and Ethiopian cuisine. Shared platters, passed from hand to hand, offer a celebration of connection, where flavors, cultures, and community intertwine in collective support and recognition of the critical role of art and artists in Berkeley and beyond. Funds raised from this event will directly go towards paying local artists, curators, and arts educators equitably for their labor and participation in BAC exhibitions and public programs in 2025-2026, including the Day of the Dead/Día de Muertos community workshop in late October.

The event will take place on Thursday, October 16, 2025 at 6:00pm at the Berkeley Art Center. For more information visit: <https://www.berkeleyartcenter.org/events>

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts.

FISCAL IMPACTS

Up to \$4,500 from Councilmembers' discretionary budgets.

CONTACT

Councilmember Shoshana O'Keefe, 510-981-7150

RESOLUTION #####-N.S.

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

WHEREAS, the Berkeley Art Center (BAC) is a nonprofit organization and a hub for artistic exploration and community building that champions Bay Area artists and curators; and

WHEREAS, since 1967, the BAC has established itself as a destination for experimental contemporary art by Bay Area artists, featuring a diverse range of voices, materials, artistic styles, and social commentary; and

WHEREAS, many artists credit early BAC exhibitions as pivotal in their career development, and BAC supports sustainability in the arts by working to address pay disparities among artists and curators of underrepresented communities, particularly in the Bay Area; and

WHEREAS, the Berkeley Arts Center serves Berkeley and the larger Bay Area through its programming which includes exhibitions, workshops, artist-conceived events, artist talks, curatorial walkthroughs, community dinners, and partnerships with community organizations.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council office budget, up to \$500 per office – including \$500 from Councilmember O’Keefe and \$250 from Mayor Ishii – shall be granted to the Berkeley Arts Center to support their Fall 2025 Community Dinner.





CONSENT CALENDAR  
September 30, 2025

To: Honorable Members of the City Council

From: Councilmember Lunaparra (Author)

Subject: Sacred Rest Drop-in Center Landline: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Lunaparra's discretionary fund and funds from any other Councilmembers who would like to contribute, to Village of Love for a landline at the Sacred Rest Drop-In Center with funds relinquished to the City's general fund for this purpose.

BACKGROUND

The Sacred Rest Drop-In Center, operated by the Village of Love Foundation, a registered 501c(3) nonprofit organization, on the property of the First Presbyterian Church of Berkeley in District 7, is a daytime center that provides unsheltered members of the community a safe place to relax, watch television, drink coffee/tea, enjoy hot meals together, use restroom facilities, store belongings, connect to WiFi, charge and use technology, send mail, and receive social services to become housing-ready.

The Village of Love has a short but rich history of providing for the community. In 2022, the Berkeley community opened its doors to the drop-in center, which was funded jointly by the City of Berkeley and UC Berkeley. Members of the community have expressed that the drop-in center has become a place where unhoused people can find a community of people who truly care.

Since 2019, the number of unhoused people in the Bay Area has reached over 8% and Alameda County's unhoused population rose by 21.5%. Sacred Rest provides local and individualized services, enabling more people to begin their path to permanent housing. The name "Sacred Rest" was given to the space after many discussions community partners had about a similar San Francisco model, Sacred Sleep, that provides a comfortable and relaxing place for unhoused folks to rest and break bread together. One of the biggest challenges people face living on the streets is feeling isolated and alone. Sacred Rest combats this by providing a place for people to be welcomed inside, sit in the shade, break bread together, and enjoy laying down on the lawn without fear of being harassed, attacked, or bothered.

CURRENT SITUATION AND ITS EFFECTS

The Village of Love aims to enrich the community by developing creative solutions to build bridges across the disparities between residents, businesses, mental health and unsheltered communities. Their Sacred Rest Drop-in Center is currently working on the implementation of a landline service that would allow their community members to communicate with family members and friends who reside in various cities and states outside of the greater Bay Area. Allowing unhoused people to maintain contact with their loved ones is crucial in the overall care and support that the Center hopes to provide. People currently use the staff's phones in order to contact others; however, in the long run, this is not a viable or sustainable option. The Drop-In Center is hoping to include landline services, which would allow the unhoused community to communicate via phone without the need to borrow someone else's. They are seeking financial support to offset the expenses associated with the creation of this landline service.

ENVIRONMENTAL SUSTAINABILITY

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

FISCAL IMPACTS

No General Fund impact. \$500 is available from the Councilmember's office budget discretionary account.

Attachments:

1. Resolution

CONTACT PERSON

Councilmember Cecilia Lunaparra (510) 981-7170  
Jonah Gottlieb, Chief of Staff

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

SUPPORT FOR THE SACRED REST DROP-IN CENTER

WHEREAS, the Sacred Rest Drop-In Center, operated by the Village of Love Foundation, a registered 501c(3) nonprofit organization, on the property of the First Presbyterian Church of Berkeley in Southside, is a daytime center which provides unsheltered members of the community a safe place; and

WHEREAS, the Sacred Rest Drop-in Center aims to provide free landline services to its' community members; and

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

WHEREAS, the Sacred Rest Drop-in Center seeks funds in the amount of \$500 from Councilmember Lunaparra's office and up to \$500 from each Councilmember to help cover the cost of landline services that would allow members contact with loved ones; and

WHEREAS, the provision of such services would help ensure years of free services, care, and support for the unhoused community.

NOW THEREFORE, BE IT RESOLVED by the Berkeley City Council that up to \$500 relinquished by Councilmembers – including \$500 from Councilmember Lunaparra – shall be granted to the Village of Love Foundation to help cover landline service costs.



CONSENT CALENDAR

September 30, 2025

To: Honorable Members of the City Council

From: Councilmember Lunaparra (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Humbert (Co-Sponsor), Councilmember Tregub (Co-Sponsor)

Subject: Refer to the City Manager in Collaboration with the City Attorney's Office to Develop Proposed Increases to the Shared Micromobility Program Fees

RECOMMENDATION

Refer to the City Manager in collaboration with the City Attorney's Office to develop proposed increases to the shared micromobility program fees and return to Council within 120 days. The proposed amendments should evaluate adjustments to the following fee categories:

- Application fee
- Operating fee
- Fee per vehicle
- Fee per ride

POLICY COMMITTEE RECOMMENDATION

On September 3, 2025, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Taplin/Lunaparra) to send item to Council with a positive recommendation. Vote: Ayes – Taplin, Lunaparra; Noes – None; Abstain – None; Absent – Humbert

CURRENT SITUATION AND ITS EFFECTS

Berkeley started its shared micromobility program in April 2022, with the goal of addressing gas-vehicle's exacerbation of climate change, offering convenient transportation options throughout the city, and creating safer streets for all. While the program has been extremely effective, there has been a persistent issue related to improperly parked scooters, largely due to insufficient scooter and bike parking infrastructure. The City Council frequently receives complaints regarding this problem.

To sustain this essential program that aligns with Berkeley values and policy commitments, it is important to adjust the shared micromobility program fees to meet the needs of all residents who use our sidewalks and streets. These fees have remained static since the program's launch, while cost of living, construction costs, and the City's budget deficit have increased. In 2024, Portland State University's Transportation Research and Education Center published a study explaining that, "now might be a logical time to re-evaluate fee structures, particularly those cities that have

made minimal changes to the program terms since the beginning of the shared micromobility industry.”<sup>1</sup> With the quickly shifting landscape of the industry and an uncertain budget, Berkeley should amend fees to become more consistent with similarly effective programs.

With additional revenue, the City could meet evolving needs and support the development and installation of necessary scooter and bike parking, racks, and infrastructure to ensure the program’s continued success.

The request that staff return to Council with an amended contract within 120 days is to ensure the process is finalized before the Spring Request For Proposal timeline.

## BACKGROUND

Since the start of Berkeley’s shared micromobility program in 2022, the most common complaint amongst community members has been improper parking of shared vehicles. Many complaints cite scooters blocking the public right-of-way, making it difficult to safely use streets and sidewalks. As the program provides significant benefits to residents citywide—demonstrated by one of the highest ridership rates in the Bay Area—and plays a vital role in advancing our climate and transit goals, it’s critical to creatively address these issues while remaining committed to the long-term viability of the program.

District 7 has one of the lowest rates of car ownership in Berkeley and the shared micromobility program has fundamentally and critically changed the way residents get around. This is evident in the fact that District 7 accounts for 37% of all shared micromobility rides across the entire City. With a high rate of ridership and UC Berkeley’s restriction of shared micromobility devices on campus, the district experiences a large share of improper parking incidents, creating hazardous conditions for people with disabilities, seniors, pedestrians, and cyclists. A study by the University of Oregon’s Urbanism Next Center found that 13% of improper parking is due to insufficient parking, 9% is because people parked how others did, and 7% of incidents were because people were in a hurry.<sup>2</sup> To address these three pertinent issues and reduce right-of-way obstructions, the City, along with our shared micromobility vendors, must invest in more dedicated scooter and bike parking facilities.

## RATIONALE FOR RECOMMENDATION

Berkeley’s shared micromobility program charges vendors less than those in other jurisdictions with comparable ridership levels. When Berkeley’s program started, public-private shared micromobility initiatives were still relatively new and still in the process of refining oversight mechanisms, best practices, and sustainable fee structures. Berkeley’s fees do not reflect the evolving challenges of the program or the high demand it sustains. The current fee structure fails to generate sufficient revenue to offset the cost of administering and sustaining the program while also supporting the development and construction of scooter and bike parking. This is a necessary part of effectively maintaining Berkeley’s high level of ridership while keeping sidewalks and streets safe and accessible.

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<sup>1</sup> John MacArthur, Kevin Fang, and Calvin Thigpen, *Taxing Shared Micromobility: Assessing the Global Landscape of Fees and Taxes and Their Implications for Cities, Riders, and Operators*, research report (Portland, OR: Transportation Research and Education Center, Portland State University, June 2024), [https://ppms.trec.pdx.edu/media/project\\_files/PSU\\_SSU\\_micromobility\\_fees\\_and\\_taxes\\_report.pdf](https://ppms.trec.pdx.edu/media/project_files/PSU_SSU_micromobility_fees_and_taxes_report.pdf).

<sup>2</sup> Calvin Thigpen, Nicholas Klein, and Anne Brown, *Dedicated Parking for Micromobility: A Practical Guide for Implementation* (Portland, OR: Urbanism Next Center, 2025), accessed July 17, 2025, <https://www.urbanismnext.org/resources/dedicated-parking-for-micromobility>

The following data provides a direct comparative analysis of shared micromobility fee structures across a sample of California cities, including regional neighbors and other cities with a large university presence.

|                                                | Application fee                   | Annual operating fee | Number of operators | Per vehicle    | Permitted vehicles         | Other fees                             | Total revenue/yr |
|------------------------------------------------|-----------------------------------|----------------------|---------------------|----------------|----------------------------|----------------------------------------|------------------|
| <b>Berkeley</b> <sup>3</sup><br>(2025)         | \$1,500                           | \$15,000             | 2                   | \$64           | 825                        | -                                      | \$85,800         |
| <b>Oakland</b> <sup>4</sup><br>(2025)          | \$2,500                           | \$30,000             | 2                   | \$64           | 2,000                      | -                                      | \$193,000        |
| <b>San Francisco</b> <sup>5</sup><br>(2025)    | \$6,173                           | \$44,041             | 2                   | see other fees | total: 5,500, added: 2,872 | One time \$100/ device, for bike racks | \$381,455        |
| <b>San Jose</b> <sup>6</sup><br>(2025)         | \$4,000                           | -                    | 1                   | \$139          | 1,000                      | \$10,000 deposit                       | \$143,000        |
| <b>Emeryville</b> <sup>7</sup><br>(2025)       | \$1,000                           | \$2,500              | 1                   | -              | -                          | -                                      | \$3,500          |
| <b>Santa Monica</b> <sup>8</sup><br>(2025)     | -                                 | \$20,000             | 4                   | \$104          | 2,200                      | \$.2/trip for PROW                     | \$451,225        |
| <b>Sacramento</b> <sup>9</sup><br>(2025)       | \$4,400.00                        | -                    | 2                   | \$104          | 1,500                      | \$.1 per trip, for infrastructure      | \$221,375        |
| <b>West Sacramento</b> <sup>10</sup><br>(2025) | 1st yr: \$2,500<br>Renew: \$1,500 | -                    | 2                   | -              | 500                        | \$.1 per trip, for monitoring          | \$9,387          |

<sup>3</sup> [https://berkeleyca.gov/sites/default/files/documents/SEMPP%20Application\\_2024.pdf](https://berkeleyca.gov/sites/default/files/documents/SEMPP%20Application_2024.pdf) Iris Kwok, "Berkeley Approves Fleet of Lime Rental E-Scooters," *Berkeleyside*, July 5, 2024, accessed July 10, 2025, <https://www.berkeleyside.org/2024/07/05/berkeley-fleet-of-lime-rental-e-scooters>.

<sup>4</sup> City of Oakland. 2025. *2025–2026 Scooter-Sharing Terms and Conditions (Redlined)*. *Dockless Vehicle Share Program*. Last updated April 16, 2025. Oakland, CA: Oakland Department of Transportation. <https://www.oaklandca.gov/files/assets/city/v/1/transportation/documents/car-share-bike-share-amp-scooter-share/bike-share/redlined-2025-2026-scooter-sharing-terms-and-conditions.pdf>

<sup>5</sup> City of San Francisco, San Francisco Municipal Transportation Agency, *FY25-FY26 Powered Scooter Share Permit Program* (memorandum from Jeffrey Tumlin, Director of Transportation, and Kate Toran, Taxis, Access & Mobility Services Director, May 30, 2024), San Francisco, CA: San Francisco Municipal Transportation Agency, <https://www.sfmta.com/media/39651/download?inline>.

<sup>6</sup> City of San José, *Resolution No. RES2024-230: Amending Resolution No. 72737 to Amend and Establish Various Fees and Charges, Effective July 1, 2024*, adopted June 11, 2024, City Council agenda item 3.5(b), accessed July 10, 2025, <https://records.sanjoseca.gov/Resolutions/RES2024-230.pdf>.

<sup>7</sup> City of Emeryville, *Master Fee Schedule* (approved April 15, 2025; effective July 1, 2025; Emeryville, CA: City of Emeryville), <https://www.emeryville.org/files/assets/city/v/1/public-works/documents/environmental-programs/waste/coe-master-fee-schedule.pdf>.

<sup>8</sup> City of Santa Monica, *Second Shared Mobility Device Program Administrative Regulations*, December 2024 (Santa Monica, CA: Santa Monica Mobility Division, City of Santa Monica), [https://www.santamonica.gov/media/Mobility/Shared\\_Mobility/Second%20Shared%20Mobility%20Device%20Program%20Admin%20Regs\\_Dec2024.pdf](https://www.santamonica.gov/media/Mobility/Shared_Mobility/Second%20Shared%20Mobility%20Device%20Program%20Admin%20Regs_Dec2024.pdf).

<sup>9</sup> City of Sacramento, *Resolution No. 2021-0260, Approving Shared-Rideable Permit Fees*, adopted by the City Council on August 17, 2021, accessed July 10, 2025, <https://www.cityofsacramento.gov/content/dam/portal/pw/Transportation/Transportation-Planning/Shared-Rideables/R2021-0260-Approving-Shared-Rideable-Permit-Fees.pdf>.

<sup>10</sup> <https://www.cityofwestsacramento.org/home/showpublisheddocument/19751/638711634834530000>

|                                            |   |          |   |       |       |                                       |                  |
|--------------------------------------------|---|----------|---|-------|-------|---------------------------------------|------------------|
| <b>Davis</b> <sup>11</sup><br>(2025)       | - | \$10,000 | 1 | -     | 600+  | → \$46,400 UCD<br>→ \$.2 per ride     | <b>\$16,400</b>  |
| <b>Long Beach</b> <sup>12</sup><br>(2025)  | - | \$25,000 | 2 | \$75  | 3,000 | → \$75 inspection<br>→ \$.25 per trip | <b>\$430,425</b> |
| <b>Culver City</b> <sup>13</sup><br>(2025) | - | \$20,000 | 1 | \$100 | 200+  | \$.2 per ride                         | <b>\$66,000</b>  |

\*Data from July 1, 2024 - June 30, 2025

\*\*2024/2025 Long Beach ride data was not publicly available, data is based on 2023 statistics

\*\*\*These numbers do not include fines or penalties

This data shows some fee areas where Berkeley charges a similar amount to other jurisdictions and others where Berkeley is undercharging. Certainly, this data only presents half of the larger market picture. There are other critical factors when calculating if Berkeley is charging market rate for permits. Many of the referenced municipalities that charge higher fees are larger or deploy more scooters than Berkeley, so to better understand how Berkeley’s ridership data proportionally compares to other jurisdictions with higher fees, we used two key indicators: per capita use, which shows the proportional rate of shared mobility users relative to population size and utilization rate, measuring how often each device is used in a day. Utilization rate is commonly used to evaluate the effectiveness of the program. Together, these metrics highlight the demand of the devices and their function within the transportation system.

| City <sup>14</sup> | Population     | Avg # of deployed vehicles | Total rides per yr | Avg rides/day | Rides per capita | Rides per device per day |
|--------------------|----------------|----------------------------|--------------------|---------------|------------------|--------------------------|
| <b>Berkeley</b>    | <b>124,000</b> | <b>710</b>                 | <b>313,000</b>     | <b>879</b>    | <b>2.52</b>      | <b>1.24</b>              |
| San Francisco      | 815,000        | 3,900                      | 1,840,000          | 5,169         | 2.26             | 1.33                     |
| Davis              | 66,850         | 269                        | 65,800             | 180.00        | 0.98             | 0.67                     |
| Sacramento         | 528,000        | 1,525                      | 545,000            | 1,531         | 1.03             | 1.00                     |
| West Sacramento    | 54,000         | 465                        | 67,800             | 190           | 1.26             | 0.41                     |
| Santa Monica       | 93,000         | 1,660                      | 711,000            | 1,997         | 7.65             | 1.20                     |

\*Data from July 1, 2024 - June 30, 2025

\*\*Data includes dock and dockless shared micromobility

<sup>11</sup> City of Davis, *Shared Micromobility Agreement* (City Council staff report, July 18, 2023), accessed July 17, 2025, <https://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/2023/2023-07-18/04-Shared-Micromobility-Agreement.pdf>.

<sup>12</sup> City of Long Beach, *Micro-Mobility Program (E-Scooters/E-Bikes)* (Long Beach, CA: City of Long Beach, updated May 24, 2025), accessed July 9, 2025, <https://www.longbeach.gov/goactive/b/programs/micro-mobility-program/>, City of Long Beach, *Beach Bike Path E-Scooter Pilot and Data Analysis*, memorandum from Eric Lopez, Director of Public Works, to Mayor and City Council, June 4, 2024, City of Long Beach, accessed July 9, 2025, <https://www.longbeach.gov/globalassets/city-manager/media-library/documents/memos-to-the-mayor-tabbed-file-list-folders/2024/june-4--2024---beach-bike-path-e-scooter-pilot-and-data-analysis>

<sup>13</sup> City of Culver City, *Standard Operating Agreement for Culver City Dockless Shared Micromobility* (Culver City, CA: City of Culver City, revised September 2021), accessed July 17, 2025, <https://www.culvercity.gov/files/assets/public/v/1/documents/transportation/standard-operating-agreement-for-culver-city-dockless-shared-micromobility.pdf>.

<sup>14</sup> Santa Cruz, Santa Barbara, and San Luis Obispo were contemplated as cities to analyze, but do not have comparable dockless scooter programs

The table indicates that Berkeley's shared micromobility program has strong shared mobility use relative to its population, high demand for vehicles, and fleet efficiency comparable to Santa Monica and San Francisco. Berkeley demonstrates proportionally concentrated and consistent scooter use, ultimately indicating high demand and suggesting potential financial feasibility for increasing fees.

With the City's considerable investment in daylighting intersections, there is a significant opportunity to leverage the available space and city funding to install new scooter racks or corrals. With additional revenue from scooter companies, the City could have more capacity to build creative infrastructure at these zones. In fact, the aforementioned study out of the University of Oregon explains that the near side of intersections are ideal locations for shared micromobility corrals.<sup>15</sup> Corrals placed at the near side of intersections create physical barriers to prevent illegal car parking, avoid conflicts with metered or loading zones, reduce accidents, and activate previously unused space.

The goal of this referral is to provide the information, guidance, and flexibility to the City Manager, in partnership with our dedicated shared micromobility vendors, to identify the most feasible and effective avenue for maintaining a successful program that meets the needs of all Berkeley residents. Parking infrastructure that accommodates high use of these vehicles is a critical component of ensuring that success.

#### FISCAL IMPACTS OF RECOMMENDATION

The Public Works Department has been working with shared micromobility vendors to address the issue of improper parking. This referral is intended to provide clarified direction in those conversations. The Public Works Department will already be engaging in the process of raising other municipal fees as part of an annual process and is able to include this without much additional staff time.

#### ENVIRONMENTAL SUSTAINABILITY

No anticipated impacts.

#### CONTACT PERSON

Councilmember Cecilia Lunaparra, 510-981-7170  
Sara Cerami, Chief of Staff

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<sup>15</sup> Urbanism Next, *Dedicated Parking for Micromobility*, by Calvin Thigpen, Nicholas Klein, and Anne Brown (Portland, OR: Urbanism Next, 2025), [https://cdn.prod.website-files.com/5d9f83b8b237fa6c07d5d69d/680ff7d0cc63c8bcd753ec7\\_Dedicated%20Parking%20for%20Micromobility-compressed.pdf](https://cdn.prod.website-files.com/5d9f83b8b237fa6c07d5d69d/680ff7d0cc63c8bcd753ec7_Dedicated%20Parking%20for%20Micromobility-compressed.pdf) (accessed July 10, 2025).





Office of the City Manager

PUBLIC HEARING  
September 30, 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: Changes to the Planning and Development Fee Schedule

### RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution amending Resolution No. 71,834-N.S. to make revisions to the Land Use Planning section of the Planning and Development Department fee schedule, effective November 1, 2025, to add new fees for Zoning reviews of Middle Housing projects and for arborist consultations when required.

### FISCAL IMPACTS OF RECOMMENDATION

The creation of new fees for projects to be reviewed under Middle Housing zoning regulations, and for arborist consulting services on any project type, will generate funds to cover costs which the City incurs for these services. These fees are paid by project applicants, and deposited into the Permit Service Center Fund 621.

Proposed Middle Housing projects will require a new kind of ministerial review, as such applications had previously required discretionary Use Permits (UPs) and Administrative Use Permits (AUPs). UPs and AUPs require significantly more staff time and thus charge higher fee rates, while the new ministerial reviews are expected to be more streamlined, requiring a new fee which is commensurate to the staff time expended. Staff propose a base fee rate of \$2,000 for each Zoning Certificate for Middle Housing (ZCMH) review, derived from eight hours of staff work at the department's \$250/hour rate. In addition, staff propose a neighborhood noticing fee of \$500 to cover City costs to inform nearby residents of such projects. This \$500 fee is the same as the City charges for similar neighborhood noticing of ADU projects.

Arborist consulting services have been part of certain project reviews for years, but have never been separately enumerated in the fee schedule, which to date has only included a fee specific to "Oak Tree Review." Staff propose to rename that fee line to encompass all arborist consulting services when required for any type of project, and to keep that fee rate at the base of \$250 per hour of arborist time spent, one hour minimum.

CURRENT SITUATION AND ITS EFFECTS

Staff are proposing the new fees to be effective November 1, 2025, to help ensure that the costs of providing these services are covered by the fees charged. Please see **Attachment 2** for the Land Use Planning section of the Planning and Development Department fee schedule with all proposed changes tracked, including the new Middle Housing and arborist services fees, as well as a number of administrative corrections with no effect on fee rates.

ZONING CERTIFICATES FOR MIDDLE HOUSING (ZCMH)

On June 26, 2025 the Berkeley City Council adopted the first reading of Ordinance 7,978-N.S., amending the Zoning Ordinance for the purposes of encouraging the development of Middle Housing project types in areas of the City previously zoned for low-density residential construction only. The term “Middle Housing” includes a number of development types, but is generally used to refer to small apartment buildings of eight or fewer units being allowed in Zoning districts which had previously been mostly limited to single-family homes and small apartments of four or fewer units. The Middle Housing changes also included provisions pertaining to residential additions and increased number of bedrooms within existing dwellings. The mechanism for encouraging such projects was to remove previous restrictions, and to instead allow Middle Housing projects to get Zoning approval through a ministerial review, so long as the projects meet objective Zoning standards.

Previously, if such a project was proposed at all, a costly, time-consuming process would ensue, requiring at least a Use Permit with Public Hearing (UP(PH)), and in many cases also requiring one or more AUPs to approve of other aspects of the project, all with no certainty of ultimate approval. Under the new Middle Housing rules, the City expects to receive more project applications, but with the review time for each taking substantially fewer hours than the previous discretionary approval process. To create a proper fee structure which recoups City costs, staff are proposing a base level fee of \$2,000, which assumes eight hours of staff review time per project. This is more time than most ministerial Zoning Certificate reviews, which staff believe is justified by the complexities of ensuring that a multi-story building within a built-out urban landscape complies with all objective Zoning standards. Staff are also proposing a \$500 fee for the noticing of proposed Middle Housing projects to nearby neighbors, in compliance with requirements adopted by the City Council.

Table 1 compares the fees which would be assessed on a Zoning application for an eight-unit, three-story apartment in a Residential Zoning District under the previous rules, versus the new ZCMH fee structure proposed once new Middle Housing regulations take effect November 1, 2025.

Table 1: Previous fees vs. ZCMH fees

|                             |                                                                                                                                                               |                              |                |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------|
| Under old rules             | <b>UP(PH)</b> —previously required for multi-unit buildings within Residential Zoning Districts                                                               | Application Fee              | \$500          |
|                             |                                                                                                                                                               | UP(PH) Fee                   | \$5,500        |
|                             |                                                                                                                                                               | UP(PH) Public Hearing fee    | \$1,250        |
|                             |                                                                                                                                                               | Records Management Fee       | \$55           |
|                             |                                                                                                                                                               | Community Planning Fee (15%) | \$1,096        |
|                             | <b>UP(PH) TOTAL</b>                                                                                                                                           |                              | <b>\$8,401</b> |
|                             | <b>Additional AUP (each)</b> —previously one or more often also required, in addition to UP(PH), for multi-unit buildings within Residential Zoning Districts | Application Fee              | \$500          |
|                             |                                                                                                                                                               | AUP Fee                      | \$500          |
|                             |                                                                                                                                                               | Records Management Fee       | \$55           |
|                             |                                                                                                                                                               | Community Planning Fee (15%) | \$158          |
| <b>Each Additional AUP:</b> |                                                                                                                                                               | <b>\$1,213</b>               |                |
| Under new rules             | <b>Zoning Certificate for Middle Housing (ZCMH):</b> Proposed fees under Middle Housing rules which become effective 11/1/25                                  | ZCMH Fee                     | \$2,000        |
|                             |                                                                                                                                                               | Community Planning Fee (15%) | \$300          |
|                             |                                                                                                                                                               | ZCMH Neighborhood Noticing   | \$500          |
|                             |                                                                                                                                                               | <b>TOTAL</b>                 | <b>\$2,800</b> |

As with other fees in the Land Use section of the fee schedule that derive from multiples of the hourly staff time rate, when a project’s complexity requires more staff review time than the base eight hours the fee provides, the City will invoice the applicant for the costs of that additional time prior to approval of the project. After the first year that Middle Housing regulations are in effect, staff will review the time spent on all such projects to determine whether eight hours is the proper fee rate, or whether the fee needs to be adjusted.

ARBORIST REVIEW FEE

Many types of development project applications require review by the City’s consulting arborist. This can be when the property includes a protected coast live oak tree, or when a project proposes to remove and replace existing street trees, or when a project has other Zoning conditions which require preservation or replacement of specific trees on the subject lot. In the past, the City has not specifically enumerated arborist costs for the customer to pay, instead including such costs generically along with other project review consultations. Staff believe that the City will be better served by collecting fees and tracking arborist review expenses separately, for the sake of complete cost recovery, as well as for improved tracking of contract expenditures. The existing fee

schedule has a line which is specific to Oak Tree Review only, which staff are now proposing to rename more generally “Arborist Review services.” The fee itself will not change from the current \$250 per hour, with a minimum charge one hour, but by applying the fee to the more complete range of required arborist reviews, the City will be better able to recover its costs.

BACKGROUND

The costs of most of the work of the Planning and Development Department are covered through fees collected for services and deposited into dedicated enterprise funds, largely to the Permit Service Center Fund (621), which takes in all Building permit and Zoning permit fees. Many fees the Planning and Development Department collects are based on multiples of the hourly staff time rate, which is \$250 per hour for staff across all divisions of the department. That hourly rate was updated May 21, 2024 (Resolution No. 71,357-N.S); no further changes to this rate are proposed here.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Infill development as encouraged by the City’s Middle Housing Zoning changes is considered a best environmental practice for accommodating growing populations within already built-out urban centers, proximate to transit and job centers, without requiring the carbon-intensive automobile travel. Arborist reviews of development projects help to protect the existing urban forest and can promote planting and care for new trees.

RATIONALE FOR RECOMMENDATION

The City is expecting an increase in applications for Middle Housing projects when new regulations take effect. Adoption of the new Middle Housing fees will allow the City to cover the costs it will incur to review such applications, while being set at a rate substantially lower than the fees such projects would have had to pay in the past. If fees are do not keep pace with the costs which the City incurs, it has the effect of subsidizing current City service delivery through other means. The new fees proposed in this action would properly charge current project applicants for the Zoning review costs of their projects, without reducing the timeliness or efficiency of the services provided.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSONS

Jordan Klein, Director, Planning and Development Department, (510) 981-7534  
Jim Bondi, Associate Management Analyst, Planning and Development Department, (510) 981-7428

Attachments:

1: Resolution

Exhibit A: Land Use section of Planning and Development Fee Schedule, clean

2: Proposed New Planning Fee schedule, changes tracked

3: Public Hearing Notice

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

FEEES: REVISIONS TO THE LAND USE PLANNING SECTION OF THE PLANNING AND DEVELOPMENT DEPARTMENT FEE SCHEDULE

WHEREAS, on May 16, 2017, Resolution No. 67,985-N.S. established fees for development-related services provided by the Planning and Development Department; and

WHEREAS, certain specific fee rates were amended on May 28, 2019 in Resolution No. 68,940-N.S., on July 27, 2021 in Resolution No. 69,989-N.S., on May 24, 2022 in Resolution No., 70,371-N.S., and on November 29, 2022 in Resolution No. 70,621-N.S.; and

WHEREAS, certain fees charged by the Public Works Department, Engineering and Transportation Divisions, were amended on April 18, 2006 in Resolution 63,262-N.S., on June 1, 2010 in Resolution 64,918-N.S., on May 15, 2012 in Resolution 65,721-N.S., and on December 1, 2020 in Resolution 69,640-N.S.; and

WHEREAS, the hourly base rate for staff services across all Planning and Development Department divisions, plus numerous other non-hourly fees, were comprehensively updated, and the entire schedule was re-adopted May 21, 2024 in Resolution No. 71,357-N.S.; and

WHEREAS, fees in the Planning and Development Department fee schedule were most recently updated in Resolution No. 71,834-N.S., adopted by the Berkeley City Council on June 17, 2025; and

WHEREAS, on June 26, 2025 the Berkeley City Council adopted the first reading of Ordinance 7,978-N.S., creating new Zoning regulations for “Middle Housing” projects, which once becoming effective on November 1, 2025 will require a new fee structure to ensure that the City can recoup the costs it will expend during the Zoning review of applications for such projects, and the neighborhood noticing thereof; and

WHEREAS, many project application types require review by the City’s on-call arborist, on lots which contain protected coast live oak trees, or on projects which propose to replace or relocate existing City street trees, or in other instances when conditions placed on proposed developments require maintenance or replacement of existing tree, and the City currently lacks an explicit fee structure for arborist services to allow the City to recover the costs it expends on such reviews; and

WHEREAS, the Council of the City of Berkeley held a public hearing on September 30, 2025 to review the proposed changes to the fee schedule, attached hereto as Exhibit A to this resolution.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that fees for Land Use Planning services provided by the Planning and Development Department

shall be as set forth in Exhibit A, attached hereto and incorporated herein, with an effective date of November 1, 2025.

BE IT FURTHER RESOLVED that Resolution No. 71,834-N.S. is hereby amended, effective November 1, 2025, to incorporate Exhibit A, the revised Land Use Planning section of the Planning and Development Department fee schedule.

Exhibits:

A: Fee Schedule

| CHAPTER B - LAND USE PLANNING                                          |           |                                                                                                                      |             |                                                                                      |
|------------------------------------------------------------------------|-----------|----------------------------------------------------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------|
| FEE TYPE / DESCRIPTION                                                 |           |                                                                                                                      | CURRENT FEE | REMARKS                                                                              |
| <b>I. Application Fee: AUP, UP, VAR, MOD, DR, LM, Condo Conversion</b> |           |                                                                                                                      | \$ 500      | Application fee to cover intake and initial completeness review: Assumes 2 hours.    |
| <b>II. Administrative Use Permit (AUP)</b>                             |           |                                                                                                                      |             |                                                                                      |
|                                                                        | 1.        | Tier 1 - Most complex projects                                                                                       | \$ 4,500    | Base fee deposit assumes 18 hours. Add \$250 per each additional hour of staff time. |
|                                                                        | 2.        | Tier 2 - Intermediately complex projects                                                                             | \$ 3,500    | Assumes 14 hours                                                                     |
|                                                                        | 3.        | Tier 3 - Least complex projects                                                                                      | \$ 1,500    | Assumes 6 hours                                                                      |
|                                                                        | 4.        | Each additional AUP required in addition to primary application                                                      | \$ 500      | Assumes 2 hours                                                                      |
| <b>III. Use Permit (UP) with public hearing</b>                        |           |                                                                                                                      |             |                                                                                      |
|                                                                        | 1.        | Use Permit                                                                                                           | \$ 5,500    | Base fee deposit assumes 22 hours. Add \$250 per each additional hour of staff time. |
|                                                                        | 2.        | ZAB Public Hearing (per hearing, in addition to permit fees).                                                        | \$ 1,250    | Assumes 5 hours; includes materials                                                  |
| <b>IV. Variance</b>                                                    |           |                                                                                                                      |             |                                                                                      |
|                                                                        | 1.        | Tier 1 - All Variances except inadvertent demolitions                                                                | \$ 5,500    | Base fee deposit assumes 22 hours. Add \$250 per each additional hour of staff time. |
|                                                                        | 2.        | Tier 2 - Inadvertent Demolition of Residential Structure                                                             | \$ 9,500    | Base fee deposit assumes 38 hours. Add \$250 per each additional hour of staff time. |
|                                                                        | 3.        | Each additional AUP, UP or Variance in addition to primary application                                               | \$ 500      | Assumes 2 hours                                                                      |
|                                                                        | 4.        | ZAB Public Hearing (per project in addition to permit fees)                                                          | \$ 1,250    | Assumes 5 hours including materials                                                  |
| <b>V. Zoning Certificate (ministerial permits)</b>                     |           |                                                                                                                      |             |                                                                                      |
|                                                                        | <b>A.</b> | <b>All Zoning Certificate (ZC) reviews (e.g. ZCs for Business License, Home Occupations), EXCEPT as noted below:</b> | \$ 250      | Assumes 1 hour                                                                       |
|                                                                        | 1.        | Business License review - continuation of lawful existing use                                                        | no fee      | No fee for continuation of existing legal use                                        |
|                                                                        | 2.        | Short-Term Rentals review                                                                                            | \$ 375      | Assumes 1.5 hours                                                                    |
|                                                                        | 3.        | Accessory Dwelling Unit Neighborhood Notice                                                                          | \$ 500      | Assumes 2 hours for neighborhood notices and documentation                           |
|                                                                        | 4.        | Accessory Dwelling Unit Plan Check                                                                                   | \$ 250      | Assumes 1 hour for review.                                                           |
|                                                                        | 5.        | Zoning Certificate for Middle Housing (ZCMH)                                                                         | \$ 2,000    | Assumes 8 hours for review. The 15% Community Planning Fee will also be applied.     |
|                                                                        | 6.        | Middle Housing Neighborhood Notice                                                                                   | \$ 500      | Assumes 2 hours for neighborhood notices and documentation                           |
|                                                                        | 7.        | Additional staff time (work performed beyond the time covered by the fees above)                                     | \$ 250      | Per hour of staff time                                                               |
| <b>B. Building Permit review</b>                                       |           |                                                                                                                      |             |                                                                                      |
|                                                                        | 1.        | Project with Administrative Use Permit (including new main buildings)                                                | \$ 500      | Assumes 2 hours                                                                      |
|                                                                        | 2.        | New main buildings (no Administrative Use Permit)                                                                    | \$ 1,000    | Assumes 4 hours                                                                      |
|                                                                        | a         | 1 to 19 residential units (Residential and/or Mixed-Use)                                                             | \$ 500      | Assumes 2 hours                                                                      |
|                                                                        | b         | 20+ residential units (Residential and/or Mixed-Use)                                                                 | \$ 1,000    | Assumes 4 hours                                                                      |
|                                                                        | c         | Nonresidential building (no Residential uses)                                                                        | \$ 1,000    | Assumes 4 hours                                                                      |
|                                                                        | 3.        | Additions, Tenant Improvements, projects not listed above                                                            | \$ 500      | Assumes 2 hours                                                                      |
|                                                                        | 4.        | Accessory Dwelling Unit Plan Check                                                                                   | \$ 250      | Assumes 1 hour                                                                       |
|                                                                        | 5.        | Landmark review                                                                                                      | \$ 250      | Assumes 1 hour                                                                       |
|                                                                        | 6.        | In-kind Repair/Replacement (e.g. window replacement, dry rot repair, etc.)                                           | \$ 125      | Assumes half hour                                                                    |
|                                                                        | 7.        | Fourth and subsequent plan check submittal                                                                           | \$ 250      | per hour of staff time                                                               |

| FEE TYPE / DESCRIPTION                                                                            |                                                                                                     | CURRENT FEE | REMARKS                                                                                                                       |
|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>VI. Modification / Transfer</b>                                                                |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Administrative Use Permit Modification (to existing AUP, or modification to UP allowed with an AUP) | \$ 1,500    | Assumes 6 hours                                                                                                               |
| 2.                                                                                                | Use Permit Modification (ZAB Review - Permit not exercised)                                         | \$ 3,000    | Base fee deposit assumes 12 hours. Add \$250 per additional hour of staff time.                                               |
| 3.                                                                                                | Use Permit Modification (ZAB Review - Exercised Permit)                                             | \$ 5,500    | Base fee deposit assumes 22 hours. Add \$250 per additional hour of staff time.                                               |
| 4.                                                                                                | Transfer of Administrative Use Permit / Use Permit                                                  | \$ 250      | Per hour of staff time                                                                                                        |
| 5.                                                                                                | Public Hearing (per hearing, in addition to permit fees)                                            | \$ 1,250    | Assumes 5 hours including materials                                                                                           |
| <b>VII. Environmental Review</b>                                                                  |                                                                                                     |             |                                                                                                                               |
| <b>A. California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA)</b> |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Initial Study resulting in a Negative Declaration or Mitigated Negative Declaration                 | \$ 6,000    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour of staff time, plus direct cost for consultants              |
| 2.                                                                                                | Environmental Impact Report (EIR)                                                                   | \$ 10,000   | Base fee Deposit assumes 40 hours. Add \$250 per additional hour of staff time, plus direct cost for consultants              |
| <b>B. Mitigation Monitoring</b>                                                                   |                                                                                                     | \$ 4,000    | Base fee Deposit assumes 16 hours. Add \$250 per additional hour of staff time, plus direct cost for consultants              |
| <b>C. Notices - NOE, NOD, etc.</b>                                                                |                                                                                                     | \$ 1,000    | Assumes 4 hours. Fee applies when notices are filed by the City on behalf of the applicant / City after all appeals are heard |
| <b>VIII. Design Review</b>                                                                        |                                                                                                     |             |                                                                                                                               |
| <b>A. Administrative Design Review</b>                                                            |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Project valued under \$50,000                                                                       | \$ 1,500    | Assumes 8 hours                                                                                                               |
| 2.                                                                                                | Project valued at \$50,000 to \$2,000,000                                                           | \$ 2,500    | Assumes 12 hours                                                                                                              |
| 3.                                                                                                | Project valued over \$2,000,000                                                                     | \$ 3,500    | Base fee deposit assumes 16 hours. Add \$250 per hour for staff time beyond 16 hours.                                         |
| 4.                                                                                                | Signs/Awnings                                                                                       | \$ 300      | Assumes 2 hours                                                                                                               |
| <b>B. Design Review Committee</b>                                                                 |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Project valued under \$50,000                                                                       | \$ 2,500    | Assumes 12 hours                                                                                                              |
| 2.                                                                                                | Project valued at \$50,000 to \$2,000,000                                                           | \$ 3,500    | Assumes 16 hours                                                                                                              |
| 3.                                                                                                | Project valued over \$2,000,000                                                                     | \$ 5,500    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour for staff time.                                              |
| <b>C. Final Review with the DRC</b>                                                               |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Project valued under \$50,000                                                                       | \$ 1,375    |                                                                                                                               |
| 2.                                                                                                | Project valued at \$50,000 - \$150,000                                                              | \$ 1,650    |                                                                                                                               |
| 3.                                                                                                | Project valued over \$150,000                                                                       | \$ 4,675    |                                                                                                                               |
| <b>D. Additional Preview</b>                                                                      |                                                                                                     | \$ 550      |                                                                                                                               |
| <b>E. Modifications - DRC Projects</b>                                                            |                                                                                                     | \$ 1,000    |                                                                                                                               |
| <b>F. DRC Public Hearing (per hearing, in addition to permit fees)</b>                            |                                                                                                     | \$ 1,250    | Assumes 5 hours, includes materials                                                                                           |

| FEE TYPE / DESCRIPTION                                                                                                                      |                                                                                                                                                                                                                                                                                                |                                                      | CURRENT FEE | REMARKS                                                                                                           |  |
|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------|--|
| <b>IX. Landmarks Preservation Commission Review</b>                                                                                         |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
| <b>A. Initiation</b>                                                                                                                        |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             | 1.                                                                                                                                                                                                                                                                                             | Structure                                            | \$ 50       | As set by the Landmarks Preservation Ordinance. BMC 3.24.340.A                                                    |  |
|                                                                                                                                             | 2.                                                                                                                                                                                                                                                                                             | District                                             | \$ 100      | As set by the Landmarks Preservation Ordinance, BMC 3.24.340.B                                                    |  |
| <b>B. Design Review - Structural Alteration (non-residential only)</b>                                                                      |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             | 1.                                                                                                                                                                                                                                                                                             | Project valued under \$50,000                        | \$ 1,700    |                                                                                                                   |  |
|                                                                                                                                             | 2.                                                                                                                                                                                                                                                                                             | Project valued between \$50,001 and \$1,999,999      | \$ 2,800    |                                                                                                                   |  |
|                                                                                                                                             | 3.                                                                                                                                                                                                                                                                                             | Project valued at \$2,000,000 or more                | \$ 5,500    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour for staff time.                                  |  |
| <b>C. Design Review - Signs and Awnings</b>                                                                                                 |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
| <b>D. Demolition Review</b> (non-residential structures 40 or more years old as required under Section 23C.08.050C of the Zoning Ordinance) |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 1,320    |                                                                                                                   |  |
| <b>E. Mills Act Historical Contract Processing</b> - payable upon application (one-time payment)                                            |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 4,620    |                                                                                                                   |  |
| <b>F. Mills Act Historical Contract Monitoring</b>                                                                                          |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             | 1.                                                                                                                                                                                                                                                                                             | Payable upon application to cover 5 contract years   | \$ 2,750    |                                                                                                                   |  |
|                                                                                                                                             | 2.                                                                                                                                                                                                                                                                                             | Assessed at the beginning of each subsequent 5 years | \$ 2,750    |                                                                                                                   |  |
| <b>X. Appeals</b>                                                                                                                           |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
| <b>A. Non-Applicant Appeal of AUP</b>                                                                                                       |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 2,000    |                                                                                                                   |  |
|                                                                                                                                             | <b>B. Reduced Non-Applicant Appeal of AUP:</b> Fee reduced if signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less                   |                                                      |             | \$ 800                                                                                                            |  |
| <b>C. Non-Applicant Appeals of ZAB or LPC</b>                                                                                               |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 3,000    |                                                                                                                   |  |
|                                                                                                                                             | <b>D. Reduced Non-Applicant Appeals of ZAB or LPC:</b> Fee reduced if 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 |                                                      |             | \$ 1,000                                                                                                          |  |
| <b>E. Appeal of AUP by Applicants</b>                                                                                                       |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>F. Appeal of ZAB or LPC by Applicants</b>                                                                                                |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 6,000    | Assumes 24 hours                                                                                                  |  |
| <b>G. Appeal of DRSL or DRC by Non-Applicant</b>                                                                                            |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 2,000    |                                                                                                                   |  |
| <b>H. Appeal of DRSL or DRC by Applicant</b>                                                                                                |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>I. Appeal to address processing error by staff</b>                                                                                       |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | Fee Waived  |                                                                                                                   |  |
| <b>XI. Plan Amendments, Reclassification Requests, and Waterfront Master Development Plan permits</b>                                       |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
| <b>A. General Plan Amendment</b>                                                                                                            |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 10,000   | Base fee Deposit assumes 40 hours. Add \$250 per additional hour for staff time, plus direct cost for consultants |  |
| <b>B. Specific Plan Amendment</b>                                                                                                           |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 10,000   |                                                                                                                   |  |
| <b>C. Rezoning / Reclassification Request</b>                                                                                               |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 10,000   |                                                                                                                   |  |
| <b>D. Waterfront Master Development Plan Permit</b>                                                                                         |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 10,000   |                                                                                                                   |  |
| <b>XII. CONDOMINIUM</b>                                                                                                                     |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
| <b>A. Rent Board Review</b>                                                                                                                 |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 125      | per unit                                                                                                          |  |
| <b>B. Notice of Local Law Compliance</b>                                                                                                    |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>C. Conversion to Condominiums - <u>one to four units</u></b>                                                                             |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 6,000    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour for staff time.                                  |  |
| <b>D. Conversion to Condominiums - <u>five or more units</u></b>                                                                            |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 10,000   | Base fee Deposit assumes 40 hours. Add \$250 per additional hour for staff time.                                  |  |
| <b>E. Appeal of an Administrative Determination on Conversion of a TIC to the Planning Commission by an Applicant</b>                       |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>F. Appeal of Planning Commission Determination on Conversion to the City Council by an Applicant</b>                                     |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 6,000    | Assumes 24 hours                                                                                                  |  |
| <b>G. Appeal of Planning Commission Determination on Conversion to the City Council by a Non-Applicant</b>                                  |                                                                                                                                                                                                                                                                                                |                                                      |             |                                                                                                                   |  |
|                                                                                                                                             |                                                                                                                                                                                                                                                                                                |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |

| FEE TYPE / DESCRIPTION |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | CURRENT FEE                    | REMARKS                                                                                                              |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>XIII.</b>           | <b>Miscellaneous Fees</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                                                                      |
|                        | <b>A. Penalty for Late Filing</b> (When Zoning Permit, Use Permit or Variance is required for work already performed)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 100%                           | of applicable fees                                                                                                   |
|                        | <b>B. Zoning Complaint Re-inspection</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                |                                                                                                                      |
|                        | 1. First Re-inspection                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | \$ 250                         |                                                                                                                      |
|                        | 2. Second Re-inspection                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | \$ 375                         |                                                                                                                      |
|                        | 3. Third Re-inspection and all inspections thereafter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | \$ 500                         |                                                                                                                      |
|                        | <b>C. Agenda Subscriptions and Mailing Fees</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Amount specified per A. R. 3.8 |                                                                                                                      |
|                        | <b>D. Publications and Duplication of Records</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Amount specified per A. R. 3.8 |                                                                                                                      |
|                        | <b>E. Maps - large, color</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$ 36.00                       |                                                                                                                      |
|                        | <b>F. Duplication of Zoning Adjustments Board, Landmarks Preservation Commission, and Design Review Commission meeting recordings</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Amount specified per A. R. 3.8 |                                                                                                                      |
|                        | <b>G. Microfilm Duplication Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Amount specified per A.R. 3.8  |                                                                                                                      |
|                        | <b>H. Records Management Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$ 55                          | per application                                                                                                      |
|                        | <b>I. Letters Regarding Status of Properties</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | \$ 250                         | per hour, 2 hour min.                                                                                                |
|                        | <b>J. Housing Density Bonus Analysis - if separate from other permits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | \$ 250                         | per hour of staff time                                                                                               |
|                        | <b>K. Zoning Research</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | \$ 250                         | per hour, 2 hour min.                                                                                                |
|                        | <b>L. Arborist Review services</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$ 250                         | per hour, 1 hour min.                                                                                                |
|                        | <b>M. Use Permit Monitoring</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$ 250                         | per hour of staff time                                                                                               |
|                        | <b>N. Pre-application Reviews</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                |                                                                                                                      |
|                        | 1. Staff level review                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | \$ 1,000                       | Assumes 4 hours                                                                                                      |
|                        | 2. Zoning Adjustments Board / Design Review Committee / Landmarks Preservation Commission / Planning Commission Review (at staff discretion in consultation with the applicant)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$ 4,000                       | Assumes 16 hours                                                                                                     |
|                        | 3. SB35, SB330, other Preliminary Development application reviews as required by State law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$ 1,000                       | Base fee Deposit assumes 4 hours. Add \$250 per additional hour for staff time, plus other cost recovery as expended |
|                        | <b>O. Dedicated Project Review:</b> In addition to all required fees, applicants may request (or the City may require) dedicated project review in which the applicant pays the City for staff overtime or to contract with a consulting firm with particular relevant expertise to review the application. In such instances, the applicant shall remit a deposit equal to the total amount of the contract, based on the bids received by the City pursuant to its purchasing procedures. Progress billings will be made if charges are expected to exceed deposit; prompt payment of bills will assure continued project review. Failure to remit a progress payment within an appropriate time frame, as determined by the Director of Planning and Development or their designee, will be treated as a withdrawal without prejudice to the underlying proposal. | At cost                        |                                                                                                                      |
|                        | <b>P. Community Planning Fee for General Plan and Zoning Ordinance Maintenance</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 15%                            | Surcharge on all Applications for AUP, UP, Modification and/or Variance.                                             |
|                        | <b>Q. Coordinated Sign Design Program Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$ 2,217                       | Sign program to cover multiple signs in one building or development                                                  |

