



**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

MONDAY, OCTOBER 26, 2020

2:30 P.M.

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Ben Bartlett

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Agenda & Rules Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/83948920765>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **839 4892 0765**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Agenda & Rules Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment

Review of Agendas

- 1. Approval of Minutes: October 13, 2020**
- 2. Review and Approve Draft Agenda:**
 - a. 11/10/20 – 6:00 p.m. Regular City Council Meeting
- 3. Selection of Item for the Berkeley Considers Online Engagement Portal**
- 4. Adjournments In Memory**

Scheduling

- 5. Council Worksessions Schedule**
- 6. Council Referrals to Agenda Committee for Scheduling**
- 7. Land Use Calendar**

Referred Items for Review

- 8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies**

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 9. Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

- 10. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12 *(Item contains supplemental material)***
From: Fair Campaign Practices Commission
Referred: July 28, 2020
Due: January 29, 2021
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Unscheduled Items

11. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment – Next Meeting Monday, November 2, 2020

Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items

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

If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.



COMMUNICATION ACCESS INFORMATION:

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

* * *

I hereby certify that the agenda for this special 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 October 22, 2020.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING MINUTES**

**TUESDAY, OCTOBER 13, 2020
2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf
Alternate: Councilmember Ben Bartlett

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

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Roll Call: 2:33 p.m. All present.

Public Comment – 2 speakers

Review of Agendas

1. Approval of Minutes: September 29, 2020

Action: M/S/C (Wengraf/Hahn) to approve the minutes of 9/29/20.

Vote: All Ayes.

2. Review and Approve Draft Agenda:

a. 10/27/20 – 6:00 p.m. Regular City Council Meeting

Action: M/S/C (Wengraf/Hahn) to approve the agenda of the 10/27/2020 meeting with the changes noted below.

- *Item 15 UC Theater (Arreguin) – Councilmember Wengraf added as a co-sponsor*
- *Item 16 Clean Streets (Bartlett) – Councilmember Harrison added as a co-sponsor*
- *Item 17 Traffic Circles (Harrison) – Councilmember Bartlett added as a co-sponsor*
- *Item 19a/b Smoke Free Multi Unit Housing – Moved to Consent Calendar*
- *Item 20a/b Smoke Free Multi Unit Housing – Moved to Consent Calendar*
- *Item 21 Treatment of Horses (Arreguin) – Councilmembers Hahn and Wengraf added as co-sponsors; Moved to 10/27 Consent Calendar*
- *Item 22 Rights of Nature (Davila) – Referred to Facilities, Infrastructure, Transportation, Environment and Sustainability Committee*
- *Item 23 Fire Extinguishers (Davila) – Referred to Public Safety Committee*
- *Item 24 Conversion of 62nd Street (Bartlett) – Moved to 10/27 Consent Calendar*
- *Item 25 Berkeley Mutual Aid (Hahn) – Councilmember Harrison added as a co-sponsor; moved to 10/27 Consent Calendar*
- *Item 26 Outdoor Dining (Droste) – Councilmembers Harrison added as a co-sponsor; referred to Facilities, Infrastructure, Transportation, Environment and Sustainability Committee with a request to analyze of the impact on parking and parking revenues*

Vote: All Ayes.

3. Selection of Item for the Berkeley Considers Online Engagement Portal

- None Selected

4. Adjournments In Memory – None

Scheduling

5. Council Worksessions Schedule – received and filed

6. Council Referrals to Agenda Committee for Scheduling

Action: Revised material received from Councilmember Harrison. M/S/C (Arreguin/Wengraf) to schedule Item 2 on the City's Energy Plan for the 10/27/2020 Action Calendar.

Vote: All Ayes.

7. Land Use Calendar

- The Mayor called a special meeting on January 21, 2021 to hear pending land use appeals.

Referred Items for Review

8. Discussion Regarding Impact of COVID-19 (novel coronavirus) on Meetings of Legislative Bodies

Action: 2 speakers. Discussion held. M/S/C (Arreguin/Wengraf) to endorse the City Manager's proposal related to the meetings of City boards and commissions as follows: All commissions may meet once before the end of 2020 to develop and finalize the commission work plan for 2021, and to analyze any Council referrals to the commission related to the COVID-19 pandemic. If a second meeting is needed, the City Manager may approve such meeting according to the limitations listed.

Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 9. Commission Reorganization for Post-COVID19 Budget Recovery**
From: Councilmember Droste (Author), Councilmember Robinson (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred: June 15, 2020
Due: November 30, 2020
Recommendation: 1. Reorganize existing commissions with the goal of achieving 20 total commissions; 2. Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions; 3. Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions; 4. Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.
Financial Implications: See report
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Action: Continued to next meeting under Unscheduled Items.
- 10. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12 (Item contains supplemental material)**
From: Fair Campaign Practices Commission
Referred: July 28, 2020
Due: January 29, 2021
Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Action: Continued to next meeting under Unscheduled Items.

Unscheduled Items

11. Relinquishments and grants from Councilmembers' office budgets

From: Open Government Commission

Referred: August 31, 2020

Due: February 15, 2021

Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

Financial Implications: None

Contact: Sam Harvey, Commission Secretary, (510) 981-6950

Action: Continued to next meeting under Unscheduled Items.

Items for Future Agendas

- Discussion of items to be added to future agendas - None

Adjournment

Action: M/S/C (Wengraf/Hahn) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 3:43 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on October 13, 2020.

Mark Numainville
City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

DRAFT AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, November 10, 2020

6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
 DISTRICT 2 – CHERYL DAVILA
 DISTRICT 3 – BEN BARTLETT
 DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
 DISTRICT 6 – SUSAN WENGRAF
 DISTRICT 7 – RIGEL ROBINSON
 DISTRICT 8 – LORI DROSTE

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Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <<INSERT URL HERE>>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: <<INSERT MEETING ID HERE>>. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

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 for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

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

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

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

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

Consent Calendar

- 1. Memorandum of Understanding for a Winter Relief Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$25,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2021.
Financial Implications:
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
- 2. Memorandum of Understanding: Berkeley Fire Fighters Association, Local 1227**
From: City Manager
Recommendation: Adopt a Resolution approving an one (1) year extension to Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Fire Fighters Association (hereafter referred to as the "Union") with a term of July 1, 2020 through June 30, 2021 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the extended MOU with no changes in compensation or terms except for economic items related to the COVID-19 epidemic items within the mandatory scope of bargaining including ballot measures adopted by the voters to permit additional time to assess the financial effects of the COVID-19 epidemic. Also, authorize the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with Council Direction, the tentative agreement and conforming to legal requirements.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 3. Lease for 5385 Cazadero Hwy, Cazadero, CA 95421 – Cazadero Performing Arts Camp (CPAC)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Cazadero Performing Arts Camp, at 5385 Cazadero Hwy, Cazadero, CA 95421 for a term of twenty-five (25) years, with an option to renew for ten (10) years.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

4. Referral Response: Including Climate Impacts in City Council Reports

From: City Manager

Recommendation: Request that the City Manager update the templates and associated training materials to add “Climate Impacts” in the “Environmental Sustainability” section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include “climate impacts” in addition to environmental sustainability.

Financial Implications: See report

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

5. Acceptance of \$20,000 Grant for utility bill management software analysis

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to accept a \$20,000 grant award from the Energy Council through East Bay Energy Watch Partnership, to support staff analysis of online utility bill database management services.

Financial Implications: See report

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

6. Purchase Order: Pape Machinery, Inc. for One (1) John Deere 310SL Backhoe Loader

From: City Manager

Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell Contract No. 032119-JDC and authorizing the City Manager to execute a purchase order for one 2020 John Deere 310SL Backhoe Loader with Pape Machinery, Inc. in an amount not to exceed \$150,000.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

7. Purchase Order: Altec Industries, Inc. for One Aerial Bucket Truck

From: City Manager

Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcwell contract bid procedures, and authorizing the City Manager to execute a purchase order for one (1) aerial bucket truck with Altec Industries, Inc. in an amount not to exceed \$200,000.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

Council Consent Calendar

8. Berkeley Holiday Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin to the Berkeley Holiday Fund's annual campaign with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

9. Open Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations and provide the ability for our community to shower during the COVID 19 pandemic *(Item contains revised materials. Reviewed by the Budget & Finance Committee)*

From: Councilmember Davila (Author)

Recommendation: Direct the City Manager to open the Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.

(On October 8, 2020, the Budget & Finance Committee took action to send the item to Council with a qualified positive recommendation acknowledging that the City Manager is already implementing a shower program and to thank the City Manager for initiating this program and to encourage its continued operation during the COVID emergency. Vote: All Ayes.)

Financial Implications: \$270,100

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

10. **Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents** (*Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*)
From: Councilmember Harrison (Author)
Recommendation: Refer to the City Manager the design of a Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents as a companion to the Council referral to expand the Seismic Transfer Tax Rebate Program to include efficiency and electrification retrofit measures.
(On October 7, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to move recommendation two to "Refer to the City Manager the design of a Companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements for low income residents" to the City Council with a positive recommendation. Vote: All Ayes.)
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. 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.

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

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

Action Calendar – Old Business

11. **Resumption of Fees at Oregon Park Senior Apartments** (*Continued from October 13, 2020*)
From: City Manager
Recommendation:
Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – New Business

12. Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body-Worn Cameras, and the Street-Level Imagery Project

From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900, Dave White, City Manager's Office, (510) 981-7000

Action Calendar – Policy Committee Track Items

13. Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street
From: Mayor Arreguin (Author)

Recommendation: Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action Calendar – Policy Committee Track Items

14. **Implement Protocols for managing the City Council Meetings on Zoom** **From: Councilmember Davila (Author)**

Recommendation: Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

A) Gallery view showing the list of all participants and attendees; B) Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking; C) Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded; D) The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order; E) Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off; F) Allow chat and reactions capabilities for attendees and participants; G) The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

15. **Consider Fire Safety Options for Fire Pit at Codornices Park** **From: Councilmember Wengraf (Author)**

Recommendation: Referral to the Parks & Waterfront Commission to consider safety options regarding the future of the fire pit at Codornices Park. Please consider

1) Complete removal of fire pit or 2) Manufacture of a cover that can be secured and locked.

Financial Implications: See report

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Public Comment – Items Not Listed on the Agenda

Adjournment

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

public hearing or prior to the close of the last public hearing on the project.

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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 posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

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



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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Office of the Mayor

02a.08

CONSENT CALENDAR

November 10, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Berkeley Holiday Fund: 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 Mayor Arreguín to the Berkeley Holiday Fund's annual campaign with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguín and any other Councilmembers who would like to contribute.

BACKGROUND

The Berkeley Holiday Fund has helped make the holiday season happier for hundreds of Berkeley's neediest residents for 107 years. An all-volunteer organization, the Berkeley Holiday Fund has been partnering with 29 Berkeley service agencies, such as the Center for Elder Independence, the YMCA, Berkeley Food and Housing Project, and the Berkeley Health Department. By keeping operating costs to a minimum, the Berkeley Holiday Fund ensures that all contributions go directly to help those who need it the most. Last year, they were able to bring a little cheer into the lives of over 1,000 Berkeley citizens distributing over \$85,000. This year, with the onset of COVID-19, they have expanded their Emergency Fund to offer cash assistance to families and individuals that their partner agencies have identified as suffering financial hardship due to COVID-19 and the Shelter in Place Orders.

The Mayor's office has actively participated in this program for over 25 years by providing application cards and first class postage to Berkeley Holiday Fund recipients. This year the Berkeley Holiday Fund anticipates distributing over 1,000 request forms. This item requests the City Council approve an expenditure, not to exceed \$500 of funds from the from the Mayor's office budget to cover reproduction costs and postage.

FINANCIAL IMPLICATIONS

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

ENVIRONMENTAL SUSTAINABILITY

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

Berkeley Holiday Fund 2020

CONSENT CALENDAR  
November 10, 2020

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Letter from Berkeley Holiday Fund



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

BERKELEY HOLIDAY FUND 2020

WHEREAS, the Berkeley Holiday Fund has been making small grants to Berkeley's neediest citizens for 107 years; and

WHEREAS, last year, the Berkeley Holiday Fund distributed about \$85,000 to over 1,000 Berkeley residents; and

WHEREAS, Berkeley Holiday Fund partners with 29 Berkeley service agencies including the Center for Elder Independence, the YMCA, Berkeley Food and Housing Project, and the Berkeley Health Department; and

WHEREAS, this year, the Berkeley Holiday Fund has expanded their Emergency Fund to offer cash assistance to families and individuals that their partner agencies have identified as suffering financial hardship due to COVID-19 and the Shelter in Place Orders; and

WHEREAS, the Berkeley Mayor's Office has supported the Berkeley Holiday Fund's efforts for over 25 years by reproducing request forms and providing first class postage costs; and; and

WHEREAS, Mayor Arreguin has surplus funds in his office expenditure account; and

WHEREAS, the Berkeley Holiday Fund seeks funds in the amount of \$500 to provide application cards and first class postage to Berkeley Holiday Fund recipients; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of providing services to low income residents of the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$500 per office shall be granted to the Berkeley Holiday Fund for providing application cards and first class postage to Berkeley Holiday Fund recipients.



# BERKELEY HOLIDAY FUND

Post Office Box 9779 ♦ Berkeley, California 94709

www.BerkeleyHolidayFund.org

HONORARY CHAIRPERSON  
Jesse Arreguin, Mayor of Berkeley

September 21, 2020

EXECUTIVE BOARD  
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The Honorable Jesse Arreguin  
Mayor of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Dear Mayor Arreguin:

SPONSORS

Schuyler and Susie Bailey  
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Narsai and Venus David  
Cheryl Davila  
Patricia Dechow and Richard Sloan  
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Bruce and Teddy Schwab  
Margaret and Contee Seely  
Robert Smith and Janet Huseby  
Timothy Stokes and Andrea Lewis  
Guy Tiphane  
Susan Wengraf  
Kris Worthington  
E. William and Mary Alice Yund

On behalf of the Board of the Berkeley Holiday Fund, I want to thank the Mayor's office for its continuing, generous support for the Fund's annual disbursement of holiday gifts to Berkeley's neediest citizens and to thank you personally for serving as the Honorary Chair Person of the Fund. For 107 years the Fund has solicited donations from the citizens of Berkeley and now partners with 29 local social service agencies to identify Berkeley citizens in need of help during the holidays.

Last year, with your help we were able to offer much needed cheer during the holiday season by sending checks totaling almost \$85,000 and to more than 1,000 individuals and families in Berkeley. This year due to the coronavirus crisis, we have expanded our Emergency Fund to offer cash assistance to families and individuals our partner agencies identify as suffering hardship due to Covid-19 or Shelter-In-Place orders.

We are requesting that you continue your longstanding support for our efforts. For at least the last twenty-five years the Mayor's office has provided assistance by funding our outreach to our partner agencies for referrals and by providing first class stamps to mail the checks to recipients. Since the Holiday Fund is an all volunteer organization, this much appreciated support reduces our costs and assures that the maximum amount goes to the recipients.

We are grateful for your support of the Berkeley Holiday Fund as our Honorary Chairman and the support of the City Council members as Sponsors.

This year we anticipate distributing over 1,000 cards to the agencies and needing first class postage for about 950 letters (this figure includes the 501(c) 3 letters we send to donors acknowledging their tax free contributions). While we fund every request we receive, the number of requests from agencies varies from year to year, and we only send one check to individuals or families recommended by multiple agencies.

Since this expenditure requires Council approval, we are formally requesting \$500 in support and are asking for your help in obtaining that approval.

In past years some council members have added funds from their office accounts. We deeply appreciate their support.

Thank you again for all of the support you have provided in the past to this truly unique Berkeley institution.

Regards,

Andrew T. Williams  
Co-Chairperson



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

**Subject: Open Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations and provide the ability for our community to shower during the COVID 19 pandemic.**

~~Subject: Open West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations, and provide the ability for our community to shower during the COVID 19 Pandemic.~~

RECOMMENDATION

**Direct the City Manager to open the Pathways (including laundry services), West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.**

~~Direct the City Manager to open the West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King pool) pool will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.~~

POLICY COMMITTEE RECOMMENDATION

On October 8, 2020, the Budget & Finance Committee took action M/S/C (Arreguin/Droste) to send the item to Council with a qualified positive recommendation acknowledging that the City Manager is already implementing a shower program and to thank the City Manager for initiating this program and to encourage its continued operation during the COVID emergency. Vote: All Ayes.



## FINANCIAL IMPLICATIONS

To operate a year-round shower program that duplicates the program at the Willard Pool would cost to establish a shower program would be approximately \$270,100 plus for the two locations.

~~To operate a year-round shower program that duplicates the program at the Willard Pool would cost to establish a shower program would be approximately \$270,100 for both locations.~~

## BACKGROUND

Berkeley, now impacted by the COVID19 pandemic crisis, a housing affordability crisis, and a homelessness crisis. COVID 19 requires one to have good personal hygiene and washing one's hands multiple times during the day for 20+ seconds, wiping surfaces, and enhanced cleanliness. Currently, there are no shower programs in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers. The contract with Project WeHope / Dignity on Wheels that provides homeless individual access to clean showers, laundry service and bathroom facilities is pending. Therefore, Project WeHope / Dignity on Wheels is not available at this time. We are in a pandemic which requires ways for our community to be cleaner to prevent further community spread transmissions.

~~The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc. Currently, there is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers. The contract with Project WeHope / Dignity on Wheels that provides homeless individual access to clean showers, laundry service and bathroom facilities is pending. Therefore, Project WeHope / Dignity on Wheels is not available at this time. We are in a pandemic which requires ways for our community to be cleaner to prevent further community transmissions.~~

The Willard Shower program is operated by the Parks, Recreation and Waterfront Department (PRW) at the Willard Recreation Administration office, 2701 Telegraph Avenue. The Telegraph location is not convenient for the curbside community in West and South Berkeley. Pathways, West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location.

~~The Willard Shower program is operated by the Parks, Recreation and Waterfront Department (PRW) at the Willard Recreation Administration office, 2701 Telegraph Avenue. The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location.~~

Pathways should open their showers and laundry facilities to be utilized, as well during the COVID 19 pandemic.

In January 2018, the City Council considered Council Item<sup>14</sup>. "Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool". Months later, the City Manager provided a response <sup>2</sup> to the City Council in June 2018, where it identified the cost to establish a shower program similar to the Willard Shower Program at West Campus pool. The COVID 19 Pandemic is upon us we must

do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.

~~In January 2018, the City Council considered Council Item <sup>1</sup>"Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool". Months later, the City Manager provided a response <sup>2</sup>to the City Council in June 2018, where it identified the cost to establish a shower program similar to the Willard Shower Program at West Campus pool. The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.~~

#### ENVIRONMENTAL SUSTAINABILITY

Access to the West Campus pool and Martin Luther King Jr. Middle School Pool is an important part of a healthy living lifestyle for the residents in West, South and all of Berkeley.

#### REFERENCES

1. Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool
2. [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Shower%20Referral%20Response%20061218.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Shower%20Referral%20Response%20061218.pdf)

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

#### ATTACHMENTS:

1. Resolution

#### CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120, cdavila@cityofberkeley.info

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

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY DIRECTING THE CITY MANAGER TO OPEN PATHWAYS (INCLUDING LAUNDRY SERVICES), WEST CAMPUS POOL AND MARTIN LUTHER KING JR. POOL (KING POOL) TO IMPLEMENT THE CITY OF BERKELEY SHOWER PROGRAM AT THESE LOCATIONS, AND PROVIDE THE ABILITY FOR OUR COMMUNITY TO SHOWER DURING THE COVID 19 PANDEMIC, A HUMANE ACTION REQUIRED DURING THIS CRISIS.

~~A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY DIRECTING THE CITY MANAGER TO OPEN THE WEST CAMPUS POOL AND MARTIN LUTHER KING JR. MIDDLE SCHOOL POOL TO IMPLEMENT THE CITY OF BERKELEY SHOWER PROGRAM AT THESE LOCATIONS, AND PROVIDING THE ABILITY FOR OUR COMMUNITY TO SHOWER DURING THE COVID 19 PANDEMIC, A HUMANE ACTION REQUIRED DURING THIS CRISIS.~~

WHEREAS, Berkeley, now impacted by the COVID19 pandemic crisis, a housing affordability crisis, and a homelessness crisis; and

WHEREAS, the Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc.; and

~~WHEREAS, The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc., and~~

WHEREAS, there is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers; and

~~WHEREAS, There is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers and,~~

WHEREAS, The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location; and

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WHEREAS, In January 2018, the City Council considered Council Item: “Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool”.

WHEREAS, The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents; and

~~WHEREAS, The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.~~

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, hereby directs the City Manager to open the Pathways, West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening these locations will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.

~~NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, hereby directs the City Manager to open the West Campus Pool and Martin Luther King Jr Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King Pool) pool will the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.~~







Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
April 14, 2020

To: Honorable Mayor and Members of the City Council  
  
From: Councilmember Cheryl Davila

Subject: Open West Campus Pool and Martin Luther King Jr. Pool (King pool) to implement the City of Berkeley Shower Program at these locations, and provide the ability for our community to shower during the COVID 19 Pandemic.

RECOMMENDATION

Direct the City Manager to open the West Campus Pool and Martin Luther King Jr. Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King pool) pool will provide the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.