**NOTE:** The minimum deposits listed are intended to reflect typical project costs. Progress billings will be made during review of a project if charges exceed the deposit; prompt payment of bills will assure continued project review. Failure to remit a progress payment within the appropriate time frame as determined by the Director of Planning and Development or their designee, will be treated as a withdrawal without prejudice to the underlying proposal. All fees are required to be paid prior to scheduling the item for Council consideration.

| CHAPTER B - LAND USE PLANNING                                          |                                                                                                               |  |             |                                                                                                                                 |
|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|--|-------------|---------------------------------------------------------------------------------------------------------------------------------|
| FEE TYPE / DESCRIPTION                                                 |                                                                                                               |  | CURRENT FEE | REMARKS                                                                                                                         |
| <b>I. Application Fee: AUP, UP, VAR, MOD, DR, LM, Condo Conversion</b> |                                                                                                               |  | \$ 500      | Application fee to cover intake and initial completeness review: Assumes 2 hours.                                               |
| <b>II. Administrative Use Permit (AUP)</b>                             |                                                                                                               |  |             |                                                                                                                                 |
| 1.                                                                     | Tier 1 - Most complex projects                                                                                |  | \$ 4,500    | Base fee deposit assumes 18 hours. Add \$250 per each additional hour of staff time.                                            |
| 2.                                                                     | Tier 2 - Intermediately complex projects                                                                      |  | \$ 3,500    | Assumes 14 hours                                                                                                                |
| 3.                                                                     | Tier 3 - Least complex projects                                                                               |  | \$ 1,500    | Assumes 6 hours                                                                                                                 |
| 4.                                                                     | Each additional AUP required in addition to primary application                                               |  | \$ 500      | Assumes 2 hours                                                                                                                 |
| <b>III. Use Permit (UP) with public hearing</b>                        |                                                                                                               |  |             |                                                                                                                                 |
| 1.                                                                     | Use Permit                                                                                                    |  | \$ 5,500    | Base fee deposit assumes 22 hours. Add \$250 per each additional hour of staff time.                                            |
| 2.                                                                     | ZAB Public Hearing (per hearing, in addition to permit fees).                                                 |  | \$ 1,250    | Assumes 5 hours; includes materials                                                                                             |
| <b>IV. Variance</b>                                                    |                                                                                                               |  |             |                                                                                                                                 |
| 1.                                                                     | Tier 1 - All Variances except inadvertent demolitions                                                         |  | \$ 5,500    | Base fee deposit assumes 22 hours. Add \$250 per each additional hour of staff time.                                            |
| 2.                                                                     | Tier 2 - Inadvertent Demolition of Residential Structure                                                      |  | \$ 9,500    | Base fee deposit assumes 38 hours. Add \$250 per each additional hour of staff time.                                            |
| 3.                                                                     | Each additional AUP, UP or Variance in addition to primary application                                        |  | \$ 500      | Assumes 2 hours                                                                                                                 |
| 4.                                                                     | ZAB Public Hearing (per project in addition to permit fees)                                                   |  | \$ 1,250    | Assumes 5 hours including materials                                                                                             |
| <b>V. Zoning Certificate (ministerial permits)</b>                     |                                                                                                               |  |             |                                                                                                                                 |
| A.                                                                     | All Zoning Certificate (ZC) reviews (e.g. ZCs for Business License, Home Occupations), EXCEPT as noted below: |  | \$ 250      | Assumes 1 hour                                                                                                                  |
| 1.                                                                     | Business License review - continuation of lawful existing use                                                 |  | no fee      | No fee for continuation of existing legal use                                                                                   |
| 2.                                                                     | Short-Term Rentals review                                                                                     |  | \$ 375      | Assumes 1.5 hours                                                                                                               |
| 3.                                                                     | Accessory Dwelling Unit Neighborhood Notice                                                                   |  | \$ 500      | Assumes 2 hours for neighborhood notices and documentation ( <del>Plan check is billed separately, with Building Permit</del> ) |
| 4.                                                                     | Accessory Dwelling Unit Plan Check                                                                            |  | \$ 250      | Assumes 1 hour for review.                                                                                                      |
| 5.                                                                     | Zoning Certificate for Middle Housing (ZCMH)                                                                  |  | \$ 2,000    | Assumes 8 hours for review. The 15% Community Planning Fee will also be applied.                                                |
| 6.                                                                     | Middle Housing Neighborhood Notice                                                                            |  | \$ 500      | Assumes 2 hours for neighborhood notices and documentation                                                                      |
| 5. 7.                                                                  | Additional staff time (work performed beyond the time covered by the fees above)                              |  | \$ 250      | Per hour of staff time                                                                                                          |
| <b>B. Building Permit review</b>                                       |                                                                                                               |  |             |                                                                                                                                 |
| 1.                                                                     | Project with Administrative Use Permit (including new main buildings)                                         |  | \$ 500      | Assumes 2 hours                                                                                                                 |
| 2.                                                                     | New main buildings (no Administrative Use Permit)                                                             |  | \$ 1,000    | Assumes 4 hours                                                                                                                 |
| a                                                                      | 1 to 19 residential units (Residential and/or Mixed-Use)                                                      |  | \$ 500      | Assumes 2 hours                                                                                                                 |
| b                                                                      | 20+ residential units (Residential and/or Mixed-Use)                                                          |  | \$ 1,000    | Assumes 4 hours                                                                                                                 |
| c                                                                      | Nonresidential building (no Residential uses)                                                                 |  | \$ 1,000    | Assumes 4 hours                                                                                                                 |
| 3.                                                                     | Additions, Tenant Improvements, projects not listed above                                                     |  | \$ 500      | Assumes 2 hours                                                                                                                 |
| 4.                                                                     | Accessory Dwelling Unit Plan Check                                                                            |  | \$ 250      | Assumes 1 hour                                                                                                                  |
| 5.                                                                     | Landmark review                                                                                               |  | \$ 250      | Assumes 1 hour                                                                                                                  |
| 6.                                                                     | In-kind Repair/Replacement (e.g. window replacement, dry rot repair, etc.)                                    |  | \$ 125      | Assumes half hour                                                                                                               |
| 7.                                                                     | Fourth and subsequent plan check submittal                                                                    |  | \$ 250      | per hour of staff time                                                                                                          |

| FEE TYPE / DESCRIPTION |  |  |  | CURRENT FEE | REMARKS |
|------------------------|--|--|--|-------------|---------|
|                        |  |  |  |             |         |

| FEE TYPE / DESCRIPTION                                                                            |                                                                                                     | CURRENT FEE | REMARKS                                                                                                                       |
|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>VI. Modification / Transfer</b>                                                                |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Administrative Use Permit Modification (to existing AUP, or modification to UP allowed with an AUP) | \$ 1,500    | Assumes 6 hours                                                                                                               |
| 2.                                                                                                | Use Permit Modification (ZAB Review - Permit not exercised)                                         | \$ 3,000    | Base fee deposit assumes 12 hours. Add \$250 per additional hour of staff time.                                               |
| 3.                                                                                                | Use Permit Modification (ZAB Review - Exercised Permit)                                             | \$ 5,500    | Base fee deposit assumes 22 hours. Add \$250 per additional hour of staff time.                                               |
| 4.                                                                                                | Transfer of Administrative Use Permit / Use Permit                                                  | \$ 250      | Per hour of staff time                                                                                                        |
| 5.                                                                                                | Public Hearing (per hearing, in addition to permit fees)                                            | \$ 1,250    | Assumes 5 hours including materials                                                                                           |
| <b>VII. Environmental Review</b>                                                                  |                                                                                                     |             |                                                                                                                               |
| <b>A. California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA)</b> |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Initial Study resulting in a Negative Declaration or Mitigated Negative Declaration                 | \$ 6,000    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour of staff time, plus direct cost for consultants              |
| 2.                                                                                                | Environmental Impact Report (EIR)                                                                   | \$ 10,000   | Base fee Deposit assumes 40 hours. Add \$250 per additional hour of staff time, plus direct cost for consultants              |
| <b>B. Mitigation Monitoring</b>                                                                   |                                                                                                     | \$ 4,000    | Base fee Deposit assumes 16 hours. Add \$250 per additional hour of staff time, plus direct cost for consultants              |
| <b>C. Notices - NOE, NOD, etc.</b>                                                                |                                                                                                     | \$ 1,000    | Assumes 4 hours. Fee applies when notices are filed by the City on behalf of the applicant / City after all appeals are heard |
| <b>VIII. Design Review</b>                                                                        |                                                                                                     |             |                                                                                                                               |
| <b>A. Administrative Design Review</b>                                                            |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Project valued under \$50,000                                                                       | \$ 1,500    | Assumes 8 hours                                                                                                               |
| 2.                                                                                                | Project valued at \$50,000 to \$2,000,000                                                           | \$ 2,500    | Assumes 12 hours                                                                                                              |
| 3.                                                                                                | Project valued over \$2,000,000                                                                     | \$ 3,500    | Base fee deposit assumes 16 hours. Add \$250 per hour for staff time beyond 16 hours.                                         |
| 4.                                                                                                | Signs/Awnings                                                                                       | \$ 300      | Assumes 2 hours                                                                                                               |
| <b>B. Design Review Committee</b>                                                                 |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Project valued under \$50,000                                                                       | \$ 2,500    | Assumes 12 hours                                                                                                              |
| 2.                                                                                                | Project valued at \$50,000 to \$2,000,000                                                           | \$ 3,500    | Assumes 16 hours                                                                                                              |
| 3.                                                                                                | Project valued over \$2,000,000                                                                     | \$ 5,500    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour for staff time.                                              |
| <b>C. Final Review with the DRC</b>                                                               |                                                                                                     |             |                                                                                                                               |
| 1.                                                                                                | Project valued under \$50,000                                                                       | \$ 1,375    |                                                                                                                               |
| 2.                                                                                                | Project valued at \$50,000 - \$150,000                                                              | \$ 1,650    |                                                                                                                               |
| 3.                                                                                                | Project valued over \$150,000                                                                       | \$ 4,675    |                                                                                                                               |
| <b>D. Additional Preview (existing fee, relocated from Sec. VII.B above)</b>                      |                                                                                                     | \$ 550      |                                                                                                                               |
| <b>E. Modifications - DRC Projects</b>                                                            |                                                                                                     | \$ 1,000    |                                                                                                                               |
| <b>F. DRC Public Hearing (per hearing, in addition to permit fees)</b>                            |                                                                                                     | \$ 1,250    | Assumes 5 hours, includes materials                                                                                           |

| FEE TYPE / DESCRIPTION                                                                                                                                                                                                                                                                         |    |                                                      | CURRENT FEE | REMARKS                                                                                                           |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------|--|
| <b>IX. Landmarks Preservation Commission Review</b>                                                                                                                                                                                                                                            |    |                                                      |             |                                                                                                                   |  |
| <b>A. Initiation</b>                                                                                                                                                                                                                                                                           |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                | 1. | Structure                                            | \$ 50       | As set by the Landmarks Preservation Ordinance. BMC 3.24.340.A                                                    |  |
|                                                                                                                                                                                                                                                                                                | 2. | District                                             | \$ 100      | As set by the Landmarks Preservation Ordinance, BMC 3.24.340.B                                                    |  |
| <b>B. Design Review - Structural Alteration (non-residential only)</b>                                                                                                                                                                                                                         |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                | 1. | Project valued under \$50,000                        | \$ 1,700    |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                | 2. | Project valued between \$50,001 and \$1,999,999      | \$ 2,800    |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                | 3. | Project valued at \$2,000,000 or more                | \$ 5,500    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour for staff time.                                  |  |
| <b>C. Design Review - Signs and Awnings</b>                                                                                                                                                                                                                                                    |    |                                                      |             |                                                                                                                   |  |
| <b>D. Demolition Review</b> (non-residential structures 40 or more years old as required under Section 23C.08.050C of the Zoning Ordinance)                                                                                                                                                    |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 1,320    |                                                                                                                   |  |
| <b>E. Mills Act Historical Contract Processing</b> - payable upon application (one-time payment)                                                                                                                                                                                               |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 4,620    |                                                                                                                   |  |
| <b>F. Mills Act Historical Contract Monitoring</b>                                                                                                                                                                                                                                             |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                | 1. | Payable upon application to cover 5 contract years   | \$ 2,750    |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                | 2. | Assessed at the beginning of each subsequent 5 years | \$ 2,750    |                                                                                                                   |  |
| <b>X. Appeals</b>                                                                                                                                                                                                                                                                              |    |                                                      |             |                                                                                                                   |  |
| <b>A. Non-Applicant Appeal of AUP</b>                                                                                                                                                                                                                                                          |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 2,000    |                                                                                                                   |  |
| <b>B. Reduced Non-Applicant Appeal of AUP:</b> Fee reduced if signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less                   |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 800      |                                                                                                                   |  |
| <b>C. Non-Applicant Appeals of ZAB or LPC</b>                                                                                                                                                                                                                                                  |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 3,000    |                                                                                                                   |  |
| <b>D. Reduced Non-Applicant Appeals of ZAB or LPC:</b> Fee reduced if 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 |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 1,000    |                                                                                                                   |  |
| <b>E. Appeal of AUP by Applicants</b>                                                                                                                                                                                                                                                          |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>F. Appeal of ZAB or LPC by Applicants</b>                                                                                                                                                                                                                                                   |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 6,000    | Assumes 24 hours                                                                                                  |  |
| <b>G. Appeal of DRSL or DRC by Non-Applicant</b>                                                                                                                                                                                                                                               |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 2,000    |                                                                                                                   |  |
| <b>H. Appeal of DRSL or DRC by Applicant</b>                                                                                                                                                                                                                                                   |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>I. Appeal to address processing error by staff</b>                                                                                                                                                                                                                                          |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | Fee Waived  |                                                                                                                   |  |
| <b>XI. Plan Amendments, Reclassification Requests, and Waterfront Master Development Plan permits</b>                                                                                                                                                                                          |    |                                                      |             |                                                                                                                   |  |
| <b>A. General Plan Amendment</b>                                                                                                                                                                                                                                                               |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 10,000   | Base fee Deposit assumes 40 hours. Add \$250 per additional hour for staff time, plus direct cost for consultants |  |
| <b>B. Specific Plan Amendment</b>                                                                                                                                                                                                                                                              |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 10,000   |                                                                                                                   |  |
| <b>C. Rezoning / Reclassification Request</b>                                                                                                                                                                                                                                                  |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 10,000   |                                                                                                                   |  |
| <b>D. Waterfront Master Development Plan Permit</b>                                                                                                                                                                                                                                            |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 10,000   |                                                                                                                   |  |
| <b>XII. CONDOMINIUM</b>                                                                                                                                                                                                                                                                        |    |                                                      |             |                                                                                                                   |  |
| <b>A. Rent Board Review</b>                                                                                                                                                                                                                                                                    |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 125      | per unit                                                                                                          |  |
| <b>B. Notice of Local Law Compliance</b>                                                                                                                                                                                                                                                       |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>C. Conversion to Condominiums - <u>one to four units</u></b>                                                                                                                                                                                                                                |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 6,000    | Base fee Deposit assumes 24 hours. Add \$250 per additional hour for staff time.                                  |  |
| <b>D. Conversion to Condominiums - <u>five or more units</u></b>                                                                                                                                                                                                                               |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 10,000   | Base fee Deposit assumes 40 hours. Add \$250 per additional hour for staff time.                                  |  |
| <b>E. Appeal of an Administrative Determination on Conversion of a TIC to the Planning Commission by an Applicant</b>                                                                                                                                                                          |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |
| <b>F. Appeal of Planning Commission Determination on Conversion to the City Council by an Applicant</b>                                                                                                                                                                                        |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 6,000    | Assumes 24 hours                                                                                                  |  |
| <b>G. Appeal of Planning Commission Determination on Conversion to the City Council by a Non-Applicant</b>                                                                                                                                                                                     |    |                                                      |             |                                                                                                                   |  |
|                                                                                                                                                                                                                                                                                                |    |                                                      | \$ 4,000    | Assumes 16 hours                                                                                                  |  |

| FEE TYPE / DESCRIPTION |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | CURRENT FEE                    | REMARKS                                                                                                              |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>XIII.</b>           | <b>Miscellaneous Fees</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                |                                                                                                                      |
|                        | <b>A. Penalty for Late Filing</b> (When Zoning Permit, Use Permit or Variance is required for work already performed)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 100%                           | of applicable fees                                                                                                   |
|                        | <b>B. Zoning Complaint Re-inspection</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                |                                                                                                                      |
|                        | 1. First Re-inspection                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | \$ 250                         |                                                                                                                      |
|                        | 2. Second Re-inspection                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | \$ 375                         |                                                                                                                      |
|                        | 3. Third Re-inspection and all inspections thereafter                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$ 500                         |                                                                                                                      |
|                        | <b>C. Agenda Subscriptions and Mailing Fees</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Amount specified per A. R. 3.8 |                                                                                                                      |
|                        | <b>D. Publications and Duplication of Records</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Amount specified per A. R. 3.8 |                                                                                                                      |
|                        | <b>E. Maps - large, color</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | \$ 36.00                       |                                                                                                                      |
|                        | <b>F. Duplication of Zoning Adjustments Board, Landmarks Preservation Commission, and Design Review Commission meeting recordings</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Amount specified per A. R. 3.8 |                                                                                                                      |
|                        | <b>G. Microfilm Duplication Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Amount specified per A.R. 3.8  |                                                                                                                      |
|                        | <b>H. Records Management Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$ 55                          | per application                                                                                                      |
|                        | <b>I. Letters Regarding Status of Properties</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$ 250                         | per hour, 2 hour min.                                                                                                |
|                        | <b>J. Housing Density Bonus Analysis - if separate from other permits</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$ 250                         | per hour of staff time                                                                                               |
|                        | <b>K. Zoning Research</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | \$ 250                         | per hour, 2 hour min.                                                                                                |
|                        | <b>L. Oak Tree Review-Arborist Review services</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | \$ 250                         | per hour, 1 hour min., plus consultant costs                                                                         |
|                        | <b>M. Use Permit Monitoring</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | \$ 250                         | per hour of staff time                                                                                               |
|                        | <b>N. Pre-application Reviews</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                |                                                                                                                      |
|                        | 1. Staff level review                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | \$ 1,000                       | Assumes 4 hours                                                                                                      |
|                        | 2. Zoning Adjustments Board / Design Review Committee / Landmarks Preservation Commission / Planning Commission Review (at staff discretion in consultation with the applicant)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | \$ 4,000                       | Assumes 16 hours                                                                                                     |
|                        | 3. SB35, SB330, other Preliminary Development application reviews as required by State law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$ 1,000                       | Base fee Deposit assumes 4 hours. Add \$250 per additional hour for staff time, plus other cost recovery as expended |
|                        | <b>O. Dedicated Project Review:</b> In addition to all required fees, applicants may request (or the City may require) dedicated project review in which the applicant pays the City for staff overtime or to contract with a consulting firm with particular relevant expertise to review the application. In such instances, the applicant shall remit a deposit equal to the total amount of the contract, based on the bids received by the City pursuant to its purchasing procedures. Progress billings will be made if charges are expected to exceed deposit; prompt payment of bills will assure continued project review. Failure to remit a progress payment within an appropriate time frame, as determined by the Director of Planning and Development or their his/her designee, will be treated as a withdrawal without prejudice to the underlying proposal. | At cost                        |                                                                                                                      |
|                        | <b>P. Community Planning Fee for General Plan and Zoning Ordinance Maintenance</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 15%                            | Surcharge on all Applications for AUP, UP, Modification and/or Variance.                                             |
|                        | <b>Q. Coordinated Sign Design Program Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | \$ 2,217                       | Sign program to cover multiple signs in one building or development                                                  |

**NOTE:** The minimum deposits listed are intended to reflect typical project costs. Progress billings will be made during review of a project if charges exceed the deposit: prompt payment of bills will assure continued project review. Failure to remit a progress payment within the appropriate time frame as determined by the Director of Planning and Development or their his/her designee, will be treated as a withdrawal without prejudice to the underlying proposal. All fees are required to be paid prior to scheduling the item for Council consideration.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL  
REVISIONS TO PLANNING DEPARTMENT FEE SCHEDULE**

**The public may participate in this hearing by remote video or in-person.**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Planning and Development Department is proposing revisions to the Land Use Planning section of its fee schedule effective November 1, 2025, to create fees for a new type of Zoning Certificate for the review of Middle Housing projects, and for the neighborhood noticing thereof, to add a fee for arborist services when required for the review of a project application, and to make minor clarifications to language in the existing fee schedule

The hearing will be held on September 30, 2025 at 6:00 PM in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Jim Bondi, Associate Management Analyst, at (510) 981-7428.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of September 18, 2025. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

If you challenge the above 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 City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

**Published:** September 12, 2025 and September 19, 2025 – The Berkeley Voice

Published pursuant to Government Code Section 6062a

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 18, 2025.

Mark Numainville, City Clerk



ACTION CALENDAR
September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Hansel A. Aguilar, Director of Police Accountability

Submitted by: Hansel A. Aguilar, Director of Police Accountability

Subject: Resolution calling on the California State Legislature to Amend Government Code Section 12519 to allow heads of civilian oversight agencies to directly request investigative assistance from the Attorney General's office.

RECOMMENDATION

Adopt a Resolution calling on the California State Legislature to Amend Government Code Section 12519 to allow heads of civilian oversight agencies to directly request investigative assistance from the Attorney General's office.

SUMMARY

The ODPa Companion Report (August 29, 2024) was prepared by the Office of the Director of Police Accountability to supplement the Police Accountability Board's (PAB) independent investigation into the Berkeley Police Department (BPD) texting scandal involving the Downtown Task Force and Bike Unit. The report provides additional analysis and recommendations in response to findings of arrest quotas, racially biased and inappropriate communications, and cultural issues within the unit that raised serious concerns about accountability, oversight, and public trust. While the PAB's investigation focused on the facts and policies underlying the incident, this companion report highlights broader systemic reforms necessary to prevent similar issues in the future.

The document offers targeted recommendations for the City Council, City Manager, and the community. For Council, it calls for legislative advocacy to expand civilian oversight authority, investment in real-time audits of body-worn camera footage, clear protocols for handling complaints against the Chief of Police, stronger neutrality in communications during investigations, expanded public data reporting, and a critical review of specialized units. It also proposes a formal City apology to acknowledge the harm caused and reaffirm a commitment to fair and impartial policing. Additional recommendations urge the City Manager to tighten oversight of city-issued devices and create an Alcohol Rehabilitation Leave Procedure to support officers' wellness. Finally, the report encourages the community to pursue Charter amendments granting the ODPa/PAB independent legal counsel and the authority to initiate misconduct investigations proactively. Collectively, these measures are aimed at strengthening oversight, improving accountability systems, and rebuilding public trust in policing.

FISCAL IMPACTS OF RECOMMENDATION

Implementation of the recommendations would not require additional funding beyond existing resources; the fiscal impact would be limited to staff time necessary to carry out the proposed actions.

CURRENT SITUATION AND ITS EFFECTS

Civilian oversight agencies are essential to promoting transparency and accountability in law enforcement, yet their impact is often constrained by limited authority and resources. Under the current Government Code section 12519, only a narrow group of officials can request investigative support from the Attorney General's office—excluding civilian oversight leaders, who are frequently at the forefront of addressing public concerns about police misconduct. Expanding this authority to include the heads of civilian oversight agencies would strengthen their ability to carry out their responsibilities without undue obstacles, particularly in cases where investigations face resistance or require specialized expertise.

The findings in the Berkeley Police Department Texting Offences: An Independent Investigation by the Police Accountability Board highlight the significant challenges oversight bodies encounter in accessing critical information, such as the Swanson report and other internal records. These barriers underscore the urgent need for legal authority that enables oversight agencies to secure the cooperation and resources necessary for examining serious allegations of misconduct. Allowing civilian oversight leaders to request assistance from the Attorney General would not only reaffirm the Legislature's commitment to transparency and accountability but also ensure that oversight investigations are thorough, effective, and independent.

In addition to investigative authority, the ability to seek formal legal opinions from the Attorney General carries unique value. Attorney General opinions provide authoritative, statewide interpretations of law that help ensure consistency across jurisdictions. For civilian oversight agencies, access to such opinions would provide critical guidance in complex or contested areas of law, reducing uncertainty and strengthening the legal foundation of their work. This would also reduce reliance on local interpretations that may be constrained by conflicts of interest or limited resources. Allowing oversight directors to request Attorney General opinions would therefore not only empower investigations but also help standardize best practices, clarify statutory ambiguities, and enhance public confidence that oversight decisions rest on sound legal footing.

BACKGROUND

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 had been 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.

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

In support of these objectives, the ODPa submitted 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.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental sustainability or climate impacts were identified in connection with this recommendation.

RATIONALE FOR RECOMMENDATION

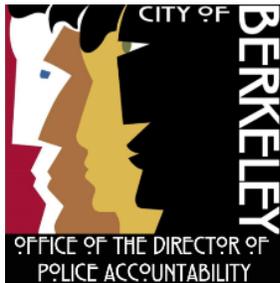
Civilian oversight agencies are critical to ensuring transparency and accountability in law enforcement, but their effectiveness is often constrained by limited authority and resources. Current law (Government Code Section 12519) does not allow civilian oversight leaders to request investigative assistance from the Attorney General, even when their work faces resistance or requires specialized expertise. Amending this section to include oversight agency heads would strengthen their ability to conduct thorough investigations, remove barriers to accessing critical information, and affirm the Legislature's commitment to independent oversight, transparency, and progressive policing reforms.

CONTACT PERSON

Hansel A. Aguilar, Director of Police Accountability, (510) 981-4960

Attachments:

- 1: Resolution
- 2: Companion Report - August 29, 2024



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

CALLING ON THE CALIFORNIA STATE LEGISLATURE TO AMEND GOVERNMENT CODE SECTION 12519 TO ALLOW HEADS OF CIVILIAN OVERSIGHT AGENCIES TO DIRECTLY REQUEST INVESTIGATIVE ASSISTANCE FROM THE ATTORNEY GENERAL'S OFFICE.

WHEREAS, the Police Accountability Board (PAB) conducted an independent investigation into allegations of arrest quotas, inappropriate communications, and accountability failures within the Berkeley Police Department's Downtown Task Force and Bike Unit; and

WHEREAS, the Office of the Director of Police Accountability (ODPA), as Secretary to the PAB and Charter officer, submitted a Companion Report on August 29, 2024, which highlighted the systemic barriers that hinder civilian oversight investigations, including lack of authority to directly request legal opinions or assistance from the Attorney General's Office; and

WHEREAS, under current law, Government Code Section 12519 only authorizes certain enumerated officials (e.g., legislators, statewide constitutional officers, county counsel, district attorneys, and sheriffs) to obtain written legal opinions from the Attorney General, excluding heads of civilian oversight agencies; and

WHEREAS, Attorney General opinions provide authoritative statewide interpretations of law that promote consistency, reduce uncertainty, and ensure that sensitive matters are guided by impartial legal standards; and extending this authority to civilian oversight leaders would give them the tools necessary to carry out their mandates with legal clarity and independence; and

WHEREAS, civilian oversight agencies are tasked with promoting transparency, accountability, and community trust in law enforcement, yet their ability to carry out these responsibilities effectively is constrained by statutory limitations; and

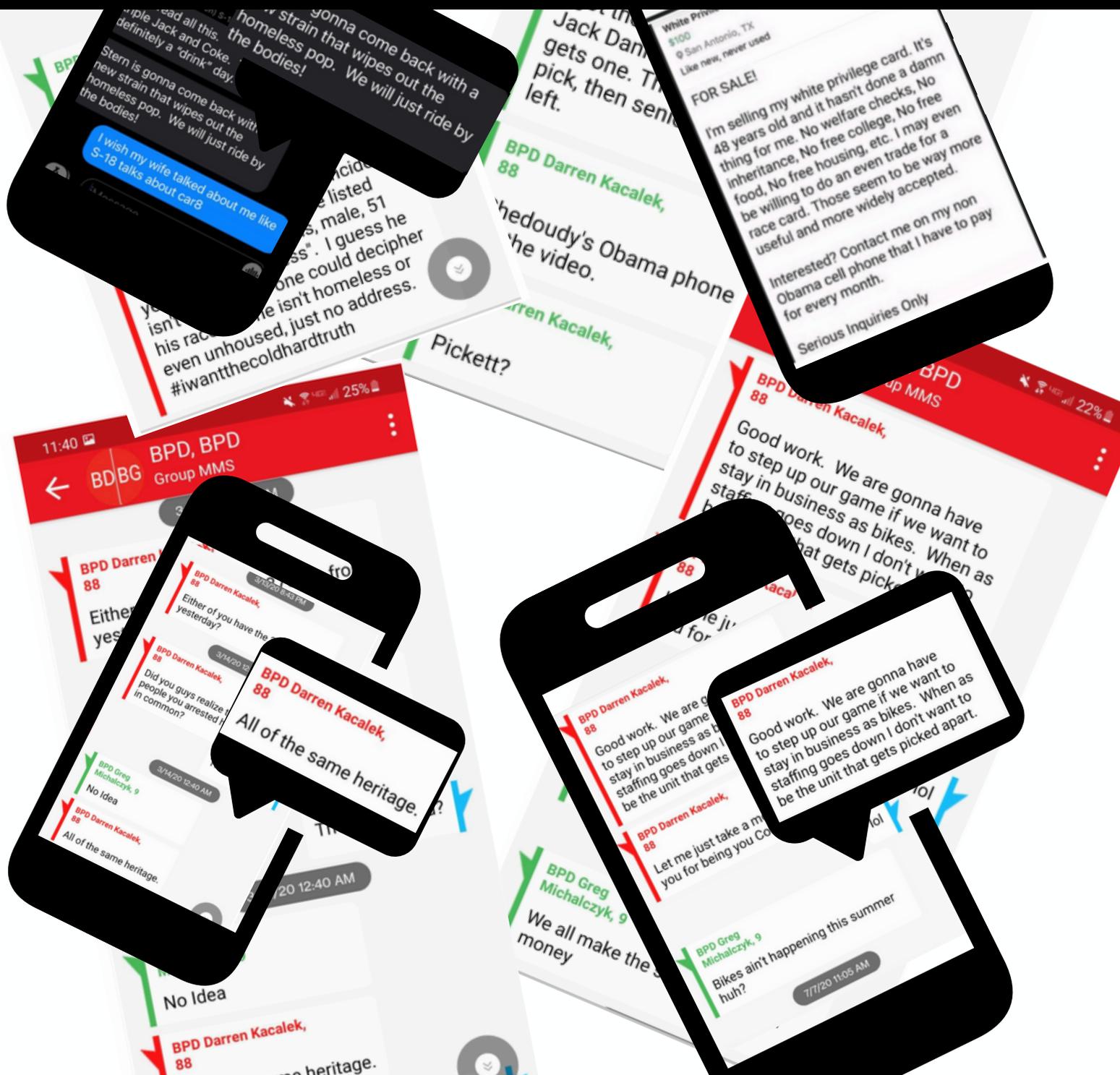
WHEREAS, Senator Jesse Arreguin, former Mayor of Berkeley and current Chair of the California State Senate Public Safety Committee, is uniquely positioned to understand the significance of this reform and to advance legislation that strengthens civilian oversight; and

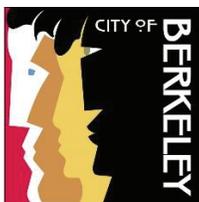
WHEREAS, amending Government Code Section 12519 to include heads of civilian oversight agencies as authorized requestors would affirm the Legislature's commitment to strengthening civilian oversight, improving accountability systems, and ensuring independent investigations of serious allegations of misconduct.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that The City of Berkeley calls upon the California State Legislature to amend Government Code Section 12519 to explicitly authorize the heads of civilian oversight agencies to directly request investigative opinions and assistance from the Attorney General's Office.



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
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Cecilia Lunaparra, District 7
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City Manager

LaTanya Bellow, Interim City Manager

Berkeley Police Department

Jennifer Louis, Chief of Police

POLICE ACCOUNTABILITY BOARD (PAB) MEMBERS

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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

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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 10th, 2024.

According to the City of Berkeley Commissioners' Manual¹, 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**:

¹ 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 12519² 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 tool³
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

² 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.>

³ 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 446.00⁴

Lastly, the ODPa calls on the **COMMUNITY** to consider the following:

1. Seek Charter amendment to Section (15) Legal Counsel⁵: 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

⁴ 446.01 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>

⁵ 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*⁶, *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.

⁶ 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

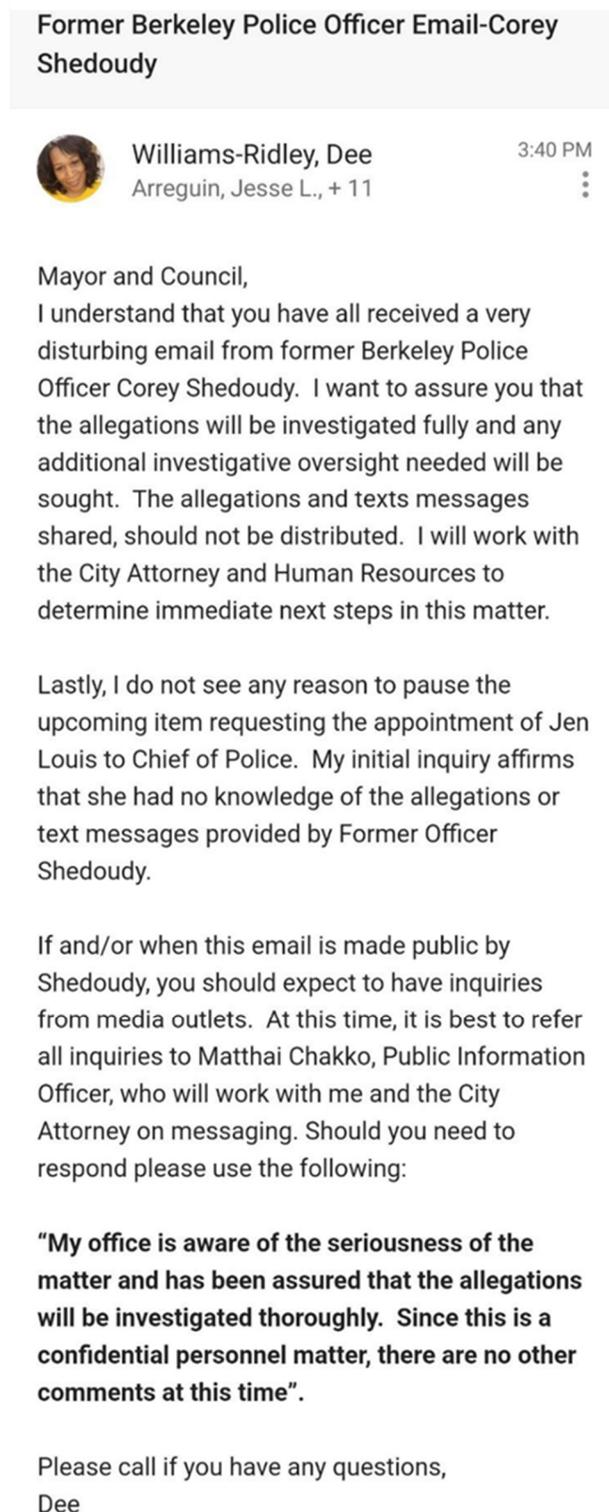
against the Chief of Police. This protocol should be subject to Council approval to ensure it reflects the community's expectations for transparency and accountability.

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



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 matter⁷ and the other Departments/units within the City with authority to investigate the matter *sua sponte*⁸ 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 CONDUCT⁹ ; and
- U.S Department of Justice, Office of Community Oriented Policing Services (COPS)- STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS: Recommendations from a Community of Practice¹⁰

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*

⁷ 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.*”

⁸ 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*”;

⁹ State Bar of California- RULES OF PROFESSIONAL CONDUCT
https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_3.6-Exec_Summary-Redline.pdf

¹⁰ 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 proceeding¹¹ 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,

¹¹ 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 Hub¹² 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 Copwatch¹³ 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

¹² <https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/>

¹³ 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 tool¹⁴

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.

¹⁴ 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."¹⁵

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

¹⁵ 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 446.00¹⁶. 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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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".¹ Arrest quotas have been prohibited by the California Vehicle Code since 1976:²

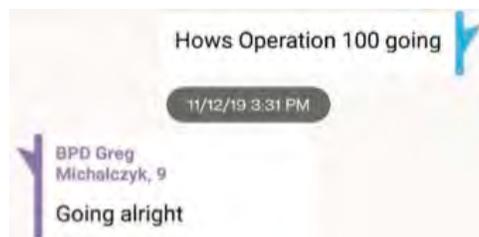
"No..local agency employing peace officers...may establish any policy requiring any peace officer...to meet an arrest quota."

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 messages³ provided to the City Council have been (with one exception, not relevant here) authenticated by a vendor retained by the outside investigator Swanson & McNamara.⁴

On November 12, 2019, an unnamed officer (most likely then-Ofcr. Shedoudy) asked Ofcr. Greg Michalczyk about "Operation 100".⁵



¹ 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, "November 10, 2022, Email from Corey Shedoudy to the Mayor and Berkeley City Council," p. 36

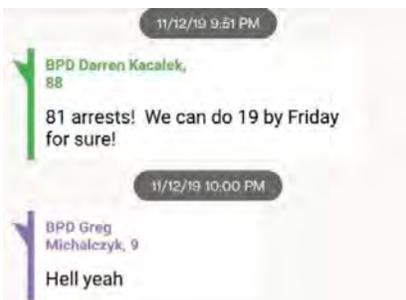
² California Vehicle Code § 41602 *Arrest Quotas*, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=17.&chapter=7.&lawCode=VEH, attached as Exhibit 1.

³ 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.

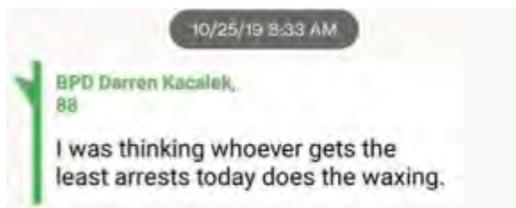
⁴ PAB Packet, supra n. 1, "Summary of Investigation Process," p. 25

⁵ 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.⁶



The preceding month Sgt. Kacalek had suggested penalizing the officer with the fewest arrests to the drudgery of waxing (bikes, presumably).⁷



Also that same month Sgt. Kacalek had emphasized arrests to his unit (then known as the DTF, Downtown Task Force).⁸



(Overtime then as now had become a perennial challenge to the Berkeley Police Department,⁹ so relaxing that constraint in explicit exchange for arrests ran the implicit risk of establishing a quota.)

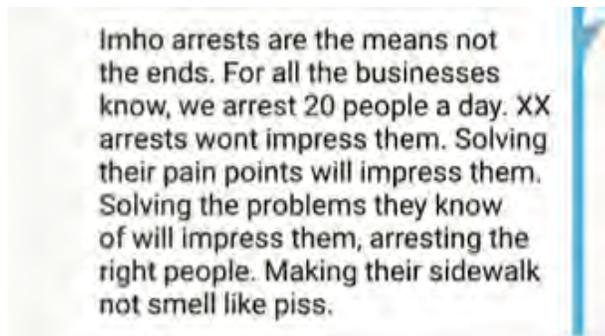
⁶ PAB Packet, supra n. 1, p. 43

⁷ PAB Packet, supra n. 1, p. 45

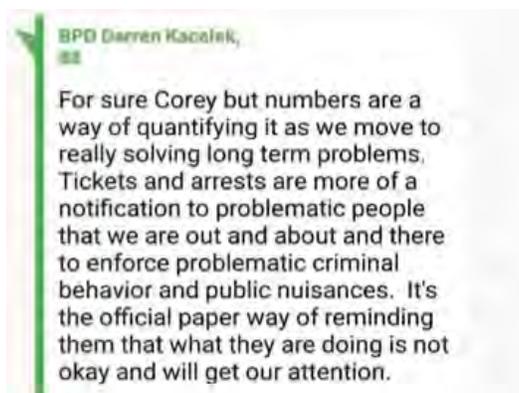
⁸ PAB Packet, supra n. 1, p. 48, apparent approximate date October 19, 2019

⁹ 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.¹⁰



Sgt. Kacalek responded that “numbers are a way of quantifying it...a notification to problematic people that we are out and about.”¹¹



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.

¹⁰ PAB Packet, supra n. 1, p. 40

¹¹ 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, 2019.¹² However, as early as 2018 BPD had "[s]taffed overtime patrols in the downtown,"¹³ partially in response to a campaign position from Councilmember Kate Harrison reflecting concerns of her Downtown constituents:¹⁴

"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:¹⁵

"Downtown Task Force...Began Bike Patrol training and equipment acquisition."

This priority was reflected in the FY 2020/2021 biennial budget adopted in mid-2019:¹⁶

"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 2020:¹⁷

"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

¹² "Summary of Investigation Process," supra n. 4

¹³ Berkeley Police Department, *2018 Annual Crime Report*, March 19, 2019, p. 3, <https://records.cityofberkeley.info/PublicAccess/api/Document/Ae3FvWxdiUDVkdSvDvvyxHM492HuYFW0lJpEpp601ZyyWihRQgcndqMWadQzZ9OpPkazKJgV5uZUIWmgvutEEac%3D/>

¹⁴ Kate Harrison, *Berkeley Progressive Alliance Candidate Questionnaire*, p. 3, <https://www.berkeleytenants.org/wp-content/uploads/2017/01/Questionnaire.-Harrison.pdf>

¹⁵ 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/AfPSh1Yn6aAYFbhJYqtROgUtEmAT74LfpBLjvP9AwFsfVemWdd89cg9B4IFNHSMaXk8ApAlICAr2wmQEKnnbbQ%3D/>

¹⁶ City Manager, *FY 2020 & FY 2021 Biennial Budget Adoption*, June 25, 2019, p. 295 of 570, <https://records.cityofberkeley.info/PublicAccess/api/Document/AcuCVnDbGawvbuJ5bA6dAkBWuDHZpxNnJyKMWTP7MeEgslmZNIpG3s0vBJM4McaNB8jGcD2WeKCmVPNhEOAjU0%3D/>

¹⁷ 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.¹⁸ Since the re-launch Berkeley Copwatch has added Ofcr. George Schikore, the Area 4 (West Berkeley) Coordinator,¹⁹ as a target for scrutiny in the Operation 100 text messages matter.²⁰ 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

¹⁸ 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>

¹⁹ Berkeley Police Department, *Community Liaisons*, <https://berkeleyca.gov/safety-health/police/community-liaisons> (accessed August 8, 2023)

²⁰ 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.²¹ 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/ Bike Unit | Rest of 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 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

²¹ 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.

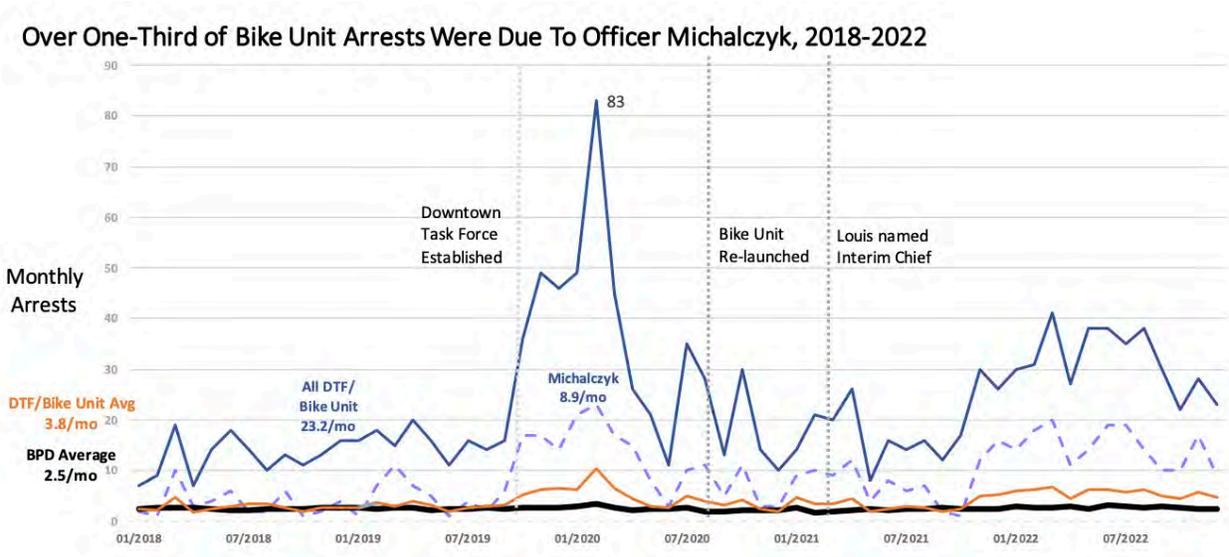
Table 2. Top 5 BPD Officers, by Arrests, 2018-2022

| 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.²² Two years later a supervising sergeant recognized his (and Ofcr. Stern’s) vigor on the Bike Unit, attached as Exhibit 2.²³

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.

²² Berkeley Police Association, December 12, 2019, <https://www.facebook.com/BerkeleyPoliceAssoc/posts/pfbid02kCFphZQkQLccoszcUMBtVQAxDsN5tmocjdKumwetFAycNN12zzK3KsZXcKs2Bftkl>

²³ 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. 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/ Bike Unit | Rest of 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.”²⁴ 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 Code²⁵ 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;²⁶
- *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);²⁷

²⁴ “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 36

²⁵ California Penal Code, <https://leginfo.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PEN&tocTitle=+Penal+Code++PEN>

²⁶ 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.

²⁷ Cal. P.C. §§ 1203.2 (felony & misdemeanor), 166(A)(4)

- *Substance abuse*, specifically possession of drug paraphernalia or methamphetamine, or public intoxication;²⁸
- *Property crime*, specifically petty theft (value less than \$950) or burglary;²⁹ and
- *Resisting arrest* incident to apprehension for some other offense.³⁰

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/ Bike Unit | Rest of 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%).

²⁸ Cal. P.C. §§ 11364(A), 11377(A), 647(F)

²⁹ Cal. P.C. §§ 484(A), 459

³⁰ 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.³¹ 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

³¹ 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.”³² 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/ Bike Unit | Rest of 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

³² “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.³³ 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:³⁴

“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.)

³³ 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)

³⁴ 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 quotas³⁵ 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,³⁶

“[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.³⁷

Quotas risk sacrificing quality (particularly legality) for quantity in undesirable ways.³⁸ His article is attached as Exhibit 5.



Shaun Ossei-Owusu
Photo: Penn Carey Law School

(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.)³⁹

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:

³⁵ California Vehicle Code §§ 41600-41603, *Arrest Quotas*, supra n. 2. Also attached as Exhibit 1.

³⁶ *Berkeley Gazette*, “Measure to outlaw CHP’s ticket quotas,” July 22, 1975, p. 1. Attached as Exhibit 4.

³⁷ 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. Attached as Exhibit 5.

³⁸ E.g. Ossei-Owusu, supra n. 37, pp. 579-580, “Thin Evaluations,” esp. fn. 305

³⁹ 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).⁴⁰ **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.”⁴¹ 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,⁴² 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**

⁴⁰ “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 37, 36

⁴¹ “November 10, 2022, Email from Corey Shedoudy,” supra n. 1, p. 36

⁴² 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,⁴³ 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."⁴⁴ **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

⁴³ 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)

⁴⁴ 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.⁴⁵ 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.”⁴⁶ 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.⁴⁷

Table 6. Berkeley Population vs. Arrestee Race Proportions, DTF/Bike Unit & BPD

| Race | 2020 Census | DTF/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.⁴⁸ 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.⁴⁹ 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.

⁴⁵ 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.”)

⁴⁶ 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&stoptime=8024&autostart=0&embed=1&redirect=true&h=40d32dbeb55e5e9296a17e679bea5bb0

⁴⁷ Wikipedia, *Berkeley, California – Demographics – 2020 Census*, https://en.wikipedia.org/wiki/Berkeley,_California#2020_census

⁴⁸ Center for Policing Equity, *supra* n. 33

⁴⁹ 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 21st, 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

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

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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

DM
PAID ALFO, CALIF. 94303
737 Loma Verde Avenue
Berkeley, Inc.

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.

* Copyright © 2021 by Shaun Ossei-Owusu, Presidential Assistant Professor of Law, University of Pennsylvania Law School. This Article benefitted from feedback and conversations with Regina Austin, Mitch Berman, Stephanos Bibas, Nathaniel Bronstein, Guy-Uriel Charles, Cary Coglianese, Dan Epps, Kimberly Ferzan, Allison Hoffman, Paul Heaton, Leo Katz, Jonathan Klick, Eisha Jain, Elizabeth Joh, Ben Levin, Sandra Mayson, Sunita Patel, John Rappaport, Dan Richman, Paul Robinson, Stephen Rushin, Madeline Verniero, and the faculties of the Loyola University Chicago and Penn Law. Additional thanks to Madeline Verniero for excellent research and editorial support as well as the editors at the *New York University Law Review*. All errors are mine.

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INTRODUCTION

Before the Great Lockdown, criminal justice reformers across the ideological spectrum lamented “policing for profit.”¹ Commentators usually discuss this practice through the more sanitized sounding category of “legal financial obligations” (LFOs).² The economic implications of the COVID-19 pandemic have put a spotlight on this type of predatory “cash register justice.”³ As of this writing, the National League of Cities has reported that 2,100 cities anticipate budget deficits.⁴ Since hundreds of jurisdictions have relied on LFOs in the past,⁵ and some have continued to do so during the crisis,⁶ 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

¹ 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>.

² 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.

³ 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).

⁴ 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>.

⁵ 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”).

⁶ 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.”⁷

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.⁸ Concerns about cities using the police to generate municipal funds—which garnered attention after the Ferguson unrest six years ago⁹—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,¹⁰ 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.¹¹ 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.¹² Evaluative jargon such

⁷ *Id.*

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ 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.”).

¹² 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,”¹³ “productivity goals,”¹⁴ and a host of other terms often obscure the operation of what are sheer police quotas.¹⁵

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.¹⁶ The Department of Justice’s report on Ferguson, which made the country aware of policing for profit, highlighted quota abolition in its Recommendation section.¹⁷ Interestingly, more than twenty states have statutory prohibitions on police quotas.¹⁸ 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.¹⁹ Nevertheless, police quotas, like criminal enforcement mechanisms more generally,²⁰ have not received meaningful consideration by legal academics.²¹ Instead, scholars typically engage quotas via the related but analytically distinct practice of broken windows policing or anecdotal accounts.²² This lack of sustained attention

¹³ 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”).

¹⁴ 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 (“[P]roductivity goals”[sic] are a euphemism for a ‘quota system.’”).

¹⁵ See *infra* notes 32–36.

¹⁶ 959 F. Supp. 2d 540, 596–602 (S.D.N.Y. 2013).

¹⁷ 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 [hereinafter Ferguson Report].

¹⁸ See *infra* Appendix A.

¹⁹ See *infra* Part II.

²⁰ 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).

²¹ 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).

²² 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,²³ empirical evidence,²⁴ references in government reports,²⁵ and annual settlements,²⁶ that all point to the existence of police quotas across the country.

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).

²³ 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).

²⁴ 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).

²⁵ 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.

²⁶ 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; 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), [Page 240](https://www.latimes.com/local/cityhall/la-me-0114-lapd-</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.²⁷ Liberal, conservative, and libertarian reformers have all lodged similar arguments and emphasized the ways quotas lead to violations of civil liberties.²⁸

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.²⁹ If advocates achieve the goal of defunding the police, addressing quotas will become especially central, as smaller police forces may increas-

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; 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>.

²⁷ See *infra* Section III.C.1.

²⁸ See *infra* Section III.C.3.

²⁹ 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.³⁰ This is precisely what has occurred in Camden, New Jersey, a city that is considered a model for police reform.³¹ 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.

³⁰ 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).

³¹ 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,”³² “productivity goals,”³³ “targets,”³⁴ “performance management,”³⁵ and “objectives.”³⁶ 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

³² GUL & O’CONNELL, *supra* note 13.

³³ 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.”).

³⁴ 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.”).

³⁵ 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”).

³⁶ 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.³⁷ 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.³⁸ 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.³⁹ 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.⁴⁰ Another memo began, “[g]ood day we need the following,” and proceeded to list various moving violations.⁴¹ That document required that summonses be handed out at accident-prone locations and specified five intersections.⁴²

Quotas can also be informal and based on unwritten requirements or implied understandings.⁴³ In North Brunswick, New Jersey, one veteran officer recounted how officers would receive four hours of overtime pay for every forty tickets written.⁴⁴ Though the police department had no official policy, there was an “unwritten understanding.”⁴⁵ 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.⁴⁶ 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

³⁷ 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>.

³⁸ *Id.*

³⁹ See Chung, *supra* note 35.

⁴⁰ *Id.*

⁴¹ 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>.

⁴² *Id.*

⁴³ 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-america-police-departments> (finding that about a third of police officers say they are expected to meet a quota for arrests and tickets).

⁴⁴ 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>.

⁴⁵ *Id.*

⁴⁶ *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.”⁴⁷ A slogan for the police department was, “[t]wo tickets a day keep the sergeants away. Five a day keep the lieutenants at bay.”⁴⁸ 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.”⁴⁹ 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.⁵⁰ Contract documents indicated that predictive algorithms produced a “daily citation expectation” for agents.⁵¹ The City insisted that the goal was not a strict requirement but a “guide.”⁵² 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

⁴⁷ 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>.

⁴⁸ Sharpe, *supra* note 26.

⁴⁹ 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>.

⁵⁰ 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>.

⁵¹ *Id.*

⁵² *Id.*

that no specific requirements existed, but that “numbers are strongly emphasized.”⁵³

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.⁵⁴ Citations and tickets were at the center of the Department of Justice’s Ferguson Report.⁵⁵ 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,⁵⁶ Republicans led a push for an anti-quota bill. Though the Fraternal Order of Police supported the bill, Governor Doug Ducey ultimately vetoed it.⁵⁷ As a result, police in Arizona remain free to use contacts to fulfill quota requirements.

South Carolina, which does have a statutory prohibition,⁵⁸ 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.⁵⁹ Lieutenant Riley Null authored the memo,

⁵³ 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.

⁵⁴ See *infra* notes 194–95.

⁵⁵ See Ferguson Report, *supra* note 17.

⁵⁶ 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.

⁵⁷ 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>.

⁵⁸ See S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.).

⁵⁹ 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.⁶⁰ 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.”⁶¹ Because the South Carolina statute makes an exception for points of contact,⁶² 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.⁶³ Failure to meet quotas can result in adverse employment actions, including denial of days off, transfers, undesirable assignments, and, of course, termination.⁶⁴ 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

www.postandcourier.com/news/internal-memo-suggests-sc-police-department-violated-law-banning-ticket-quotas/article_aa02a4d6-77f2-11e9-8a32-b75a8475adde.html.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 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).

⁶³ 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 (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).

⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.”⁶⁷

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.⁶⁸ 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.

⁶⁵ 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>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ 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 1975.⁶⁹ 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.⁷⁰ 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.⁷¹ 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."⁷² 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."⁷³ 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.⁷⁴ The Commission to Investigate Alleged Police

⁶⁹ 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).

⁷⁰ David Mundstock, *Chapter 10 – The June 1976 Campaign and the New Slate Politics*, BERKELEY CITIZENS ACTION, https://berkeleycitizensaction.org/?page_id=397 (last visited Dec. 28, 2020).

⁷¹ See *Measure to Outlaw CHP's Ticket Quotas*, *supra* note 69, at 1.

⁷² *Id.*

⁷³ *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.").

⁷⁴ 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.⁷⁵ 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.”⁷⁶ Testimony to the Commission described “a pattern of requiring a quota of four felony arrests per month.”⁷⁷ The informal policy led to a practice of “flaking,” which is when police plant drugs on suspects.⁷⁸ 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.”⁷⁹

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.”⁸⁰ 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.”⁸¹ 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.⁸²

⁷⁵ COMM’N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE CITY’S ANTI-CORRUPTION PROCEDURES, COMM’N REP. 28 (1972).

⁷⁶ *Id.* at 28.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 71.

⁸¹ *Id.*

⁸² *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.⁸³ 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."⁸⁴ Wisconsin, led by Republican State Assemblyman DuWayne Johnsrud, passed its bill more than a decade later in 1998.⁸⁵ 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."⁸⁶ 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.⁸⁷ In Utah, Republican State Senator Howard Stephenson helped the state pass its bill in 2018.⁸⁸ 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?"⁸⁹ 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.

⁸³ 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.).

⁸⁴ Mitzfield, *supra* note 83.

⁸⁵ *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.

⁸⁶ Reid Magney, *Officials Say Standards Are Needed for Police*, LA CROSSE TRIBUNE, Jan. 8, 1998, at A6.

⁸⁷ 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>.

⁸⁸ 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>.

⁸⁹ *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."⁹⁰ 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.⁹¹ Slager claimed that he struggled with Scott over his taser and shot him out of fear.⁹² 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."⁹³ 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.⁹⁴ 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."⁹⁵ 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

⁹⁰ *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>.

⁹¹ 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>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ 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 (reporting on Bamberg's representation of the Scott family and his sponsorship of the bill).

⁹⁵ 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.

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."⁹⁶ 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."⁹⁷ 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.⁹⁸ 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."⁹⁹ 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-

⁹⁶ FLA. STAT. ANN. § 316.640 (West, Westlaw through Ch. 184 of 2020 2d Reg. Sess.).

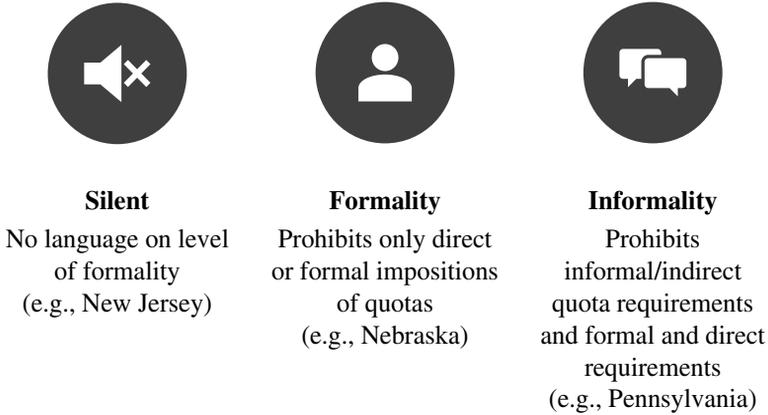
⁹⁷ UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.) (emphasis added).

⁹⁸ NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.).

⁹⁹ 71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West 2020).

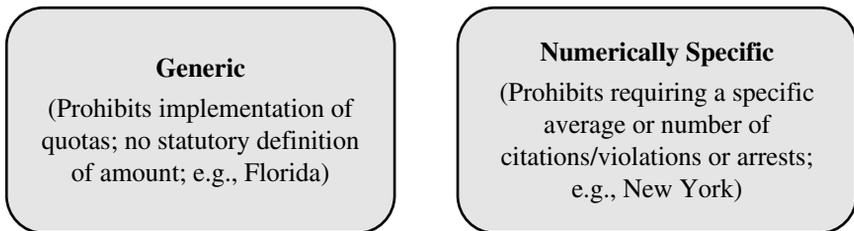
tions.”¹⁰⁰ This might include direct or indirect quotas, or encapsulate only formal quotas. Since many of these statutes are under-litigated, the available language is crucial for parties seeking to bring a claim that an agency violated the prohibition.

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.”¹⁰¹ 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.¹⁰²

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

¹⁰⁰ N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2).

¹⁰¹ MICH. COMP. LAWS ANN. § 257.750 (West, Westlaw through P.A. 2020, No. 256 of 2020 Reg. Sess.).

¹⁰² See Sparrow, *supra* note 34.

quotas for citations and traffic violations.¹⁰³ Nine states include citations, traffic violations, and arrests.¹⁰⁴ 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.¹⁰⁵ 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,¹⁰⁶ whereas South Carolina and Illinois make *exceptions* for “points of contact.”¹⁰⁷ 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.

¹⁰³ 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.

¹⁰⁴ Arkansas, California, Louisiana, Maryland, New Jersey, New York, North Carolina, Rhode Island, and Utah all include citations, tickets, and arrests.

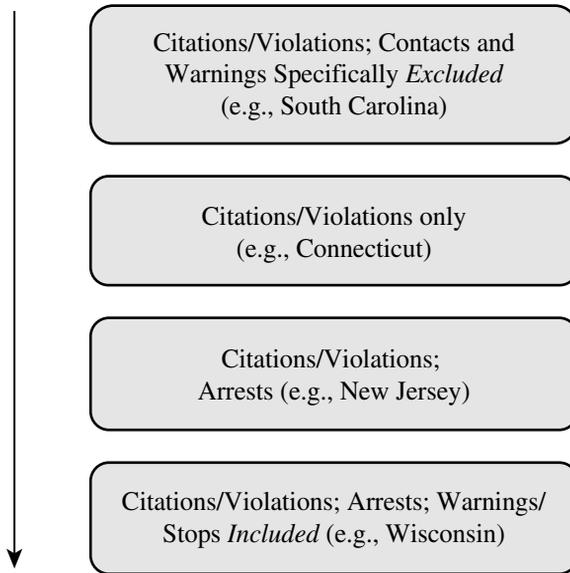
¹⁰⁵ WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186); 31 R.I. GEN. LAWS ANN. § 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.).

¹⁰⁶ MO. ANN. STAT. § 304.125 (West, Westlaw through 2020 2d Reg. Sess.) (“This section shall not apply to the issuance of warning citations.”).

¹⁰⁷ 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.¹⁰⁸ 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.”¹⁰⁹ 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.

¹⁰⁸ TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.) (emphasis added).

¹⁰⁹ 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.¹¹⁰ 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.”¹¹¹ Second, Tennessee amended its prohibition in July 2020 and made violation of the statute a Class B misdemeanor subject to a fine.¹¹² 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.¹¹³ These individuals fall into two catego-

¹¹⁰ 65 ILL. COMP. STAT. ANN. 5/11-1-12 (West, Westlaw through P.A. 101-651).

¹¹¹ *Id.*

¹¹² Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, <https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf>.

¹¹³ 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. § 1983.¹¹⁴ 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.¹¹⁵ This code¹¹⁶—which commentators also refer to as "the blue wall of

¹¹⁴ 42 U.S.C. § 1983.

¹¹⁵ 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").

¹¹⁶ 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”¹¹⁷—has been a problem in American policing for almost a century.¹¹⁸ 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.”¹¹⁹ 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.”¹²⁰ Three weeks after he made misconduct allegations, a dozen officers, led by a deputy chief, went to his apartment.¹²¹ 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,¹²² 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

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).

¹¹⁷ *See* Chin & Wells, *supra* note 116, at 237 n.15 (describing the different terms for the code).

¹¹⁸ *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).

¹¹⁹ 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.”).

¹²⁰ 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>.

¹²¹ *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>.

¹²² *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.”¹²³ Schoolcraft was subjected to the latter and forcibly committed to a psychiatric ward.¹²⁴ After six days in the ward, he was discharged and suspended and continued to receive visits from police officers.¹²⁵ Ultimately, he made the tapes public and sued the NYPD for retaliation.¹²⁶ The NYPD settled.¹²⁷ 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.”¹²⁸ While this is one of the more spectacular examples of what happens when the code of silence is breached, it highlights its retaliatory nature.¹²⁹ 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.¹³⁰ 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.¹³¹ Considering the

¹²³ 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>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Goodman, *supra* note 26.

¹²⁷ *Id.*

¹²⁸ 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>.

¹²⁹ 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.”).

¹³⁰ 547 U.S. 410, 424 (2006).

¹³¹ *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.¹³² 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).¹³³ 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,¹³⁴ but that option can be similarly, if not more, antagonizing to colleagues and lead to resignations that are difficult to remediate.¹³⁵ 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.¹³⁶ As a threshold matter, discovery disputes can preclude parties from demonstrating that quota-based policing exists. For example, in cases

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).

¹³² 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).

¹³³ See LARRY K. GAINES & JOHN L. WORRALL, POLICE ADMINISTRATION 344–45 (2012) (describing grievance procedures).

¹³⁴ See *infra* note 330; *supra* notes 37, 44, 65, 120–29.

¹³⁵ 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”).

¹³⁶ 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.¹³⁷

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.¹³⁸ 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.¹³⁹ The plaintiffs also argued that the arrests were products of quota-based policing.¹⁴⁰ 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].”¹⁴¹ Notwithstanding this evidence, New York’s anti-quota statute,¹⁴² and the NYPD’s documented struggles with quotas,¹⁴³ 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.”¹⁴⁴ By requiring this kind of evidence at the pleading stage, particularly in a jurisdiction that has

¹³⁷ 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).

¹³⁸ 309 F. Supp. 3d 52, 63 (S.D.N.Y. 2018).

¹³⁹ *Id.* at 64.

¹⁴⁰ *Id.* at 76.

¹⁴¹ *Id.* at 75.

¹⁴² N.Y. LAB. LAW § 215-a (McKinney, Westlaw through L.2019, ch. 758 and L.2020, chs. 1 to 387).

¹⁴³ See Bronstein, *supra* note 21 (arguing that the New York anti-quota statute has largely failed to rectify the negative practices of the NYPD).

¹⁴⁴ *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.¹⁴⁵ 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.¹⁴⁶ A local prosecutor dropped the charges.¹⁴⁷ Meanwhile, the officer was suspended for a month for what the police chief described as a failure of judgement.¹⁴⁸ Wynn brought a § 1983 suit, arguing that the officer and the City had violated her Fourth and Fourteenth Amendment rights.¹⁴⁹ 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.¹⁵⁰ The court ruled that this testimony was not indicative of a "hard-and-fast policy of the department."¹⁵¹ 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."¹⁵² 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.

¹⁴⁵ Wynn v. City of Pulaski, No. 11-0025, 2013 WL 527154 (M.D. Tenn. Feb. 11, 2013).

¹⁴⁶ *Id.* at *3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at *13.

¹⁵¹ *Id.*

¹⁵² *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.¹⁵³ 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."¹⁵⁴ The court ruled that the defendant met his burden, and interpreted the memo as creating an impermissible quota.¹⁵⁵

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.¹⁵⁶ The appellate court ruled that the trial court had abused its discretion and deprived the appellant of his Sixth Amendment right to confrontation.¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ Other cases, decided before and after *Garcetti*, did not hinge on First Amendment claims, and involved officer complaints about quotas and

¹⁵³ 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).

¹⁵⁴ *Commonwealth v. Greene*, 32 Pa. D. & C.3d 48, 52–53 (Ct. Com. Pl. 1984).

¹⁵⁵ *Id.* at 53–54.

¹⁵⁶ *Alexander v. State*, 949 S.W.2d 772, 773–74 (Tex. App. 1997).

¹⁵⁷ *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).

¹⁵⁸ See *State v. Sampia*, 696 So. 2d 618, 620 (La. Ct. App. 1997).

¹⁵⁹ 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.¹⁶⁰ Juan Iglesias, an officer in the City's police department,¹⁶¹ sent letters to the City's police chief and mayor protesting the enforcement of illegal ticket quotas.¹⁶² Nevertheless, he received multiple disciplinary notices for not meeting traffic enforcement standards.¹⁶³ He used the state's whistleblower law to argue that the City had illegally retaliated against him for complaining about the quotas.¹⁶⁴ The trial court awarded him lost wages but precluded him from seeking noneconomic damages—a decision that the appellate court reversed.¹⁶⁵

Martinez v. Village of Mount Prospect is the most noteworthy court victory involving a police challenge to a quota.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸ A federal district court entered an approximately \$1.1 million settlement for Martinez¹⁶⁹ 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.”¹⁷⁰ Finally, the presiding judge sent a letter, included in the opinion, to the Department of Justice.¹⁷¹ The

¹⁶⁰ *Iglesias v. City of Hialeah*, No. 3D18-639, 2019 WL 3309040 (Fla. Dist. Ct. App. July 24, 2019).

¹⁶¹ *Id.* at *1.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *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.

¹⁶⁶ 92 F. Supp. 2d 780 (N.D. Ill. 2000).

¹⁶⁷ *Id.* at 781.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 782.

¹⁷¹ *Id.*

letter highlighted the interface of the quota policy and racial profiling and encouraged the agency to investigate the Village for civil rights violations.¹⁷²

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.¹⁷³ Sometimes courts are unpersuaded by evidence that points to the existence of quotas.¹⁷⁴ Sometimes the claims are outright unpersuasive, as in *Gravitt v. N.C. Division of Motor Vehicles*,¹⁷⁵ 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.¹⁷⁶

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.¹⁷⁷ 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

¹⁷² *Id.*

¹⁷³ 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).

¹⁷⁴ 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).

¹⁷⁵ 33 F. App'x 45, 47 (4th Cir. 2002).

¹⁷⁶ 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.

¹⁷⁷ See Fussell, *supra* note 31.

police officers to “engage” people whether or not they were suspected of wrongdoing.¹⁷⁸ 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.”¹⁷⁹ The contacts were to be tracked and recorded, and officers on regular patrol were expected to perform a minimum of eighteen contacts.¹⁸⁰ According to plaintiffs, failure to comply with these numerical requirements was cause for disciplinary action.¹⁸¹ The City argued that the program was not a quota because it required police-civilian interactions and not arrests or citations.¹⁸² The Third Circuit relied on the text of the statute and, in a short analysis, agreed.¹⁸³ *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.¹⁸⁴ 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

¹⁷⁸ 842 F.3d 231, 236 (3d Cir. 2016).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 237.

¹⁸³ *Id.* at 239.

¹⁸⁴ *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.)¹⁸⁵

Officers who received an index of two or more points received an exceptional performance evaluation.¹⁸⁶ The union argued that the policy undermined the state's prohibition on quotas, and the trial court agreed.¹⁸⁷

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.¹⁸⁸ 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."¹⁸⁹ It added, "if it looks like a duck, quacks like a duck, then it probably is a duck."¹⁹⁰ Notwithstanding the court's acknowledgment of possible subterfuge, it reversed the trial court's conclusion that the policy constituted an illegal quota.¹⁹¹ 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.¹⁹² 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-

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at *2.

¹⁸⁸ *Id.* at *3.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at *4.

¹⁹² *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,¹⁹³ 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 \$600,000.¹⁹⁴ 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.¹⁹⁵ 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.¹⁹⁶

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.¹⁹⁷ 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.¹⁹⁸ In *Floyd v. City of New York*, the famous “stop and frisk” decision, quotas were a significant theme.¹⁹⁹

¹⁹³ 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).

¹⁹⁴ Goodman, *supra* note 26.

¹⁹⁵ *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.

¹⁹⁶ Mathias, *supra* note 195.

¹⁹⁷ *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>.

¹⁹⁸ Weiser, *supra* note 197.

¹⁹⁹ *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.²⁰⁰ Officers who did not comply would be denied overtime or receive undesirable work assignments.²⁰¹ 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.²⁰² 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.²⁰³ 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.²⁰⁴ 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.²⁰⁵

Miami Gardens, which has the largest Black population in Florida and has been called the “stop-and-frisk capital of America,”²⁰⁶ 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.²⁰⁷ 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.²⁰⁸ A few weeks after a

²⁰⁰ 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>.

²⁰¹ *Id.*

²⁰² 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>.

²⁰³ Rubin & Saillant, *supra* note 200.

²⁰⁴ Branson-Potts & Reyes, *supra* note 26.

²⁰⁵ 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).

²⁰⁶ 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>.

²⁰⁷ *Id.*

²⁰⁸ *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.²⁰⁹

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.²¹⁰ 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."²¹¹ She also described how "boys as young as seven," and adolescents "riding their bikes home from school" were accosted by police.²¹² 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.²¹³ 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.²¹⁴

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.²¹⁵ 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.²¹⁶ The officers made false statements to a magistrate judge to secure a no-knock search warrant.²¹⁷ They could not kick down the security gate, so they used a pry bar and a battering ram during the nighttime raid.²¹⁸ Johnston lived

²⁰⁹ 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.

²¹⁰ 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>.

²¹¹ 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>.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Rabin, *supra* note 210.

²¹⁵ Radley Balko, *The Militarization of America's Police Forces*, 11 CATO'S LETTER 1, 1–2 (2013).

²¹⁶ 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>.

²¹⁷ *Id.*

²¹⁸ *Id.*

alone in a dangerous neighborhood, where an elderly neighbor was recently raped.²¹⁹ She fired one shot, which provoked 39 shots by the officers, some of which ultimately killed her.²²⁰ 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.²²¹ Afterward, the officers conspired to fabricate a story that they then shared with homicide investigators.²²² An FBI investigation found that the narcotics unit had a performance quota of nine arrests per month.²²³ 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.²²⁴ The City of Atlanta ultimately awarded a \$4.9 million settlement to the family of Kathryn Johnston.²²⁵

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,²²⁶ Smyrna, Delaware,²²⁷ Lehigh, Pennsylvania,²²⁸ Novi, Michigan,²²⁹ Byrnes Mills, Missouri,²³⁰ and the central California city of Paso Robles.²³¹ Financially, law professors Joanna Schwartz and John Rappaport have explained how these kinds

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *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>.

²²² *Id.*

²²³ 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.

²²⁴ *Id.*

²²⁵ 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>.

²²⁶ See Wright, *supra* note 26.

²²⁷ *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>.

²²⁸ See Hall, *supra* note 49.

²²⁹ See Phillips, *supra* note 26.

²³⁰ 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.

²³¹ 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.²³² 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.²³³ 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.²³⁴ 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

²³² 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.”).

²³³ 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).

²³⁴ 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.”²³⁵ If they are not “sufficiently monitored or bonded, agents will be lazy or irresponsible—or at least not entirely selfless in their motivations.”²³⁶ Quotas are an attempt to reduce the agency costs that come with police administration. Although concerns about shirking exist across many organizations,²³⁷ these worries have unique expressions in policing. In 1909, Leonhard Fuld, one of the earliest scholars of American urban

²³⁵ Eric W. Orts, *Shirking and Sharking: A Legal Theory of the Firm*, 16 YALE L. & POL'Y REV. 265, 276–77 (1998).

²³⁶ *Id.*

²³⁷ 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.”²³⁸ 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.’”²³⁹ 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.”²⁴⁰

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.”²⁴¹ 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,²⁴² 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.²⁴³

²³⁸ LEONHARD FELIX FULD, *POLICE ADMINISTRATION: A CRITICAL STUDY OF POLICE ORGANISATIONS IN THE UNITED STATES AND ABROAD* 91 (2d ed. 1910).

²³⁹ *Id.* at 48–49.

²⁴⁰ Dean Chang, *Tix Quota No Token Rule: TA Cops*, N.Y. DAILY NEWS, Nov. 17, 1992, at 15.

²⁴¹ 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>.

²⁴² 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)).

²⁴³ 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.²⁴⁴ 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.²⁴⁵ 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.”²⁴⁶ Productivity rationales also ostensibly ensure the fair distribution of work within a police force.²⁴⁷ 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.”²⁴⁸

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.²⁴⁹ Setting aside real and often consequential issues of implementation,²⁵⁰ as a general matter, one might argue that the careful dedication of police resources to drunk driving is uncontroversial. It would also be

²⁴⁴ See Bronstein, *supra* note 21, at 551–53.

²⁴⁵ 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.”).

²⁴⁶ 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>.

²⁴⁷ 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.”).

²⁴⁸ 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>.

²⁴⁹ 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).

²⁵⁰ 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.”²⁵¹ 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.²⁵² 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.²⁵³ 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

²⁵¹ ATLANTA CITIZEN REV. BD., *supra* note 247, at 22.

²⁵² 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.”).

²⁵³ 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.”²⁵⁴ 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.”²⁵⁵ 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.”²⁵⁶ Some describe these quantitative metrics as less vulnerable to the idiosyncrasies of police management.²⁵⁷

The idea of objectivity is significant because promotion in policing is notoriously nepotistic and subject to interpersonal politics.²⁵⁸ Quotas, it could be argued, provide a more impersonal way to assess employee productivity and address longstanding concerns about diversity in law enforcement.²⁵⁹

²⁵⁴ 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>.

²⁵⁵ *Id.*

²⁵⁶ STEVEN M. COX, SUSAN MARCHIONNA & BRIAN D. FITCH, INTRODUCTION TO POLICING 243–44 (3d ed. 2017).

²⁵⁷ 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.”).

²⁵⁸ 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).

²⁵⁹ 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.²⁶⁰ They argued that such an action would lead to an annual loss of \$33 million in the counties of Washoe and Reno.²⁶¹

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.”²⁶² 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.²⁶³ 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.²⁶⁴

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.²⁶⁵ A recent California law imposes a four-dollar fee on moving violations to support emergency air medical services.²⁶⁶ In a driver-friendly state with

²⁶⁰ 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>.

²⁶¹ *Id.*

²⁶² 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>.

²⁶³ See Ferguson Report, *supra* note 17.

²⁶⁴ See *infra* Appendices A & B.

²⁶⁵ 42 PA. STAT. AND CONS. STAT. ANN. § 3733.1(c)(3) (West, Westlaw through 2020 Reg. Sess. Act 95).

²⁶⁶ *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 accidents²⁶⁷ and improves services to rural residents who need critical care in urban centers.²⁶⁸ Surcharges for traffic violations in New Jersey fund research on spinal cord repair, brain injury, and autism treatment.²⁶⁹ 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.²⁷⁰ Notably, all of these states have quota prohibitions on the books.²⁷¹ 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."²⁷² 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.²⁷³ These localities have small property tax bases and collect fewer sales taxes than their urban counterparts because of relatively lower commerce.²⁷⁴ Thus, "[e]ven when the ethical and fiscal problems with financing government through fines are apparent,

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.).

²⁶⁷ § 76000.10(e)(1).

²⁶⁸ *Governor Signs Bipartisan Bill to Extend Funding for Emergency Air Medical Services*, *supra* note 266.

²⁶⁹ 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.

²⁷⁰ 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.

²⁷¹ *See infra* Appendix A.

²⁷² Liz Gonzalez, *Special Report: Why Traffic Tickets in California Are So High*, FOX26 NEWS (Apr. 29, 2019), <https://kmpb.com/news/local/special-report-why-traffic-tickets-in-california-are-so-high>.

²⁷³ *See* Maciag, *supra* note 5.

²⁷⁴ *Id.*

viable alternatives remain hard to find.”²⁷⁵ 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.²⁷⁶

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.²⁷⁷ 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.²⁷⁸ Their scam involved writing bogus traffic tickets without motorists’ knowledge.²⁷⁹ 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

²⁷⁵ 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>.

²⁷⁶ See *supra* note 249.

²⁷⁷ 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.”).

²⁷⁸ 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.

²⁷⁹ *Id.*

and the driver was notified.”²⁸⁰ 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.²⁸¹ 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.”²⁸² 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.”²⁸³ 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.”²⁸⁴

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.²⁸⁵ Prosecutors claimed that officers were “expected to issue a minimum of 8–10 citations” for each shift.²⁸⁶ 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.”²⁸⁷

Because MSP received federal funding, the Department of Justice became involved and ultimately charged and convicted eight people of

²⁸⁰ 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>.

²⁸¹ *Id.*

²⁸² Ray v. Miss. Dep’t of Pub. Safety, 172 So. 3d 182, 184 (Miss. 2015).

²⁸³ *Id.* at 186.

²⁸⁴ *Id.* at 185.

²⁸⁵ 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>.

²⁸⁶ 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>.

²⁸⁷ *Id.*

various embezzlement-related charges.²⁸⁸ 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."²⁸⁹ The scheme was so elaborate that the federal judge directed prosecutors to revisit whether the parties should be charged with conspiracy.²⁹⁰

Elsewhere, quota-based policing has led officers to plant crack on innocent people,²⁹¹ lazily dump summonses on clearly abandoned cars,²⁹² cite fictitious drivers,²⁹³ and ticket dead people.²⁹⁴ 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.²⁹⁵ The absence of empirical scholarship on quota-based shirking, coupled with the exis-

²⁸⁸ 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>.

²⁸⁹ 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>.

²⁹⁰ 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>.

²⁹¹ See Oren Yaniv, *Ex-Cop Jason Arbeen 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-arbeen-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>.

²⁹² ELIZABETH REUSS-IANNI, *TWO CULTURES OF POLICING: STREET COPS AND MANAGEMENT COPS* 112 (1983).

²⁹³ 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>.

²⁹⁴ 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.

²⁹⁵ 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,²⁹⁶ leads to the reasonable conclusion that these requirements do not incentivize diligent policing and instead contribute to the scourge of wrongful convictions.²⁹⁷

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.²⁹⁸ 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

²⁹⁶ 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).

²⁹⁷ 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.").

²⁹⁸ 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,²⁹⁹ 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.³⁰⁰ When quotas are low, as supporters claim, public safety benefits are questionable.³⁰¹ 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?"³⁰² 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."³⁰³ But a simpler, less loaded critique is available: Quotas poorly capture the qualitative dimensions of policing and misguidedly

²⁹⁹ 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").

³⁰⁰ David I. Dewar, *Goal Displacement*, in *ENCYCLOPEDIA OF PUBLIC ADMINISTRATION AND PUBLIC POLICY* 193, 196 (David Andrew Schultz & James A. Beverly eds., 2004).

³⁰¹ See *id.*

³⁰² 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>.

³⁰³ 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.³⁰⁴

The obsession with quantity sacrifices a long list of qualitative concerns that are relevant to policing, namely good judgment, fairness, reasonableness, and legality.³⁰⁵ 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.³⁰⁶

³⁰⁴ Sparrow, *supra* note 34, at 18.

³⁰⁵ *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 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”).

³⁰⁶ 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.”³⁰⁷ 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.³⁰⁸ 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.”³⁰⁹ 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.”³¹⁰ This revenue-based orientation ultimately “compromises their ability to perform their traditional functions.”³¹¹ 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-

³⁰⁷ Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1537 (2020).

³⁰⁸ 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>.

³⁰⁹ 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”).

³¹⁰ *Id.*

³¹¹ *Id.*

centage point decrease in the clearance rate for violent crimes.³¹² 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.³¹³ 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.³¹⁴ 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.³¹⁵ Such requirements, he complained, “risk turning officers into automatons.”³¹⁶ 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

³¹² *Id.*

³¹³ 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; 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”).

³¹⁴ See Bronstein, *supra* note 21, at 550.

³¹⁵ 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>.

³¹⁶ *Id.*

professional law enforcement officers. It distracts police officers in the exercise of their day-to-day law enforcement activities.”³¹⁷

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.”³¹⁸ In Washington, where quotas are also legal, retired Spokane police officer and Washington State Senator Jeff Holy sponsored a bill prohibiting the practice.³¹⁹ 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.”³²⁰ 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.³²¹ 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.³²² “If I help deliver a baby in an emergency, I get no credit. But I score points if I issue a seat belt summons”³²³

When quotas distract from serious crimes and preclude the ostensible services that law enforcement holds itself out as offering (officers

³¹⁷ 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>.

³¹⁸ 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.

³¹⁹ *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>.

³²⁰ *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>.

³²¹ See *supra* text accompanying notes 309–13.

³²² POLICE REFORM ORG. PROJECT, *supra* note 14, at 3.

³²³ *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.³²⁴ 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.³²⁵ 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.³²⁶ "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."³²⁷ 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

³²⁴ 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>.

³²⁵ 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).

³²⁶ Wallace, *supra* note 44.

³²⁷ *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.³²⁸ 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.³²⁹ 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.³³⁰ 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.”³³¹

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.³³² A desire to decrease unnecessary police and citizen contact also motivated Tennessee’s recent quota

³²⁸ 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>.

³²⁹ 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).

³³⁰ 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).

³³¹ Ferguson Report, *supra* note 17, at 2, 91.

³³² 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.

statute,³³³ which levies criminal fines on law enforcement officials who impose quotas.³³⁴

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.³³⁵ 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.”³³⁶ 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.”³³⁷ 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.”³³⁸

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

³³³ See Arnold, *supra* note 95.

³³⁴ Act of July 15, 2020, ch. 801, 2020 Tenn. Pub. Acts, <https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf>.

³³⁵ Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

³³⁶ *Id.* at 598–99.

³³⁷ Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 561 (2017).

³³⁸ *Id.*

going to the black community, we're going to those that have no vote, that have no power.³³⁹

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.³⁴⁰ 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.’”³⁴¹ 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.”³⁴² 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.”³⁴³ 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

³³⁹ 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>.

³⁴⁰ See DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* 24 (2008).

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ 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).³⁴⁴

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.”³⁴⁵ 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*.³⁴⁶ 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.”³⁴⁷ 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-

³⁴⁴ *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).

³⁴⁵ 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>.

³⁴⁶ JOHN A. ETERNO & ELI B. SILVERMAN, *THE CRIME NUMBERS GAME: MANAGEMENT BY MANIPULATION* (2017); see also Bronstein, *supra* note 21, at 555–56.

³⁴⁷ 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.”³⁴⁸ Others have echoed this view.³⁴⁹ 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.”³⁵⁰ 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.³⁵¹ 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.³⁵² 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.³⁵³ There is a strong reason to believe, based on the Camden example,

³⁴⁸ 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/despise-laws-and-lawsuits-quota-based-policing-lingers>.

³⁴⁹ See Smith, *supra* note 299; Jonathan Banks, *Thing Blue Lies: How Pretextual Stops Undermine Police Legitimacy*, 66 CASE W. RESV. L. REV. 931 (2016).

³⁵⁰ Marina Bell, *Abolition: A New Paradigm for Reform*, LAW & SOC. INQUIRY 1, 14 (2000).

³⁵¹ 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>.

³⁵² *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>.

³⁵³ 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.³⁵⁴

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,³⁵⁵ some jurisdictions’ narcotic addiction to profit-based policing,³⁵⁶ judicial hostility to the enforcement of civil rights in federal courts,³⁵⁷ 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 criminologists³⁵⁸ 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.

³⁵⁴ See *supra* text accompanying notes 177–88; Fussell, *supra* note 31; Rushin & Michalski, *supra* note 30.

³⁵⁵ 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).

³⁵⁶ See Maciag, *supra* note 5.

³⁵⁷ See *supra* note 136 and accompanying text.

³⁵⁸ 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 jurisprudence³⁵⁹ or with an exception-riddled Fourth Amendment³⁶⁰ 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.³⁶¹ 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.

³⁵⁹ 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”).

³⁶⁰ See RIC SIMMONS, *SMART SURVEILLANCE: HOW TO INTERPRET THE FOURTH AMENDMENT IN THE TWENTY-FIRST CENTURY* 174 (2019).

³⁶¹ 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.³⁶² 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.³⁶³ Police quotas are often the mechanisms for such “taxation by citation”³⁶⁴ and make critical tax law scholars relevant interlocutors.³⁶⁵

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.”³⁶⁶ 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

³⁶² See NATAPOFF, *supra* note 298, at 59.

³⁶³ 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).

³⁶⁴ 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>.

³⁶⁵ 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).

³⁶⁶ *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.³⁶⁷ 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.³⁶⁸

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.³⁶⁹ 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.³⁷⁰ 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.³⁷¹ 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.³⁷²

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

³⁶⁷ NATAPOFF, *supra* note 298 at 218 (describing the misdemeanor process, which represents the bulk of criminal justice cases, as "sloppy, inaccurate, unpredictable and disrespectful").

³⁶⁸ Nebraska Press Ass'n, 427 U.S. at 587.

³⁶⁹ 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 (discussing how some journalists are now unwilling to take the police's account of events "at face value").

³⁷⁰ See *supra* text accompanying notes 35, 240, 245.

³⁷¹ 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>.

³⁷² See Cohn & Quealy, *supra* note 8.

police chiefs in the state reminding them of the illegality of quotas³⁷³ and the loss of the right to issue tickets,³⁷⁴ respectively. Mainstream news outlets like the socialist *Jacobin*,³⁷⁵ the moderate *New York Times*,³⁷⁶ the libertarian *Reason*,³⁷⁷ and the conservative *Washington Examiner*³⁷⁸ 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*³⁷⁹ and *The Appeal*.³⁸⁰

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.³⁸¹ 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

³⁷³ 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>.

³⁷⁴ 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>.

³⁷⁵ 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>.

³⁷⁶ See Goldstein et al., *supra* note 309.

³⁷⁷ See Oppenheimer, *supra* note 371.

³⁷⁸ 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>.

³⁷⁹ 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>.

³⁸⁰ 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>.

³⁸¹ 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.³⁸² 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.³⁸³ Police chiefs and politicians worry that these bills will hamper their ability to evaluate officers.³⁸⁴ 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.³⁸⁵

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.³⁸⁶ 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

³⁸² See JAMES L. AUCOIN, *THE EVOLUTION OF AMERICAN INVESTIGATIVE JOURNALISM* 12 (2005).

³⁸³ See *infra* Appendix B.

³⁸⁴ 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).

³⁸⁵ See *supra* Section I.B.

³⁸⁶ See *infra* Appendix C.

sound like an extraordinary ramification.³⁸⁷ But many states already have laws that either revoke, reduce, or suspend the pensions of public employees who have been convicted of a felony³⁸⁸ or any crime related to their public employment.³⁸⁹ 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."³⁹⁰ 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,³⁹¹ and economists have tentatively found that states with stronger pension forfeiture laws experience lower rates of police misconduct.³⁹² Adding a pension forfeiture provision could add teeth to existing statutes and help stamp out stubborn police quotas.