FINANCIAL IMPLICATIONS

To operate a year-round shower program that duplicates the program at the Willard Pool would cost to establish a shower program would be approximately \$270,100 for both locations..

BACKGROUND

The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc. Currently, there is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers. The contract with Project WeHope / Dignity on Wheels that provides homeless individual access to clean showers, laundry service and bathroom facilities is pending. Therefore, Project WeHope / Dignity on Wheels is not available at this time. We are in a pandemic which requires ways for our community to be cleaner to prevent further community transmissions.

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In January 2018, the City Council considered Council Item<sup>-1</sup>: “Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool”. Months later, the City Manager provided a response <sup>2</sup> to the City Council in June 2018, where it identified the cost to establish a shower program similar to the Willard Shower Program at West Campus pool. The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.

ENVIRONMENTAL SUSTAINABILITY

Access to the West Campus pool and Martin Luther King Jr. Middle School Pool is an important part of a healthy living lifestyle for the residents in West, South and all of Berkeley.

REFERENCES

1. Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool
2. [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3 -  
\\_General/Shower%20Referral%20Response%20061218.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Shower%20Referral%20Response%20061218.pdf)

CONTACT PERSON

Cheryl Davila  
Councilmember District 2  
510.981.7120  
cdavila@cityofberkeley.info

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

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BERKELEY DIRECTING THE CITY MANAGER TO OPEN THE WEST CAMPUS POOL AND MARTIN LUTHER KING JR. MIDDLE SCHOOL POOL TO IMPLEMENT THE CITY OF BERKELEY SHOWER PROGRAM AT THESE LOCATIONS, AND PROVIDING THE ABILITY FOR OUR COMMUNITY TO

Page 9 of 9  
SHOWER DURING THE COVID 19 PANDEMIC, A HUMANE ACTION REQUIRED DURING THIS CRISIS.

WHEREAS, The Coronavirus or COVID 19 pandemic requires cleanliness, washing our hands, often for twenty seconds or longer, washing our face, etc., and

WHEREAS, There is no shower program in West or South Berkeley where there are high concentrations of our curbside communities who do not have access to showers and,

WHEREAS, The Telegraph location is not convenient for the curbside community in West and South Berkeley. West Campus Pool and the Martin Luther King Jr. Middle School pool will enable the curbside community in West and South Berkeley access to showers closer to their location, and,.

WHEREAS, In January 2018, the City Council considered Council Item: "Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool".

WHEREAS, The COVID 19 Pandemic is upon us we must do all that we can to mitigate the dire consequences. We need to ensure that the shower program is also accessible and equitable to all residents.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, hereby directs the City Manager to open the West Campus Pool and Martin Luther King Jr Middle School (King pool) Pool to implement the City of Berkeley Shower Program at these locations. Opening the West Campus Pool and Martin Luther King Jr. Middle School (King Pool) pool will the ability for our community to shower during the COVID 19 Pandemic, a humane action required during this crisis.





Kate Harrison  
Councilmember District 4

02a.10

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

RECOMMENDATION

Refer to the City Manager the design of a Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents as a companion to the Council referral to expand the Seismic Transfer Tax Rebate Program to include efficiency and electrification retrofit measures.

POLICY COMMITTEE RECOMMENDATION

On October 7, 2020, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to move recommendation two to the City Council with a positive recommendation. The item was continued to the next meeting. Vote: All Ayes

BACKGROUND

On November 27, 2018, City Council adopted a referral sponsored by Councilmembers Harrison and Davila to expand the existing Seismic Transfer Tax Rebate Program to include qualifying electrification, energy efficiency and water conservation retrofits. Staff recently proposed delaying amendments to the ordinance expanding the scope of the program due to budgetary uncertainty. The item is currently under review by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee. Staff's item also included a proposed referral to the City Manager to design a companion Resilient Homes Equity Pilot Program that would eventually provide funding for home retrofit improvements to low-income residents.

The Facilities, Infrastructure, Transportation, Environment & Sustainability Committee continued the item at the October 7, 2020 meeting to further consult stakeholders and review the ordinance, however in recognition of the outreach-intensive nature and lead

Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

CONSENT CALENDAR  
November 10, 2020

time of designing a Resilient Homes Equity Pilot Program, the Committee acted to expeditiously advance the referral as a separate item to Council.

Council approval of the referral will ensure that staff will be able to design the Resilient Homes Equity Pilot Program in coordination with the proposed amendment to the Transfer Tax ordinance. Staff have indicated that they can begin to design the program in collaboration with community partners with existing staff resources; adoption of this referral does not commit the Council to expending additional funds.

### **Staff Proposal for Resilient Homes Equity Pilot Program**

Communities of color and low-income communities are not only most impacted by financial disparities, they are also the frontline communities most impacted by climate change and other disasters. The City of Berkeley values equity and strives to be a leader in developing creative approaches for addressing the affordability and housing crises the City faces, leading to displacement of people of color and low-income community members. The City also has ambitious goals to combat climate change and to become a more resilient City. Further, in the referral, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>1</sup> These goals can all be aligned together to achieve multiple benefits in a new Resilient Homes Equity Pilot Program proposed by City staff.

An equity analysis of the impacts of the Transfer Tax Rebate Program considers who benefits, who is burdened and who is excluded. A transfer tax rebate program only benefits Berkeley residents who can afford to purchase a home, currently selling for an average of \$1.27 million.<sup>2</sup> Low-income residents often live in older homes that are most in need of home improvements for safety, health, comfort, efficiency, and resilience. Attachment 1 is an Equity White Paper written by Noel Simpkin, a UC Berkeley Masters of Planning graduate student. This paper applies an equity lens to the Seismic Retrofit Refund Program and recommends developing an equity pilot program that targets Berkeley’s underserved residents.

A concurrent Resilient Homes Equity Pilot Program would provide direct funding to low-income residents to improve their homes as a parallel program to the proposed expanded Resilience Transfer Tax Rebate, for home improvements. This equity pilot program would aim to provide a valuable benefit to low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the existing

---

<sup>1</sup> City of Berkeley, November 27, 2018 Council Referral: [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

<sup>2</sup> Zillow, “Berkeley Home Prices & Values”: <https://www.zillow.com/berkeley-ca/home-values/>. Last accessed 3/5/2020.

Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

CONSENT CALENDAR  
November 10, 2020

Seismic or future Resilience Transfer Tax Rebate Program. This program could support homeowners' ability to remain in their homes, improve occupant health and increase resilience in an aging building stock. An equity pilot program would create a replicable example of how City programs can operationalize equity in residential buildings and assure equitable distribution of City resources. This program, once developed and approved, may provide additional funding and/or free resources for homeowners and leverage work in existing programs that benefit low income residents and homeowners. Staff would design the program in collaboration with community stakeholders to ensure that it will meet the needs of frontline communities such as low-income communities, communities of color, and those most affected by the impacts of climate change. If approved by Council, staff will begin to:

1. Design the program in collaboration with community stakeholders;
2. Develop a detailed budget;
3. Identify potential funding sources for the program;
4. Determine necessary staffing for program administration and implementation;
5. Prepare an implementation strategy including timelines; and
6. Return to Council for approval of the budget and implementation of the program.

This equity pilot program concept was discussed with and received support from the Berkeley Energy Commission, Disaster & Fire Safety Commission, and other stakeholders.

#### ENVIRONMENTAL SUSTAINABILITY

Developing a Resilient Homes Equity Pilot Program would extend the City's sustainability efforts further by providing these benefits to more buildings, serving a broader and more diverse set of Berkeley residents than would otherwise have access to the Resilience Transfer Tax Rebate Program.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary to design the Resilient Homes Equity Pilot Program. Staff will seek additional resources to support engagement and co-creation of an equity program in partnership with representatives from low-income communities.

#### CONTACT PERSON

Councilmember Kate Harrison  
510-981-7140

#### ATTACHMENTS

Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents

CONSENT CALENDAR  
November 10, 2020

1. Staff Report
2. Equity White Paper, “Resilience for All: Applying an Equity Lens to Berkeley’s Seismic Transfer Tax Rebate Program”





Office of the City Manager

**02**

CONSENT CALENDAR  
July 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Department of Planning & Development

Subject: Referral Response: Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

RECOMMENDATION

1. Delay adoption of the first reading of an ordinance amending the Berkeley Municipal Code (BMC) Chapter 7.52 to expand the Seismic Transfer Tax Rebate Program to include qualifying sustainability and resilience measures, and any associated budget requests, until FYE 2022 when more information on budget due to COVID-19 response and recovery is available; and
2. Refer to the City Manager the design of a companion Resilient Homes Equity Pilot Program that would provide funding for home retrofit improvements to low-income residents.

SUMMARY

On November 27, 2018, City Council adopted a referral sponsored by Councilmembers Harrison and Davila to expand the existing Seismic Transfer Tax Rebate Program to include qualifying electrification, energy efficiency and water conservation retrofits.<sup>1</sup> The Seismic Transfer Tax Rebate Program provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax rate may be refunded, on a dollar-for-dollar basis, for voluntary seismic upgrades to residential property. Applicants have up to one year from the record of transfer to complete all seismic retrofit work, then apply for the rebate. The ordinance allows this deadline to be extended for good cause for up to one additional year.

This report and proposed actions are the result of in-depth analysis and input from stakeholders, including the Energy Commission and Disaster & Fire Safety Commission. The recommendations for updating the Transfer Tax Rebate program have General Fund budget implications for the City. Given challenges and uncertainties from COVID-19 response and recovery, staff now recommend that adoption of these

<sup>1</sup> See November 27, 2018 Council Referral:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

proposed changes be delayed. Staff will return to Council in one year, when more information on future budget constraints is available. Should Council approve the program changes in the future, staff would develop Administrative Regulations to define the qualifying measures and rebate application process.

The current Transfer Tax Rebate Program only benefits Berkeley residents who can afford to purchase a home in Berkeley, while low-income residents who often live in older homes most in need of improvements are excluded from this resource. Given that COVID-19 is exacerbating vulnerabilities of low income homeowners and renters, staff proposes development of a Resilient Homes Equity Pilot Program now, to complement a proposed future update to the Transfer Tax Rebate program.

### FISCAL IMPACTS OF RECOMMENDATION

#### *Resilience Transfer Tax Rebate Program*

The current proposal of delaying program changes for one year has no fiscal impacts.

If these program changes are adopted in the future, there would be budget impacts. The current Seismic Transfer Tax Rebate Program reserves one-third of the base 1.5% transfer tax amount to be rebated from the General Fund. Based on residential property sales from 2014 to 2019, the average annual total net residential Transfer Tax (1.5%) was nearly \$14 million,<sup>2</sup> and the eligible rebate amount was approximately \$4.6 million. Funds not spent on rebates have remained in the General Fund.