³⁸⁷ 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).

³⁸⁸ 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.).

³⁸⁹ 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.).

³⁹⁰ W. VA. CODE ANN. § 5-10A-1 (West, Westlaw through 2020 Reg. Sess.).

³⁹¹ 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 (last visited Dec. 30, 2020).

³⁹² 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 | | |
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| State | Statute Title | Statute Overview |
| Arkansas | 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 |
| California | 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. |
| Connecticut | CONN. GEN. STAT. ANN. § 7-282d (West, Westlaw through 2020 Reg. Sess.) Imposition of traffic ticket quotas prohibited | <ul style="list-style-type: none"> • 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. • “Quota” means a specified number of . . . summonses for motor vehicle violations to be issued within a specified period of time. • 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. |
| Florida | 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. |
| Illinois | 20 ILL. COMP. STAT. ANN. 2610/24 (West, Westlaw through P.A. 101-651) 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) Quotas prohibited | <ul style="list-style-type: none"> • 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. • 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. • Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer’s points of contact. |

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| <p>Louisiana</p> | <p>LA. STAT. ANN. § 40:2401.1 (West, Westlaw through 2020 2d Extraordinary Sess.) 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>Maryland</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. (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. (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>Michigan</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"> • 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. • A police officer’s performance evaluation system shall not require a predetermined or specified number of citations to be issued. |
| <p>Minnesota</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>Missouri</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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| Nebraska | NEB. REV. STAT. ANN. § 48-235 (West, Westlaw through end of 2020 2d Reg. Sess.) | 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. |
| New Jersey | N.J. STAT. ANN. § 40A:14-181.2 (West, Westlaw through L.2020, c.136 and J.R. No. 2) | <ul style="list-style-type: none"> • A State, county or municipal police department . . . shall not establish any quota for arrests or citations. • 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. |
| New York | 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 | 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 |
| North Carolina | N.C. GEN. STAT. ANN. § 20-187.3 (West, Westlaw through S.L. 2020-97 of 2020 Reg. Sess.) Quotas prohibited | <ul style="list-style-type: none"> • 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 • 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. |
| Pennsylvania | 71 PA. STAT. AND CONS. STAT. ANN. § 2001 (West, Westlaw through 2020 Reg. Sess. Act 95) | 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. |
| Rhode Island | 31 R.I. GEN. LAWS 31-27-25 (West, Westlaw through ch. 79 of 2020 2d Reg. Sess.) Ticket quotas prohibited | <ul style="list-style-type: none"> • 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. • "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. • 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. |

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| South Carolina | S.C. CODE ANN. § 23-1-245 (West, Westlaw through 2020 Sess.) | <ul style="list-style-type: none"> • 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. • 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. • 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. |
| Tennessee | <p>TENN. CODE ANN. § 39-16-516 (West, Westlaw through end of 2020 2d Extraordinary Sess.) Traffic offense citation quotas — Performance standards</p> <p>Replaced by Act of July 15, 2020, ch. 801, 2020 Tenn. Pub Acts, https://publications.tnsosfiles.com/acts/111/pub/pc0801.pdf. <i>See also</i> TENN. CODE ANN. § 50-1-304 (West, Westlaw through end of 2020 2d Extraordinary Sess.) (Whistleblower Act)</p> | <ul style="list-style-type: none"> • 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. • 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. • 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. |

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| Texas | TEX. TRANSP. CODE ANN. § 720.002 (West, Westlaw through end of 2019 Reg. Sess.) Prohibition on Traffic-Offense Quotas | <ul style="list-style-type: none"> • 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 • 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. |
| Utah | UTAH CODE ANN. § 77-7-27 (West, Westlaw through 2020 6th Spec. Sess.) Quotas for arrest, citation prohibited | 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. |
| Wisconsin | WIS. STAT. ANN. § 349.025 (West, Westlaw through 2019 Act 186) Quotas relating to the enforcement of traffic regulations prohibited | 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. |

APPENDIX B. STATE BILLS

| State Bills on the Prohibition of Police Quotas | | |
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| State | Bill Title | Bill Overview |
| Arizona | 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"> • implementing or establishing a traffic complaint quota for peace officers (officers) employed by a police department, sheriff’s department or DPS; • basing the determination of an officer’s rank or classification on the number of traffic complaints the officer issues; or • consider[ing] the number of traffic complaints an officer issues as a factor when determining the officer’s rank or classification. |
| Colorado | S. 84, 67th Gen. Assem., 2nd Reg. Sess. (Colo. 2010) | <p>16-2.5-311. Arrest Quotas.</p> <ul style="list-style-type: none"> • An employing agency may not establish any policy requiring any peace officer to meet an arrest quota. • 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 |
| District of Columbia | 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"> • Finding that “some MTPD officers had created and were participating in a ‘game’ in which officers were rewarded for making arrests and issuing citations.” • Establishing an independent review body to address officer complaints. |
| Georgia | H.R. 738, 2009 Gen. Assem., Reg. Sess. (Ga. 2009) 2009 Bill Text GA H.B. 738 | <ul style="list-style-type: none"> • 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. • 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. |

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| Nevada | 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"> • 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. • 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. |
| Virginia | H.R. 1376, 2015 Sess. (Va. 2015) | <p>A sheriff shall not . . .</p> <ul style="list-style-type: none"> • 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. • use the number of arrests made or summonses issued by a deputy as the sole criterion for evaluating a deputy's job performance. |
| Washington | 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> |
| West Virginia | <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"> • 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. • May not use the number of arrests or citations issued by their officers as the criterion for funding, staffing or equipment needs. |

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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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* memorandum¹ 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:²

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.³ Part of Copwatch's effort included publication of a dataset recording Alameda County District Attorney (ACDA) decisions whether to charge BPD arrestees.⁴ 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.**

¹ *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

² *Arrest Quotas*, supra n. 1, pp. 15-16

³ *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

⁴ 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.⁵ 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 sheet⁶ 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; Insufficient evidence to connect suspect; Insufficient quantity of drugs |
| T3 – Admissibility Factors | Questionable execution (search warrant); Questionable probable cause for arrest/officer not present; Questionable search and seizure problem |
| T4 – Victim Factors | Victim credibility issues; 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; Exonerating evidence/information revealed; 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.⁷ I concur with this interpretation.

⁵ Alameda County Information Technology Department, *Projects: District Attorney's Case Management System DALITE*, <https://itd.acgov.org/projects/> (accessed February 18, 2024)

⁶ ACDA, *T Series for Refusals: 02/03/2014*, https://drive.google.com/file/d/1Rd8Cy9hsal-Tj1Wh5EaJ5CDz_dYIKvUi/view (accessed February 18, 2024) Attached as Exhibit 1.

⁷ *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.”⁸ “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.⁹ 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).¹⁰ **On this view, the disposition codes of greatest concern to the people and police of Berkeley should be T1, T2, and T3, not T7.**

⁸ 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§ionNum=1385.

⁹ 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§ionNum=853.6.

¹⁰ *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:¹¹

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 Order¹² 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, 2021,¹³ and courtrooms reopened to the public on April 25, 2022.¹⁴ This latter reopening preceded by 10 months the official termination of California’s COVID-19 state of emergency on February 28, 2023,¹⁵ 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

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ 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 Attached as Exhibit 5.

¹⁵ 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 million¹⁶) 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).¹⁷ 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.¹⁸ 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.

¹⁶ 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)

¹⁷ 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>

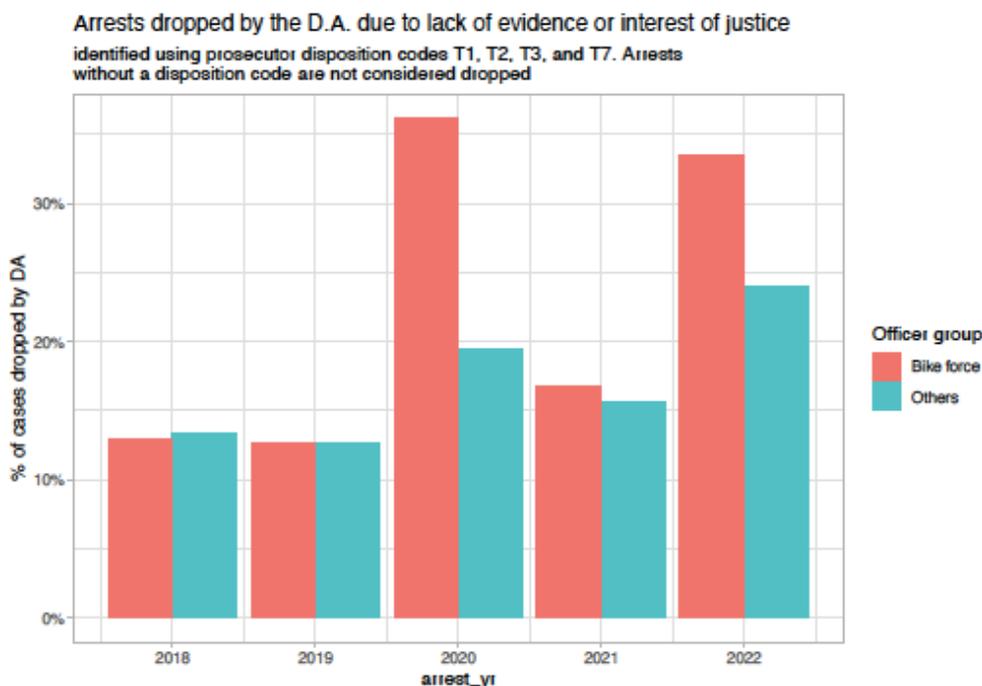
¹⁸ For more on switching regression, see Lung-Fei Lee and Robert H. Porter, “Switching Regression Models with Imperfect Sample Separation Information – With an Application on Cartel Stability,” *Econometrica* 52:2 (March 1984), pp. 391-418, <https://www.jstor.org/stable/1911495>

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.¹⁹

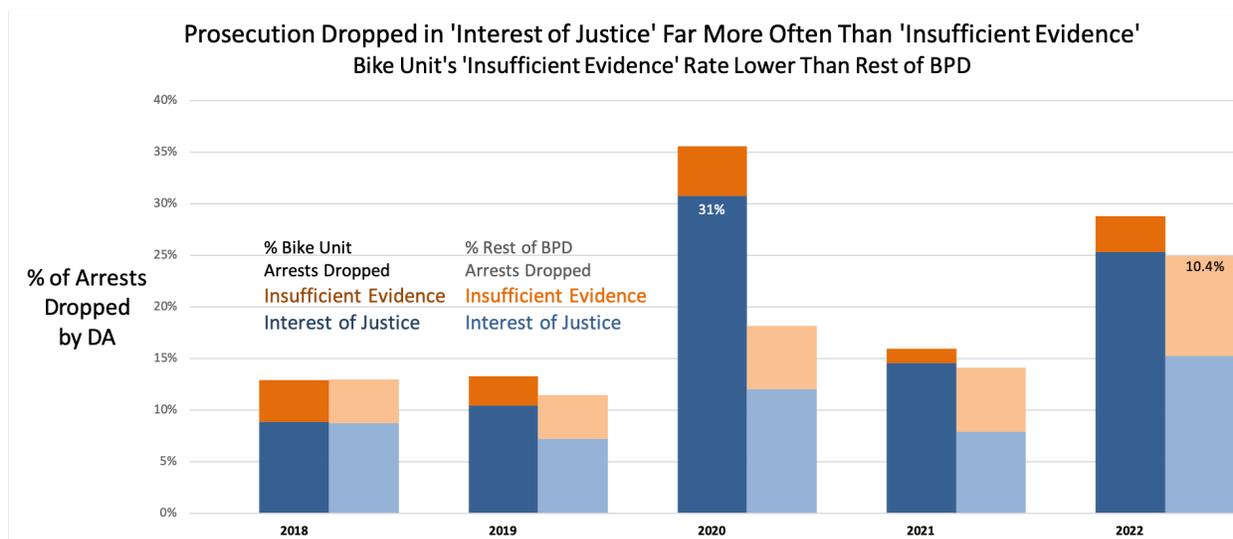
Figure 1. Copwatch’s Summary of the Data



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.

¹⁹ *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 serious²⁰ 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

²⁰ *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/ Bike Unit | Rest of 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),²¹ 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.

²¹ *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

The footnote should have read:

²⁸ Cal. H&S.C. §§ 11364(A), 11377(A), P.C. § 647(F)

EXHIBIT 1

T Series for Refusals: 02/03/2014

| | | | |
|---------------------------------------|--|---|---|
| T1 - LACK OF CORPUS | | T7 - INTEREST OF JUSTICE | |
| 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 |
| T2 LACK OF SUFFICIENT EVIDENCE | | 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 |
| | | T8 OTHER (INDICATE REASON IN REMARKS) | |
| T3 ADMISSIBILITY FACTORS | | 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 | T9 - PROSECUTOR PREFILING DEFERRAL | |
| D | Questionable PC for arrest/officer not present | A | District Attorney Corrective Intervention Program |
| E | Questionable search and seizure problem | U2 - REFERRED TO NON-CALIF. JURIS | |
| F | Questionable statement by defendant | A | Referred to military authority |
| T4 - VICTIM FACTORS | | B | Referred to another jurisdiction |
| A | Other victim considerations | C | Referred to U.S. Attorney General |
| B | Victim credibility issues | U3 - REFERRED TO PROBATION (CORPUS Entry only) | |
| C | Victim requests no prosecutions | U4 - REFERRED TO PAROLE (DALITE Entry only) | |
| D | Victim unable to qualify | V1A- SENT BACK FI (indicate one DALITE only) | |
| E | Victim unavailable | 1 | Inadequate ID |
| F | Victim uncooperative | 2 | Insufficient proof of intent |
| T5 - WITNESS FACTORS | | 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 |
| T6 - OTHER CASES AND/OR COUNTS | | 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

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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."

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

H.E.A.T. Watch Toolkit
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[Directions](#)

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

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.

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](https://twitter.com/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

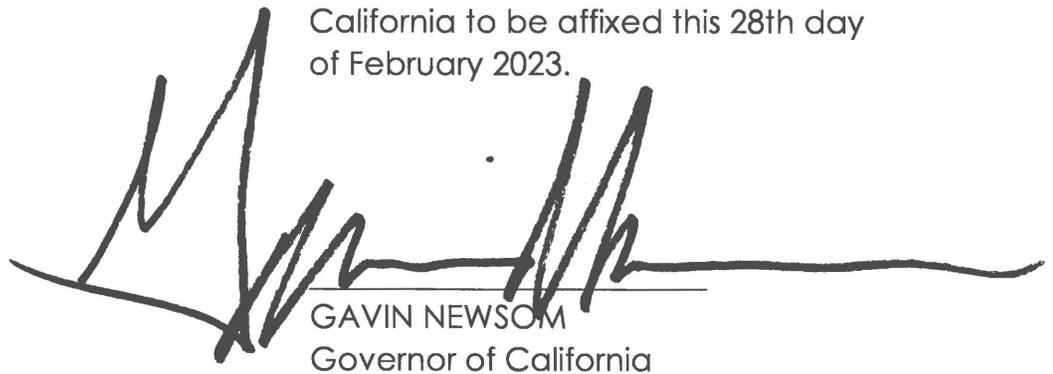
A PROCLAMATION
BY THE GOVERNOR OF THE STATE OF CALIFORNIA
TERMINATING STATE OF EMERGENCY

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.

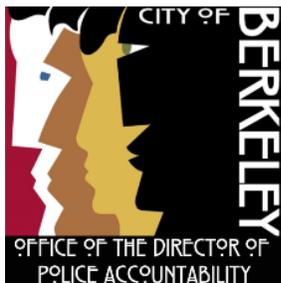
IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28th day of February 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State



ACTION CALENDAR

September 30, 2025

To: Honorable Mayor and Members of the City Council

From: Hansel A. Aguilar, Director of Police Accountability

Submitted by: Hansel A. Aguilar, Director of Police Accountability

Subject: Resolution Directing 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

RECOMMENDATION

Adopt a Resolution directing 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.

SUMMARY

The ODPa Companion Report (August 29, 2024) was prepared to supplement the Police Accountability Board's (PAB) independent investigation into the Berkeley Police Department's (BPD) texting scandal involving the Downtown Task Force and Bike Unit. The companion report identified not only issues of quotas and inappropriate communications, but also systemic gaps in how the City communicates during personnel investigations, particularly when high-ranking officials are implicated.

The report highlighted an incident in November 2022 when the former City Manager emailed the Mayor and Council about the allegations, affirming that they were "disturbing" but also stating she saw "no reason to pause" an item concerning the appointment of the Chief of Police. Specifically, the former City Manager stated that she did "*not see any reason to pause the upcoming item requesting the appointment of Jen Louis to Chief of Police.*" This statement was 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 added that her "*initial inquiry affirmed that she [Chief Louis] had no knowledge of the allegations or text messages provided by Former Officer Shedoudy.*" It was unclear to the Board what the depth and scope of the "initial inquiry" had been, 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 who may have had knowledge about this, or through an administrative review of the Chief's emails and text messages, it was 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 of having knowledge could have “suggested” that the allegations lacked or possessed questionable merit.

To address this problem, the ODPa recommends that the City Council direct the City Manager, in consultation with the City Attorney’s Office, to establish a communications policy, paired with training and compliance mechanisms, to safeguard impartiality and neutrality during ongoing investigations.

FISCAL IMPACTS OF RECOMMENDATION

The development of the policy and training will primarily require staff time within the City Manager’s Office, the City Attorney’s Office, and ODPa. Additional fiscal impacts may arise from implementing compliance training, but these can be absorbed within existing resources.

CURRENT SITUATION AND ITS EFFECTS

Civilian oversight systems rely on impartial processes that inspire confidence from both the public and department employees. When senior City officials make public or semi-public statements suggesting the outcome of an investigation before it is complete, this risk:

- Prejudicing the investigation and undermining its integrity.
- Eroding public confidence in the fairness and neutrality of the process.
- Creating potential legal challenges or due process concerns for the subject(s) of the investigation.

The Companion Report identified that the City Manager’s early statements about the Chief of Police’s knowledge of texting allegations risked creating the appearance of bias. Without clear policy guidance and training, such missteps could recur, undermining both oversight and public trust.

This recommendation is consistent with best practices identified in:

- The State Bar of California’s Rules of Professional Conduct (Rule 3.6, Trial Publicity), which caution against extrajudicial statements that may materially prejudice adjudicative proceedings.
- The U.S. Department of Justice’s “Standards and Guidelines for Internal Affairs”, which emphasize neutrality and impartiality in communications during pending investigations.

ACTION CALENDAR
September 30, 2025

By implementing a communications policy rooted in these principles, Berkeley can set clear standards for how officials handle sensitive information during personnel investigations.

BACKGROUND

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 had been 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.

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

In support of these objectives, the ODPa submitted 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.

In summary:

- On November 10, 2022, former BPD Officer Corey Shedoudy disclosed a series of text messages alleging arrest quotas and misconduct within the Downtown Task Force.
- On November 11, 2022, the City Manager emailed the Mayor and Council, classifying the allegations as "disturbing" but affirming there was "no reason to pause" the pending appointment of the Chief of Police.
- The ODPa Companion Report (Aug. 29, 2024) analyzed this incident and concluded that such statements, absent an independent inquiry, risk undermining impartiality in investigations.
- Since the incident, the City currently does not have a policy to guide these communications.

ACTION CALENDAR

September 30, 2025

This context demonstrates the urgent need for formal guidance on communications during investigations to prevent prejudicial or biased statements and maintain the integrity of City processes.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental sustainability or climate impacts were identified in connection with this recommendation.

RATIONALE FOR RECOMMENDATION

Adopting this resolution will:

- Codify best practices for impartial communications during active investigations.
- Provide training to ensure City officials understand the boundaries of appropriate communication.
- Establish compliance mechanisms that protect investigative integrity and public trust.

CONTACT PERSON

Hansel A. Aguilar, Director of Police Accountability, (510) 981-4960

Attachments:

1: Resolution

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

DIRECTING 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

WHEREAS, on November 10, 2022, allegations of misconduct involving the Berkeley Police Department's Downtown Task Force and Bike Unit were brought forward by a former officer, leading to independent and external investigations into the existence of arrest quotas and inappropriate communications; and

WHEREAS, during the pendency of those investigations, the City Manager issued communications to the Mayor and City Council that, while acknowledging the allegations as "disturbing," also prematurely expressed confidence in the subject of the investigation, thereby raising concerns of bias and prejudice; and

WHEREAS, the Office of the Director of Police Accountability (ODPA) submitted a Companion Report to the Police Accountability Board's Independent Investigation on August 29, 2024, which identified this communication as an example of how the absence of clear guidelines may undermine impartiality, investigative integrity, and public trust; and

WHEREAS, impartiality and neutrality are essential to maintaining the integrity of active personnel investigations, and best practices — including the State Bar of California's Rules of Professional Conduct, Rule 3.6 (Trial Publicity) and the U.S. Department of Justice's "Standards and Guidelines for Internal Affairs" — underscore the need for caution in public communications that could prejudice investigative outcomes; and

WHEREAS, the City of Berkeley is committed to ensuring its investigative and oversight systems operate with the highest standards of fairness, transparency, and accountability.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that:

1. The City Manager is directed to work with the City Attorney's Office to establish a communications policy that provides clear guidelines for how City officials communicate during the pendency of an active personnel investigation.
2. The City Manager is further directed to develop and implement corresponding training for City officials on this policy to ensure compliance and understanding of their obligations.
3. The policy shall include compliance mechanisms designed to safeguard impartiality and neutrality, preserve investigative integrity, and protect public confidence in the City's processes.
4. The City Manager shall return to Council with the proposed communications policy for review and approval.



Office of the City Manager

INFORMATION CALENDAR
September 30, 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: Landmark Preservation Ordinance Notice of Decision: 2201-2205 Blake Street/#LMSAP2024-0004

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 (BMC/LPO) 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 Landmarks Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject Landmark property. This action is subject to a 15-day appeal period, which began after the notice was mailed on September 15, 2025.

BACKGROUND

BMC/LPO 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 September 30, 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

Allison Riemer, Senior Planner, Planning and Development, 510-981-7433

Attachments:

1: Notice of Decision – #LMSAP2024-0004/2201-2205 Blake 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

Notice of Decision

DATE OF BOARD DECISION: February 6, 2025
DATE NOTICE MAILED: September 15, 2025
APPEAL PERIOD EXPIRATION: September 30, 2025
EFFECTIVE DATE (Barring Appeal or Certification): October 1, 2025¹

2201-2205 Blake Street – Bartlett Houses

Structural Alteration Permit #LMSAP2024-0004 to relocate the historic stable structure and convert it to residential use; and to construct a new, three-story residential building at the rear of the subject 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:** Nathan George
9101 Burning Tree Road
Bethesda, MD 20817
- **Project Applicant:** Hannah Micallef, Studio KDA
1810 Sixth Street
Berkeley, CA 94710

ZONING DISTRICT: Restricted Multiple-Family Residential (R-2A)

¹ 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 15-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
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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>

FINDINGS AND CONDITIONS OF APPROVAL AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 7-1-0-0

YES: CRANDALL, ENCHILL, LEUSCHNER, MONTGOMERY, ORBUCH, PLESE, SCHWARTZ

NO: FINACOM

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, 1st 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 \$3,000. This fee may be reduced to \$1,000 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
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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 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:

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.

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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 project planner, Allison Riemer, at (510) 981-7433 or ariemer@berkeleyca.gov. All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3rd Fl., during regular business hours.

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans



ATTEST: _____

Fatema Crane, Secretary
Landmarks Preservation Commission

cc: City Clerk
Hannah Micallef, Architect, Studio KDA, 1810 Sixth Street, Berkeley, CA 94710
Nathan George, 9101 Burning Tree Road, Bethesda, MD 20817

Attachment 1, Part 2

Findings and Conditions

2201-2205 Blake Street – The Bartlett Houses

Structural Alteration Permit #LMSAP2024-0004 to restore the single-family use of the Bartlett House originally constructed in 1877 (no change to the 1892 House); to relocate the historic stable structure and convert it to residential use; and to construct a new, three-story residential building at the rear of the subject City Landmark property.

FINDINGS REQUIRED UNDER CEQA

1. The 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 15303 of the CEQA Guidelines (“New Construction”). 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. The property will retain the existing residential 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 as the project scope does not involve alteration of the historic homes. Improvements to the Stable Building will be performed while retaining as much of the original materials as is structurally possible.
3. To avoid any sense of false historical development, the design of the new building has been conditioned to require further adjustments and the removal of proposed design elements that are reminiscent of the Bartlett Houses and their Victoria-era design.
4. Changes to the property that may have acquired significance in their own right are not affected by this project.

5. Distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize this property will be substantially retained and preserved with this new construction 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 limited excavation.
9. The proposed new work is designed with high-quality materials employing colors and finishes that harmonize with the historic design elements of the Bartlett Houses. As conditioned here in, the proposed design of the new building will be further adjusted and improved prior to construction so as to remove elements that are reminiscent of the Victoria era; thereby, the design would be differentiated from the historic structures. Owing to these aspects, new work might 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 property.

FINDINGS REQUIRED UNDER LANDMARKS PRESERVATION ORDINANCE

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, the Bartlett Houses. The proposed new construction will be visible, but located behind the historic buildings. The historic architecture, as well as the mature landscaping surrounding it, would remain unaltered by this application.
 - B. The special character of the subject property may lie in the design of the original Bartlett Houses and the spatial qualities of the parcel. The improvements proposed in this project would not adversely affect these qualities as the project scope does not include improvements to the historic main buildings. The size of the parcel allows for adequate landscaping around the new duplex and relocated stable building that compliments the setting of the two original structures and the surrounding mature landscaping, which will also remain unaltered by the scope.

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 of Berkeley. 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

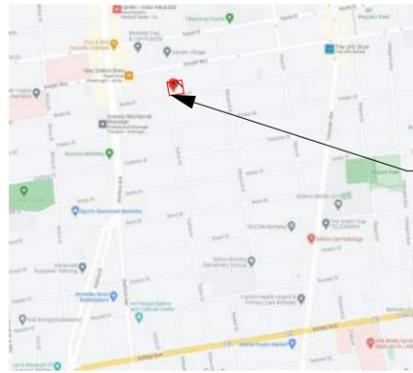
The following additional conditions are attached to this Permit:

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 requisite Use 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 dated/received December 20, 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.

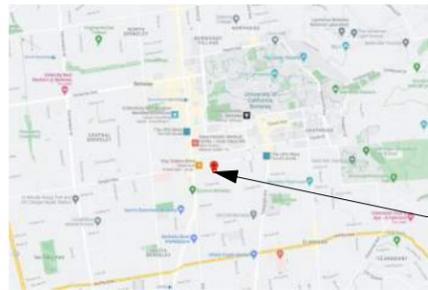
14. **PROJECT DESIGN.** Prior to Landmark plan check approval of any building permits for this project, the project plans and the design of the new building shall be revised to include the following improvements, at a minimum: (1) removal building design details reminiscent of Victorian design; (2) simplified roof and building forms; (3) removal of on-site parking spaces in excess of the maximum number required by the BMC; (4) permeable vehicle surfaces; (5) installation of a historic plaque at a publicly visible location; (6) tree protection measures during construction; and (7) detailed fence design that is compatible with the design of the historic fence.
15. **COLORS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
16. **DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit window, bay window, door, base, roof and trim, and fence details for review and approval by the Landmarks plan checker.
17. **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.
18. **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.
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. 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.
21. 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.
22. 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.

- 23.** 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.
- 24.** The applicant shall hold harmless, defend, and indemnify the City of Berkeley 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.



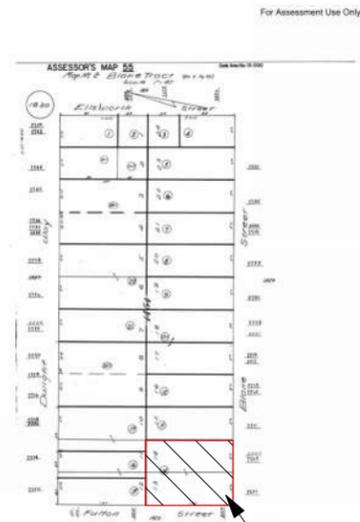
PROJECT LOCATION

5 LOCATION MAP



PROJECT LOCATION

4 VICINITY MAP



PROJECT LOCATION

3 ASSESSOR'S MAP

SHEET LIST LANDMARKS

| SHEET # | SHEET NAME | LANDMARKS SUBMITTAL |
|---------|-----------------------------|---------------------|
| A-0 | COVER SHEET | • |
| A-0.1 | RENDERINGS | • |
| A-0.2 | EXISTING SITE PHOTOS | • |
| A-0.3 | EXISTING LANDSCAPE PHOTOS | • |
| A-1 | EXISTING SITE PLAN | • |
| A-1.1 | PROPOSED SITE PLAN | • |
| A-1.2 | 2201 BLAKE EXISTING | • |
| A-1.3 | 2201 BLAKE PROPOSED | • |
| A-1.4 | PROPOSED LANDSCAPE PLAN | • |
| A-1.5 | PROPOSED FLOOR PLANS | • |
| A-1.6 | PROPOSED FLOOR PLANS | • |
| A-1.7 | EXISTING STABLE FLOOR PLANS | • |
| A-1.8 | PROPOSED STABLE FLOOR PLANS | • |
| A-2 | EXISTING ELEVATIONS | • |
| A-2.1 | EXISTING ELEVATIONS | • |
| A-2.2 | EXISTING ELEVATIONS | • |
| A-2.3 | EXISTING ELEVATIONS | • |
| A-2.4 | EXISTING STABLE ELEVATIONS | • |
| A-3 | PROPOSED STABLE ELEVATIONS | • |
| A-3.1 | PROPOSED ELEVATIONS | • |
| A-3.2 | PROPOSED ELEVATIONS | • |
| A-3.3 | SITE SECTION | • |
| A-6 | DOOR SCHEDULE | • |
| A-6.1 | WINDOW SCHEDULE | • |



OWNER:
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nathan@ndgre.com

ARCHITECT:
Studio KDA
1810 6TH ST.
BERKELEY, CA 94710
TEL: (510) 841-3555

SURVEYOR:
MORAN ENGINEERING INC.
1930 SHATTUCK AVE, SUITE A
BERKELEY, CA 94704
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JIM MORAN
jmoran@moraneng.com

2 PROJECT TEAM

THE PROPOSED PROJECT INCLUDES:

1. RELOCATION AND RESIDENTIAL CONVERSION OF (E) STRUCTURE (BLDG. B), AT THE NORTH-EAST CORNER OF THE LOT, SEE PROPOSED SITE PLAN A-1.1
2. CONSTRUCTION OF (N) 3-STORY DUPLEX (BLDG. A) WITH A 2-CAR GARAGE & 1 OFF STREET PARKING SPACE
3. (N) DRIVEWAY FROM FULTON ST.

UNDER SEPARATE APPLICATION:

- PARCEL MAP APPLICATION FOR A LOT SPLIT INTO 2 LOTS : PARCEL A & PARCEL B, SEE PROPOSED SITE PLAN A-1.1

1 PROJECT NARRATIVE

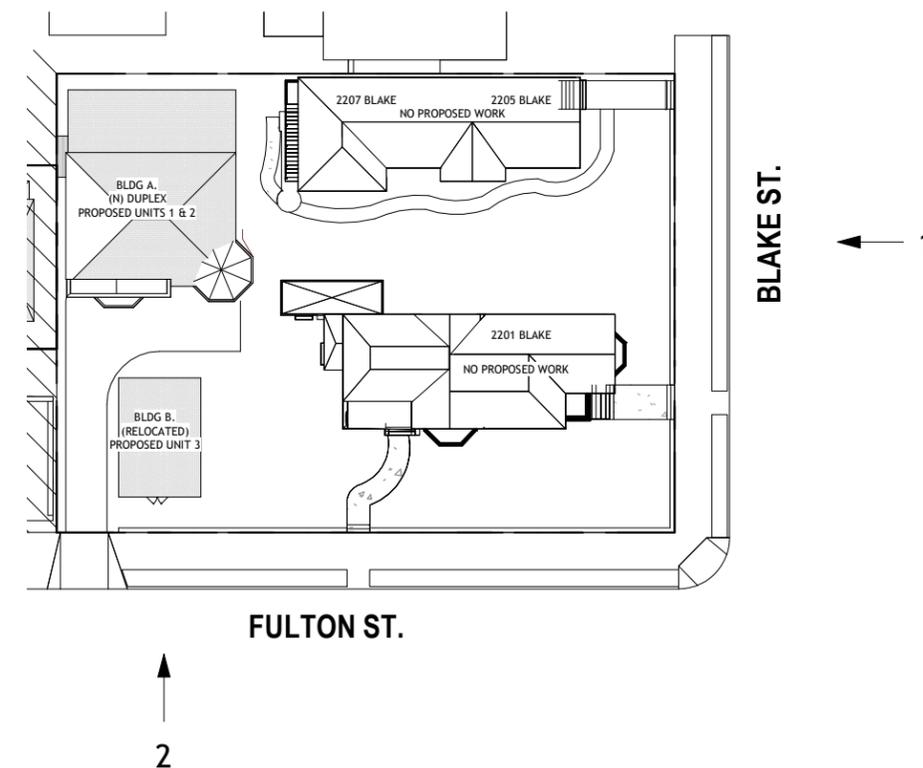
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② FULTON VIEW



① BLAKE VIEW

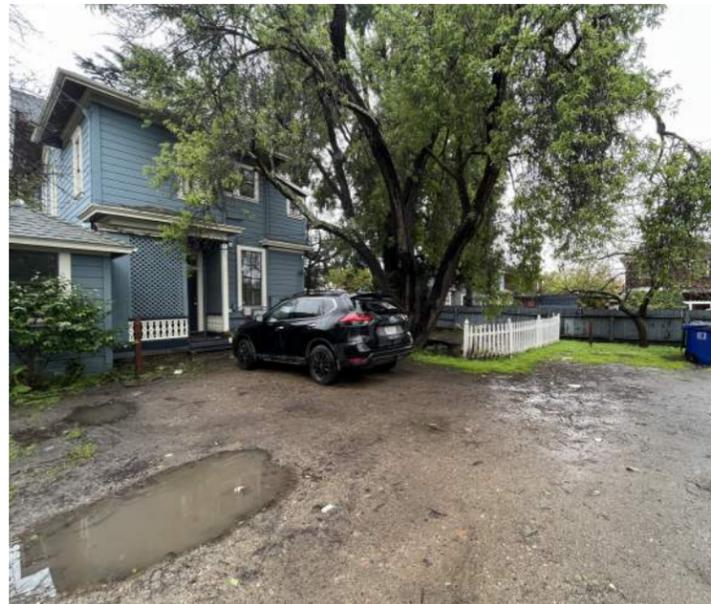


③ KEY PLAN
1" = 40'-0"

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VIEW 1



VIEW 2



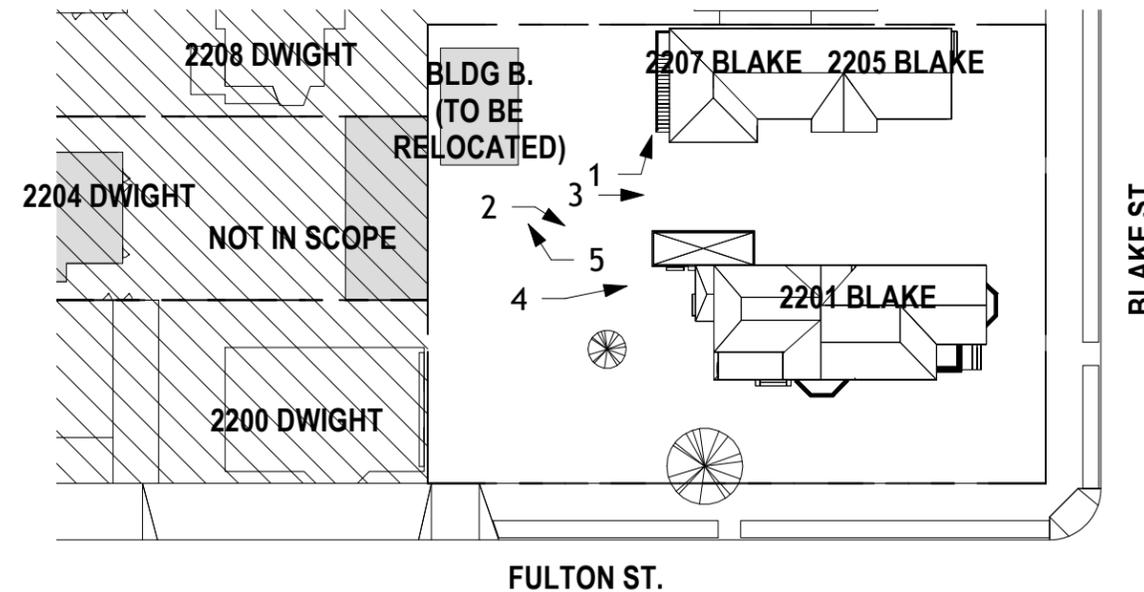
VIEW 3



VIEW 4



VIEW 5



① KEY PLAN - LANDMARKS PHOTOS
1" = 40'-0"

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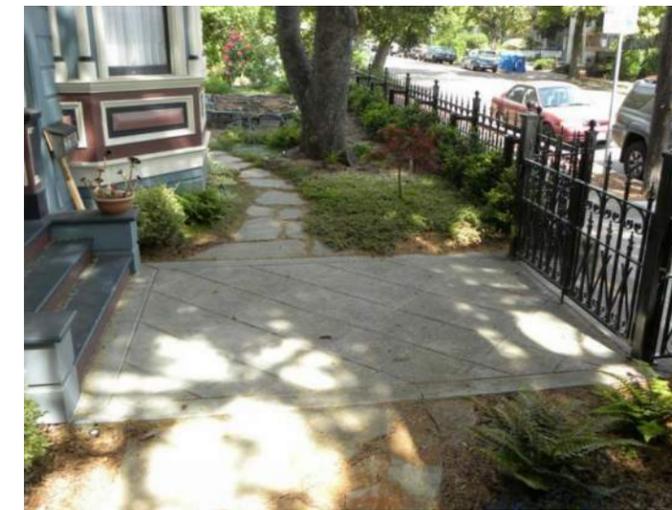
VIEW 1



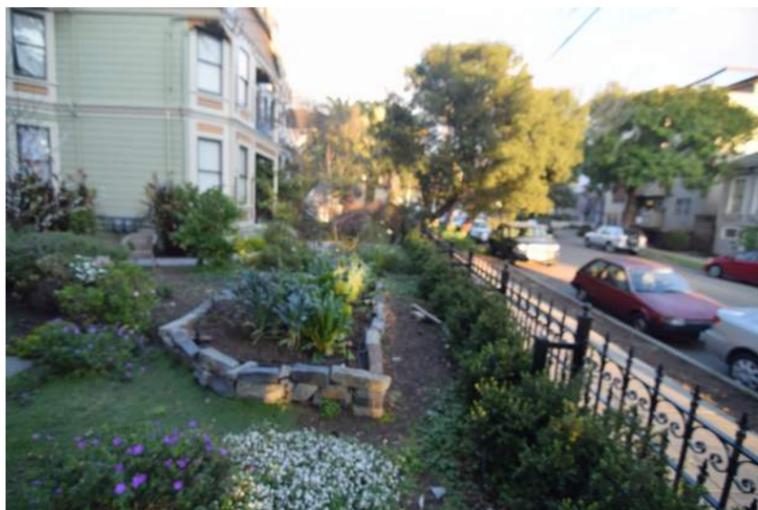
VIEW 2



VIEW 3



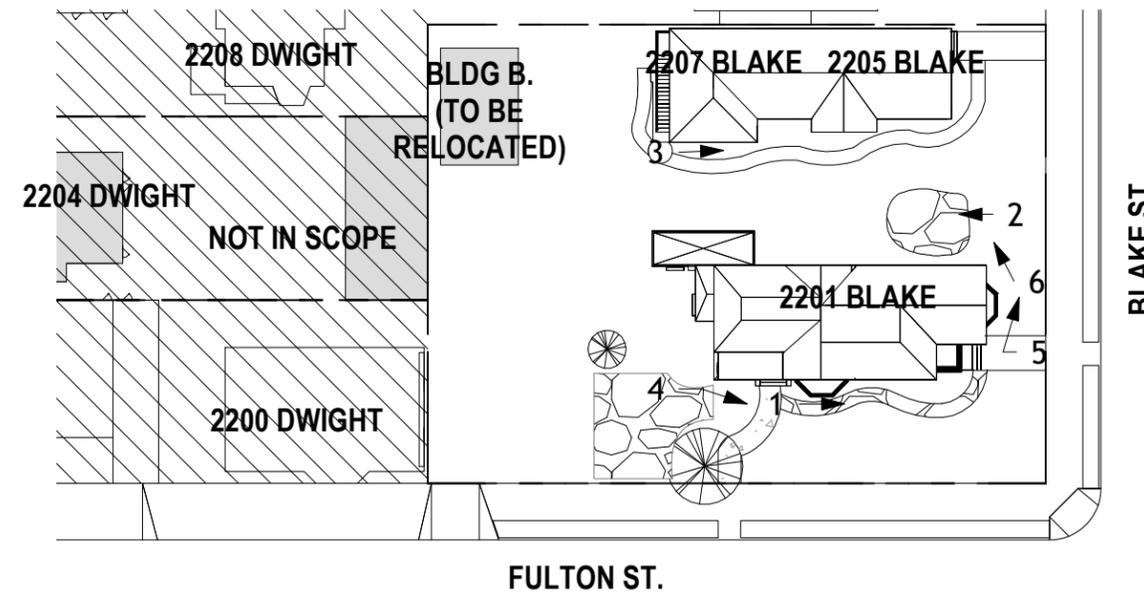
VIEW 4



VIEW 5

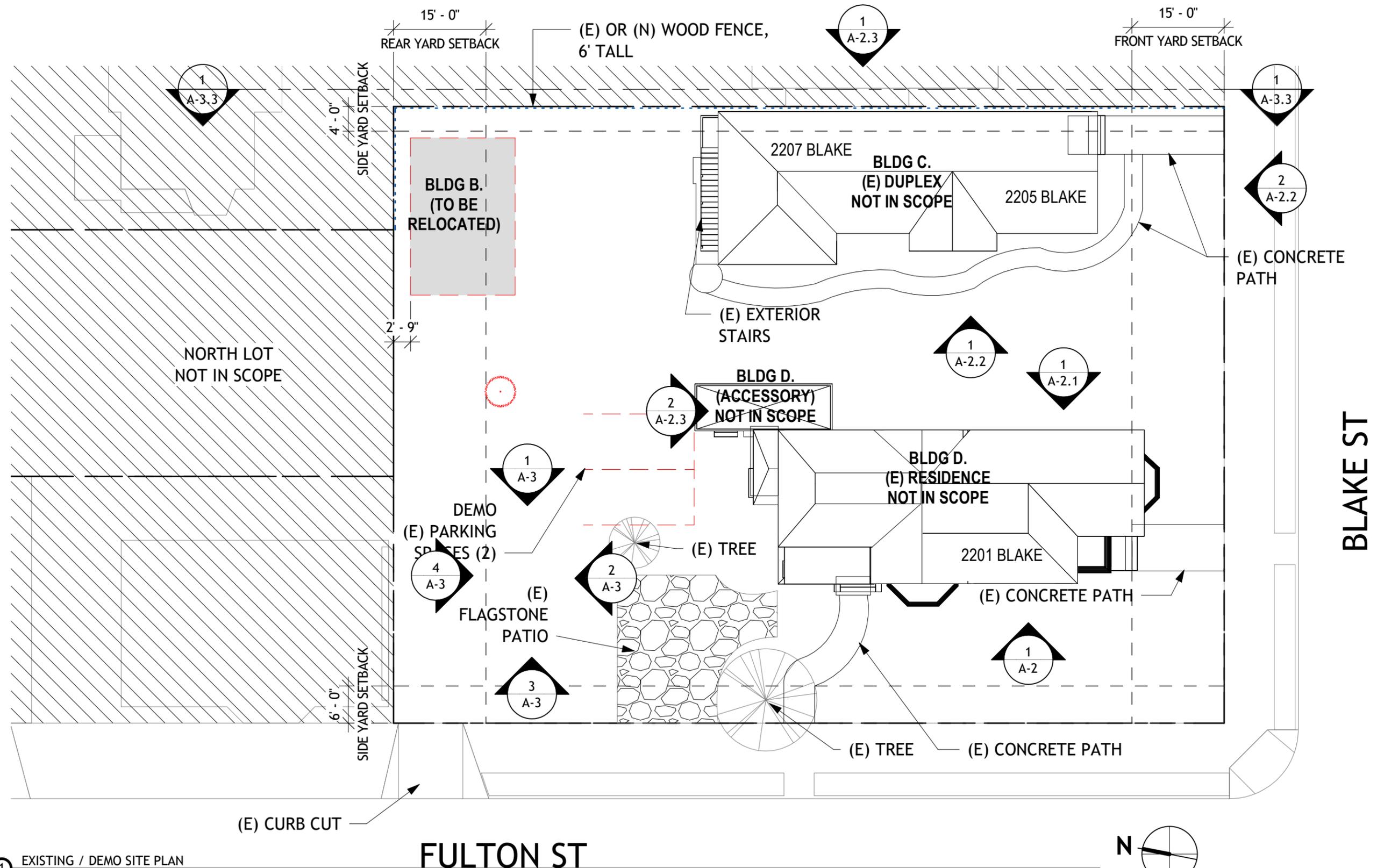


VIEW 6



① KEY PLAN - LANDMARKS LANDSCAPE PHOTOS
1" = 40'-0"

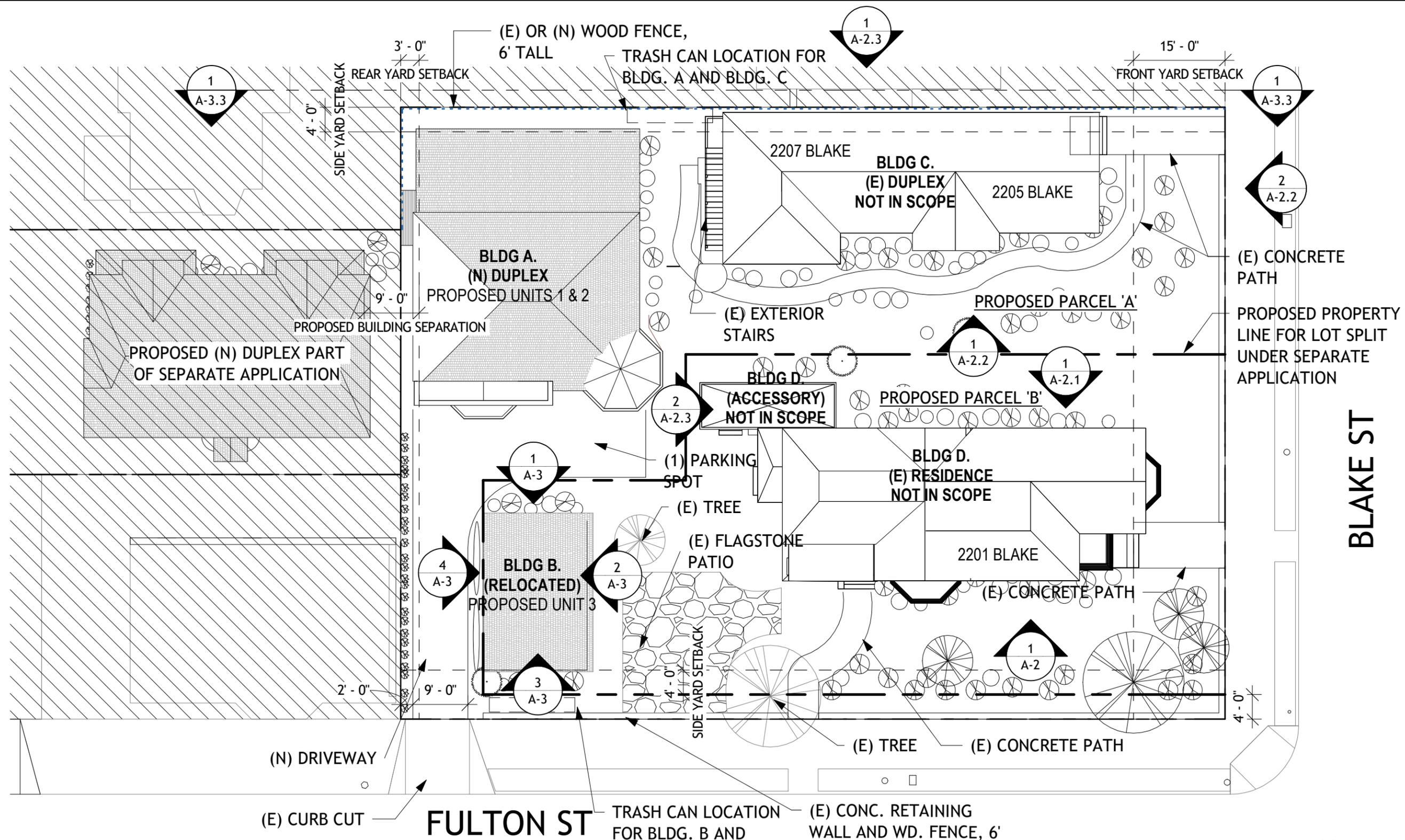
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① EXISTING / DEMO SITE PLAN
1/16" = 1'-0"

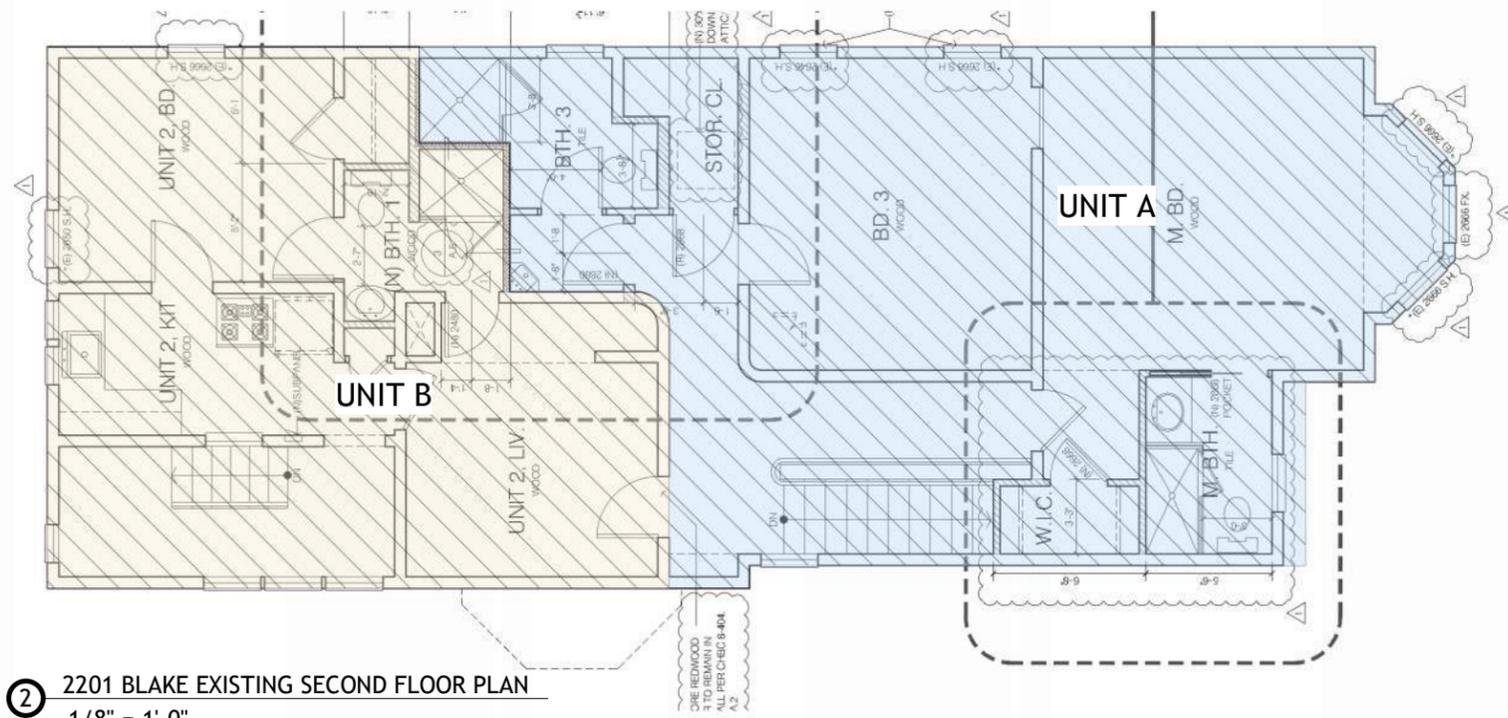


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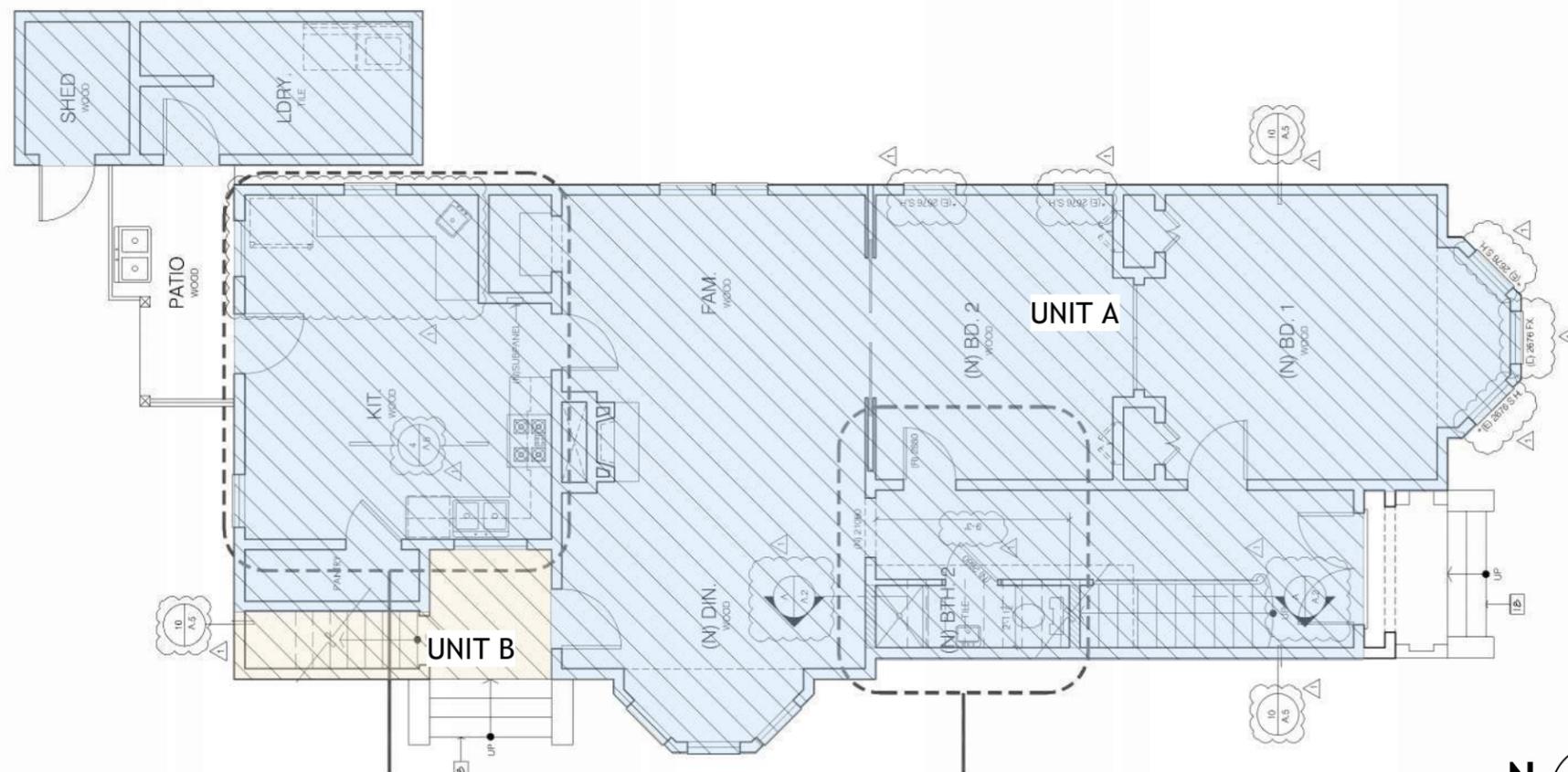


PROPOSED SITE PLAN (LOT SPLIT/NEW PARCELS INDICATED)
 1/16" = 1'-0"

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② 2201 BLAKE EXISTING SECOND FLOOR PLAN
1/8" = 1'-0"



① 2201 BLAKE EXISTING FIRST FLOOR PLAN
1/8" = 1'-0"

LEGEND:

-  (E) UNIT A
-  (E) UNIT B

NOTES:

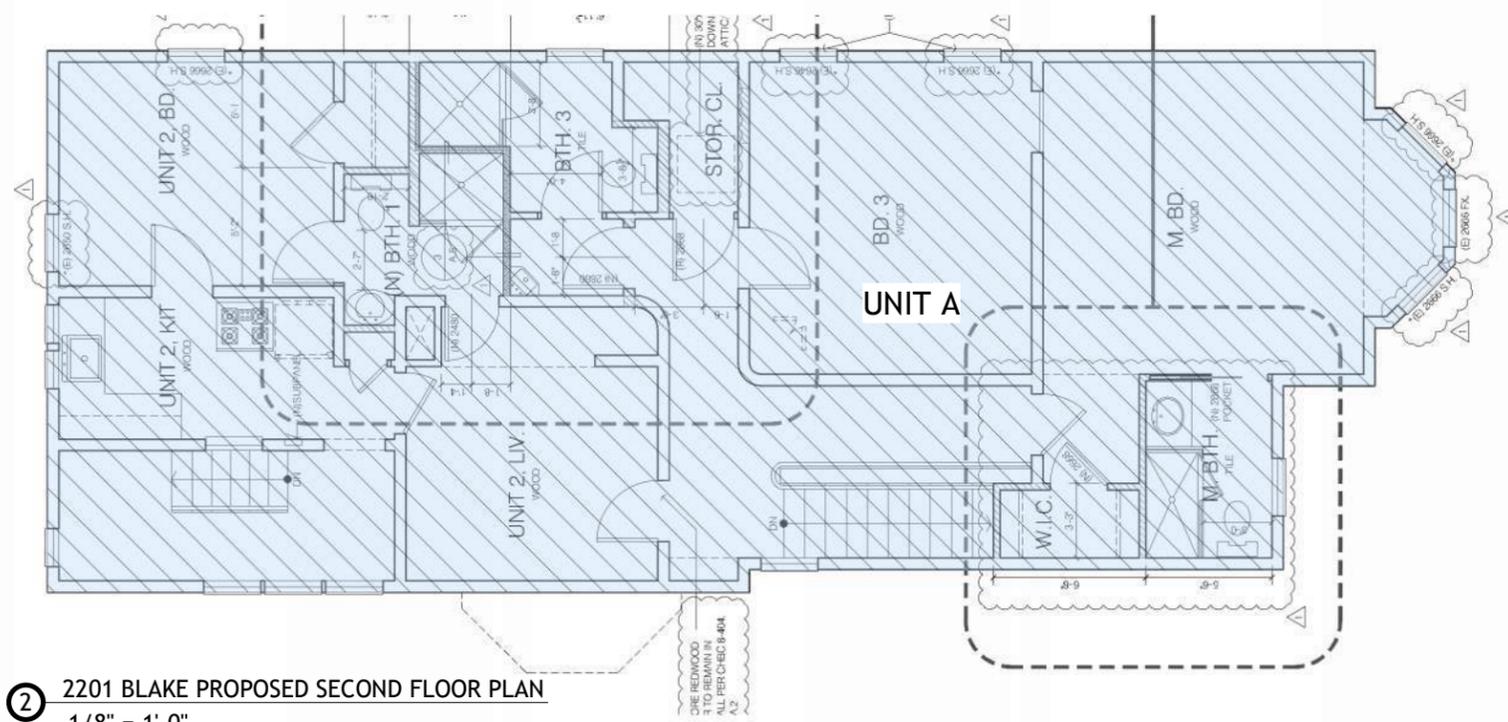
NO WORK IS PROPOSED FOR THIS EXISTING LANDMARKED RESIDENCE AT 2201 BLAKE

PLANS ARE SHOWN FOR INTERIOR LAYOUT PURPOSES ONLY

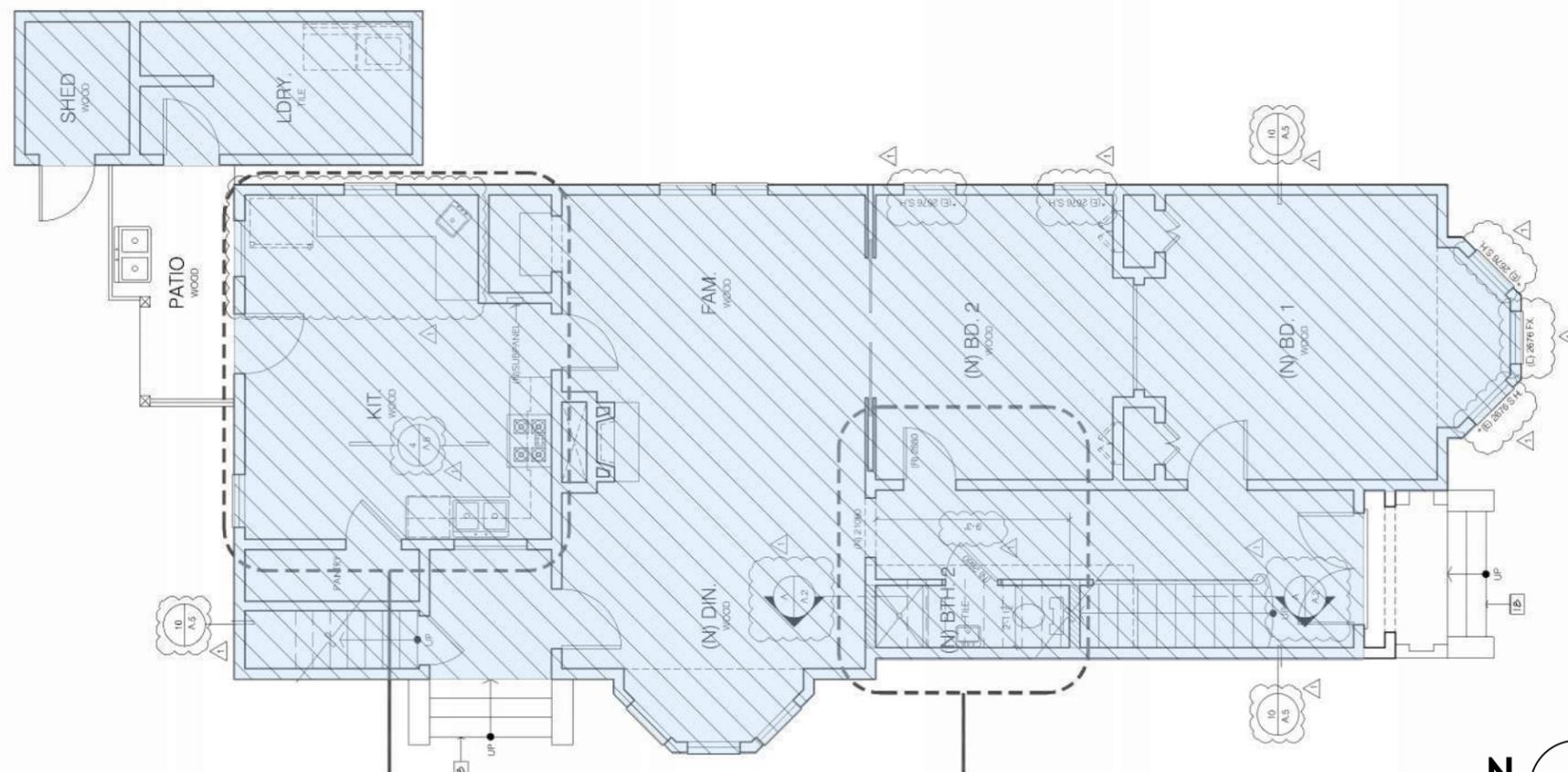
○ EXISTING UNIT LEGEND
1/4" = 1'-0"



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② 2201 BLAKE PROPOSED SECOND FLOOR PLAN
1/8" = 1'-0"



① 2201 BLAKE PROPOSED FIRST FLOOR PLAN
1/8" = 1'-0"

LEGEND:

 (E) UNIT A

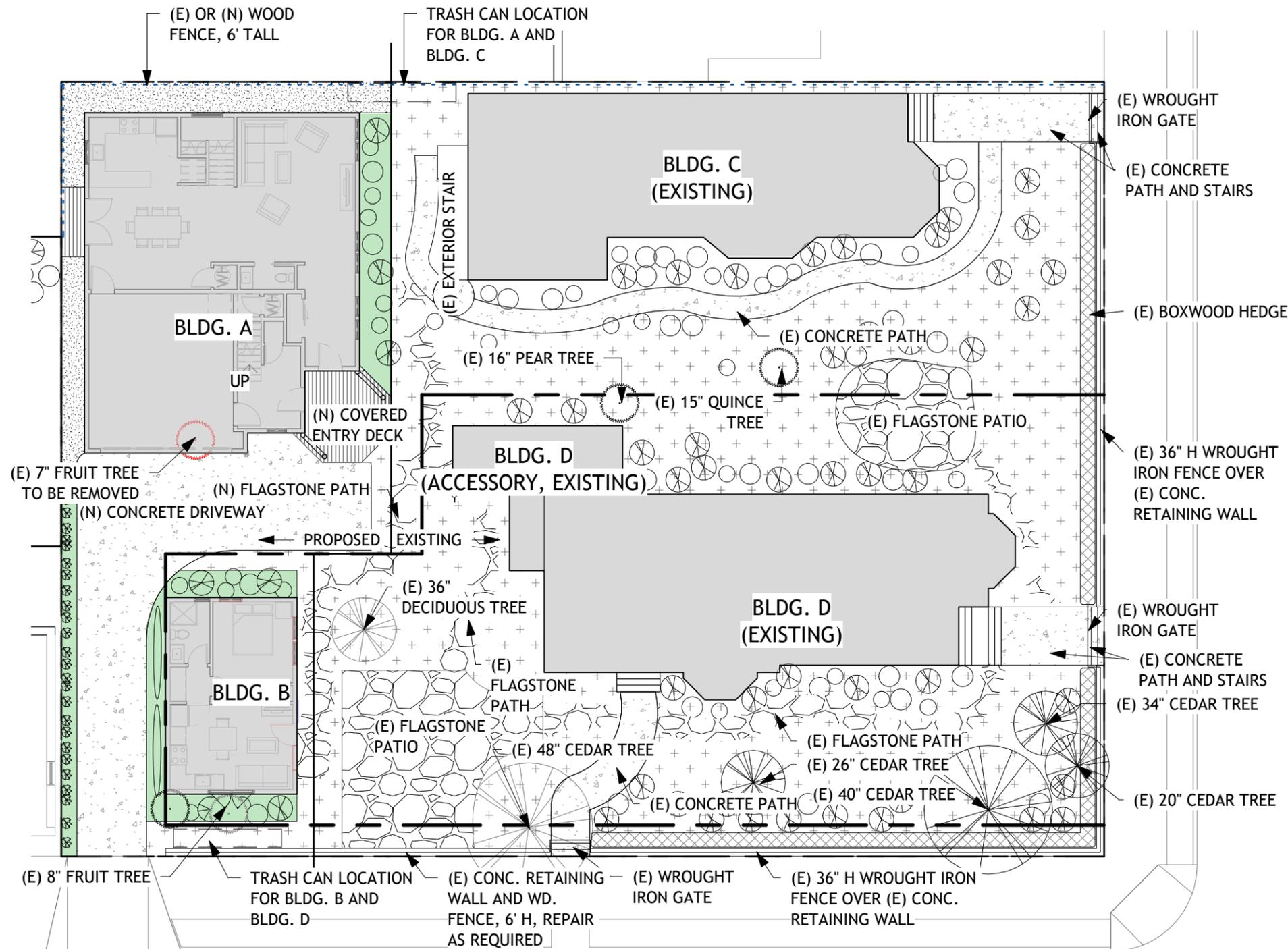
NOTES:

NO WORK IS PROPOSED FOR THIS EXISTING LANDMARKED RESIDENCE AT 2201 BLAKE

PLANS ARE SHOWN FOR INTERIOR LAYOUT PURPOSES ONLY

 EXISTING UNIT LEGEND PROPOSED
1/4" = 1'-0"

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LANDSCAPE LEGEND AND NOTES

NATURAL FEATURES

-  TYPE A - MEDIUM TREE. 8' - 10' TALL
-  TYPE B - SMALL TREE. 6' - 8' TALL
-  TYPE C - SHRUB, LARGE.
-  TYPE D - SHRUB, MEDIUM.
-  TYPE E - SHRUB, SMALL.
-  TYPE F - SUCCULENT
-  TYPE G - FLOWERING VINE

SITE ELEMENTS

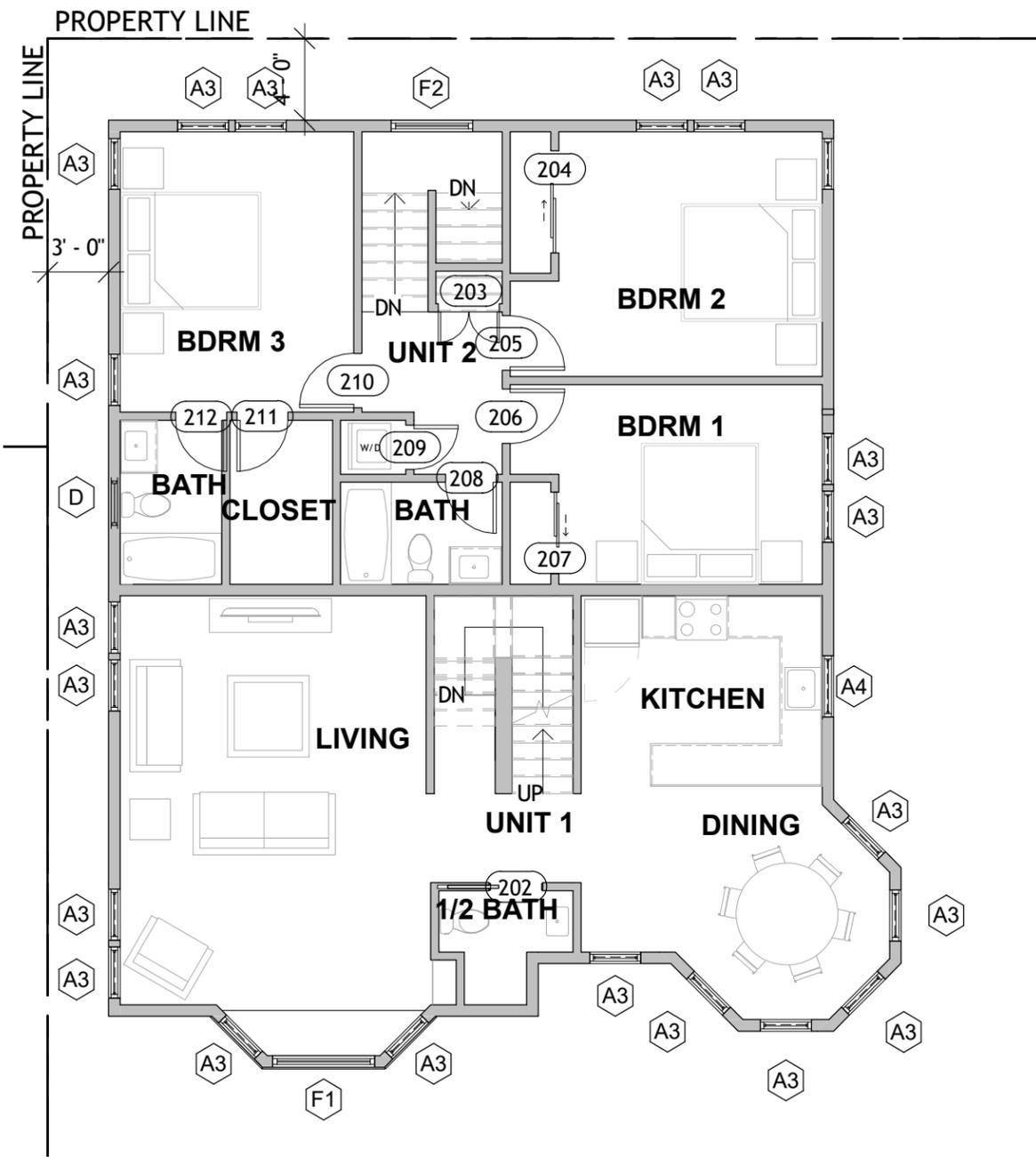
-  GROUND COVER
-  CONCRETE
-  FLAGSTONE
-  GRAVEL
-  WOOD DECK
-  NEW IRRIGATED AREA = 423 SF
-  PROPOSED PROPERTY LINE FOR LOT SPLIT UNDER SEPERATE APPLICATION

1 PROPOSED LANDSCAPE PLAN - Landmarks
1/16" = 1'-0"

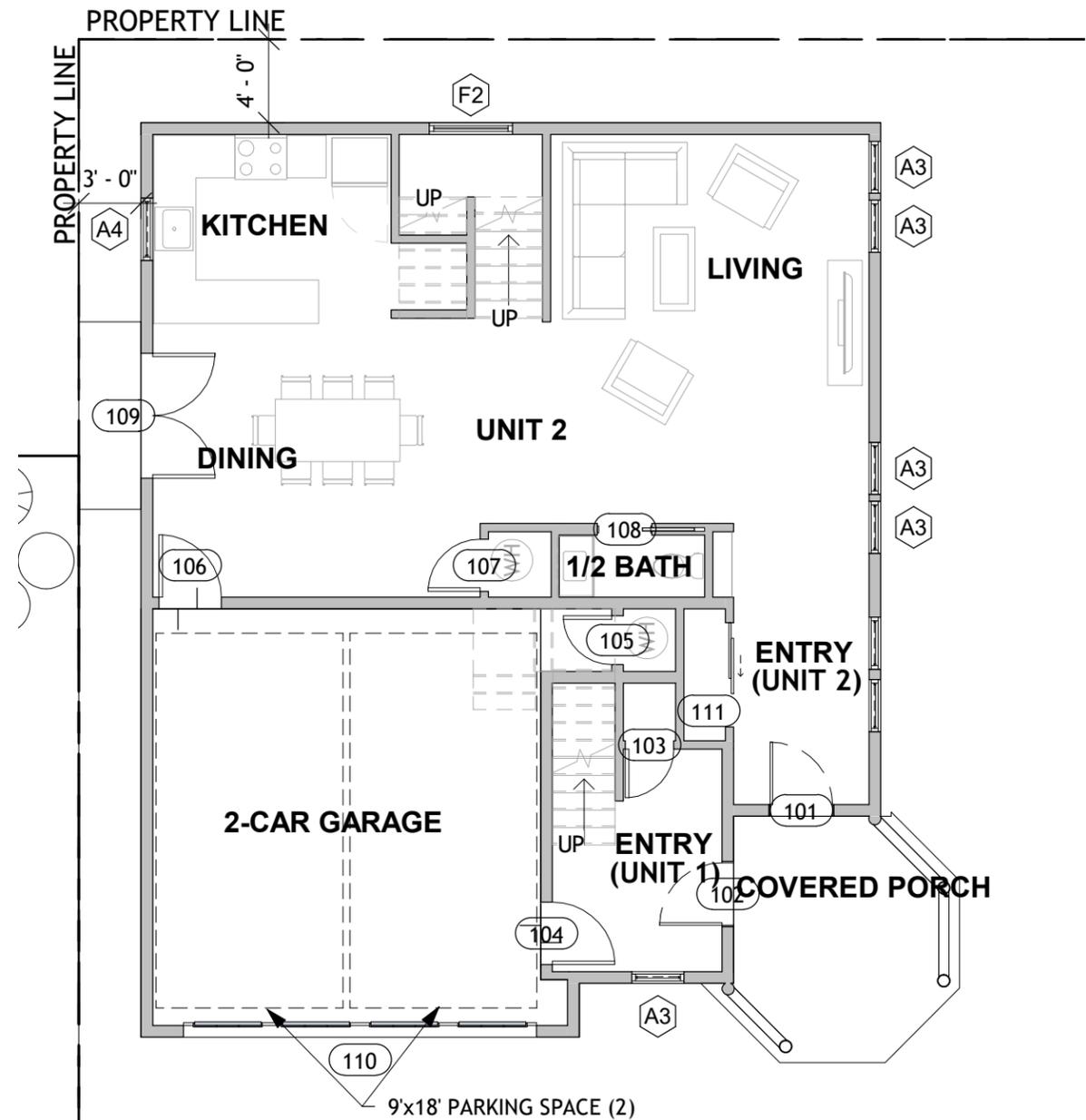
2 LANDSCAPE LEGEND AND NOTES - LANDMARKS
1/16" = 1'-0"



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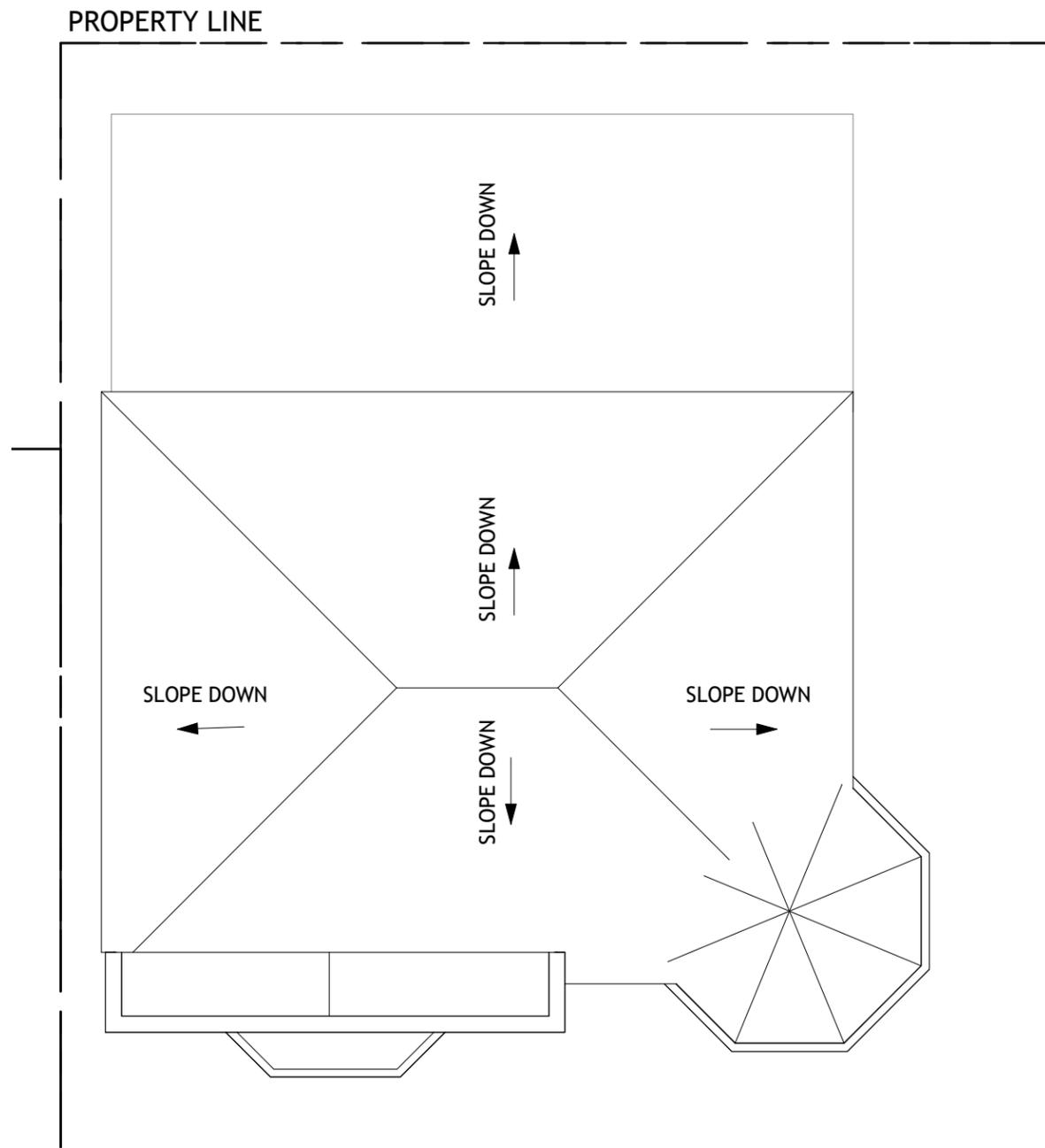
2 BLDG. A - PROPOSED SECOND FLOOR PLAN
1/8" = 1'-0"



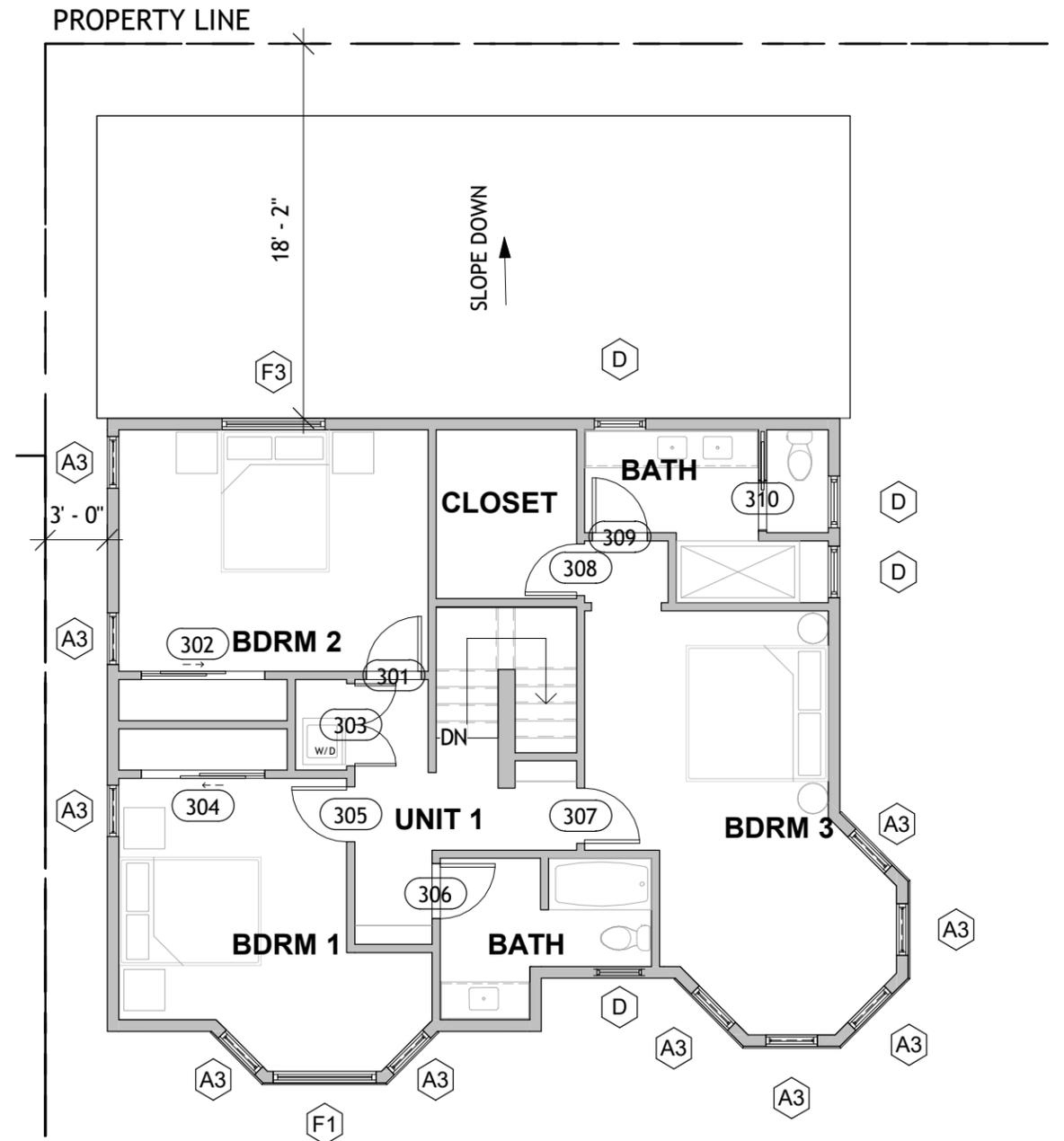
1 BLDG. A - PROPOSED FIRST FLOOR
1/8" = 1'-0"

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② BLDG. A - PROPOSED ROOF PLAN
1/8" = 1'-0"

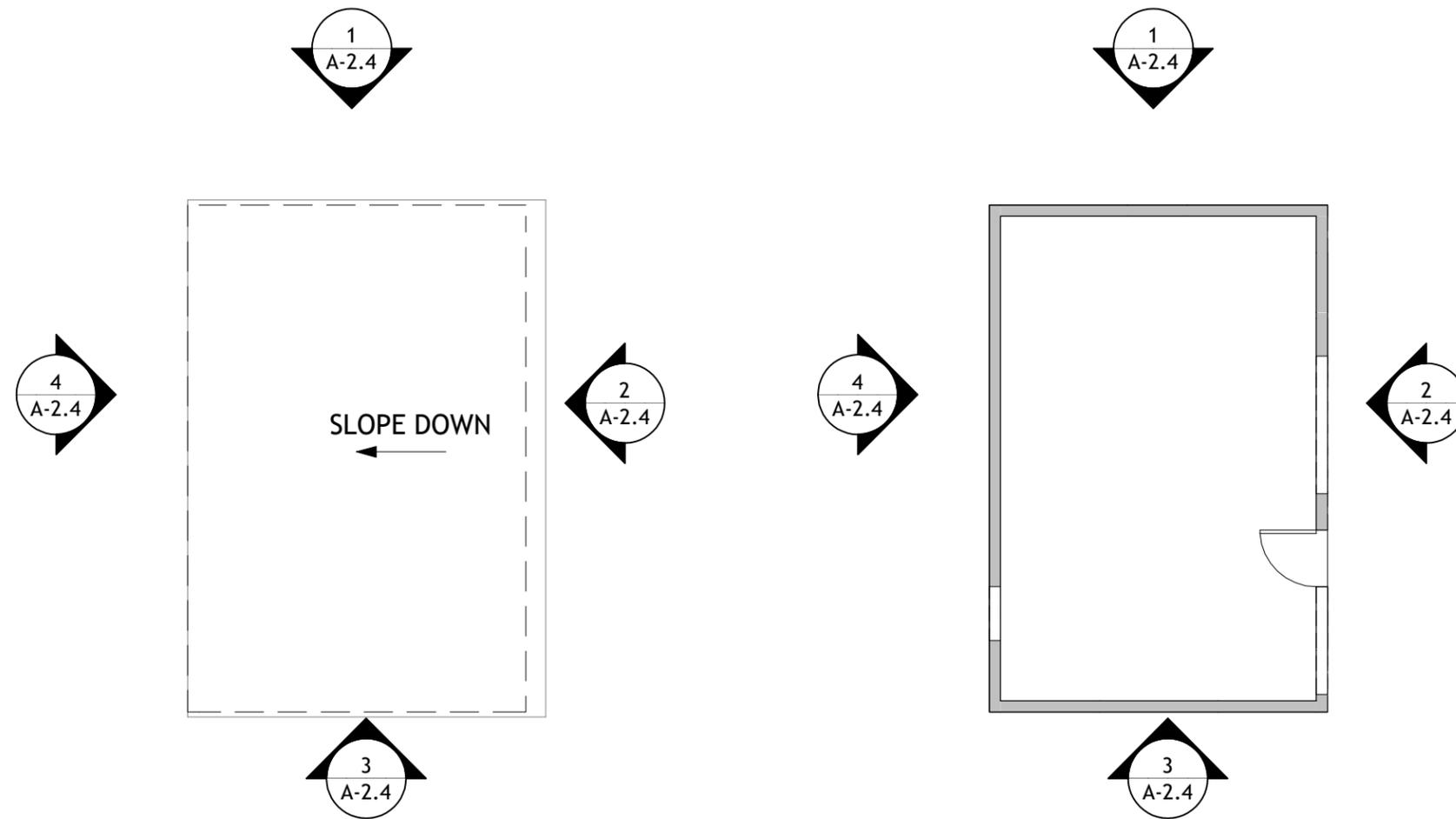


① BLDG. A - PROPOSED THIRD FLOOR - Landmarks
1/8" = 1'-0"





③ EXISTING STABLE PHOTO
1" = 1'-0"



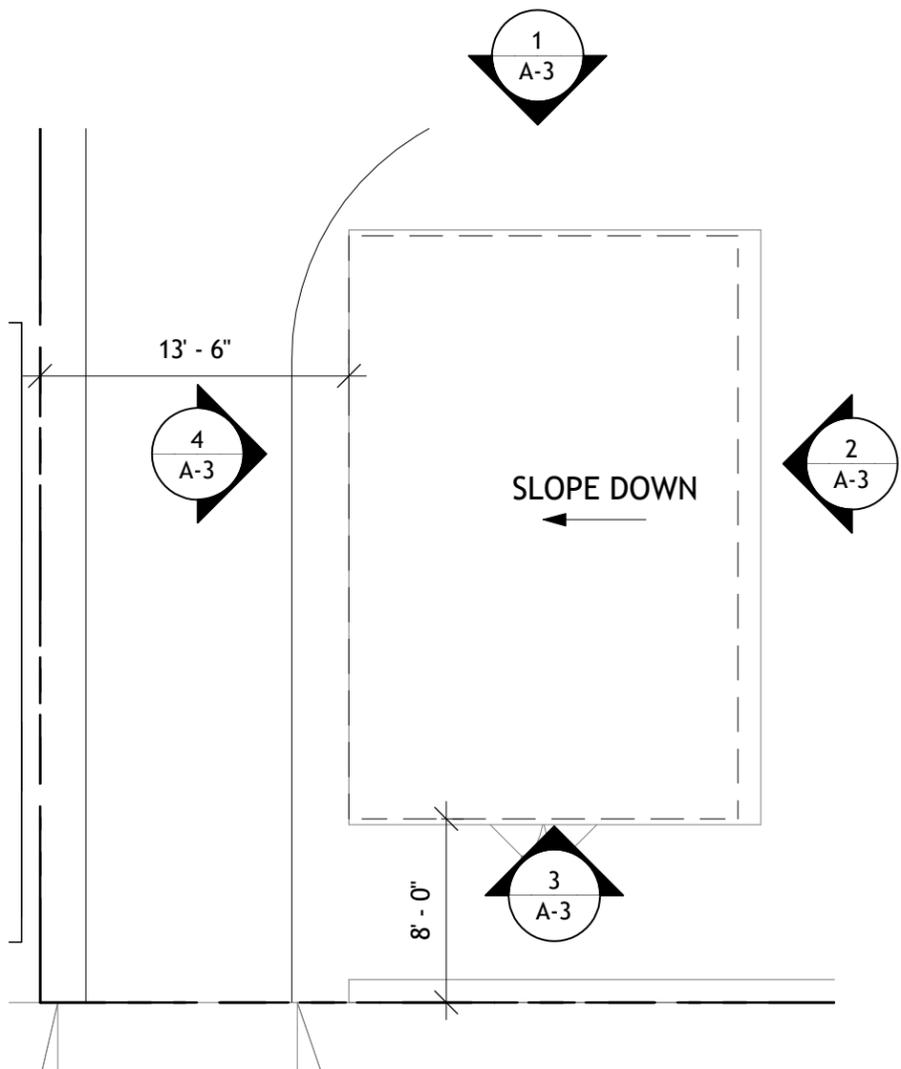
② BLDG. B - EXISTING ROOF PLAN
1/8" = 1'-0"

① BLDG. B- EXISTING FIRST FLOOR
1/8" = 1'-0"

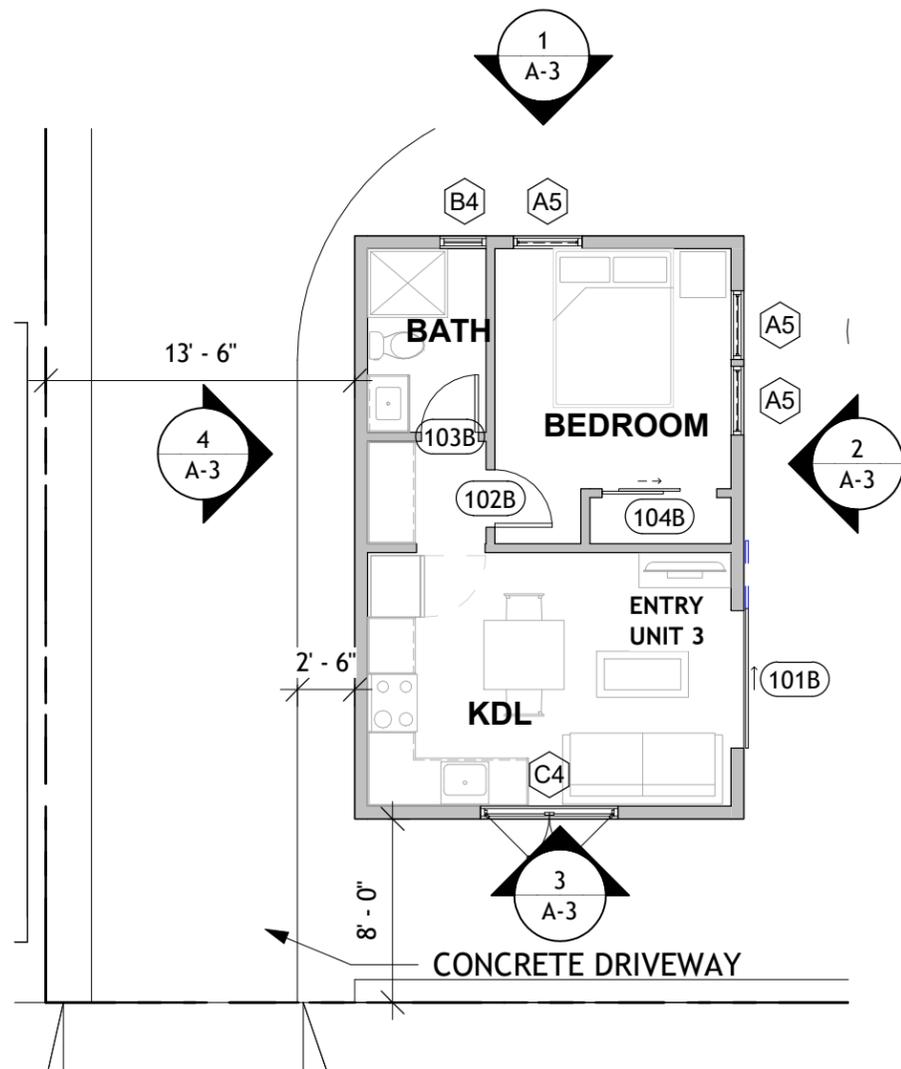


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2 BLDG. B - PROPOSED ROOF
1/8" = 1'-0"



1 BLDG. B- PROPOSED FIRST FLOOR
1/8" = 1'-0"





NOTES:

NO PROPOSED WORK AT EXISTING LANDMARKED STRUCTURES 2201-2207 BLAKE STREET. STRUCTURES WILL REMAIN UNCHANGED.