As of the FY2018-2019 adopted budget, up to \$12.5 million of the net Transfer Tax amount goes to the General Fund, including the one-third subset which can be rebated to homeowners as part of the Seismic Transfer Tax Rebate Program. Anything received by the City exceeding \$12.5 million is to be used for Capital Improvement Projects.<sup>3</sup>

See Table 1 below for average transfers of residential, commercial, and mixed-use properties from 2014-2019.

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<sup>2</sup> This amount does not include the additional 1.0% of Transfer Tax funds that is dedicated for Measure P.

<sup>3</sup> City of Berkeley, Fiscal Years 2018 & 2019 Adopted Biennial Budget:  
<https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY%202018-2019%20Adopted%20Budget%20Book.pdf>

Table 1 – 2014-2019 Residential, Commercial + Mixed Use Property Transfers<sup>4</sup>

| Fiscal Year:             | # Residential Transfers | Total Residential 1.5% Transfer Tax Amount | Eligible Residential Rebate Amount | # Commercial + Mixed Use Transfers | Commercial + Mixed Use Transfer Tax Amount (\$) | Potential Eligible Commercial + Mixed Use Rebate Amount | Total Potential Residential + Commercial + Mixed Use Rebate (\$) |
|--------------------------|-------------------------|--------------------------------------------|------------------------------------|------------------------------------|-------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------|
| 2014                     | 945                     | \$ 12,334,024                              | \$ 4,111,341                       | 69                                 | \$ 1,579,799                                    | \$ 526,600                                              | \$ 4,637,941                                                     |
| 2015                     | 886                     | \$ 12,474,066                              | \$ 4,158,022                       | 71                                 | \$ 3,093,733                                    | \$ 1,031,244                                            | \$ 5,189,267                                                     |
| 2016                     | 874                     | \$ 13,516,064                              | \$ 4,505,355                       | 64                                 | \$ 3,303,230                                    | \$ 1,101,077                                            | \$ 5,606,431                                                     |
| 2017                     | 710                     | \$ 13,410,320                              | \$ 4,470,107                       | 61                                 | \$ 3,002,048                                    | \$ 1,000,683                                            | \$ 5,470,789                                                     |
| 2018                     | 793                     | \$ 14,511,819                              | \$ 4,837,273                       | 79                                 | \$ 3,705,287                                    | \$ 1,235,096                                            | \$ 6,072,368                                                     |
| 2019                     | 863                     | \$ 17,577,210                              | \$ 5,859,070                       | 53                                 | \$ 2,519,843                                    | \$ 839,948                                              | \$ 6,699,018                                                     |
| <b>Average 2014-2019</b> | <b>845.17</b>           | <b>\$ 13,970,584</b>                       | <b>\$ 4,656,861</b>                | <b>66.17</b>                       | <b>\$ 2,867,323</b>                             | <b>\$ 955,774</b>                                       | <b>\$ 5,612,636</b>                                              |

### Resilient Homes Equity Pilot Program

Staff would design the program with existing capacity and return to Council with a full budget request, implementation strategy, and timelines.

### CURRENT SITUATION AND ITS EFFECTS

On November 27, 2018, the City Council adopted a referral, sponsored by Councilmembers Harrison and Davila, to expand the existing Seismic Transfer Tax Rebate Program for qualifying electrification, energy efficiency and water conservation retrofits. The referral was intended to increase use of the program to advance the community's greenhouse gas reductions, address the urgency of the Climate Emergency Declaration, and increase the community's resilience. The referral asked staff to evaluate options for additional qualifying measures, evaluate how the program expansion should interact with the existing seismic program, and consider the framework for a just and equitable transition as set out in the Climate Emergency Declaration.

In response to the referral, staff conducted outreach over many months with staff from multiple City departments, the Energy Commission, the Disaster and Fire Safety Commission, as well as several technical experts and stakeholders. As developed through those efforts, staff developed proposed changes to amend BMC Chapter 7.52 to:

1. Add qualifying measures for the expanded Resilience Transfer Tax Rebate Program to include electrification, sustainability and resilience measures that require a building permit, in addition to the seismic measures already included in the program;
2. Expand the program to apply to all residential, commercial, and mixed-use buildings at time of property transfer, augmenting the current program which applies to only residential or mixed-use buildings with two or more dwelling units; and

<sup>4</sup> From City of Berkeley Finance Department.

3. Expand the deadline of the program so applicants have two years to apply for the rebate plus the opportunity to apply for a one-year extension, instead of the current program's one year deadline with a one-year extension.

Staff is recommending delaying approval of these changes, which would have potentially significant impacts to the General Fund. Staff will return next year and make another recommendation based on the budget situation at that time. If these changes are approved, staff would develop Administrative Regulations including qualifying measures, an implementation strategy, and timelines. In order to develop and administer the proposed changes, the next recommendation would include additional staff capacity to support the increased application review and processing.

### ***Proposal for Resilient Homes Equity Pilot Program***

Communities of color and low-income communities are not only most impacted by financial disparities, they are also the frontline communities most impacted by climate change and other disasters. The City of Berkeley values equity and strives to be a leader in developing creative approaches for addressing the affordability and housing crises the City faces, leading to displacement of people of color and low-income community members. The City also has ambitious goals to combat climate change and to become a more resilient City. Further, in the referral, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>5</sup> These goals can all be aligned together to achieve multiple benefits in a new Resilient Homes Equity Pilot Program proposed by City staff.

An equity analysis of the impacts of the Transfer Tax Rebate Program considers who benefits, who is burdened and who is excluded. A transfer tax rebate program only benefits Berkeley residents who can afford to purchase a home, currently selling for an average of \$1.27 million<sup>6</sup>. Low-income residents often live in older homes that are most in need of home improvements for safety, health, comfort, efficiency, and resilience. Attachment 2 is an Equity White Paper written by Noel Simpkin, a UC Berkeley Masters of Planning graduate student. This paper applies an equity lens to the Seismic Retrofit Refund Program and recommends developing an equity pilot program that targets Berkeley's underserved residents.

A concurrent Resilient Homes Equity Pilot Program would provide direct funding to low-income residents to improve their homes as a parallel program to the proposed expanded Resilience Transfer Tax Rebate, for home improvements. This equity pilot program would aim to provide a valuable benefit to low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the existing

<sup>5</sup> City of Berkeley, November 27, 2018 Council Referral:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/11\\_Nov/Documents/Item\\_24\\_Rev\\_Harrison.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_24_Rev_Harrison.aspx)

<sup>6</sup> Zillow, “Berkeley Home Prices & Values”: <https://www.zillow.com/berkeley-ca/home-values/>. Last accessed 3/5/2020.

Seismic or future Resilience Transfer Tax Rebate Program. This program could support homeowners' ability to remain in their homes, improve occupant health and increase resilience in an aging building stock. An equity pilot program would create a replicable example of how City programs can operationalize equity in residential buildings and assure equitable distribution of City resources.

This program, once developed and approved, may provide additional funding and/or free resources for homeowners and leverage work in existing programs that benefit low income residents and homeowners. Staff would design the program in collaboration with community stakeholders to ensure that it will meet the needs of frontline communities such as low-income communities, communities of color, and those most affected by the impacts of climate change. If approved by Council, staff will:

1. Design the program in collaboration with community stakeholders;
2. Develop a detailed budget;
3. Identify potential funding sources for the program;
4. Determine necessary staffing for program administration and implementation;
5. Prepare an implementation strategy including timelines; and
6. Return to Council for approval of the budget and implementation of the program.

This equity pilot program concept was discussed with and received support from the Berkeley Energy Commission, Disaster & Fire Safety Commission, and other stakeholders.

### ***Related Initiatives***

Staff is concurrently advancing other programs and initiatives which may be directly impacted by an expansion of the Resilience Transfer Tax Rebate Program:

- *Building Energy Savings Ordinance (BESO)*<sup>7</sup>: The BESO program has just completed its evaluation, and will be updated to better align with the City's priorities of building electrification and resilience. The proposed update to BESO would prioritize electrification and provide recommendations at time of listing that would align with the transfer tax rebate eligible measures. This change, along with possible future mandatory requirements, has the potential to increase Transfer Tax Rebate Program participation.
- *Existing Building Electrification Strategy*: In April 24, 2018, Council requested the development of "policies to incentivize energy efficiency and electrification, in support of Climate Action Plan (CAP) goals" and referred \$50,000 to the budget process to fund the Existing Building Efficiency Strategy. Staff is working with a team of experts to identify how Berkeley can electrify its existing buildings as soon as

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<sup>7</sup> BESO requires building owners and homeowners to complete and publicly report comprehensive energy assessments to uncover energy saving opportunities. More information at: <https://www.cityofberkeley.info/BESO/>.

possible. This report will include equitable strategies, policies, and programs that will help Berkeley achieve its goal of becoming a fossil fuel-free City, and will include specific building measures that can be supported by the proposed Resilience Transfer Tax Rebate Program and Resilient Homes Equity Pilot Project.

- *Automatic Gas Shutoff Valve Referral:* Another Council referral asked the Disaster & Fire Safety Commission to consider an ordinance amending BMC 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves. The referral would expand use of such devices in multifamily, condominium and commercial buildings undergoing renovations, and in all existing buildings prior to execution of a contract for sale or close of escrow. It also asks the Commission to consider other triggers as appropriate. Installation of an automatic gas shutoff valve has been included as a qualifying measure under the proposed Resilience Transfer Tax Rebate Program.

Amending the BMC to update the Resilience Transfer Tax Rebate Program as proposed and approving the development of a Resilient Homes Equity Pilot Project would advance the City Strategic Plan goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. It also advances the following goals:

- Create affordable housing and housing support service for our most vulnerable community members.
- Create a resilient, safe, connected, and prepared city.
- Champion and demonstrate social and racial equity.

## BACKGROUND

### ***Existing Seismic Transfer Tax Rebate Program***

In 1991 the City created the Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax rate may be refunded on a dollar-for-dollar basis, for all expenses incurred on or after October 17, 1989 for voluntary seismic upgrades to residential property. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structures that contains two or more dwelling units. Applicants have up to one year from the recordation of transfer to complete all seismic retrofit work, then apply for the rebate. The ordinance allows this deadline to be extended for good cause for up to one additional year.

Since July 2002, the City has distributed over \$12 million to homeowners through the Seismic Transfer Tax Rebate Program, which reduces the real estate transfer tax to

building owners who perform seismic safety work.<sup>8</sup> As shown in the table below, between 2014-2019 an average of 13% of homeowners took advantage of the program.