EXISTING ELEVATIONS SHOWN FOR REFERENCE

③ 2201 BLAKE - EXISTING PHOTOS



② 2201 BLAKE - EXISTING SOUTH ELEVATION
1/8" = 1'-0"



① 2201 BLAKE - EXISTING WEST ELEVATION
1/8" = 1'-0"

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NOTES:

NO PROPOSED WORK AT EXISTING LANDMARKED STRUCTURES 2201-2207 BLAKE STREET. STRUCTURES WILL REMAIN UNCHANGED.

EXISTING ELEVATIONS SHOWN FOR REFERENCE

③ 2201 BLAKE - EXISTING PHOTOS



② 2201 BLAKE - EXISTING NORTH ELEVATION
1/8" = 1'-0"



① 2201 BLAKE - EXISTING EAST ELEVATION
1/8" = 1'-0"

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NOTES:

NO PROPOSED WORK AT EXISTING LANDMARKED STRUCTURES 2201-2207 BLAKE STREET. STRUCTURES WILL REMAIN UNCHANGED.

EXISTING ELEVATIONS SHOWN FOR REFERENCE

③ 2205 BLAKE - EXISTING PHOTOS



② 2205 BLAKE EXISTING SOUTH ELEVATION
1/8" = 1'-0"



① 2205 BLAKE - EXISTING WEST ELEVATION
1/8" = 1'-0"

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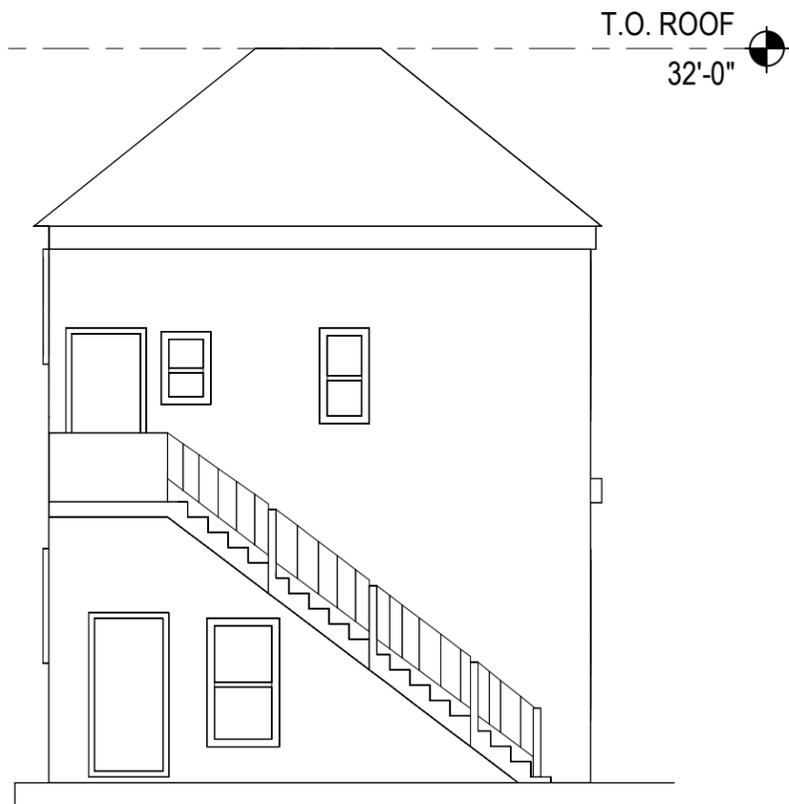


NOTES:

NO PROPOSED WORK AT EXISTING LANDMARKED STRUCTURES 2201-2207 BLAKE STREET. STRUCTURES WILL REMAIN UNCHANGED.

EXISTING ELEVATIONS SHOWN FOR REFERENCE

③ 2205 BLAKE - EXISTING PHOTOS



② 2205 BLAKE - EXISTING NORTH ELEVATION
1/8" = 1'-0"



① 2205 BLAKE - EXISTING EAST ELEVATION
1/8" = 1'-0"

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WD-1
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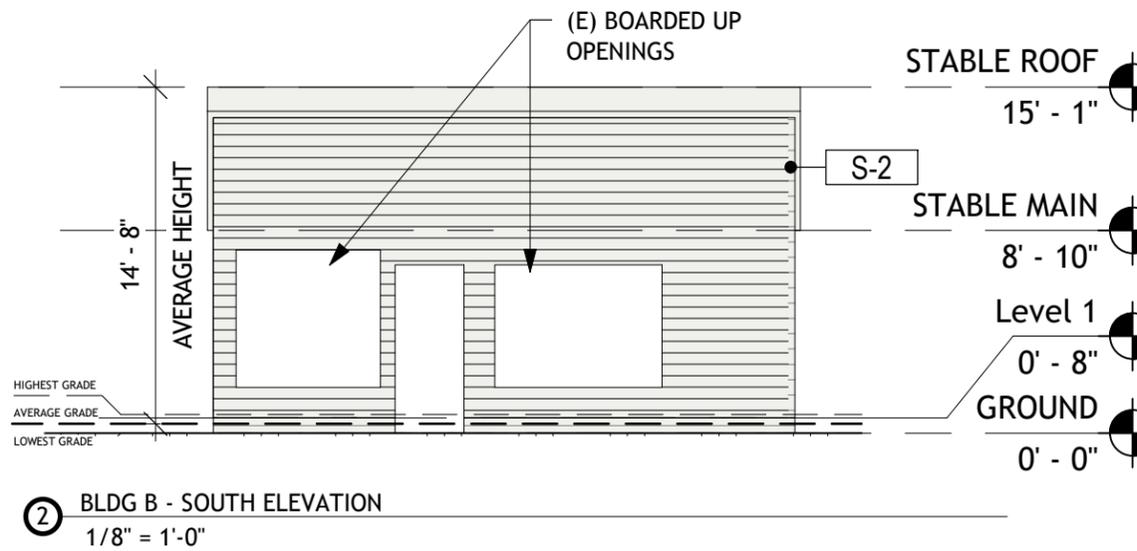
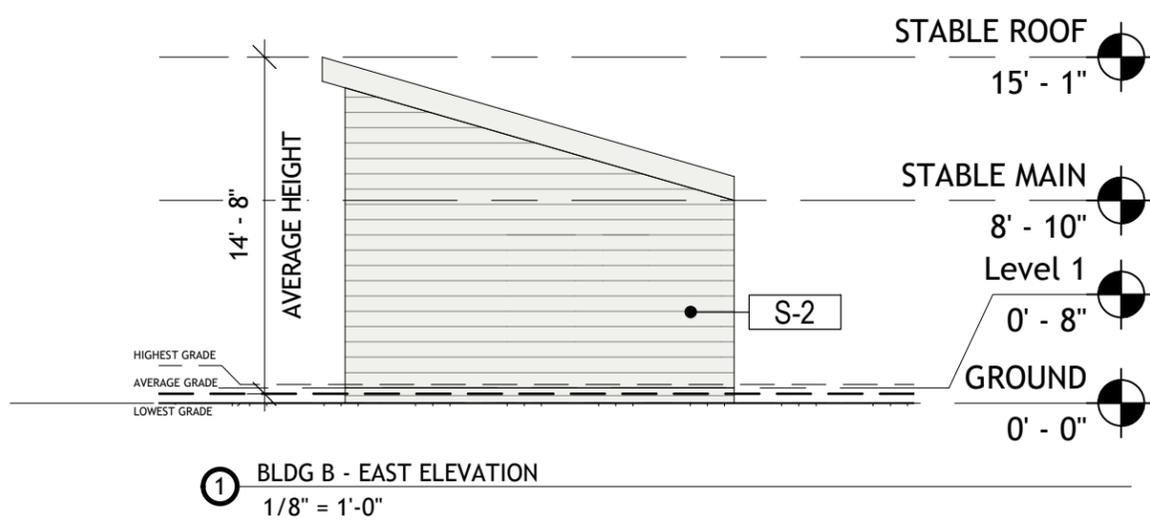
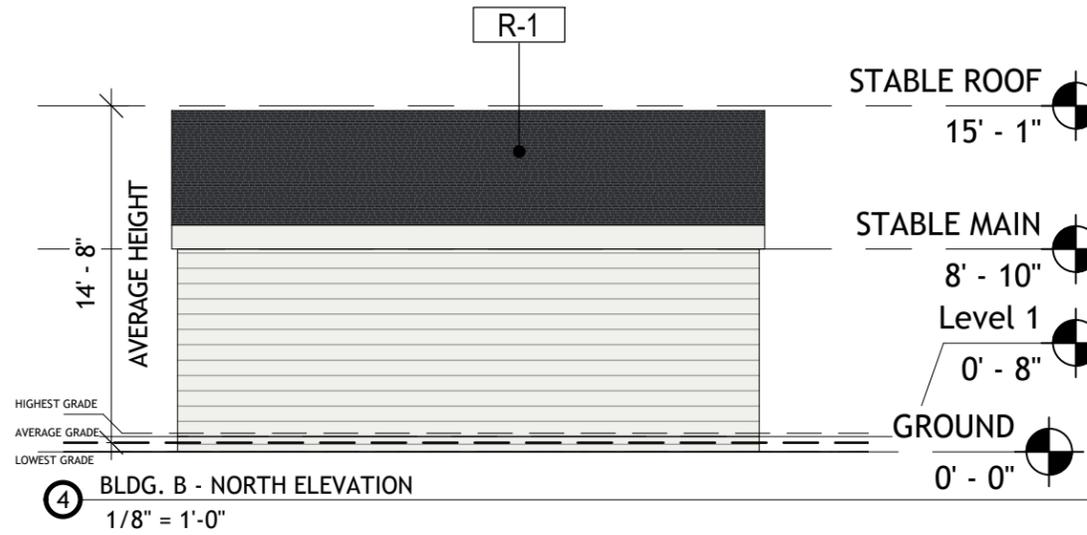
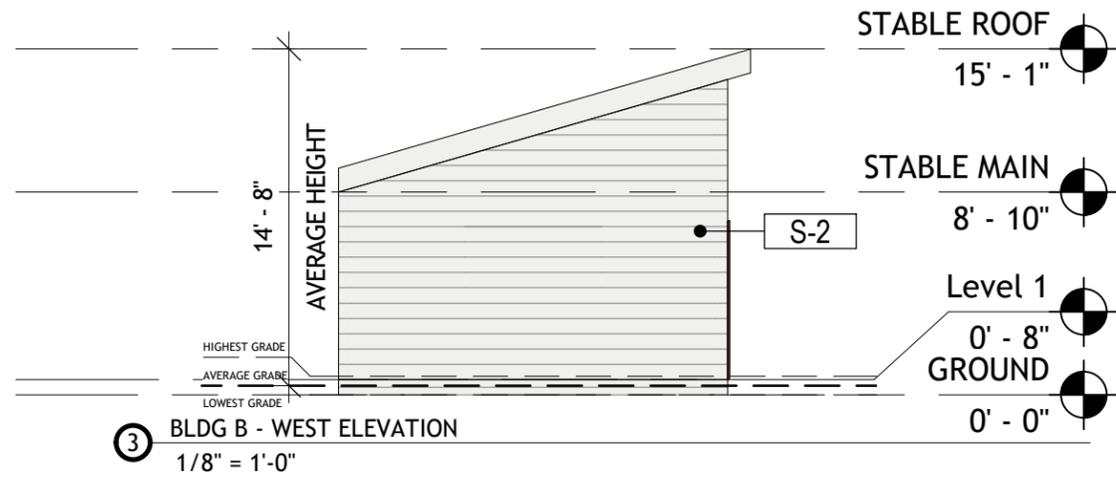


S-2
EXISTING OR NEW (TO MATCH
EXISTING) V-RUSTIC WOOD SIDING,
PAINTED WHITE



R-1
ASPHALT SHINGLES

○ MATERIAL LEGEND
1/8" = 1'-0"



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WD-1
WHITE PAINTED TRIM

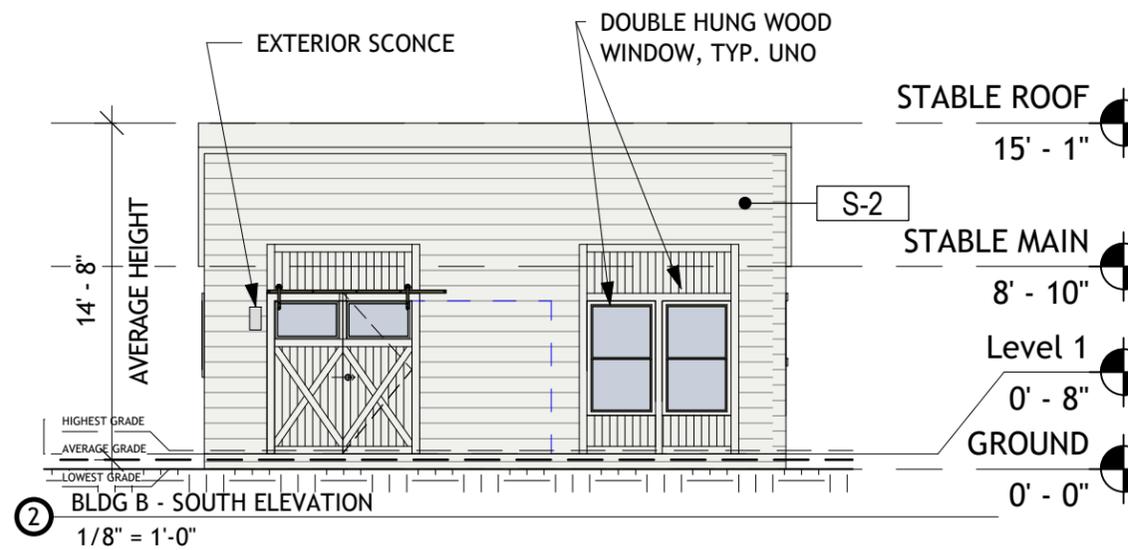
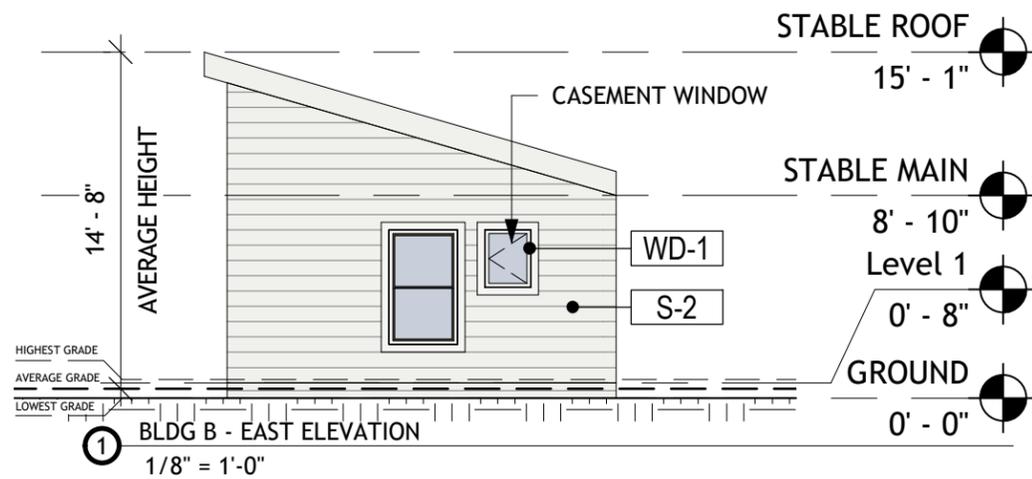
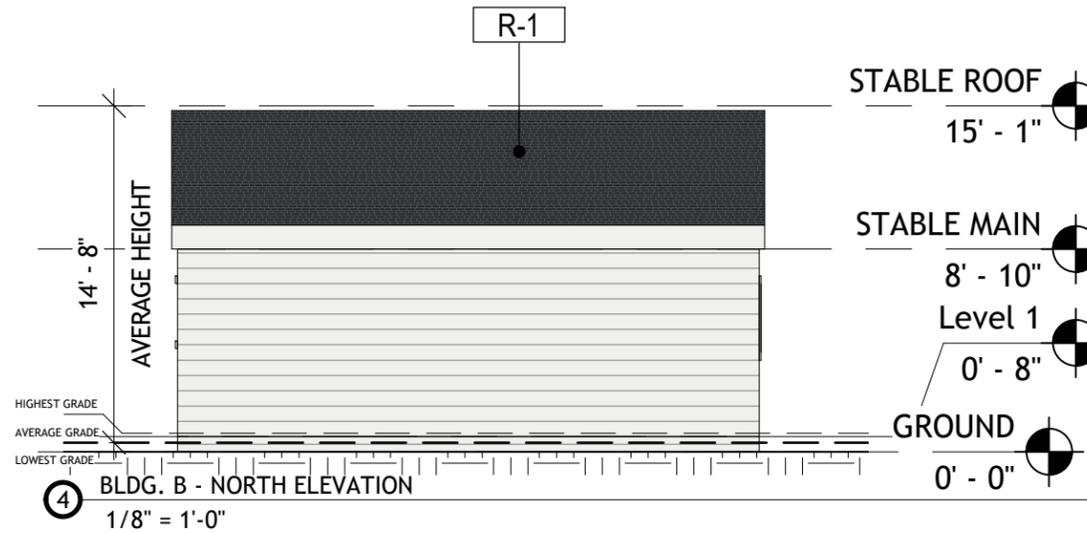
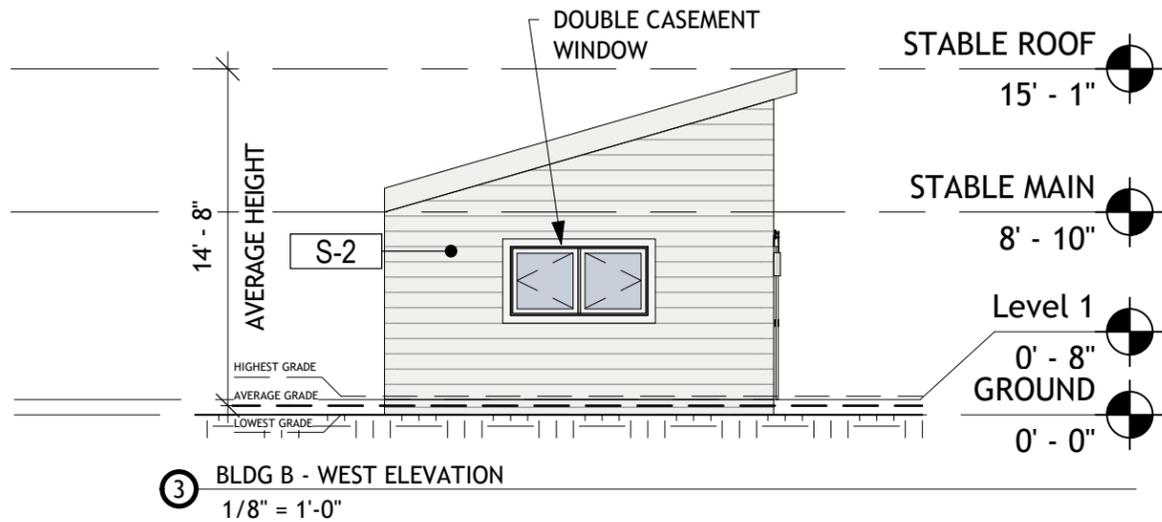


S-2
EXISTING OR NEW (TO MATCH
EXISTING) V-RUSTIC WOOD SIDING,
PAINTED WHITE



R-1
ASPHALT SHINGLES

○ MATERIAL LEGEND
1/8" = 1'-0"



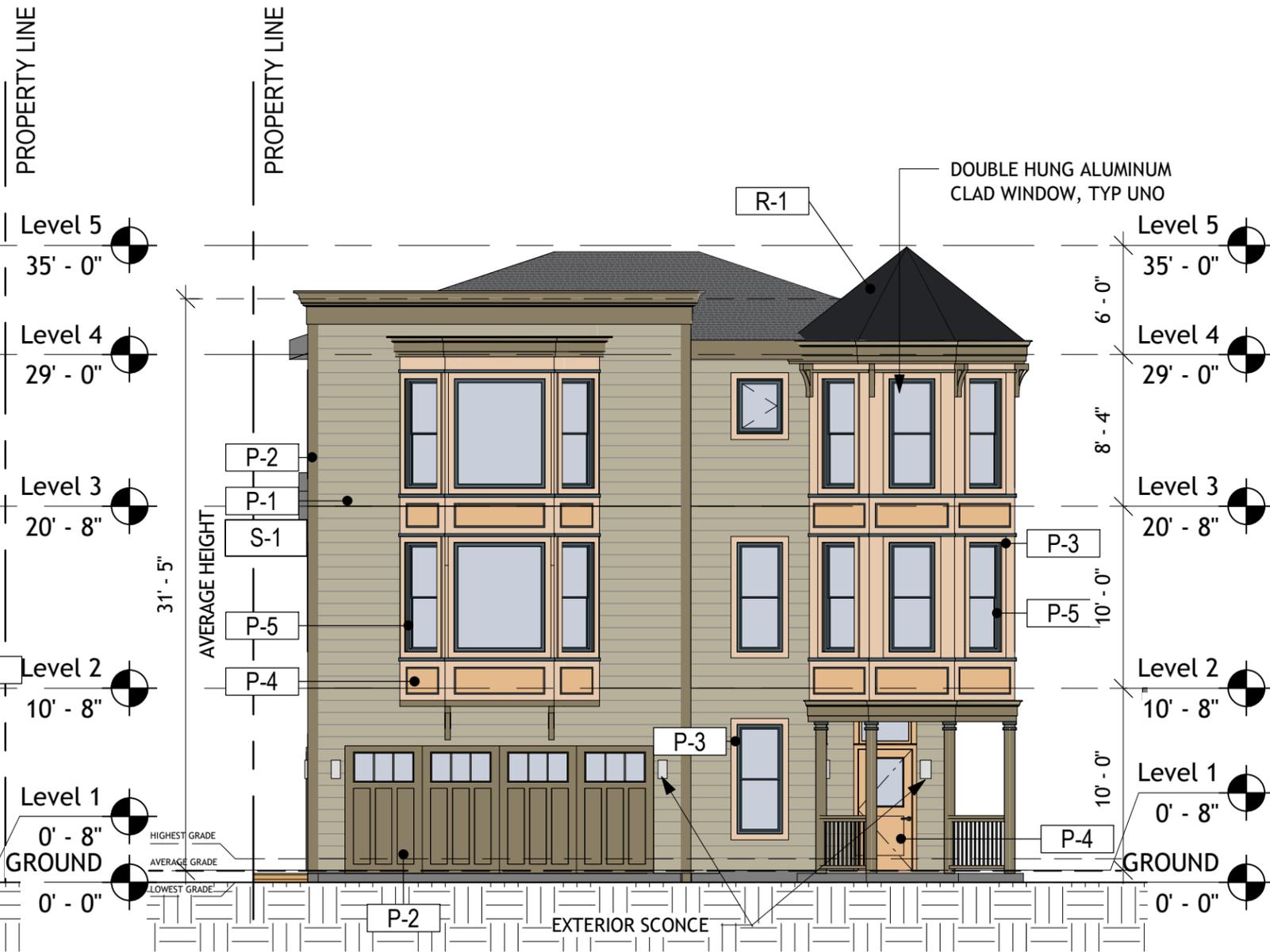
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| | | | | | | | | | |
|---|--|---|---|---|---|---|-------------------------|---|--|
|  | P-1 MAIN BODY PAINT SW-3860 SAGE |  | P-3 ACCENT PAINT SW-0028 CAEN STONE |  | P-5 ACCENT PAINT SW-0032 NEEDLEPOINT NAVY |  | R-1 ASPHALT SHINGLES |  | S-1 HORIZONTAL V-RUSTIC PAINTED SIDING |
|  | P-2 ACCENT PAINT SW-3861 AVOCADO |  | P-4 ACCENT PAINT SW-0044 HUBBARD SQUASH | | | | | | |

MATERIAL LEGEND
1/4" = 1'-0"

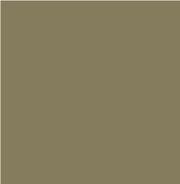
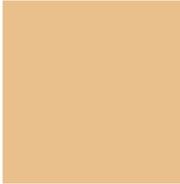


② SOUTH ELEVATION
1/8" = 1'-0"



① WEST ELEVATION
1/8" = 1'-0"

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| | | | | | | | | | |
|---|--|---|---|---|---|---|-------------------------|---|--|
|  | P-1 MAIN BODY PAINT SW-3860 SAGE |  | P-3 ACCENT PAINT SW-0028 CAEN STONE |  | P-5 ACCENT PAINT SW-0032 NEEDLEPOINT NAVY |  | R-1 ASPHALT SHINGLES |  | S-1 HORIZONTAL V-RUSTIC PAINTED SIDING |
|  | P-2 ACCENT PAINT SW-3861 AVOCADO |  | P-4 ACCENT PAINT SW-0044 HUBBARD SQUASH | | | | | | |

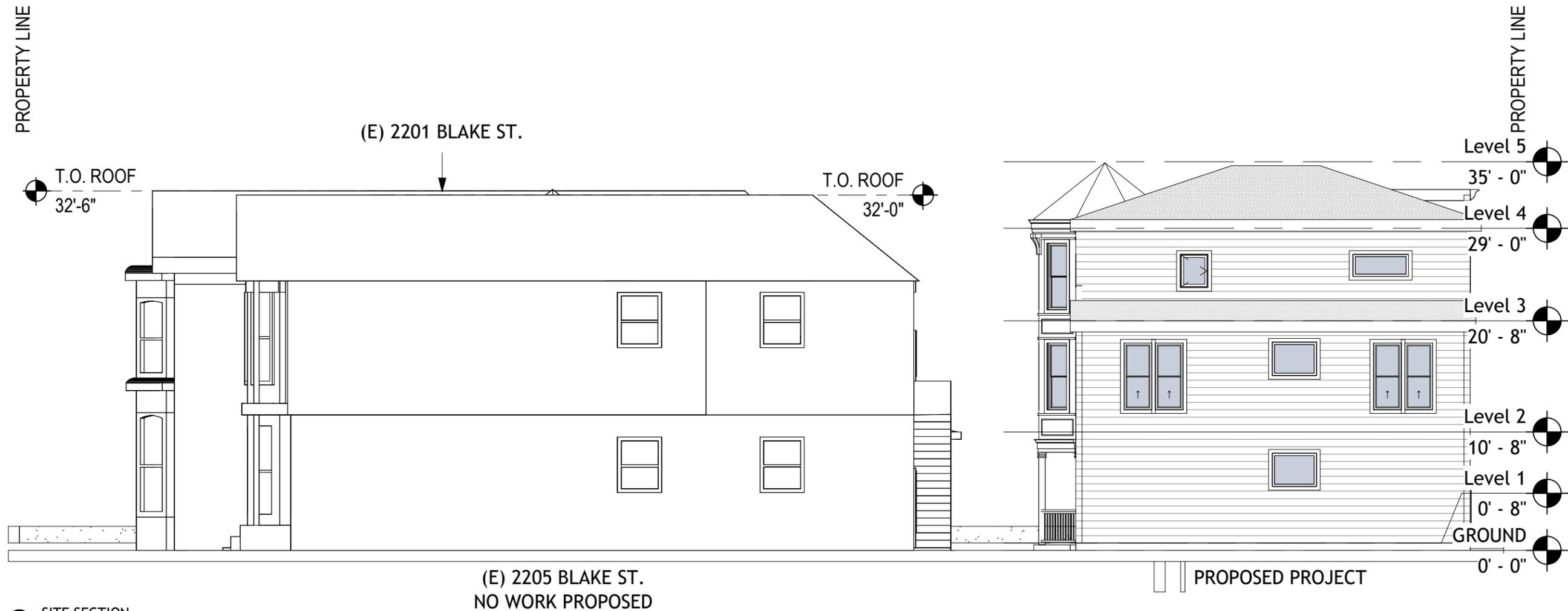
 MATERIAL LEGEND
1/4" = 1'-0"

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2 NORTH ELEVATION
1/8" = 1'-0"

1 EAST ELEVATION
1/8" = 1'-0"

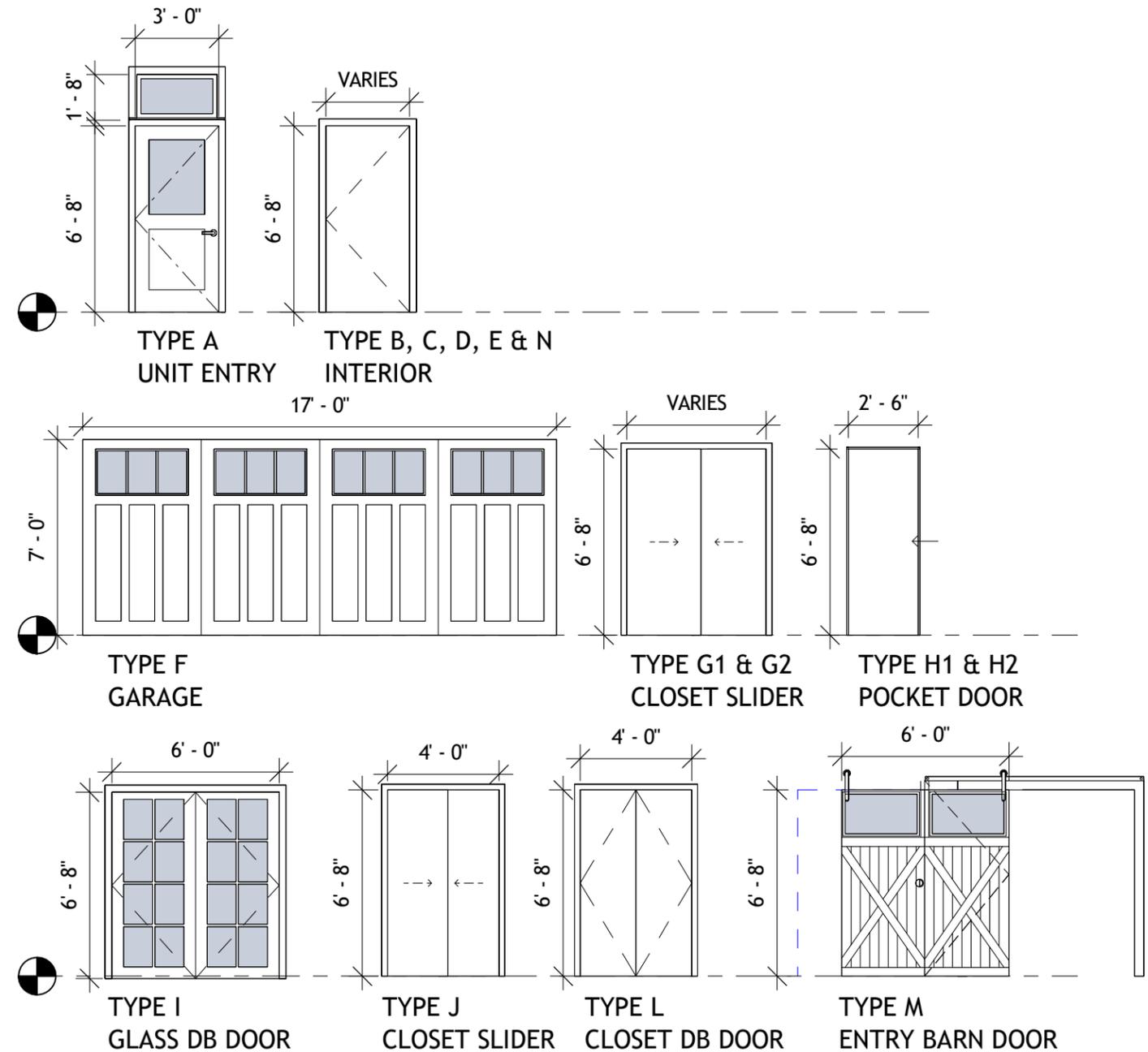


① SITE SECTION
1" = 10'-0"

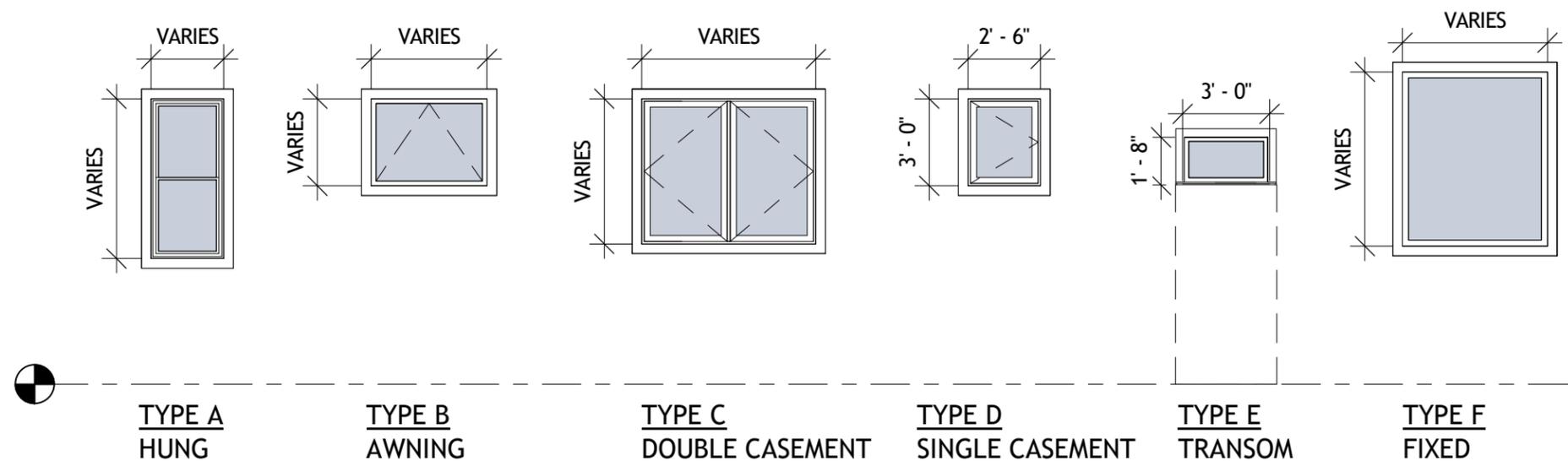
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| Door Schedule | | | | | |
|---------------|------|-----------|----------|---------|----------|
| Level | Mark | Type Mark | MATERIAL | Height | Width |
| Level 1 | 101 | A | WOOD | 6' - 8" | 3' - 0" |
| Level 1 | 101B | M | WOOD | 6' - 8" | 6' - 0" |
| Level 1 | 102 | A | WOOD | 6' - 8" | 3' - 0" |
| Level 1 | 102B | N | WOOD | 6' - 8" | 2' - 6" |
| Level 1 | 103 | E | WOOD | 6' - 8" | 2' - 4" |
| Level 1 | 103B | N | WOOD | 6' - 8" | 2' - 6" |
| Level 1 | 104 | B | WOOD | 6' - 8" | 3' - 0" |
| Level 1 | 104B | G1 | WOOD | 6' - 8" | 5' - 0" |
| Level 1 | 105 | E | WOOD | 6' - 8" | 2' - 4" |
| Level 1 | 106 | B | WOOD | 6' - 8" | 3' - 0" |
| Level 1 | 107 | N | WOOD | 6' - 8" | 2' - 6" |
| Level 1 | 108 | H1 | WOOD | 6' - 8" | 2' - 6" |
| Level 1 | 109 | I | WOOD | 6' - 8" | 6' - 0" |
| Level 1 | 110 | H6 | WOOD | 7' - 0" | 17' - 0" |
| Level 1 | 111 | G1 | WOOD | 6' - 8" | 5' - 0" |
| Level 2 | 202 | H1 | WOOD | 6' - 8" | 2' - 6" |
| Level 2 | 203 | L | WOOD | 6' - 8" | 3' - 0" |
| Level 2 | 204 | G1 | WOOD | 6' - 8" | 5' - 0" |
| Level 2 | 205 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 2 | 206 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 2 | 207 | J | WOOD | 6' - 8" | 4' - 0" |
| Level 2 | 208 | N | WOOD | 6' - 8" | 2' - 6" |
| Level 2 | 209 | D | WOOD | 6' - 8" | 2' - 2" |
| Level 2 | 210 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 2 | 211 | N | WOOD | 6' - 8" | 2' - 6" |
| Level 2 | 212 | N | WOOD | 6' - 8" | 2' - 6" |
| Level 3 | 301 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 3 | 302 | G2 | WOOD | 6' - 8" | 6' - 0" |
| Level 3 | 303 | L | WOOD | 6' - 8" | 4' - 0" |
| Level 3 | 304 | G2 | WOOD | 6' - 8" | 6' - 0" |
| Level 3 | 305 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 3 | 306 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 3 | 307 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 3 | 308 | N | WOOD | 6' - 8" | 2' - 6" |

| Door Schedule | | | | | |
|---------------|------|-----------|----------|---------|---------|
| Level | Mark | Type Mark | MATERIAL | Height | Width |
| Level 3 | 309 | C | WOOD | 6' - 8" | 2' - 8" |
| Level 3 | 310 | H2 | WOOD | 6' - 8" | 2' - 4" |



| Window Schedule | | | |
|-----------------|---------|---------|---------------|
| TYPE | WIDTH | HEIGHT | MATERIAL |
| A3 | 2' - 6" | 6' - 0" | ALUMINUM CLAD |
| A4 | 3' - 0" | 4' - 0" | ALUMINUM CLAD |
| A5 | 3' - 0" | 5' - 0" | WOOD |
| B4 | 2' - 0" | 2' - 6" | WOOD |
| C4 | 6' - 0" | 3' - 0" | WOOD |
| D | 2' - 6" | 3' - 0" | ALUMINUM CLAD |
| E | 3' - 0" | 1' - 8" | ALUMINUM CLAD |
| F1 | 5' - 0" | 6' - 0" | ALUMINUM CLAD |
| F2 | 4' - 0" | 3' - 0" | ALUMINUM CLAD |
| F3 | 5' - 0" | 2' - 0" | ALUMINUM CLAD |





Office of the City Manager

INFORMATION CALENDAR
September 30, 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: Landmark Preservation Ordinance Notice of Decision: 2939 Dwight Way/#LMIN2020-0007

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 (BMC/LPO) 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 Landmarks Preservation Commission (LPC/Commission) has designated the subject property as a Landmark. This action is subject to a 15-day appeal period, which began after the notice was mailed on September 15, 2025.

BACKGROUND

BMC/LPO Section 3.24.190 allows the Council to review any action of the Commission in granting or denying Landmark, Structure of Merit, or Historic District status. 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 September 30, 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

Allison Riemer, Senior Planner, Planning and Development, 510-981-7433

Attachments:

1: Notice of Decision – #LMSAP2020-0007/2939 Dwight Way



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: August 7, 2025
DATE NOTICE MAILED: September 15, 2025
APPEAL PERIOD EXPIRATION: September 30, 2025
EFFECTIVE DATE (Barring Appeal or Certification): October 1, 2025¹

2939 Dwight Way – Smyth Fernwald House

Landmark application #LMIN2020-0007 for the consideration of City Landmark or Structure of Merit designation for a residential property constructed circa 1868 and remodeled in 1911 (APN: 055-1853-032-06)

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

- **City Landmark** designation
 - **Property Owner:** Regents of the University of California
1111 Franklin St 6
Oakland, CA 94607
 - **Applicant:** Leila Moncharsh
5707 Redwood Rd, Suite 10
Oakland, CA 94619

ZONING DISTRICT: Restricted Multiple-Family Residential, Hillside Overlay (R-2AH)

¹ 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 15-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
#LMIN2020-0007
2939 Dwight Way
Mailed: September 15, 2025
Page 2 of 4

ENVIRONMENTAL REVIEW STATUS: Not subject to review under the California Environmental Quality Act (“CEQA”) pursuant to the common sense exemption, because it can be seen with certainty that there is no possibility that the City Landmark designation may have a significant effect on the environment. (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>

FINDINGS AND APPLICATION MATERIALS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 6-0-0-2

YES: CRANDALL, ENCHILL, FINACOM, GREENE, MONTGOMERY, ORBUCH

NO: NONE

ABSTAIN: NONE

ABSENT: PLESE, SCHWARTZ

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, 1st 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 \$3,000. This fee may be reduced to \$1,000 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
#LMIN2020-0007
2939 Dwight Way
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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 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 Landmarking will be final on the first business day following expiration of the appeal period.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

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.

LANDMARKS PRESERVATION COMMISSION
NOTICE OF DECISION
#LMIN2020-0007
2939 Dwight Way
Mailed: September 15, 2025
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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 project planner, Allison Riemer, at (510) 981-7433 or ariemer@berkeleyca.gov. All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3rd Fl., during regular business hours.

ATTACHMENTS:

1. Findings and Conditions
2. Landmarks Application

ATTEST:



Allison Riemer, Secretary
Landmarks Preservation Commission

cc: City Clerk
Leila Moncharsh, 5707 Redwood Road, Suite 10, Oakland, CA 94619
Regents of the University of California, 1111 Franklin St 6, Real Estate Services, Oakland, CA 94607

Attachment 1, part 2

Findings for Designation

AUGUST 7, 2025

2939 Dwight Way – Smyth Fernwald House

Landmark application #LMIN2020-007 for the consideration of City Landmark or Structure of Merit designation for a residential property constructed circa 1868 and remodeled in 1911 (APN: 055-1853-032-06)

PROJECT DESCRIPTION

City Landmark designation of the property at 2939 Dwight Way

CEQA FINDINGS

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

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 2939 Dwight Way meets the architectural value criterion for City Landmark designation for being a work of master architect Julia Morgan and as an outstanding example of Tudor Revival design in a First Bay Tradition residence as reflected in its half-timber exterior, varied massing, Tudor-arched windows and moldings, and ornamental chimneys along with its natural setting, trellised porch, exterior porches, and broad heavy timber eaves.
2. Pursuant to BMC Section 3.24.110(A)(4) of the LPO, the Commission also finds that the property at 2939 Dwight Way meets the historic value criterion for City Landmark designation since it is the oldest surviving building in Berkeley's oldest surviving development tract, and for its association with the life and work of local inventor William Henry Smyth, who held over forty patents for machines used in several key California industries. Smyth is also significant locally for his association with scientific and technical societies and was an honorary member of the UC Faculty Club. He owned the property beginning in 1895 and was responsible for developing its landscape, expanding the house to its current configuration, and deeding the property to UC Berkeley.

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 the northwest side of Smyth Road at Hillside Avenue
- Setting in a neighborhood at the base of the Berkeley Hills, south of UC Berkeley's campus
- Original stone walls by Smyth along Hillside Avenue
- Intact creek landscape along the northern edge of the property
- The wisteria vines near the pergola at the rear of the property
- The placement of the house within an informal grove of trees, including Coast Live Oaks and Monkey Puzzle trees (*Araucaria araucana*)

Residence

- Exterior elevations, with primary (south) elevation
- Half-timber exterior details
- Cast stone Tudor arch window details
- Entry porch on south elevation with arched opening
- Corbelled brick chimneys
- Trellised porch at southwest corner
- Third floor belvedere tower
- West balcony
- Irregular roof plan
- Broad heavy timber eaves
- Original wood windows, including large flattened-arch window with fanlight and west elevation windows with intricate wood transoms
- Basement level arched openings

CITY OF OAKLAND
Ordinance #4694 N.S.
LANDMARK APPLICATION

Smyth Fernwald House
2939 Dwight Way
Berkeley, California



Photo of the main façade taken from southeast by John Bernstein 2024

1. **Street Address:** 2939 Dwight Way
County: Alameda **City:** Berkeley **ZIP:** 94720
2. **Assessor's Parcel Number:** Near 55-1856-8 (Batchelder Tract, Block B, lot 8) City record GIS Portal shows 55-1853-32-6 for the 2939 Dwight Way address.
Dimensions: 50 feet by 70 feet
Cross Streets: Hillside Avenue and Dwight Way (on old, abandoned Fernwald Street, 200 feet north of Dwight Way)
3. **Is property on the State Historic Resource Inventory?** No **Is property on the Berkeley Urban Conservation Survey?** No
Form #
4. **Application for Landmark Includes:**
 - a. **Building(s):** Yes **Garden:** No **Other Feature(s):** No
 - b. **Landscape or Open Space:** No
 - c. **Historic Site:** Yes (Julia Morgan and William Henry Smyth)
 - d. **District:** No
 - e. **Other:** Entire property
5. **Historic Names:** Smyth House, Smyth Fernwald Property
Commonly Known Name: Smyth Fernwald House
6. **Date of Construction:** ca. 1868, remodeled in 1911 **Factual:** Yes
Source of Information: Seigal & Strain History Report, 1874 photo (pp. 1, 9) 2011 remodel - City of Berkeley Application for Building Permit No. 1284, May 20, 1911.
7. **Architect:** 2011 Remodel: Julia Morgan
8. **Builder:** Contractor: H.D. Koch
9. **Style:** Original structure: Italianate; remodeled structure: First Bay Region Arts and Crafts style with Tudor Revival features.
10. **Original Owners:** Perez Mann Batchelder and wife, née Clara F. Adams, purchase the property from the College of California and erected a house. Property was listed in Mrs. Batchelder's name. (ca. 1867- ca. 1889.)