Table 2 - Seismic Transfer Tax Rebates, 2014-2019

| Fiscal Year:             | # Residential Transfers | Total # Seismic Transfer Tax Rebates | Total Seismic Rebate Amount Spent (\$) | Eligible Residential Rebate Amount | % Seismic Rebate Uptake (#) | % Seismic Rebate Amount Spent | Total Residential 1.5% Transfer Tax Amount |
|--------------------------|-------------------------|--------------------------------------|----------------------------------------|------------------------------------|-----------------------------|-------------------------------|--------------------------------------------|
| 2014                     | 945                     | 171                                  | \$ 823,352                             | \$ 4,111,341                       | 18%                         | 20%                           | \$ 12,334,024                              |
| 2015                     | 886                     | 140                                  | \$ 781,447                             | \$ 4,158,022                       | 16%                         | 19%                           | \$ 12,474,066                              |
| 2016                     | 874                     | 142                                  | \$ 826,994                             | \$ 4,505,355                       | 16%                         | 18%                           | \$ 13,516,064                              |
| 2017                     | 710                     | 77                                   | \$ 518,058                             | \$ 4,470,107                       | 11%                         | 12%                           | \$ 13,410,320                              |
| 2018                     | 793                     | 94                                   | \$ 676,042                             | \$ 4,837,273                       | 12%                         | 14%                           | \$ 14,511,819                              |
| 2019                     | 863                     | 63                                   | \$ 427,581                             | \$ 5,859,070                       | 7%                          | 7%                            | \$ 17,577,210                              |
| <b>Average 2014-2019</b> | <b>845.17</b>           | <b>114.5</b>                         | <b>\$ 675,579</b>                      | <b>\$ 4,656,861</b>                | <b>13%</b>                  | <b>15%</b>                    | <b>\$ 13,970,584</b>                       |

**ENVIRONMENTAL SUSTAINABILITY**

Amending the Resilience Transfer Tax Rebate Program would advance the City’s ambitious climate action goals, by incentivizing energy efficiency, electrification, and other resilience improvements in Berkeley’s buildings.

Developing a Resilient Homes Equity Pilot Program would extend the City’s sustainability efforts further by providing these benefits to more buildings, serving a broader and more diverse set of Berkeley residents than would otherwise have access to the Resilience Transfer Tax Rebate Program.

**RATIONALE FOR RECOMMENDATION**

Given the need to address COVID-19 response and recovery, and the associated budgetary impacts, staff recommends that Council delay approving the proposed changes to the B.M.C. Chapter 7.52. Staff will return next year for Council to consider approval at that time.

In the future, expanding the current Transfer Tax Rebate Program would encourage and incentivize sustainability and resilience upgrades in homes.

Developing the Resilient Homes Equity Pilot Program is aligned with the City’s Strategic Plan Goal to champion and demonstrate social and racial equity, and is aligned with the City’s Resilience Strategy goal to advance racial equity. This program would aim to serve as an anti-displacement strategy for low-income homeowners as well as to incorporate equity into existing City policies. This could serve as a pilot equity pilot program that could be replicated and scaled.

<sup>8</sup> City of Berkeley 2019 Local Hazard Mitigation Plan, Summary-11: [https://www.cityofberkeley.info/uploadedFiles/Fire/Level\\_3\\_-\\_General/City%20of%20Berkeley%202019%20LHMP%20-%20FINAL%2012-10-19%20-%20REDUCED%20SIZE.pdf](https://www.cityofberkeley.info/uploadedFiles/Fire/Level_3_-_General/City%20of%20Berkeley%202019%20LHMP%20-%20FINAL%2012-10-19%20-%20REDUCED%20SIZE.pdf)

ALTERNATIVE ACTIONS CONSIDERED

Rather than delaying approval of this proposal, Council could consider adopting the proposed changes to the BMC Chapter 7.52 at this time. This would provide a benefit to home buyers sooner, but would have ongoing budget impacts.

Whenever Council does consider adopting the proposed changes to the BMC Chapter 7.52, other potential alternative actions for this proposal include:

- **Qualifying Measures:** Council could consider expanding the qualifying measures to include work that does not require a building permit. This would provide additional options and flexibility to the building owner, but would require design, development, and implementation of a new process to validate the measures, plus additional ongoing staff resources, because it would be staff time-intensive to verify completion of qualifying work.
- **Building Types:**
  - Council could continue to limit the program to residential and mixed-use buildings with two or more dwelling units. This approach would not generate as significant greenhouse gas emissions reductions, electrification, or resilience improvements in buildings.
  - Council could consider including industrial building types, for which sufficient information was not available for analysis in this report.
- **Application Deadline:** Council could keep the current program timeline as is, at one year plus a one year extension, or it could further extend timelines to provide even greater flexibility to applicants.

**Resilient Homes Equity Pilot Program:** Council could reject the proposal for a Resilient Homes Equity Pilot Program. Eliminating this program would mean no new benefits would be provided to low income residents, and would have no financial impact on the current budget.

CONTACT PERSON

Billi Romain, Sustainability Manager, Office of Energy and Sustainable Development, Planning & Development Department, 510-981-7432.  
Katie Van Dyke, Climate Action Program Manager, 510-981-7403.

## Attachments:

1. Draft Ordinance language to expand existing Seismic Transfer Tax Rebate Program for possible future action
2. Equity White Paper
3. Potential list of qualifying measures for consideration in Administrative Regulations
4. Original Referral Report from November 27, 2018



ORDINANCE NO. XXXX-N.S.

AMENDMENTS TO THE BERKELEY MUNICIPAL CODE TO EXPAND THE  
TRANSFER TAX REBATE PROGRAM FOR RESILIENCE MEASURES

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

Section 1. That Berkeley Municipal Code Chapter 7.52.060 is amended to read as follows:

**7.52.060 Exceptions.**

K. 1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to perform a "resilience seismically retrofit" ~~on either~~ any structure which is used ~~exclusively~~ for residential, mixed-use, or commercial purposes, ~~or any mixed use structure which contains two or more dwelling units.~~

2. The term "resilience seismically retrofit" within the meaning of this chapter means any of the following:

- a. That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;
- b. Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;
- c. Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially

hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

d. Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

e. Any other work as defined in the list of qualifying measures for the Resilience Transfer Tax Rebate Program Administrative Regulations, including but not limited to measures that provide the following types of benefits: safety, health, electrification, efficiency, or other resilience measures.

3. The work to perform resilience seismically retrofits on structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to perform resilience seismically retrofits on the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the base 1.5% transfer tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one two years to complete all seismic-resilience retrofit work and submit a resilience seismic-retrofit verification application to ~~the codes and inspection division of~~ the City of Berkeley. If the work is not completed at the end of one two years, that portion which has been completed may be credited to the applicant upon submission of a resilience seismic-retrofit

verification application and substantiating documentation, as required by the ~~codes and inspections division of the~~ City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the ~~one~~two-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.

a. "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the ~~seismic~~resilience retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the ~~seismic~~resilience retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the ~~seismic~~resilience retrofit work.

b. "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the ~~seismic~~resilience retrofit rebate provided in this chapter or state or local laws relating to the standards with which ~~seismic~~resilience retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant. (Ord. 6971-NS § 1, 2007: Ord. 6741-NS § 1, 2003: Ord 6539-NS § 1, 2000: Ord. 6262-NS § 1, 1994: Ord. 6146-NS §§ 1, 2, 1992: Ord. 6072-NS § 2, 1991: Ord. 6069-NS § 1, 1991: Ord. 5061-NS § 5, 1978)

# RESILIENCE FOR ALL

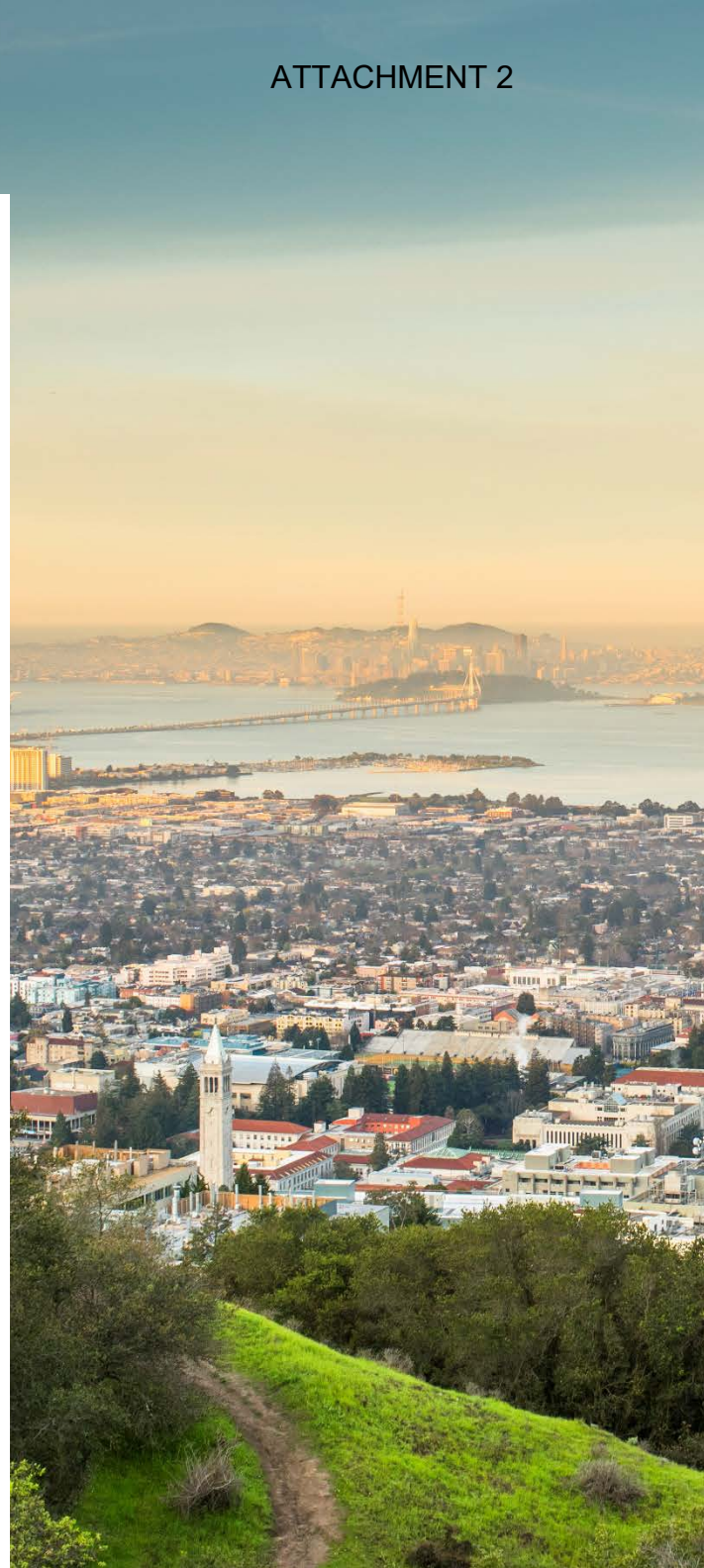
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## Applying an Equity Lens to Berkeley's Seismic Transfer Tax Rebate Program