William Henry Smyth (ca. 1900-1940.)
Original Use: residential
11. **Present Owner:** Regents of the University of California
Present Occupant: None
12. **Present Use:** None
Current Zoning: R-2AH **Adjacent Property Zoning:** same

13. Present Condition of Property:

Exterior: Poor **Interior:** Poor **Grounds:** Poor

Has the property's exterior been altered? Not intentionally, damage due to neglect

14. Description: See attached Draft National Register of Historic Places application.

Features to Preserve:

The house is significant for all of the reasons listed in the attached Draft NR application. The following features to be preserved include, but are not limited to:

- Façade and all exterior sides of the building
- Corbelled brick chimneys
- Trellised porch and wisteria at southeast corner
- Original hardware on exterior doors
- Entry porch on south side with arched opening and brick ramp to basement workshop entry below porch
- Julia Morgan exterior alterations shown in each side of elevation plans
- Third floor tower
- West balcony
- Roof including shape and materials
- All exterior windows and window frames
- detail of south elevation
- Pergola including built-in seating below pergola

15. History – See attached NR application

16. Significance - See attached NR application

17. Historic Value— City: Yes Neighborhood: Yes

Architectural Value— City: Yes Neighborhood: Yes

18. Is the property endangered? Yes. It has been neglected for decades by U.C. to the point where the roof is leaking, a part of the balcony is hanging off the building, and the exterior shows signs of deterioration. U.C. has refused or failed to address any of the deterioration or prevent further deterioration.

19. Bibliography: See attached NR application.

20. Recorder: Leila H. Moncharsh, President for the Berkeley Architectural Heritage Association, P.O. Box 1137, Berkeley, California 94701

Date: May 2025

United States Department of the Interior
 National Park Service

National Register of Historic Places Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in National Register Bulletin, *How to Complete the National Register of Historic Places Registration Form*. 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.

1. Name of Property

Historic name: Smyth-Fernwald House
 Other names/site number: Smyth House
 Name of related multiple property listing: N/A
 (Enter "N/A" if property is not part of a multiple property listing)

2. Location

Street & number: 2939 Dwight Way
 City or town: Berkeley State: CA County: Alameda
 Not For Publication: Vicinity:

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, 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 at the following level(s) of significance:

___ national ___ statewide ___ local
 Applicable National Register Criteria:
 ___A ___B ___C ___D

| | |
|---|----------------------|
| _____ Signature of certifying official/Title: | _____ Date |
| _____ State or Federal agency/bureau or Tribal Government | |

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

In my opinion, the property ___ meets ___ does not meet the National Register criteria.

Signature of commenting official:

Date

Title :

State or Federal agency/bureau
or Tribal Government

4. National Park Service Certification

I hereby certify that this property is:

- ___ entered in the National Register
___ determined eligible for the National Register
___ determined not eligible for the National Register
___ removed from the National Register
___ other (explain:) _____

Signature of the Keeper

Date of Action

5. Classification

Ownership of Property

(Check as many boxes as apply.)

- Private:
Public – Local
Public – State
Public – Federal

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Category of Property

(Check only **one** box.)

- Building(s)
- District
- Site
- Structure
- Object

Number of Resources within Property

(Do not include previously listed resources in the count)

| Contributing | Noncontributing | |
|-------------------|-------------------|------------|
| <u>1</u> | <u> </u> | buildings |
| <u> </u> | <u> </u> | sites |
| <u> </u> | <u> </u> | structures |
| <u> </u> | <u> </u> | objects |
| <u> </u> | <u> </u> | Total |

Number of contributing resources previously listed in the National Register 0

6. Function or Use

Historic Functions

(Enter categories from instructions.)

DOMESTIC: single dwelling

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Current Functions

(Enter categories from instructions.)

VACANT

7. Description

Architectural Classification

(Enter categories from instructions.)

Italianate

Tudor Revival

Materials: (enter categories from instructions.)

Principal exterior materials of the property:

Foundation: Stucco

Walls: Stucco

Roof: Asphalt shingle

Smyth-Fernwald House

Alameda County,
 California
 County and State

Name of Property

Narrative Description

(Describe the historic and current physical appearance and condition of the property. Describe contributing and noncontributing resources if applicable. Begin with a **summary paragraph** that briefly describes the general characteristics of the property, such as its location, type, style, method of construction, setting, size, and significant features. Indicate whether the property has historic integrity.)

Summary Paragraph

Set at the base of the Berkeley Hills with a magnificent view of San Francisco Bay, the Smyth-Fernwald House is a 4,600-square-foot, three-story, single-family residence constructed in 1868. Once part of a large estate, the house presently stands on 9.26 acres at the top of Dwight Way near the University of California's Clark Kerr Campus. Originally designed with Italianate features-most of which are no longer extant-it was remodeled extensively in a mixed Craftsman and Tudor Revival style in 1911 by Julia Morgan, the first woman architect to practice in California. Morgan was among the most prominent early twentieth-century Bay Area architects; she had an extensive practice throughout the State. While retaining much of the original structure as a core, Morgan enlarged the house considerably, adding a new entrance hall, projecting bays, a grand stair hall, and a third-story belvedere and study. She also added extensive redwood woodwork on the interior and reclad the house in stucco with half-timbering. While a few internal modifications in the kitchen and dining room accommodated use as a women's dorm in the mid-twentieth century, the property is little changed since the redesign by Morgan over a century ago. The house retains historic integrity of design, workmanship, and materials from the 1911 period, and integrity of location, setting, feeling, and association from 1868, but it is vacant and suffers from extensive deferred maintenance.

Narrative Description**Site Description**

The large, three-story Smyth House is located in Berkeley, California at the base of the Berkeley Hills on part of the former Fernwald estate. Situated on the edge of a neighborhood of large single-family homes in a tract originally laid out by Frederic Law Olmsted in 1866, this approximately 9.26 acre site stands out from its surroundings through its original oak chaparral landscape, characterized by gentle to steep slopes, native grasses, generously spaced oak trees, and a stream (Derby Creek) with riparian vegetation. These features, along with a much larger than typical residential lot, date from the original Olmsted subdivision. The site once contained several mid-1940s dormitory structures for University of California students, but these were removed by 2013, leaving open fields and trees – surprisingly reminiscent of the original estate setting -- surrounding the house.

Smyth-Fernwald House

Alameda County,
 California
 County and State

Name of Property

Exterior Description¹

Featuring an irregular yet largely rectangular plan, the extant 4,600-square-foot house measures approximately 50 by 70 feet including porches, the patio, and servants' quarters. The exterior finish consists of painted, off-white stucco with decorative half-timbering on major elevations in varying states of disrepair. On the first floor, the south elevation features a large, roofed entrance porch and several large, multi-light windows, illuminating the front hall and a room described in the surviving Morgan plans as a library. Most of the windows on this elevation have ornamental lintels with flattened pointed arches. The north elevation has large, multi-light windows giving natural light to the dining room and a living room alcove, as well as a porch on the northwest corner; somewhat simpler windows on the second floor give light to bedrooms. The west elevation, on the first floor, above a basement level with three round arches, contains three elaborate, multi-light flattened-arch windows serving the living room. The east elevation on both first and second floors is given over to a relatively unornamented servants' wing, with, on the first floor, the kitchen and a large trellised patio.

On the second floor the west elevation is entirely devoted to an open porch with a solid wood balustrade. At the south elevation, a large, half-timbered cross gable with a multi-light window serves an upstairs bedroom. The third floor features a tower room or 'belvedere' surrounded on all sides by double-hung windows, replaced in some places by aluminum sliders, and wide roof overhangs supported by heavy brackets. Such open, wide overhanging eaves are a feature of the multiple side-gables on all elevations, some of which may date from the original construction. The complex, gabled, asphalt-shingled roof bears three tall, heavily molded brick chimneys.

Interior Description^{2 3}

The interior is accessed from an impressive stuccoed porch on the southern elevation with wide eaves and flattened arches on three sides. The front door leads to a hall paneled with shoulder-high redwood surmounted by a heavy cove cornice, and then to a similarly-paneled large living room, dating in outline to the 1868 structure, but now furnished with a sandstone fireplace and surround, the chimneypiece containing four panels in an oriental style with figural and floral inlays. The several entrances to the living room are formed in the shape of arcades with multiple wooden arches resting on square wooden columns. The heavily-beamed, coffered ceiling is also paneled. A large flattened-arch window with fanlight serves this room.

Towards the east, the front hall also leads to a library, also served by a fireplace, probably dating to the original 1868 structure but now including a sandstone mantel and mirrored surround. This room also features shoulder-high redwood and possibly Douglas fir paneling and a coffered

¹ See Photos 1-31.

² See Photos 1-31.

³ Much of this detail is derived from Siegel and Strain (2011).

Smyth-Fernwald House

Alameda County,
 California
 County and State

Name of Property

ceiling. Elaborate joinery and cabinetry work surrounds a large window, again with a flattened pointed-arch design. Built-in shelves and cabinets line the east wall.

To the northeast of the living room and library, accessible from both, lies the dining room, again a room from the 1868 structure. Anchored by a massive brick and cut-stone fireplace in a Romanesque style, the room is again paneled in redwood and features a large bay or nook facing north with built-in benches and large rectangular windows on two sides, surmounted with transoms with multiple leaded panes. The ceiling is coffered in wood.

The kitchen wing, while largely utilitarian, also appears to date from the 1868 structure, though it has been enlarged with several additions. It contains a pantry and “cooler”, as well as a large flattened-arch window. All furnishings in this room are modern.

The lower portion of the main stair consists of two separate mahogany balustraded runs within a paneled stair hall, meeting in a landing halfway to the second floor, from which a single run continues upward. As in the remainder of the first floor, joinery work is elaborate and walls are paneled.

The second floor consists of five bedrooms, three in the main house and two in the servants’ wing (served by a separate staircase). Each bedroom in the main house has a fireplace and is fitted with a closet. Fenestration is simpler than on the first floor, consisting of double hung or casement windows, some with elaborately divided upper lights. Walls are plastered and woodwork is largely unpainted redwood. A porch wraps around the west elevation and parts of the south and north elevations. This porch forms the only direct communication between the servants’ bedrooms and those in the main house.

The main staircase continues to the third floor “study” room in the tower, with a fireplace on the north side and windows on all sides. The wood ceiling exposes ornamental roof beams. Views to the Berkeley Hills and San Francisco Bay are impressive.

Early History (1858 – c. 1911)

In 1858, the Oakland-based College of California, requiring more space, resolved to acquire land in the future City of Berkeley. One hundred and sixty acres were purchased, part of which was intended for a campus (now part of the University of California); the remainder, south of the campus, was to be subdivided and sold as home sites to generate income. Landscape architect Frederick Law Olmsted, then resident in California, was approached in 1865 to create a subdivision plan (possibly his first such subdivision effort)⁴, envisioned as large country lots suitable for the elegant residences of college professors “of means and taste.”⁵ In 1868, the map

⁴ Etzel, Fred. *Samuel Hopkins Willey, Pioneer Berkeley Resident*. Berkeley Historical Society Newsletter, Vol. 39, No. 4 (Fall 2021).

⁵ Willey, Samuel Hopkins. *A history of the College of California* (San Francisco: Samuel Carson and Co., 1887), p.187. <https://archive.org/details/historyofcollege00willrich/page/n5/mode/2up?>

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forming the Berkeley Property Tract was filed with the County. The Italianate country villa, constructed by Perez Mann Batchelder, a successful early daguerrotypist⁶, was the third residence built in the subdivision, its design consistent with Olmsted's rural vision. The Smyth house is the only house remaining on the tract from the early period, and appears to be the oldest surviving residential structure in Berkeley.

While there are few images of the original house⁷, photographs from before 1895 show a two-story Italianate residence with characteristic clapboard siding, low-pitched cross gable roof, two brick chimneys, and heavy bracketed cornices. The T-shaped house featured a wrap-around porch with turned balusters on three sides. The principal façade faced the south. A straight entrance lane approached the house from the southwest through fields and trees. None of these external features remain, although it is clear from later remodeling drawings that the older house forms the core of the present structure; the living room, study, and dining room, as well as the service wing, retain the configuration of the original rooms.

The large Batchelder tract was subdivided in 1889. After several changes of ownership, the house and approximately eight acres were rented in 1896, and eventually purchased in 1901, by William Henry Smyth, a British-born engineer, inventor, and somewhat eccentric philosopher of government, for "over \$20,000" (a high price for the period). Smyth made minor improvements to the house while introducing extensive plantings and altering Batchelder's straight entrance lane into a winding, picturesque, tree-lined drive; he also purchased several adjacent lots. Smyth named the estate "Fernwald", writing that "when we called the place Fernwald we thought it would be quite the thing to accentuate the ferns as the name seemed to suggest. Yet the name is divisible into fern (distant) and wald (forest) in the German language."⁸

In 1911, Smyth undertook a sophisticated and artistic transformation of the then unfashionable Italianate-style house into an impressive Tudor Revival residence at the hands of a master California architect, Julia Morgan. Morgan's remodeling was thoroughgoing. The 1911 building permit⁹ listed 8-foot-by-16-foot "extensions" at the north and south elevations; the south extension was a new entrance hall, and the north a covered porch and alcove allowing improved circulation between the living room and dining room. Other modifications included a large, trellised loggia at the southeast corner, a formal roofed entryway, a second-floor porch at the western facade, and a square windowed tower forming a new third story or "belvedere". Siding was replaced by stucco and half-timbered work. Windows were largely replaced by lancet-arched sashes and casements in a Tudor style, with elaborate fanlights. With windows on all sides, the third-story tower or belvedere allowed views to the hills and the bay. On the interior,

⁶ Perez Mann Batchelder. http://historiccamera.com/cgi-bin/librarium2/pm.cgi?action=app_display&app=datasheet&app_id=3859&. Last visited 1/15/2024

⁷ See photos 29, 30, 31

⁸ Siegel and Strain Architects. *Smyth-Fernwald Property, Historic Structures Report*. (Oakland: Siegel and Strain, 2011), p. 31

⁹ Berkeley City Permit Application #1281, 29 May 1911. *Berkeley Architectural Heritage Association*; see Photograph 34

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Morgan introduced redwood and oak paneling throughout the first floor, new fireplaces with elaborate surrounds, a grand stair hall, and arcaded passageways between the main rooms featuring semicircular arches resting on square wooden columns. These changes enlarged the house considerably and resulted in an impressive structure in a Tudor Revival style, bearing evidence of Bay Area Craftsman influence in such details as heavy roof overhangs and exposed beams.

History after the Julia Morgan Redesign (post-1911)

Smyth arranged the eventual donation of his house and land to the University of California in 1926, while retaining a life interest.¹⁰ In the 1930 U.S. Census, Smyth is still shown as owner of the house, there called “Fernwald” and valued (exclusive of the land) at the very high amount of \$27,500.¹¹ (Typical census values for houses on neighboring streets were \$10,000-12,000 at the time.)¹² Smyth continued to live in the house until his death in 1940, when full ownership passed to the University of California.

During the post-World War II boom in student attendance resulting from the G.I. bill, the University developed part of the Fernwald tract into housing for students. Large temporary housing structures, designed by the Ratcliff firm to house around five hundred students, were erected on the surrounding Fernwald property, and the Smyth House was also converted into housing for students.¹³ These buildings were all removed by 2013, possibly due to the proximity of the active Hayward Fault.¹⁴ The Smyth House was left intact.

The house currently stands vacant; the Morgan additions, made over a century ago, are the last major structural changes made. The University has done little to maintain the house. Considerable water damage has occurred in the servants’ quarters, stemming from a hole in the roof above the two servants’ bedrooms. Some water damage has also been observed in the main staircase that descends through the center of the house. In recent years, the University has erected a chain-link fence around the structure and has secured the windows and exterior doors in hopes of deterring trespassers.

¹⁰Siegel and Strain Architects (2011), pg. 2; Thompson (2008).

¹¹<https://www.archives.gov/research/census/1930>

¹²*Ibid.*

¹³ Siegel and Strain (2011), p. 49.

¹⁴*Ibid.*

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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.)

- A. Owned by a religious institution or used for religious purposes
- B. Removed from its original location
- C. A birthplace or grave
- D. A cemetery
- E. A reconstructed building, object, or structure
- F. A commemorative property
- G. Less than 50 years old or achieving significance within the past 50 years

Areas of Significance

(Enter categories from instructions.)

B. Politics and Government

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C. Architecture

Period of Significance

1868-1911

Significant Dates

1911

Significant Person

(Complete only if Criterion B is marked above.)

William Henry Smyth
Julia Morgan

Cultural Affiliation

Architect/Builder

Julia Morgan

Statement of Significance Summary Paragraph (Provide a summary paragraph that includes level of significance, applicable criteria, justification for the period of significance, and any applicable criteria considerations.)

The Smyth-Fernwald house is significant under Criterion B for its association with William Henry Smyth and his contributions to American political history and theory, particularly his coining and popularization of the term “technocracy.” The house is significant under Criterion C for its associations with the work of a master architect. As remodeled in 1911 it is an excellent and unusually grand example of the residential work of Julia Morgan (1872-1957), expertly

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employing elements of the Tudor Revival and First Bay Area traditions, and has largely maintained its architectural integrity.

As remodeled by Julia Morgan in 1911, the Smyth House is an important example of a type and style of house associated with the [First] Bay Area Tradition, typically designed for clients affiliated with the university or the arts or professions in the Berkeley hills. In style, the design of the house is drawn from a variety of sources, united by the concerns of the Bay Area Tradition: siting for an openness to nature and views, reference to historic periods associated with good craftsmanship and respect for craftsmen, and exposed use of regional materials.¹⁵

Narrative Statement of Significance (Provide at least **one** paragraph for each area of significance.)

Criterion B – William Henry Smyth

The Smyth-Fernwald house is significant under Criterion B as the residence of William Henry Smyth, an economic theoretician and philosopher who was among the first to describe the technocratic turn that government took during and after the First World War. He took note of the fact that the Federal government, previously largely *laissez-faire* in policy, had taken unprecedented control of United States industry, compelled by the exigencies of the war and the requirements for vast amounts of materiel. Smyth called this phenomenon “technocracy”; the new word later became an essential part of political discourse. His extensive writings on the subject were published by the University of California in the 1920s in three volumes titled *Technocracy* and are still in print.

A modern evaluation of Smyth’s thinking notes:

Smyth's basic claim in his founding technocratic manifesto is that the national direction and control of the economy during the recently concluded war [sc. World War I] had pioneered a new idea in the ancient art of government. Indeed, the management of the nation's productive forces under the ‘period of national stress’ during the war had amounted to a form of government with ‘no precedence in human experience’, due to ‘the fact that we rationally organized our National Industrial Management. We became, for the time being, a real Industrial Nation’. For this unique experiment in government, Smyth goes on to state, ‘I have coined the term **Technocracy . . .**’ (Smyth, 1921: 13).¹⁶

In the aftermath of World War I Smyth also promulgated various doctrines relating to the League of Nations. In *Federation of Nations: An Alternative to the League of Nations*¹⁷ (1922) he proposed an alternative form of universal government. “Under the Federation idea. . .each

¹⁵ Siegel and Strain (2011), pp. 98-99.

¹⁶ Esmark, Anders (2021), p. 122 ff.

¹⁷ Smyth, William H., *Federation of Nations: An Alternative to the League of Nations* (Berkeley, Reprinted from the Gazette, 1922), p. 12.

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component Nation shall furnish its proportionate quota of naval armament to the World Policy Navy. . . [which] would be far in excess in fighting strength of any national navy”, thus rendering any national aggression futile. Smyth asserted that such a Federation would be far more practical than any “ ‘diplomacy’ -concocted League of Nations.”

Smyth was also strongly interested in botany and plant cultivation. In a biographical document among the Smyth papers at the Bancroft Library of the University of California, he indicates that he was among the organizers of the California State Floral Society in the 1890’s. As a leader of that group, Smyth was instrumental in the selection of the California Poppy (*Eschscholtzia californica*) as the State Flower.¹⁸

The house is integral to Smyth’s lifelong contributions, as it served as his primary residence, where he conducted much of his work and writings. While he had an office in San Francisco beginning in 1878, it was destroyed in the 1906 earthquake. After that point, especially after the 1911 remodel, he conducted his work from Fernwald. Many of the later publications bearing Smyth’s name include the following short colophon:

*William H. Smyth,
 “Fernwald”,
 Berkeley, California.*

Criterion C – Smyth-Fernwald House and Julia Morgan

The Smyth-Fernwald House is an important and early example of the work of Julia Morgan, who made major contributions to architecture during her lengthy career. It represents a thoroughgoing, inventive and professional remodeling of a house in what was considered an “outdated” style into a form consonant with the taste of the early 20th century in the Bay Area. In 1911, when she remodeled the house, Morgan’s name and reputation were only regionally known; it was only after many decades that she received the national accolades that her work deserved. In 1988 and 2021, historians Sara Holmes Boutelle and Victoria Kastner contributed greatly to understanding Morgan’s importance beyond her work in the 1920s and 1930s on the San Simeon Castle owned by William Randolph Hearst. In part, contemporary recognition of her work has been due to the 2014 posthumous Gold Medal awarded to her by the American Institute of Architects. The AIA established the Gold Medal, considered the highest award an architect can receive, in 1907. It had been awarded to only seven other well-respected California architects including Bernard Maybeck in 1951 and William Wurster in 1969.¹⁹ Morgan was the first woman architect to receive that honor.

Distinguished architect Michael Graves wrote in support of the award:

¹⁸Siegel and Strain (2011), p. 28.

¹⁹Hawthorne, Christopher. *Architect Magazine* (June 23, 2014). https://www.architectmagazine.com/awards/aia-awards/gold-medal-julia-morgan_o

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Morgan experimented with formal strategies of place-making and symmetry before Modernism emerged, and she adapted historic motifs with modern ease, showing us how to revere history and design for the new era.²⁰

Denise Scott Brown, architect, professor, and advocate for women architects to receive equal professional recognition as men also wrote:

Julia Morgan had a large, well-run office, 46 years of practice, more commissions than we ever saw, the trust, love, and repeat work of her clients, and over 20 books written on her alone She deserved the Gold Medal in her lifetime.²¹

Although the belated praise given for Julia Morgan's work came after her death, when she remodeled an Italianate villa into a mansion in 1911 for Mr. Smyth, her reputation was well-established. Between 1890 and 1894, Morgan attended University of California, Berkeley's engineering department, as there was no architectural department at the time.²² Morgan's engineering education may have later contributed to her 1904 "El Campanil" on the Mills College campus in Oakland, constructed entirely of steel-reinforced concrete, which survived the 1906 earthquake.²³ (Photos 32, 33)

After graduating with a bachelor's degree in civil engineering in 1894, Morgan met Bernard Maybeck and attended his design class at the Mark Hopkins Institute. She also assisted him in designing and remodeling several houses, both in Berkeley.²⁴ Morgan then applied for admission to the École des Beaux Arts, where Maybeck had studied. She first applied to take the entrance exam in 1897, but it was not until her third attempt that she was admitted in 1898 when she placed 13th out of hundreds of applicants.²⁵ She was not eligible for a diploma, because of the school's age restriction precluding award of a diploma to students who did not complete the requirements by age 30, but she instead received a *certificat* from the school in December 1901.²⁶ By this time, she had studied architecture with Maybeck and then in Paris for a total of seven years in addition to the four years of engineering studies. Nine years later she would receive her commission from Smyth to remodel his house.

Between 1902 and 1904, Morgan returned to the Bay Area and worked with John Galen Howard, another notable Bay Area architect, after his firm took over the design of many University of California, Berkeley structures. Her major works included the Greek Theater and assisting with

²⁰ Kastner, Victoria. *Julia Morgan: An Intimate Biography of the Trailblazing Architect*. (San Francisco: Chronicle Books, 2022); Boutelle, Sara Holmes. *Julia Morgan, Architect* (New York: Abbeville, 1988)

²¹ *Ibid.* See also: <https://www.theguardian.com/artanddesign/2018/oct/16/the-scandal-of-architecture-invisible-women-denise-scott-brown>

²² *Ibid.*, pp. 35, 78-80

²³ *Ibid.*, p. 92

²⁴ <http://exhibits.ced.berkeley.edu/exhibits/show/juliamorgan/early-life-and-the-ecole>

²⁵ U.C. Berkeley Exhibit on Julia Morgan, date unknown:

<http://exhibits.ced.berkeley.edu/exhibits/show/juliamorgan/early-life-and-the-ecole>

²⁶ Kastner, *op. cit.*, p. 69

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Howard's Hearst Memorial Mining Building. On March 1, 1904, she became California's first woman licensed architect.²⁷ Following the April 18, 1906 earthquake, she relied on her architectural and engineering training to restore the reinforced concrete San Francisco Fairmont Hotel, despite the fact that it had shifted seven feet from its foundation.²⁸ In another major accomplishment, she designed the skylighted hall in the San Francisco Merchants Exchange building with Willis Polk.²⁹ While many of her commissions during this time period were for residences, in 1910, Morgan designed another major work – the sanctuary of the Berkeley's St. John's Presbyterian Church (now Berkeley Playhouse's Julia Morgan Theater).³⁰

The Smyth house at present no longer represents the Italianate structure still present at its core, constructed in 1868 and believed to be among the very earliest surviving residences in the City of Berkeley. However, it is significant under Criterion C because the remodeling of 1911 represents an outstanding and large example of First Bay Region Arts and Crafts style with Tudor Revival features. The 1911 reworking of the structure was typical of the high-end work of Julia Morgan, the well-known Bay Area architect who was the first woman to practice architecture in the state, for a wealthy client. With its thoughtfully-chosen additions, improvements in interior circulation and finish, and third-story belvedere, the house represents a rare surviving example of a period house for a well-to-do client.

As remodeled by Julia Morgan in 1911, the Smyth House is an important example of a type and style of house associated with the Bay Area Tradition, typically designed for clients affiliated with the university or the arts or professions in the Berkeley hills. In style, the design of the house is drawn from a variety of sources united by the concerns of the Bay Area Tradition: siting for an openness to nature and views, reference to historic periods associated with good craftsmanship and respect for craftsmen, and exposed use of regional materials. The design incorporates half-timbered walls that recall the Tudor period in England but is freely executed in a manner that is not Tudor Revival. The design, materials, and workmanship reflect the principles of the Arts and Crafts movement generally and its local manifestation, the Bay Area Tradition. The siting adjacent to a wooded stream bed took advantage of the proximity to water and the cooling effect of the shade trees and cooler air drawn downhill along the creek. The arched windows of the basement, the second floor balconies on three sides, and the tower all open the house to the near landscape and the far views. The extensive redwood paneling of the interior makes expressive use of a local material.³¹

The structure has undergone few changes since that period. In recent decades the house has sat vacant, however, and years of deferred maintenance have caused significant deterioration of the structural fabric. Despite being in varying states of disrepair, the character defining features clearly remain. Thus, it retains integrity of materials, workmanship, and design from 1911.

²⁷*Id.*, at p. 86

²⁸*Id.*, at p. 92

²⁹*Id.*, at pp. 94-95

³⁰*Id.*, at p. 97

³¹Siegel and Strain (2011), p.99

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After she completed Smyth's commission, Morgan went on to complete many other notable commissions, including several structures for the Hearst family such as the Hearst Gymnasium at University of California, Berkeley (with Bernard Maybeck) and Hearst Castle. Other notable commissions included the Berkeley Women's City Club, the Los Angeles Examiner Building, the remodeling of the Hearst Building in San Francisco, and several structures for Mills College in Oakland. By the time she retired in 1950, Morgan had designed more than 700 structures. Many have been listed on the National Register, most notably Hearst Castle (#72000253), Julia Morgan House (#82002230, formerly Goethe House), and Hearst Gymnasium for Women (#82004645).

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Major Bibliographical References Bibliography (Cite the books, articles, and other sources used in preparing this form.)

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Zinkievich, Maxwell H., *Long-Form Writing for Smyth House National Register Application*, unpublished draft, 2022

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 # ___ recorded by Historic American Landscape Survey # ___ **Primary location of additional data:** ___ State Historic Preservation Office ___ Other State agency ___ Federal agency ___ Local government ___ University ___ Other Name of repository: _____

Historic Resources Survey Number (if assigned): _____

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Geographical Data Acreage of Property 9.26 ac

Use either the UTM system or latitude/longitude coordinates

Latitude/Longitude Coordinates Datum if other than WGS84: _____ (enter coordinates to 6 decimal places)

Latitude: 37.867151 Longitude: -122.247659

Verbal Boundary Description (Describe the boundaries of the property.)

The property follows the Fernwald property boundaries as owned by the last private owner before the gift to the University of California. The property is bounded by Dwight Way on the south, a deep stream valley, the North Fork of Derby Creek, on the north, Hillside Avenue on the west, and other tracts to the east. See map, page 42.

Boundary Justification (Explain why the boundaries were selected.)

The tract remains intact from the configuration present during the period of architectural integrity. Therefore, those boundaries were selected.

Form Prepared By

John Bernstein, Shelby Kendrick, Leila Moncharsh, Maxwell Zinkievich
Research Contributors: PGS Design Inc., Steven Finacom

Organization: _

Berkeley Architectural Heritage Association
2318 Durant Avenue
Berkeley, California 94704
Date: October 1, 2024

Additional Documentation Submit the following items with the completed form:

Maps: A **USGS map** or equivalent (7.5 or 15 minute series) indicating the property's location. (attached)

Sketch map for historic districts and properties having large acreage or numerous resources. Key all photographs to this map.

Additional items: Check with the SHPO, TPO, or FPO for any additional items

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Photographs

Photo Log Name of Property: Smyth-Fernwald House City or Vicinity: Berkeley
 County: Alameda County, California

Photograph Credits: John Bernstein, Maxwell Zinkievich, Stephen Finacom, Siegel and Strain, Carleton Watkins, unknown. All other photos courtesy of Siegel and Strain Architects.

Dates of Photographs: 2023, 2020, 2011, 1879, before 1875

Description of Photograph and Number

- 1 Distant view from southeast, main façade (Photo credit: Bernstein)
- 2 View from southwest, entry porch, second floor deck, belvedere (Finacom)
- 3 Detail of entry porch, view from southwest (Zinkievich)
- 4 Loggia at southwest corner (Zinkievich)
- 5 View from northeast, servants' wing (Zinkievich)
- 6 View from northwest, second floor deck, living room alcove windows (Zinkievich)
- 7 View from south, living room and front hall windows
- 8 Second floor deck, north façade
- 9 Second floor deck, south façade
- 10 Deteriorated roof, servants wing, east side
- 11 Roof and chimneys
- 12 Front hall, facing west
- 13 Living room alcove, facing west
- 14 Living room with fireplace, facing north
- 15 Typical gothic-style window, first floor living room, facing west
- 16 Detail of living room fireplace panel
- 17 Library, paneling, built in cabinets, fireplace, facing north
- 18 Library, coffered ceiling
- 19 Dining room, fireplace and paneling, facing south
- 20 Kitchen, facing northeast
- 21 Stair hall, living room on left
- 22 2nd floor stair hall, stair to belvedere
- 23 West bedroom
- 24 North bedroom
- 25 North bedroom
- 26 Water damage in servants' wing
- 27 Fireplace in third-floor belvedere
- 28 Beamed ceiling of belvedere
- 29 View of Smyth house, before 1875. Louis Stein collection, Berkeley Historical Society
- 30 Stereograph showing Batchelder house and "School for Deaf and Dumb" (Carleton Watkins, 1879)
- 31 Detail of Photograph 30 (Carleton Watkins)
- 32 El Campanil, Mills College (Will Callan/Hoodline)
- 33 El Campanil, Mills College (Will Callan/Hoodline)
- 34 Building Permit (1911) (Berkeley Architectural Heritage Association)

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National Park Service / National Register of Historic Places Registration Form
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Figures

Tract Map

Vicinity Map

Architectural Drawings – Julia Morgan, 1911

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Photo 1



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Photo 2



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Photo 4



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Photo 5



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Photo 6



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Photo 7



Photo 8



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Photo 9



Photo 10



Sections 7 and page 20

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Photo 12



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Photo 13

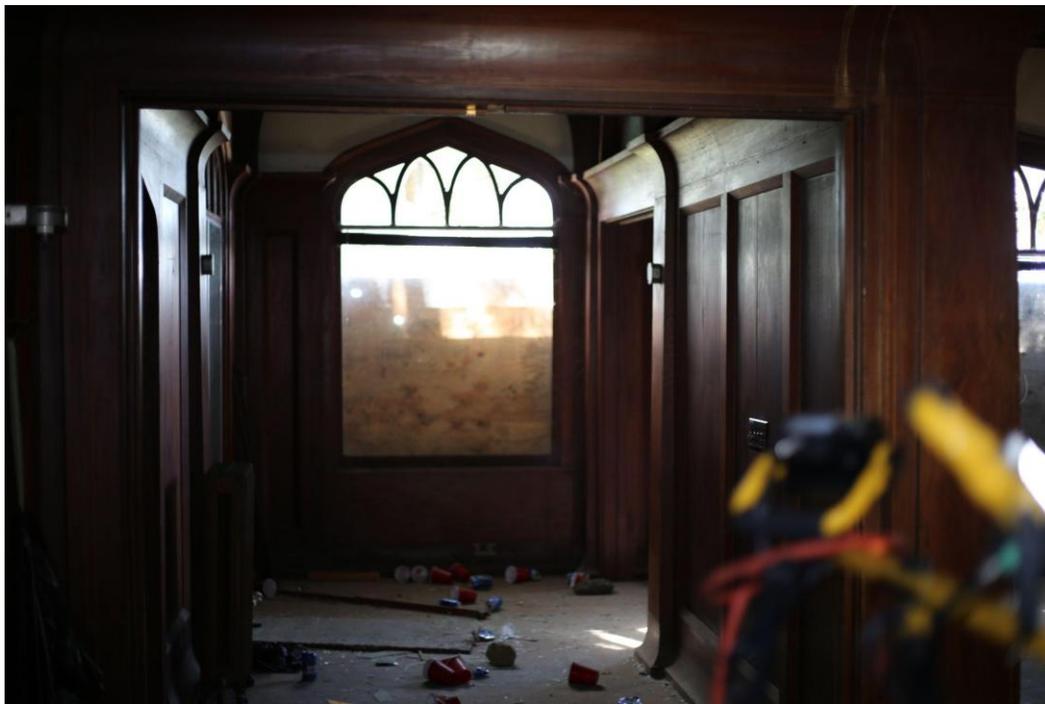


Photo 14



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Photo 15

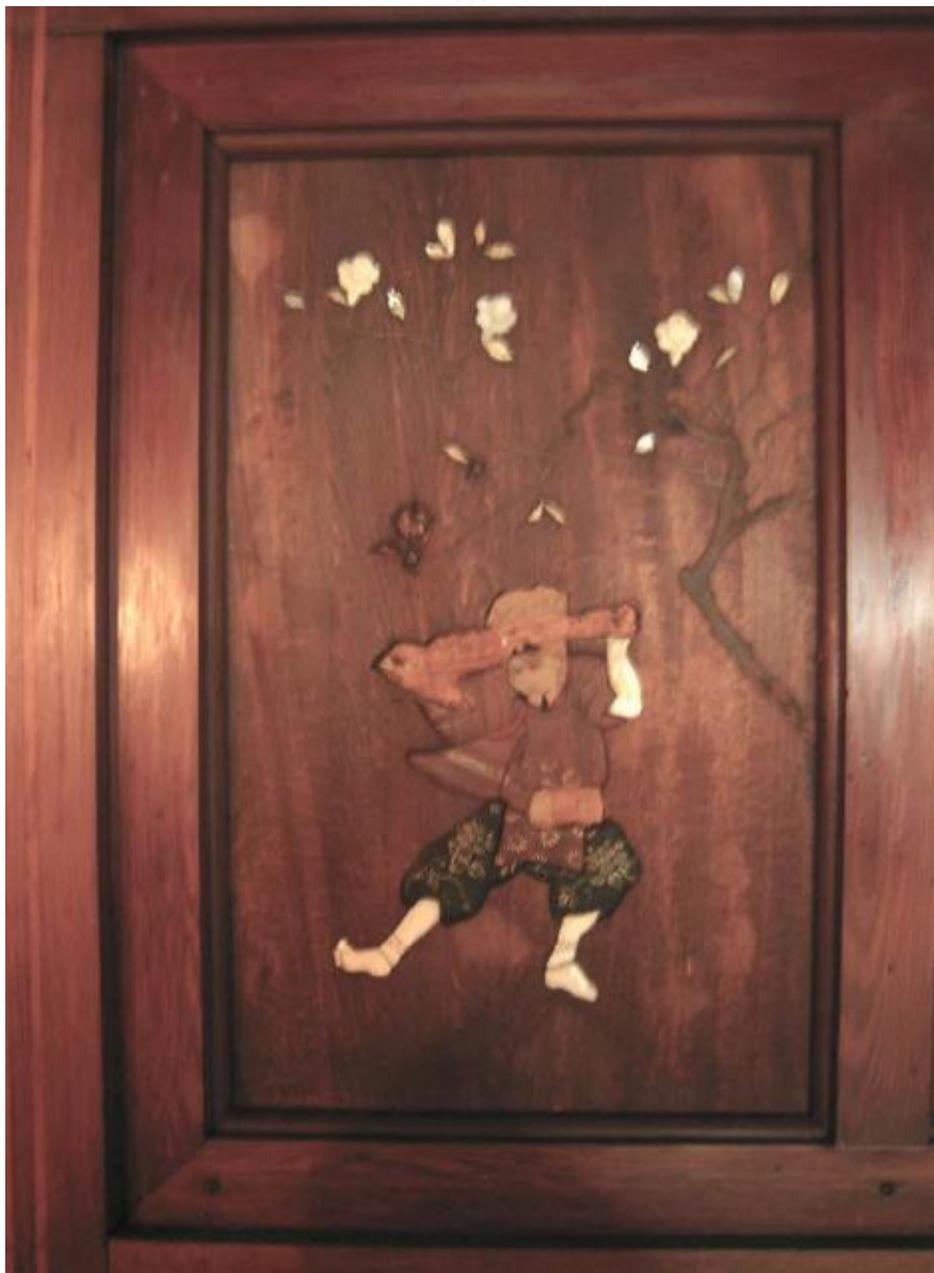


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Photo 16



Smyth-Fernwald House

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Photo 17

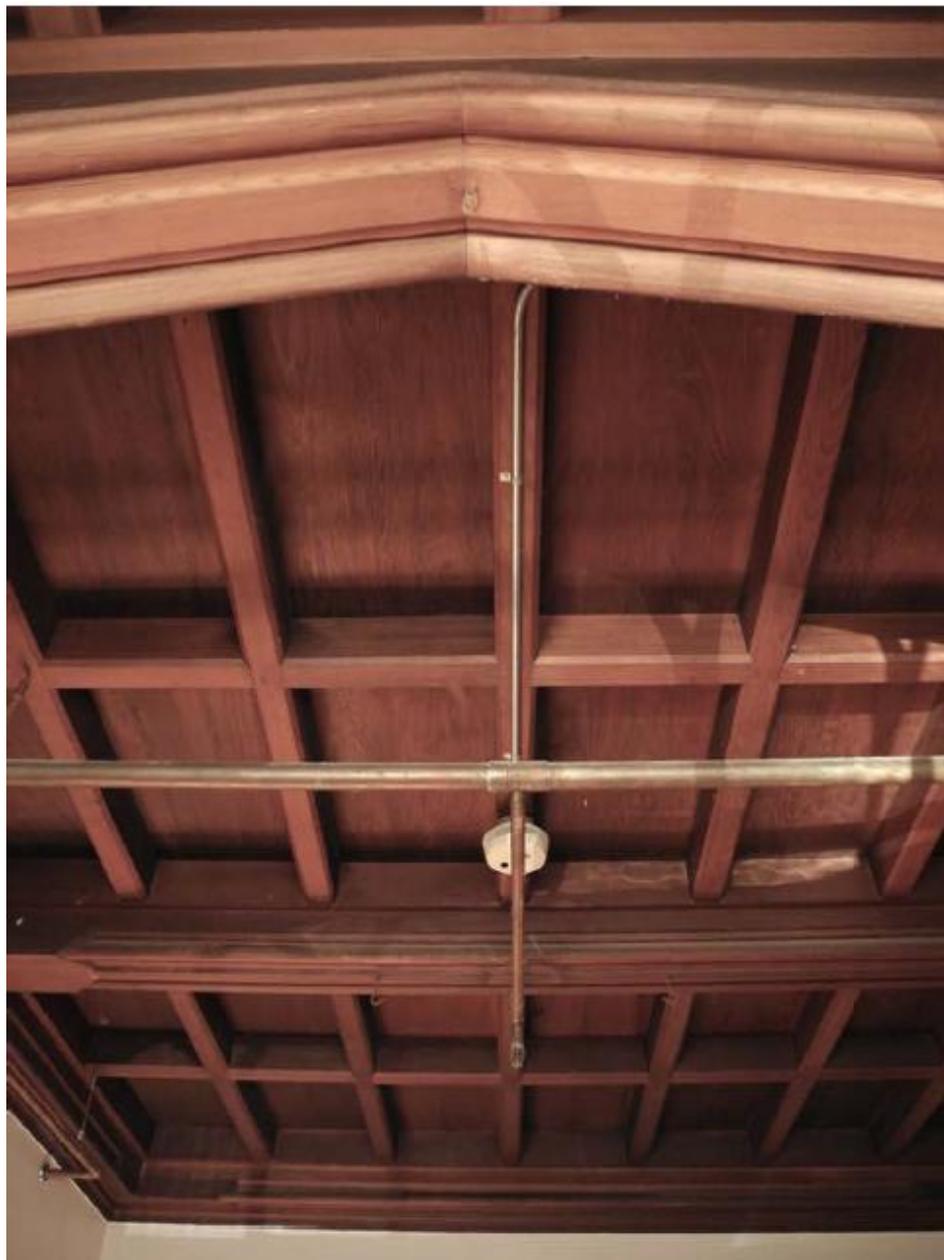


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Photo 18



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Photo 19



Photo 20



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Photo 21



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Photo 22



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Photo 23



Photo 24



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Photo 25



Smyth-Fernwald House

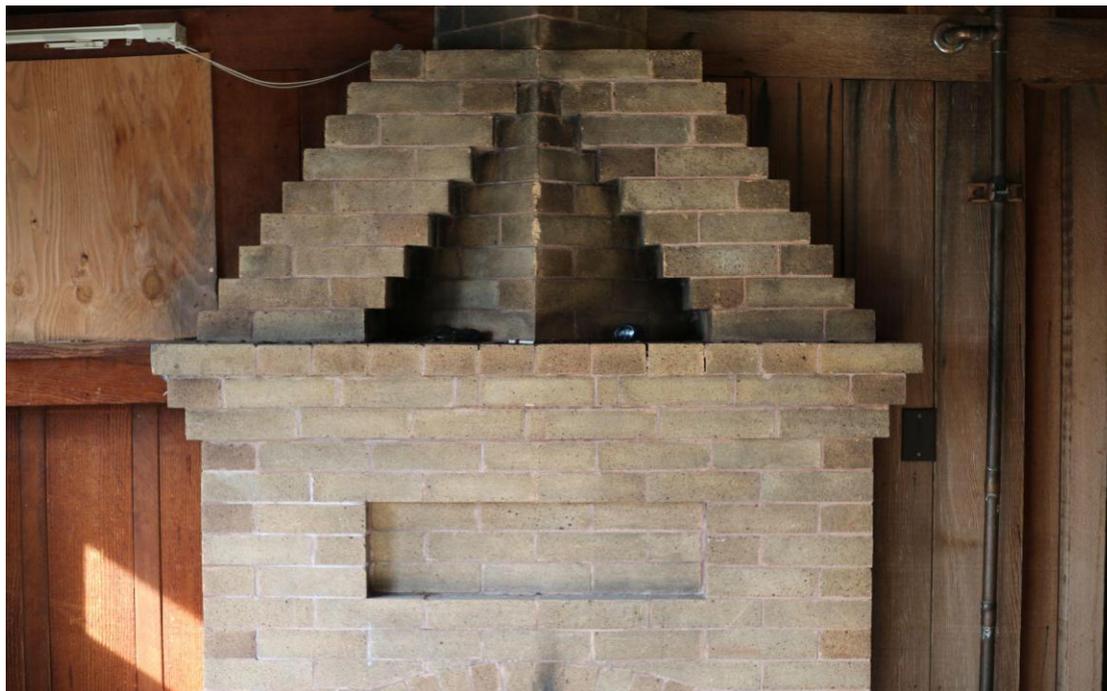
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Photo 26



Photo 27



Sections 9-end page 41

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 28



United States Department of the Interior
National Park Service / National Register of Historic Places Registration Form
NPS Form 10-900 OMB Control No. 1024-0018