MARCH 2020

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NOEL SIMPKIN  
MASTER OF CITY PLANNING, CLASS OF 2020  
UNIVERSITY OF CALIFORNIA, BERKELEY



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# I. Executive Summary

The City of Berkeley (City) has long had a reputation for tolerance and inclusiveness, and yet social and racial inequity remains a significant challenge.<sup>1</sup> In its 2018-2019 Strategic Plan, the City identified a goal to “champion and demonstrate social and racial equity” and has prioritized integrating equity considerations throughout City operations and services.<sup>2</sup> To support this work, the City developed a Racial Equity Lens Toolkit (Toolkit) to assess city policies, plans, programs, and budgets in order to identify biases and help ensure equitable access to opportunities for all community members. Incorporating equity is particularly important in City programs aimed at increasing resilience for two reasons: without careful and deliberate planning, resilience strategies can actually exacerbate inequalities,<sup>3</sup> and true resilience can only be achieved when physical challenges as well as social challenges are addressed.<sup>4</sup>

The City’s current Seismic Transfer Tax Rebate Program (Program) offers an example of a resilience strategy that addresses physical vulnerabilities but fails to advance social and racial equity. The current Program allows a portion of the City’s transfer tax to be refunded to residential property owners for seismic upgrades, thus incentivizing homeowners who recently purchased a home to make important safety improvements. However when analyzing the Program through an equity lens it becomes clear that the Program is not reaching underserved members of the community, despite the fact that low-income and minority communities are more vulnerable to natural disasters and the impacts of climate change.<sup>5</sup> The current median sale price for a single-family home in Berkeley is over \$1.2 million, which suggests that many recent homebuyers in Berkeley are economically advantaged.<sup>6</sup> In addition, 75 percent of the City’s homeowners are white, and income disparities in the region demonstrate the challenge people of color face to purchase a home in Berkeley.<sup>7</sup>

In 2018, Berkeley City Council declared a Climate Emergency and established a goal of becoming a Fossil Fuel Free city. That same year, Council passed a referral to the City Manager and Office of Energy and Sustainable Development to expand the existing Seismic Transfer Tax Rebate Program in an effort to accelerate the transition toward more sustainable buildings. The referral identified the need for expanding the Program in order to reduce greenhouse gas (GHG) emissions, address the urgency of the Climate Emergency Declaration, and increase the City’s resilience. In response, staff is providing recommendations to Council to expand the Program to include specific sustainability and resilience upgrades, as well as to establish a Resilient Homes Equity Pilot Program (Equity Pilot) that would provide similar home-improvement benefits to frontline communities. A new, equity-centered program that parallels the existing Program can help the City more quickly achieve its Fossil Fuel Free

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<sup>1</sup> *City of Berkeley Resilience Strategy 2016*

<sup>2</sup> *City of Berkeley Strategic Plan 2018*

<sup>3</sup> *Anguelovski 2016*

<sup>4</sup> *100 Resilient Cities 2019*

<sup>5</sup> *City of Berkeley Resilience Strategy 2016*

<sup>6</sup> *Zillow 2020*

<sup>7</sup> *ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population; and Table B25003H, Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.*



goal, while benefitting low-income residents, long-term homeowners with limited incomes, and renters, who are not able to access the current Program.

This paper analyzes the current Seismic Transfer Tax Rebate Program through an equity lens, and aims to demonstrate the need for a more inclusive approach to increasing Berkeley's resilience. In addition, it recommends Berkeley City Council take the following actions to build both physical and social resilience:

1. Approve the development of a Resilient Homes Equity Pilot Program that leverages the City's Racial Equity Lens Toolkit in collaboration with community organizations and stakeholders.
2. Confirm a commitment to dedicate additional future funding to implement the Equity Pilot, with the exact annual amount to be determined during the program design phase.

An Equity Pilot offers many potential benefits, including: increased safety, improved health outcomes, reduction in GHG emissions, and it enables a Just Transition. It is also an opportunity to operationalize the City's Toolkit, and learnings can inform how other City programs and policies can incorporate equity and assure equitable distribution of City resources. Through the Equity Pilot, the City will be better positioned to achieve its goals of demonstrating social equity and becoming Fossil Fuel Free, while building a safer, healthier, more sustainable, and more resilient community.

## II. Introduction

The City's Resilience Strategy, released in 2016, prioritizes both physical and social resilience: through a combination of long-term goals and short-term actions, the strategy aims to build the capacity of residents, institutions, and businesses to manage physical challenges, such as earthquakes and sea level rise, as well as social challenges, including racial inequity.<sup>8</sup> The City reaffirmed this holistic approach more recently in its 2018-2019 Strategic Plan, which articulates a goal to "create a resilient, safe, connected and prepared city" as well as a "responsibility to advance social and racial equity."<sup>9</sup> In order to make progress in these areas, City policies and programs must be designed to enable *all* residents to participate in, contribute to, and benefit from building Berkeley's resilience – especially historically underserved residents. There is an opportunity to make meaningful progress toward achieving these goals while prioritizing those most in need by examining the City's Seismic Transfer Tax Rebate Program, historically referred to as the Seismic Retrofit Rebate Program, through an equity lens. The current Program allows a portion of the City's transfer tax to be refunded to residential property owners for seismic upgrades. This program incentivizes homeowners who recently purchased a home to make important safety improvements and creates a more resilient housing stock. However, because the median price to purchase a home in Berkeley is currently over \$1.2 million,<sup>10</sup> the Program is primarily supporting higher-income households and fails to reach low-income or long-term members of the community.

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<sup>8</sup> City of Berkeley Resilience Strategy 2016

<sup>9</sup> City of Berkeley Strategic Plan 2018

<sup>10</sup> Zillow 2020

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***“We have a responsibility to advance social and racial equity.”***

*- City of Berkeley 2018-2019 Strategic Plan*

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In November 2018 Berkeley City Council passed a referral to the City Manager and the Office of Energy and Sustainable Development to expand the existing Program to include subsidies beyond seismic retrofit and potentially include qualifying electrification, energy efficiency, and water conservation retrofits. In addition, Council urged staff to consider “the framework for a just and equitable transition” as laid out in the Climate Emergency.<sup>11</sup> In response, staff has conducted an analysis with stakeholder input.<sup>12</sup> and is providing recommendations to Council to expand the Program to include specific sustainability and resilience upgrades, as well as to establish a Resilient Homes Equity Pilot Program that would provide similar home-improvement benefits to frontline communities. An Equity Pilot, that parallels the existing Program, can improve physical resilience and advance equity by enabling underserved residents to improve their physical environments – making them safer, more comfortable, more sustainable, and less susceptible to disasters and climate change (more on potential impact in Section VII). The following sections describe how an Equity Pilot aims to address the impacts of harmful racist policies that favor high-income, white homeowners while furthering the City’s goals of resilience and equity.

### III. Equity Principles & Frameworks

Income inequality and health disparities are unfortunate realities in Berkeley: white families earn roughly three times more than African American families, and African American residents experience higher rates of hospitalization due to high blood pressure, stroke, asthma, and diabetes compared to other groups.<sup>13</sup> Improving these and other outcomes requires the City and its partners to address the “underlying social, economic, and environmental inequities that perpetuate them.”<sup>14</sup> However, addressing these inequities is rarely simple or straightforward and without intentional, strategic planning even well-intentioned efforts can reinforce injustices. When discussing equity principles and frameworks, it’s important to first define what is meant by “equity”. Equity is focused on giving communities what they need to thrive, while equality is about treating everyone the same (see Figure 1).

Equity frameworks are a valuable tool for governments, community development practitioners, and others to design and evaluate equitable policies and programs. By identifying who will benefit from or be burdened by decisions and potential unintended consequences of an intervention, equity frameworks help decision-makers mitigate negative effects and implement solutions that emphasize *equity* instead of *equality*.<sup>15</sup> In addition, it’s important to clearly identify the ‘who’ when assessing

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<sup>11</sup> City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018

<sup>12</sup> Including the Energy Commission, Disaster & Fire Safety Commission, as well as other internal and external stakeholders

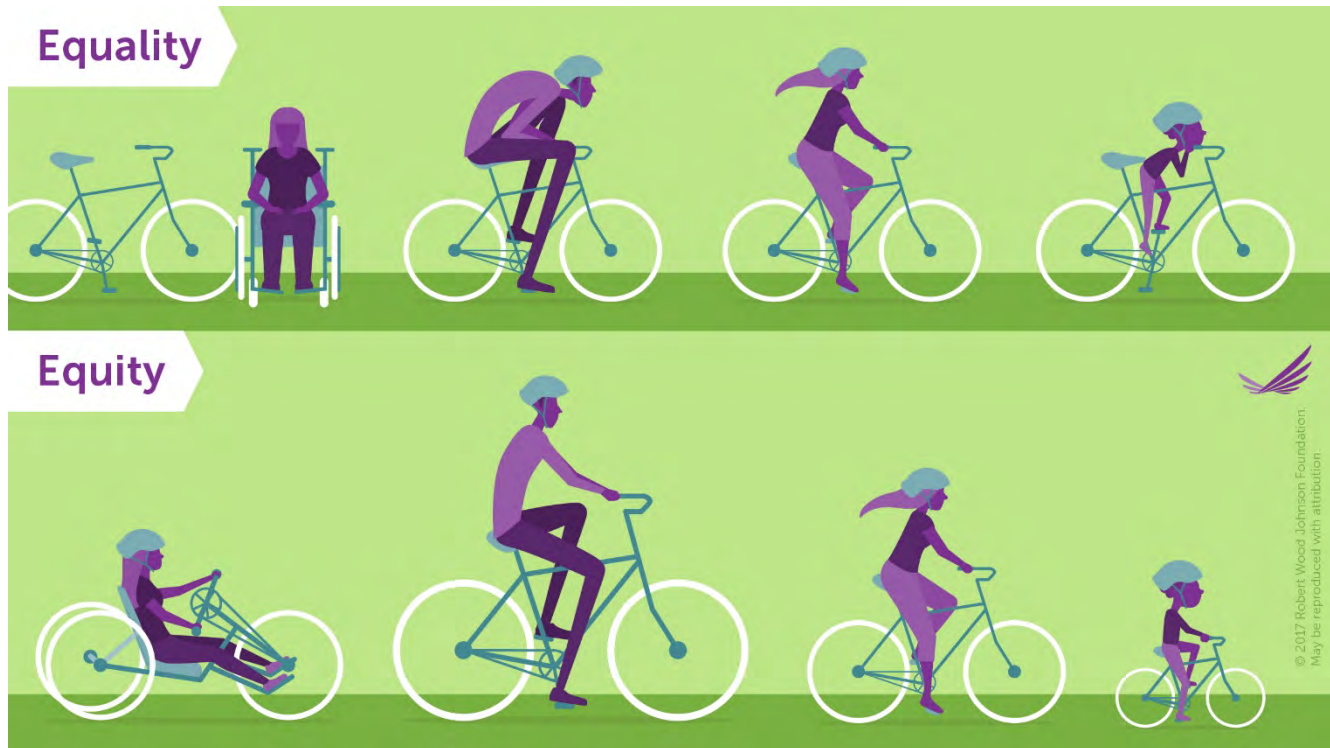
<sup>13</sup> City of Berkeley Health Status Report 2018

<sup>14</sup> *Ibid.*

<sup>15</sup> GARE 2016



Figure 1: Equity is focused on giving communities what they need to thrive, while equality is about treating everyone the same



Source: Robert Wood Johnson Foundation 2017

who may benefit or be burdened by interventions, and use the appropriate language to describe this group. There are a variety of terms that can describe potential target groups, such as frontline, underserved, vulnerable, low-income, and marginalized. These terms are often used interchangeably in development programs, despite the fact that they each have different definitions. According to The Greenlining Institute, “in conversations about social equity, terms such as underserved, vulnerable, low-income, disadvantaged, or environmental justice community are often interchanged but can potentially have different meaning depending the context.”<sup>16</sup> As a result, it’s important when designing an equitable program to clearly identify and define the target communities it aims to impact. In addition to providing clarity on specific target populations, terms are important because words can “promote compassion, empowerment, inclusiveness and equity.”<sup>17</sup> For example, the term ‘vulnerable’ can describe a population group that is socioeconomically disadvantaged, but it can also be a term that communities choose not to identify with because it can feel disempowering. For the purposes of this paper, the terms ‘underserved’ and ‘frontline’ are used interchangeably, and refers to “communities that are already facing environmental, health and socioeconomic inequities, and that are disproportionately impacted by climate change” as well as disasters.<sup>18</sup>

The following is a set of equity frameworks the City has engaged with and/or implemented in various planning processes and projects in recent years. In addition, principles from each framework presented

<sup>16</sup> The Greenlining Institute 2019

<sup>17</sup> National Collaborating Centre for Determinants of Health 2013

<sup>18</sup> The Greenlining Institute 2019

below have helped to inform this analysis of the current Seismic Transfer Tax Rebate Program through an equity lens, and may be further leveraged in the development of the Equity Pilot.

### 1 | Community-Driven Engagement

Engaging communities is a critical part of developing equitable programs, however in order to be effective involving community members must be done in an authentic, strategic manner. Staff may use the following Continuum of Community Engagement as a way to strengthen its approach to creating a collaborative planning process (see Figure 2). Developed by the Urban Sustainability Directors Network, this continuum demonstrates increasing levels of engagement and partnership from left to right. The USC Program for Environmental and Regional Equity as well as The Greenlining Institute – organizations committed to racial and economic justice – advocate for program development that creates “authentic partnerships that center the perspectives of vulnerable communities, support community-based participation and power, and result in shared decision-making”.<sup>19</sup> The California Public Utilities Commission (CPUC) recently leveraged principles of joint decision-making in its San Joaquin Valley Disadvantaged Communities Pilot Project, which brings clean, affordable energy options to frontline communities. The project aims to empower communities who rely on propane or wood-burning appliances for heating and cooking to choose an energy solution that worked best for

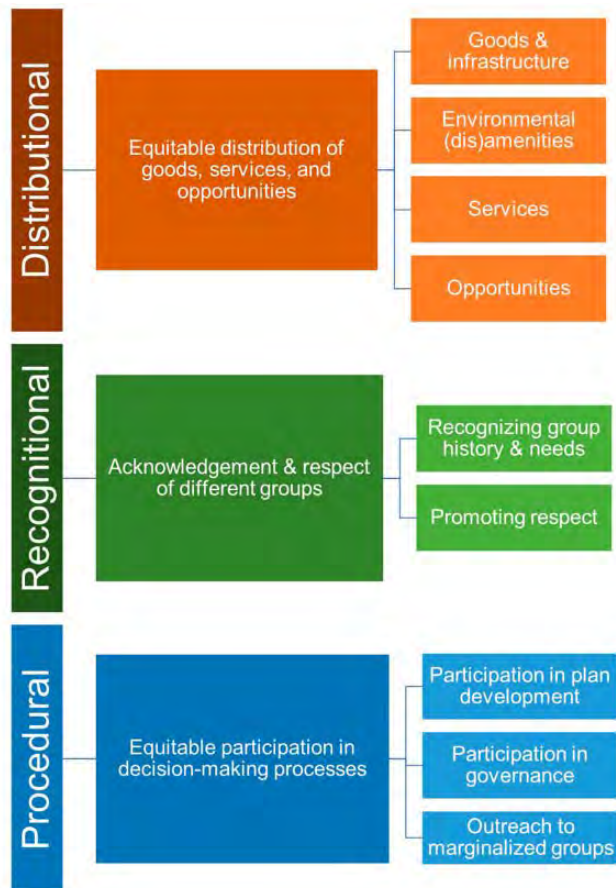
Figure 2: Continuum of Community Engagement

| Inform                                                                                                                                           | Consult                                                                                                                                                    | Involve                                                                                                                                                                         | Shared Leadership                                                                                                                                        | Community-Driven                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local government initiates an effort, coordinates with departments, and uses a variety of channels to inform the community to take action        | Local government gathers information from the community to inform local government-led interventions                                                       | Local government engages community members to shape government priorities and plans                                                                                             | Community and local government share in decision-making to co-create solutions together                                                                  | Community initiates and directs strategy and action with participation and technical assistance from local government                                                          |
| Characteristics of Engagement                                                                                                                    |                                                                                                                                                            |                                                                                                                                                                                 |                                                                                                                                                          |                                                                                                                                                                                |
| - Primarily one-way channel of communication<br>- One interaction<br>- Term-limited to project<br>- Addresses immediate need of local government | - Primarily one-way channel of communication<br>- One to multiple interactions<br>- Short to medium-term<br>- Shapes and informs local government programs | - Two-way channel of communication<br>- Multiple interactions<br>- Medium to long-term<br>- Advancement of solutions to complex problems                                        | - Two-way channel of communication<br>- Multiple interactions<br>- Medium to long-term<br>- Advancement of solutions to complex problems                 | - Two-way channel of communication<br>- Multiple interactions<br>- Medium to long-term<br>- Advancement of solutions to complex problems                                       |
| Strategies                                                                                                                                       |                                                                                                                                                            |                                                                                                                                                                                 |                                                                                                                                                          |                                                                                                                                                                                |
| Media releases, brochures, pamphlets, outreach to population groups, translated information, new and social media                                | Focus groups, interviews, community surveys, public hearings, public comment periods                                                                       | Forums, advisory boards, stakeholder involvement, coalitions, policy development and advocacy, including legislative briefings, and testimony, workshops, community-wide events | Co-led community meetings, advisory boards, coalitions, and partnerships, policy development and advocacy, including legislative briefings and testimony | Community-led planning efforts, community-hosted forums, collaborative partnerships, coalitions, policy development and advocacy including legislative briefings and testimony |

Source: Urban Sustainability Directors Network 2017 (Adapted from King County, Washington and IAP2)

<sup>19</sup> The Greenlining Institute 2019

Figure 3: Tripartite approach to equity in resilience planning



Source: Meerow et al. 2019

32 cities selected by the Rockefeller Foundation to participate in 100 Resilient Cities (100RC), an initiative aimed at building community resilience to face social, economic, and physical challenges.<sup>23</sup> Last year, researchers at Arizona State University and the University of Toronto released a study analyzing the goals, priorities, and strategies of the 100RC initiative, and developed a tripartite framework of equity that includes distributional, recognitional, and procedural dimensions (see Figure 3). In their analysis, researchers found that many cities that participated in the 100RC program emphasized the distributional aspect of equity, but focused less on the recognitional and procedural dimensions. They go on to advocate for resilience strategies that “explicitly consider resilience for whom, while at the same time promoting the equitable distribution of social and material goods, meaningful participation and engagement in decision-making processes, and acknowledgment of social, cultural, and political differences.”<sup>24</sup>

them. Ten out of the 11 pilot communities will receive cleaner energy through electrification, and one community will implement a joint gas and electrification approach.<sup>20</sup> This project demonstrates “community members can decide the best ways to overcome the challenges they see”<sup>21</sup> and serves as a model for community decision-making.

## 2 | Targeted Universalism

Targeted Universalism, a framework developed by the Othering & Belonging Institute at UC Berkeley, promotes establishing a universal goal with corresponding, specific strategies that target different groups to achieve that goal. This approach focuses on advancing all people toward the same goal through diverse implementation strategies that account for how different groups “are situated within structures, culture, and across geographies.”<sup>22</sup> The City is incorporating a Targeted Universalism approach in its Pathway to Clean Energy Buildings work to ensure that proposed programs and policies benefit all communities.

## 3 | Tripartite Approach to Equity

In 2014 the City of Berkeley was one of the first

<sup>20</sup> The Greenlining Institute 2019

<sup>21</sup> Ibid.

<sup>22</sup> Powell et al. 2019

<sup>23</sup> City of Berkeley Agenda Item 1, June 6 2015

<sup>24</sup> Meerow et al. 2019

#### 4 | GARE Racial Equity Toolkit

The GARE (Government Alliance on Race & Equity), a national network of governments working to achieve racial equity, developed the Racial Equity Toolkit in 2015. The toolkit presents a multi-layered approach to integrating racial equity into city decisions and processes, and is incorporated into the City of Berkeley’s Resilience Strategy as well as the 2018-2019 Strategic Plan. As described in the toolkit, when “racial equity is not explicitly brought into operations and decision-making, racial inequities are likely to be perpetuated.”<sup>25</sup> Questions in the toolkit, such as – Who will benefit from or be burdened by your proposal? What are your strategies for advancing racial equity or mitigating unintended consequences? – help decision-makers place racial equity at the center of every strategy and make more thoughtful, informed decisions.

#### 5 | City of Berkeley Racial Equity Lens Toolkit

As part of its Adeline Corridor Specific Plan process, the City of Berkeley developed its own Racial Equity Lens Toolkit to assess city policies, plans, programs, and budgets in order to identify biases and help ensure equitable access to opportunities for all community members. This Toolkit, which was adapted from the City of Madison’s racial equity work and builds on principles outlined in the GARE toolkit, was created not only to inform work on the Adeline Corridor, but to enable City staff to integrate equity considerations into all operations and services. Through a series of questions, the Toolkit is designed to help users think about the interaction between race and place, and design successful neighborhood change efforts with a focus on underserved populations.<sup>26</sup> A few of the guiding questions include:

- How can our approaches to increasing affordable housing, health, wealth, and equitable development become more effective – particularly for the most racially, socially, and economically vulnerable?
- How do we know if we are being successful without ensuring that success is measured through an equity lens?
- How do we get neighborhood transformation right?