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 29



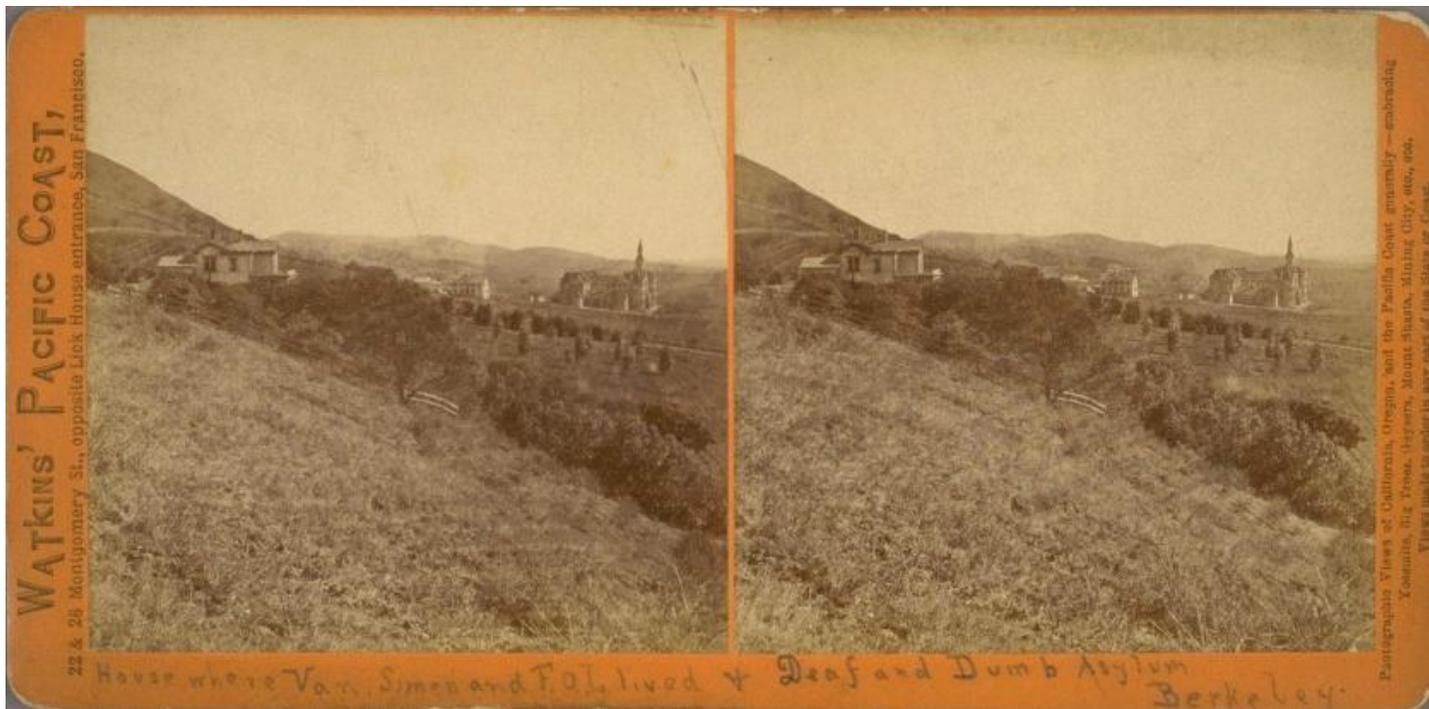
United States Department of the Interior
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NPS Form 10-900 OMB Control No. 1024-0018

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 30



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Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 31

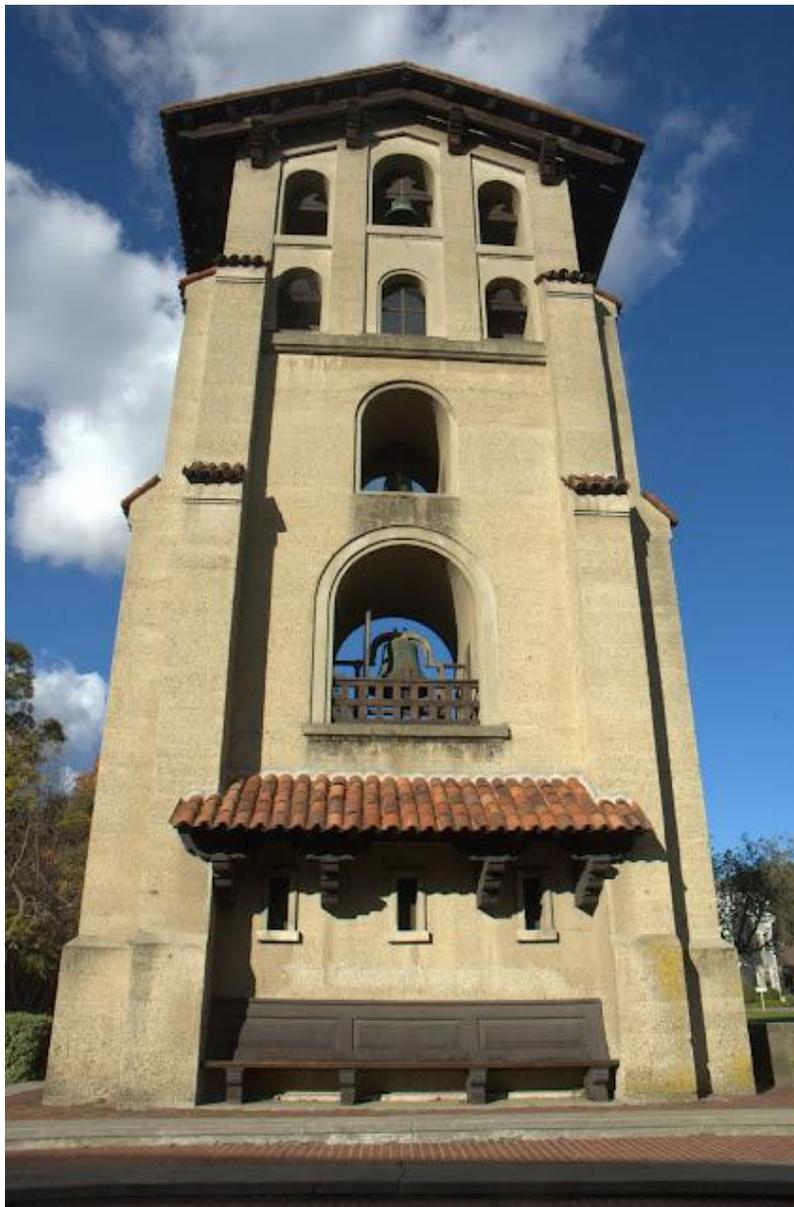


Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 32



Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 33



Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Photo 34

WRITE IN INK

APPLICATION FOR BUILDING PERMIT, No. 1287

Application is hereby made to the Building Inspector of the Town of Berkeley for permission to
for alterations and general repairs to
side of Fernwald street 200 feet North
of Dwight way Street

WRITE PLAINLY FULL DESCRIPTION OF WORK TO BE DONE

extension across front of building 8' x 16' - 12' 1/2"
extension across rear of building 8' x 16' - 16' High
Veranda north side 3' 6" x 28'
veranda South side 3' 6" x 28'
Deck across front 8' x 32' over old living room
floor beams in new extension 2' 10" - 16" center
space 8' between bearing, studs 4" and 4" x
center Building to be covered with cement plaster
Chimney of brick foundation of brick and concrete base
house to be replastered inside, Tower addition
16' x 16' ft 8' high roof steep gable roof shingles
alterations of plumbing and electrical
repainting exterior and interior

Estimated cost of work, \$4,500
Building now used as
Building to be used as: Dwelling
Name of Architect: Julia Morgan
Address: San Francisco Cal. Mendocino Ex-
Plans by: Julia Morgan
Address: Berkeley Exchange
Name of Builder: Fred Koch
Address: 1816 Baker St.
W. H. Smyth Owner
Address: Fernwald St Berkeley

THIS APPLICATION MUST BE FILLED OUT BY THE OWNER, ARCHITECT OR BUILDER
MAY 20 1911

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Tract Map



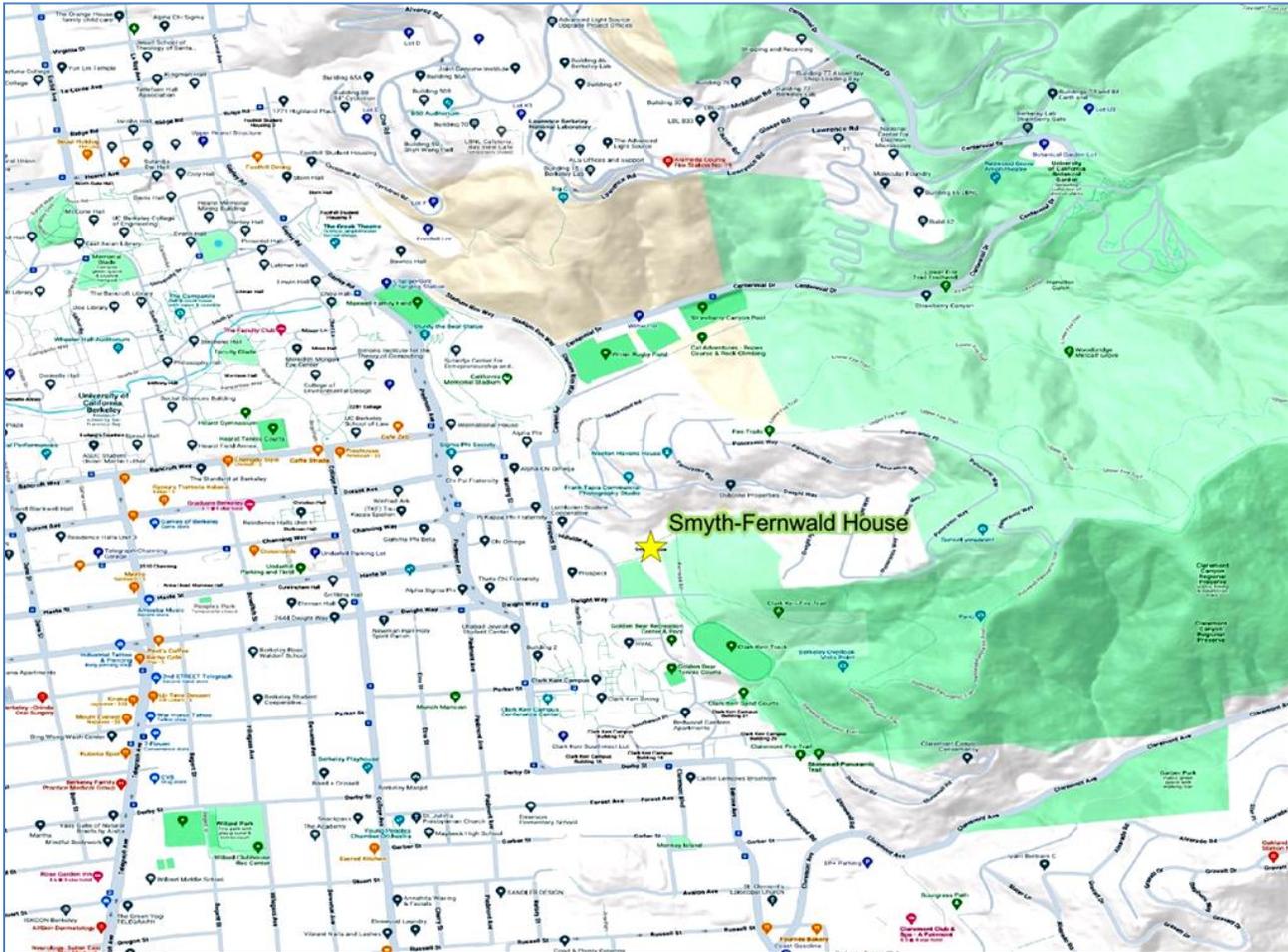
John Bernstein

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Vicinity Map



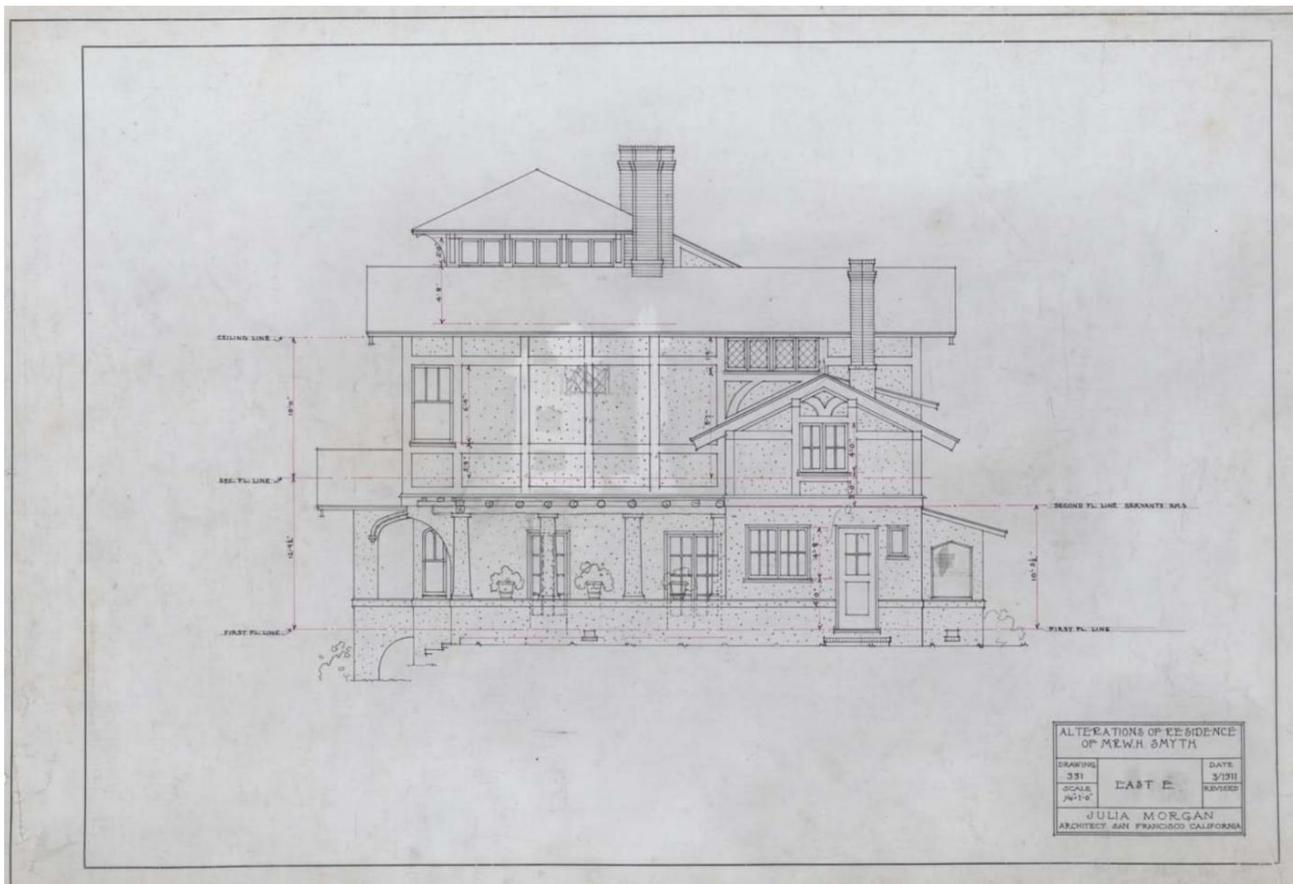
John Bernstein

Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

Architectural Drawings – Julia Morgan, 1911

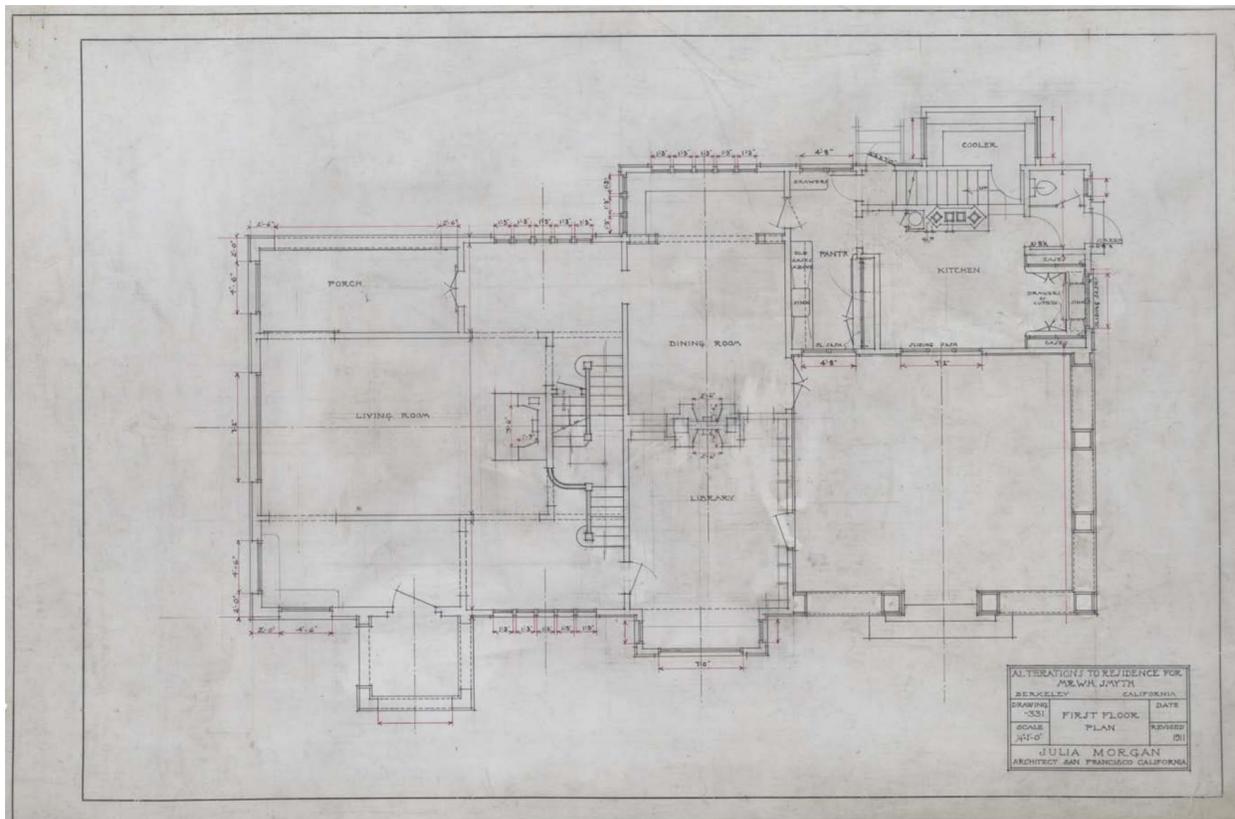


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Smyth-Fernwald House

Alameda County,
California
County and State

Name of Property

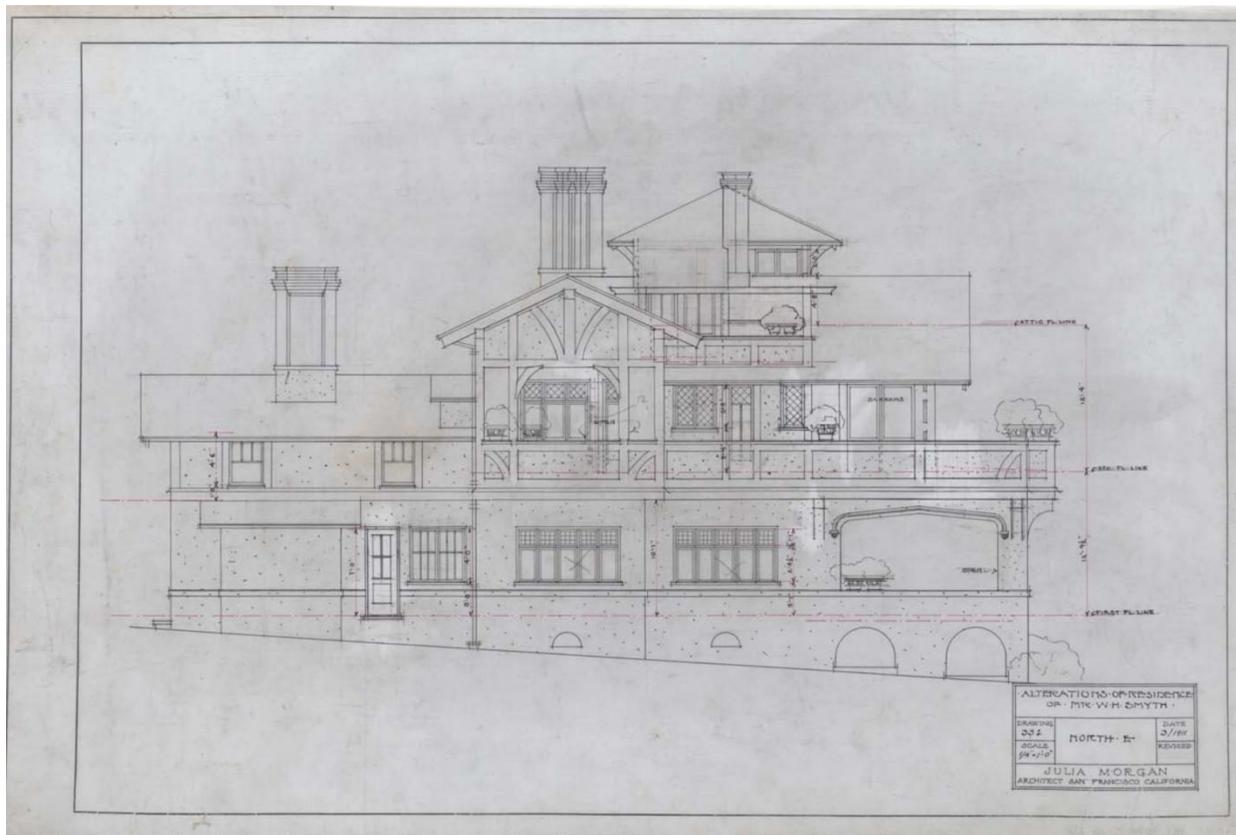


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Smyth-Fernwald House

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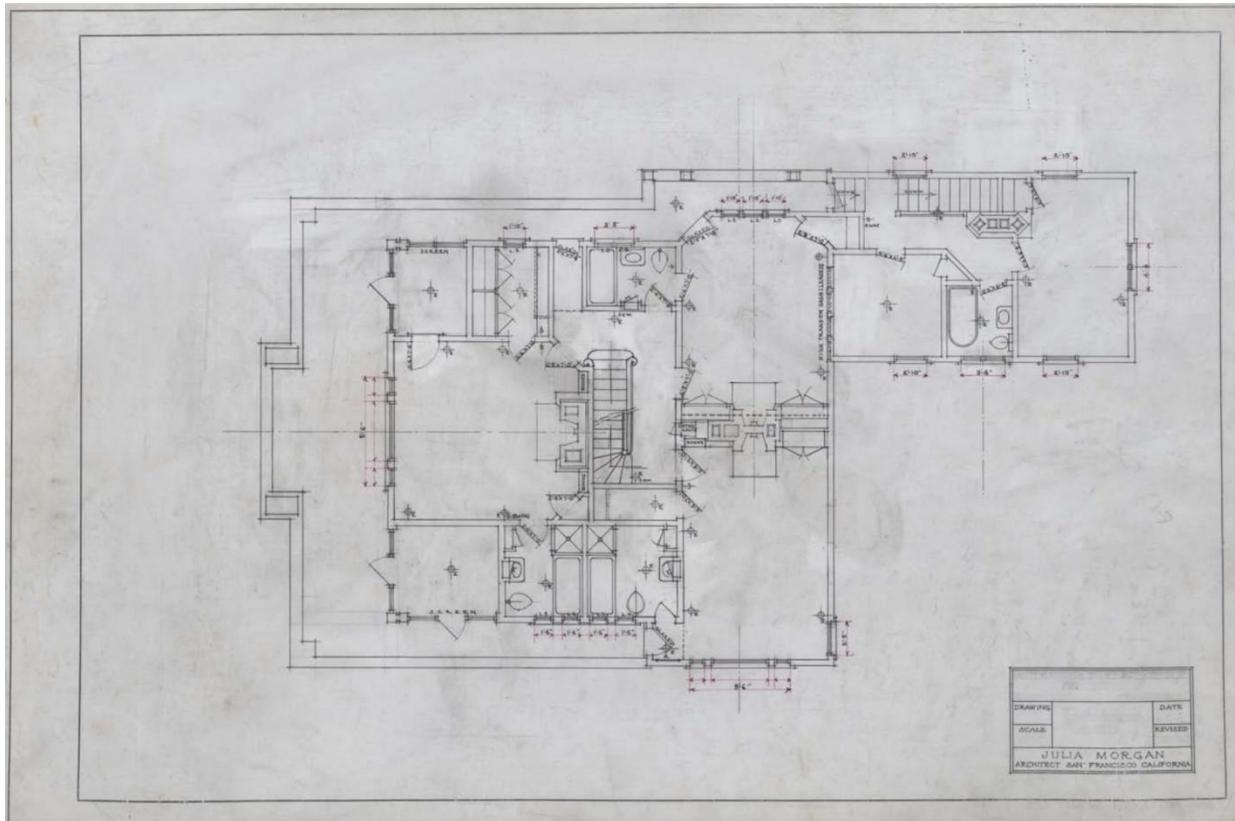


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Smyth-Fernwald House

Alameda County,
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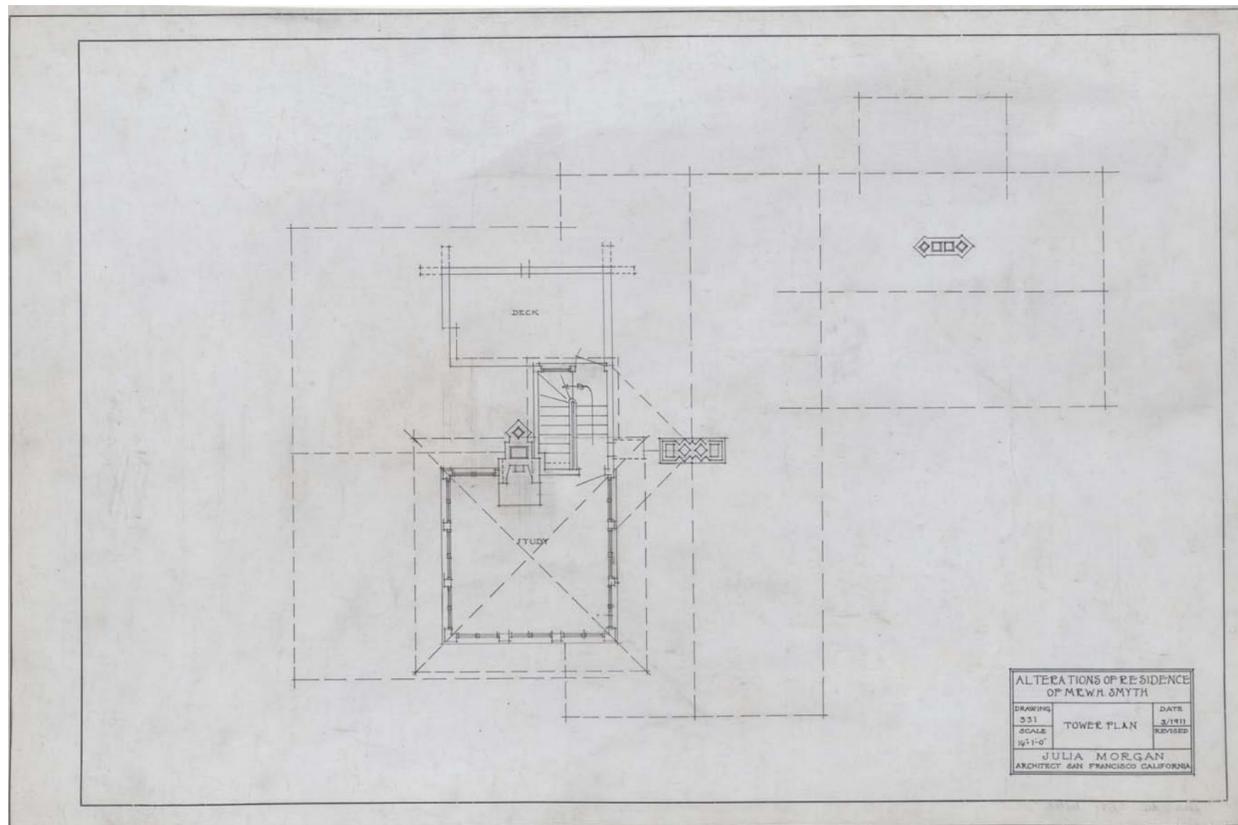


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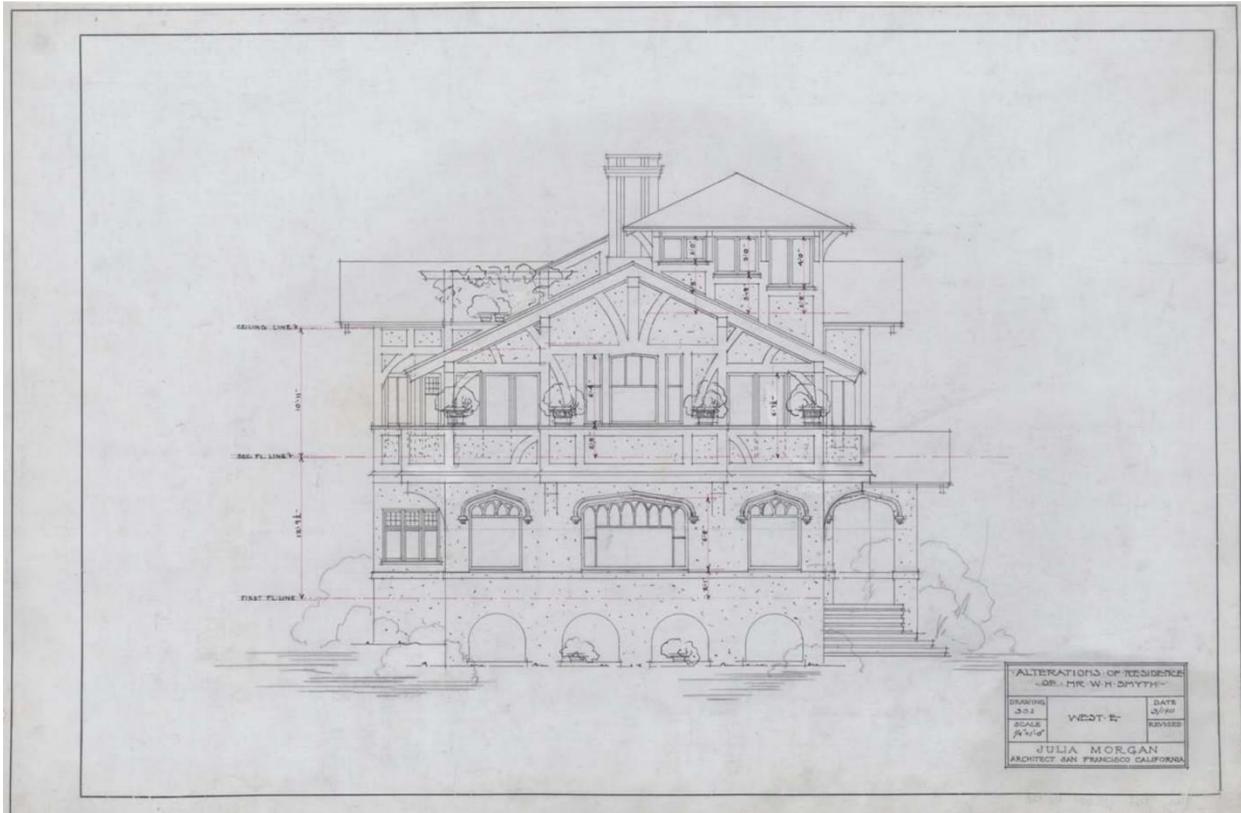


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Smyth-Fernwald House

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Name of Property



Paperwork Reduction Act Statement: This information is being collected for nominations 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.460 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Estimated Burden Statement: Public reporting burden for each response using this form is estimated to be between the Tier 1 and Tier 4 levels with the estimate of the time for each tier as follows: Tier 1 – 60-100 hours Tier 2 – 120 hours Tier 3 – 230 hours Tier 4 – 280 hours The above estimates include time for reviewing instructions, gathering and maintaining data, and preparing and transmitting nominations. Send comments regarding these estimates or any other aspect of the requirement(s) to the Service Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive Fort Collins, CO 80525.



Berkeley Police Department

INFORMATION CALENDAR
September 30, 2025

To: Honorable Mayor and Members of the City Council
 From: Paul Buddenhagen, City Manager
 Submitted by: Jennifer Louis, Chief of Police
 Subject: Audit Recommendation Status - Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's 2022 report *Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities* included twelve recommendations for Berkeley Police Department (BPD). As of the last update, ten of the twelve recommendations had been implemented. The two remaining recommendations, both related to staffing, have since been addressed through the comprehensive staffing assessment completed by Citygate Associates, LLC (Citygate).

The final Citygate report, delivered in September 2024, was shared with the Mayor, City Council, the Police Accountability Board (PAB), and the public via the Berkeley Police Transparency Hub. BPD has completed a thorough review of the 147-page report and has prioritized next steps to address the 74 key findings and 54 specific recommendations.

In consultation with the City Auditor's Office, and based on the progress detailed below, this audit is being closed.

Audit Recommendation 1.2 - Fill vacancies deemed necessary and/or reallocate staff pending the reimagining process and a determination of appropriate staffing levels.

Citygate's report included an analysis of staffing levels in patrol and other units across the department. In response, BPD realigned the Bike Team under the Community Services Bureau and fully implemented the Patrol CSO program. Three trained CSOs now handle low-risk calls, freeing sworn officers for higher-priority duties.

Audit Recommendation 2.3 - *Document the results of staffing assessments along with the assessment criteria. Incorporate results into staffing projections for budgetary decision making, including establishing a sufficient and appropriate overtime budget.*

Citygate's findings are integrated into the current budget and guide future staffing projections. While Citygate recommended 73 patrol officers, BPD will start the next timesheet with 62 officers as recruitment continues. The CSO program, expanded from 21 to 27 positions in the FY26 budget, supplements patrol staffing and handles low-risk calls without reducing sworn officer numbers, allowing officers to focus on beat health, special projects, and other priorities.

Additional Key Initiatives

BPD will continue evaluating and implementing additional Citygate recommendations as resources and staffing levels permit. Key upcoming initiatives include:

Use of Force Reporting Policy Review

BPD has a comprehensive review and update of our Use of Force reporting policy well underway and hopes to launch new edits soon. This is a critical area highlighted by Citygate, which suggested aligning our reporting thresholds for certain lower-level force incidents with common practices in comparable agencies, while ensuring full compliance with state and federal law and maintaining robust accountability. We are committed to a transparent process and will provide the PAB with advance notice before the implementation date so that their input can be considered on version edits.

Enhanced Online Reporting System

An updated online reporting system is in development. This initiative aims to provide a more convenient and accessible option for the public to report specific non-injury crimes and incidents. This will allow patrol officers to focus more time on high-priority calls, proactive policing, and community engagement. We are actively exploring the feasibility of additional categories of reportable incidents that can be submitted online to further improve efficiency and public service.

Real-Time Crime Analyst

To further operationalize Citygate's recommendations, BPD will soon be interviewing for a full-time Program Manager to lead the development and implementation of real-time analysis capabilities. This position will support both Patrol and Investigations by rapidly operationalizing data to provide actionable intelligence to officers in the field and detectives working active cases.

These initial steps, guided by the Citygate report, are aimed at optimizing resource allocation, enhancing community service, and improving operational efficiency. This foundational work is crucial as we continue to refine staffing levels and incorporate the Citygate assessment into future budgetary decision-making processes.

BACKGROUND

On March 3, 2022, the City Auditor's Office issued its audit, *Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities*¹, which contained 12 recommendations. This report serves as the final update on BPD's implementation progress. With this submission = and concurrence from the City Auditor's Office, the audit is now formally closed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

FISCAL IMPLICATIONS

The Citygate contract is authorized for up to \$200,000.00. The actual contract expenditure has been \$133,252.36.

CONTACT PERSON

Captain Kevin Schofield, Police Department, (510) 981-5815

ATTACHMENTS

1. Police Overtime Recommendation Table

¹ City Auditor's Office Overtime Audit (3/3/2022)
<https://berkeleyca.gov/sites/default/files/2022-04/Berkeley%20Police%20-%20Improvements%20Needed%20to%20Manage%20Overtime%20and%20Security%20Work%20for%20Outside%20Entities.pdf>

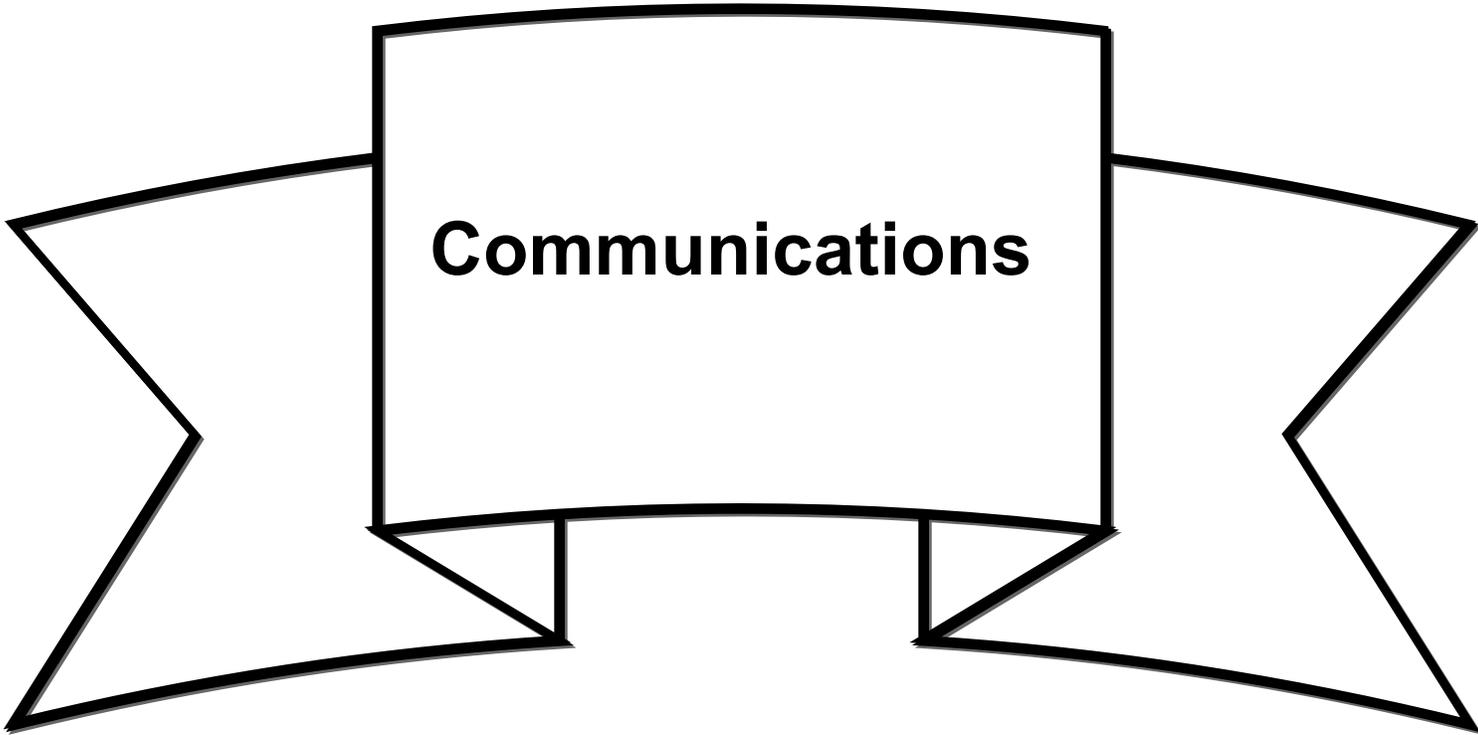
| Audit Title: Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities | | | | | |
|---|--|------------|------------------------|---|--|
| Issue Date: March 3rd, 2022 | | | | | |
| Finding | Recommendation | Department | Previous status update | Current status update | |
| Overtime is used to maintain minimum patrol staffing set by BPD. | 1.1 Collect and monitor data on how often compensatory time leads to additional backfill overtime and develop a plan to monitor it. | Police | Implemented | <u>Implemented:</u> BPD now has a formal process to monitor how often compensatory time leads to backfill overtime with data from the electronic staffing software. The Police Technology Unit will create a biannual report on this data to be reviewed by the Captain of the Support Services Division and the Office of the Chief. | |
| Overtime is used to maintain minimum patrol staffing set by BPD. | 1.2 Fill vacancies deemed necessary and/or reallocate staff pending the reimagining process and a determination of appropriate staffing levels. | Police | Partly Implemented | <u>Implemented:</u> Citygate's report included an analysis of staffing levels in patrol and other units across the department. In response, BPD realigned the Bike Team under the Community Services Bureau and fully implemented the Patrol CSO program. Three trained CSOs now handle low-risk calls, freeing sworn officers for higher-priority duties. | |
| Minimum staffing levels in BPD's Patrol Unit could cause unnecessary overtime if not regularly updated. | 2.1 Establish a procedure to regularly assess minimum staffing and overall staffing needs of the department. This process should document and incorporate criteria to assess staffing levels, such as calls for service, other workload, community input, and other relevant factors. As BPD prepares for the rollout of a new software system, BPD should consider how to best align the program's capabilities with this assessment process. | Police | Implemented | <u>Implemented:</u> BPD has created a written protocol to assess minimum staffing and department staffing needs biannually. The protocol incorporates criteria such as calls for service and shift availability. The protocol also considers allocation of police resources geographically, i.e. beat alignment. | |

| | | | | | |
|--|------------|--|---------------|---------------------------|--|
| <p>Minimum staffing levels in BPD’s Patrol Unit could cause unnecessary overtime if not regularly updated.</p> | <p>2.2</p> | <p>Document and define the Patrol Unit’s minimum staffing levels in a publicly assessible format.</p> | <p>Police</p> | <p>Implemented</p> | <p><u>Implemented:</u> This information has been placed on the BPD webpage. The button “current officer shift assignments” links to a timesheet with officer assignments. Information can be viewed at https://berkeleyca.gov/safety-health/police/community-liaisons.</p> |
| <p>Minimum staffing levels in BPD’s Patrol Unit could cause unnecessary overtime if not regularly updated.</p> | <p>2.3</p> | <p>Document the results of staffing assessments along with the assessment criteria. Incorporate results into staffing projections for budgetary decision making, including establishing a sufficient and appropriate overtime budget.</p> | <p>Police</p> | <p>Partly Implemented</p> | <p><u>Implemented:</u> Citygate’s findings are integrated into the current budget and guide future staffing projections. While Citygate recommended 73 patrol officers, BPD will start the next timesheet with 62 officers as recruitment continues. The CSO program, expanded from 21 to 27 positions in the FY26 budget, supplements patrol staffing and handles low-risk calls without reducing sworn officer numbers, allowing officers to focus on beat health, special projects, and other priorities.</p> |
| <p>Officers work excessive overtime, increasing health and safety risks.</p> | <p>3.1</p> | <p>Update the department overtime policy to address the fact that there currently is no limit to the number of consecutive days worked and determine the appropriate limit for overtime that is enforceable with the goal of avoiding officer fatigue. The department may examine other jurisdictions’ overtime limits as possible criteria.</p> | <p>Police</p> | <p>Implemented</p> | <p><u>Implemented:</u> BPD policy 1015 has been updated to include a limit on the number of consecutive days worked. The policy also includes limitations on hours worked. This updated policy was issued on 8/23/23.</p> |

| | | | | | |
|--|------------|--|---------------|--------------------|--|
| <p>Officers work excessive overtime, increasing health and safety risks.</p> | <p>3.2</p> | <p>Work to implement a staffing software solution that integrates overtime management and scheduling software. Develop management reports that provide timely, accurate, and complete information on overtime usage. Develop a process for filling overtime shifts on a voluntary and mandatory basis, including supervisor approval. Build in warnings for when an individual is approaching overtime limits and an approval process for allowing individuals to exceed limits when deemed necessary according to the policy.</p> | <p>Police</p> | <p>Implemented</p> | <p><u>Implemented:</u> The CareWare electronic staffing software solution has recently been implemented to monitor staffing, overtime and time off, as well as shift trades/swaps. This includes a warning notice within the system that someone could be working more than the allowed number of hours. This warning requires acknowledgement by the user allowing the hours.</p> |
|--|------------|--|---------------|--------------------|--|

| | | | | | |
|--|------------|--|---------------|--------------------|---|
| <p>BPD has no contracts for overtime security with outside entities.</p> | <p>4.1</p> | <p>Update A.R. 2.10 and other department policies to explicitly include guidance around department agreements for work for outside entities, which is paid for by reimbursements to the City from the outside entities. Internal procedures should include appropriate criteria to identify and document the benefit to the City gained by work for outside entity agreements, and to allocate resources in a way that does not negatively impact City operations. Additionally, BPD should document their criteria for when officers are not available or eligible for work for outside entities.</p> | <p>Police</p> | <p>Implemented</p> | <p><u>Implemented:</u> BPD has finalized Policy 1043 and will begin using the newly created contracts with outside entities.</p> |
| <p>BPD has no contracts for overtime security with outside entities.</p> | <p>4.2</p> | <p>In consultation with the City Attorney, create contracts with outside entities in compliance with City policies and applicable laws.</p> | <p>Police</p> | <p>Implemented</p> | <p><u>Implemented:</u> Service agreements for work with outside entities are being executed and are available on the Police Department's website: https://berkeleyca.gov/sites/default/files/documents/BPD%20Service%20Agreement-final.pdf</p> |

| | | | | | |
|---|-----|---|--------|-------------|---|
| BPD has no contracts for overtime security with outside entities. | 4.3 | Develop an application for BPD's services that is publicly available and accessible online to any interested party. Set pay uniformly according to rank and hourly rate and include a reasonable fee that covers the expenses of administering work for outside entities including workers compensation, fuel, use of equipment, and any other actual or potential costs to the City. | Police | Implemented | <p><u>Implemented:</u> The application and service agreement have been added to the BPD website on the Community Liaisons page under 'Related Documents'. BPD will be working with their web management team to add it to the main City of Berkeley website in the 'Special Events' section.</p> <p>https://berkeleyca.gov/safety-health/police/community-liaisons</p> <p>A 10% fee was added on top of employee fees to offset costs associated with coordinating special events, including planning and staff time. 10% is a standard administrative fee at the state level and is standard administrative fee for grant funding we receive. We want to be consistent with department administrative fees throughout BPD. The police department will adjust the administrative fee in the future as needs dictate.</p> |
| BPD has no contracts for overtime security with outside entities. | 4.4 | BPD should reconcile invoices with the amounts received for work with outside entities at regular intervals. BPD should also implement procedures to check invoices for errors prior to billing outside entities. | Police | Implemented | <p><u>Implemented:</u> BPD's Admin & Fiscal Services Unit developed a written procedure for the 'Outside Entity Billing Process'. This will ensure consistency and accountability in billing and tracking.</p> |
| BPD has no contracts for overtime security with outside entities. | 4.5 | Explore ways to clearly account for different funds to track revenues and expenses. | Police | Implemented | <p><u>Implemented:</u> BPD has formalized a written protocol for an Outside Entity Billing Process. This document reflects eleven needed steps from billing through the depositing of funds with the Finance Department and clearly identifies a method to track revenues and expenses.</p> |



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
(510) 981-6900

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