The Toolkit offers a number of tactics to help users get neighborhood transformation right, such as engaging communities in the design and development process, building the capacity of local community members, and analyzing data not only to understand the story that it tells but also to consider what stories may be missing. The Toolkit also provides guidance on how to determine the appropriate language for target communities by working toward mutually agreed upon language that is both clear and works to reduce power imbalances.

Developing a Resilient Homes Equity Pilot Program as a parallel program to the City’s Seismic Transfer Tax Rebate Program presents a perfect opportunity to operationalize this Toolkit and use the tactics, as well as other equity principles mentioned above, to enable a more equity-centered approach to increasing the City’s resilience. Furthermore, this approach can serve as a valuable example of how to

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<sup>25</sup> GARE 2016

<sup>26</sup> City of Berkeley Racial Equity Lens Toolkit 2019 (adapted from City of Madison, Race Forward)

incorporate equity into a City program, and learnings can help the City scale use of the Toolkit to other activities and operations – enabling the City to further its goal of championing social and racial equity.

## IV. Berkeley’s Seismic Transfer Tax Rebate Program

In response to the 1989 Loma Prieta earthquake, the City took multiple steps to improve the seismic safety of buildings. One of those measures included the Seismic Transfer Tax Rebate Program, which allows up to 1/3 of the base 1.5 percent City Transfer Tax to be refunded on a dollar-for-dollar basis for voluntary seismic upgrades to residential property within one year of purchase.<sup>27</sup> Examples of qualifying seismic retrofits include: work to repair or replace substandard foundations, securing chimneys, and anchoring existing water heaters. The Program has been extremely successful at increasing seismic safety, and has contributed to roughly 75 percent of Berkeley’s homes becoming more seismically safe over a 20-year period.<sup>28</sup> Since July 2002, more than 3,000 rebates have been processed resulting in over \$12 million to property owners.<sup>29</sup> With fewer homes needing seismic retrofits, the Program has seen a decline in program participation in recent years (see Figure 3). Between 2014 and 2019, the number of rebates decreased by 63 percent. As a result of this trend, as well as a desire to make progress on the City’s broader goals around electrification and GHG emission reduction targets, Council is considering expansion of the Program to include rebates for other sustainability-related improvements.

Figure 4: Seismic Transfer Tax Rebate

| Fiscal Year       | # Residential Transfers | Total # Seismic Transfer Tax Rebates | Total Seismic Rebate Amount Spent (\$) | Eligible Residential Rebate Amount | % Seismic Rebate Uptake (#) | % Seismic Rebate Amount Spent |
|-------------------|-------------------------|--------------------------------------|----------------------------------------|------------------------------------|-----------------------------|-------------------------------|
| 2014              | 945                     | 171                                  | \$823,352                              | \$4,111,341                        | 18%                         | 20%                           |
| 2015              | 886                     | 140                                  | \$781,447                              | \$4,158,022                        | 16%                         | 19%                           |
| 2016              | 874                     | 142                                  | \$826,993                              | \$4,505,354                        | 16%                         | 18%                           |
| 2017              | 710                     | 77                                   | \$518,057                              | \$4,470,106                        | 11%                         | 12%                           |
| 2018              | 793                     | 94                                   | \$676,042                              | \$4,837,272                        | 12%                         | 14%                           |
| 2019              | 863                     | 63                                   | \$427,581                              | \$5,859,070                        | 7%                          | 7%                            |
| Average 2014–2019 | 845                     | 114                                  | \$675,579                              | \$4,656,861                        | 13%                         | 15%                           |

Source: City of Berkeley Finance Department

## V. Applying an Equity Lens to the Seismic Transfer Tax Rebate Program

Expanding the Program to include specific sustainability upgrades is a strong strategy to increase program participation and to accelerate progress toward the City’s broader resilience and sustainability goals. However, the Program only benefits those who can afford to purchase a home in Berkeley.

<sup>27</sup> The Program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

<sup>28</sup> Bohland et al. 2018

<sup>29</sup> City of Berkeley Local Hazard Mitigation Plan 2019



When assessing the Program in the context of the City’s Racial Equity Lens Toolkit, it becomes clear that the Program has failed on a number of fronts:

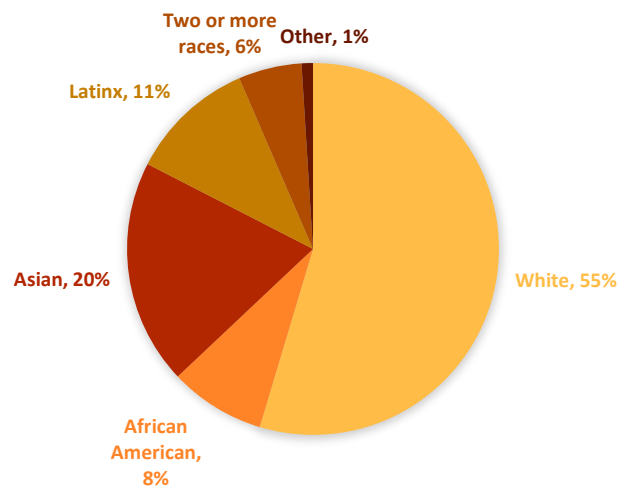
- Success is not measured through an equity lens: Program metrics focus on number of rebates and total funding issued, and data related to race/ethnicity, age, ability, gender, or other social factors are unavailable.
- It does not consider how access to the rebate may be limited for certain groups: barriers likely prevent individuals in certain racial/ethnic or socioeconomic groups from benefitting from this program, as it primarily benefits homeowners.<sup>30</sup>

Although Program data is limited, current homeownership trends and other information related to income, segregation, and displacement helps to illustrate how the current Program excludes frontline communities. Exclusion not only keeps resilience out of reach for these communities, but it perpetuates social and racial inequality in the City.

### 1 | Current Homeownership

The City is nearly equally split among homeowners and renters, with homeowners representing 46 percent of the population.<sup>31</sup> Homeownership rates are not distributed evenly, however, among Berkeley residents: while white residents make up 55 percent of Berkeley’s population they represent 75 percent of the City’s homeowners (see Figure 5 and 6).<sup>32</sup> The current median sale price for a single-family home in Berkeley is over \$1.2 million, which requires an annual household income of approximately \$200,000.<sup>33</sup> Income disparities in the region demonstrate one barrier people of color face to purchase a home in Berkeley (see Figure 7). In addition, since the rebate is only available for one year after purchasing a property, long-time Berkeley homeowners do not qualify for the Program. These residents may struggle to find the capital needed to make home improvements – making them more susceptible to unsafe living conditions and/or displacement.

Figure 5: There are significantly more white homeowners in Berkeley compared to any other racial group



Source: ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population, N=120,179

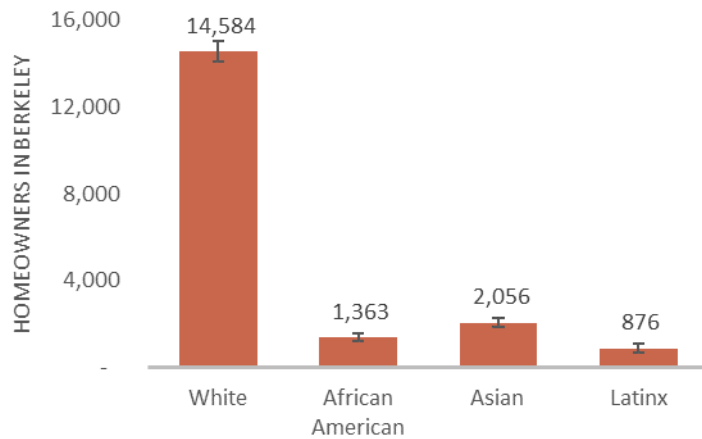
<sup>30</sup> Buyers of multifamily properties are eligible for the rebate, which in some situations may benefit low-income renters; however, the rebate is primarily used by single-family residential properties.

<sup>31</sup> American Community Survey (ACS) 2017 5-Year Estimates; Table B25033; Universe: Total Population in Occupied Housing Units; N = 107,408

<sup>32</sup> ACS 2017 5-Year Estimates; Table DP05, Universe: Total Population; and Table B25003H, Universe: Occupied housing units with a householder who is White alone, not Hispanic or Latino.

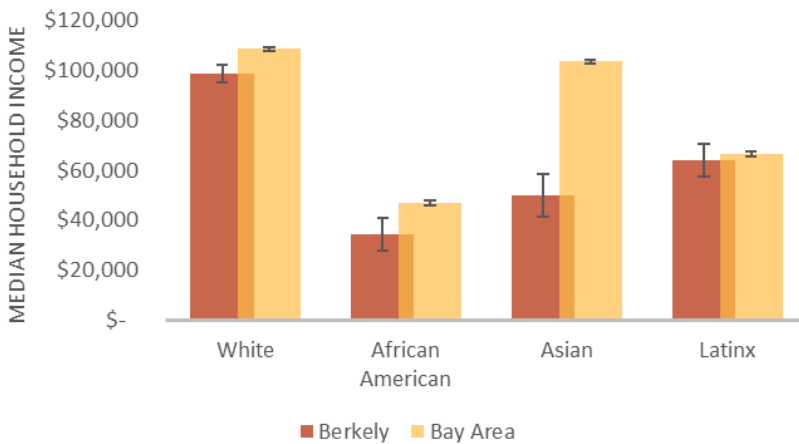
<sup>33</sup> Data from Zillow 2019, expects 20 percent down payment.

**Figure 6: There are significantly more white homeowners in Berkeley compared to any other racial group**



Source: ACS 2017 5-Year Estimates; Tables B25003B, B25003D, B25003H, B25003I; Universe: Occupied housing units; Note: Figure 4 does not include the race & ethnicity categories for American Indian & Alaska Native, Native Hawaiian and Other Pacific Islander, Some Other Race, or Two or More Races; Margins of Error expressed at 90 percent confidence level

**Figure 7: On average, white households in Berkeley make almost three times more than African American households**



Source: ACS 2017 5-Year Estimates; Tables B19013B, B19013D, B19013H, B19013I; Universe: Households; Note: 'Bay Area' consists of San Francisco, Alameda, Marin, Contra Costa, and San Mateo counties; Margins of Error expressed at 90 percent confidence level

## 2 | Segregation and Displacement

Institutional and structural racism has and continues to contribute to unequal outcomes, not only in homeownership and income, as described above, but also in terms of segregation and displacement. These issues are interrelated, and a result of racist and discriminatory practices such as slavery, Jim Crow laws, racially restrictive covenants, and redlining. Although these policies have been banned, they have resulted in severe and lasting impacts on communities of color.

The history of redlining is particularly important for understanding how segregation and displacement affect the Berkeley community still today, and helps shed light on how programs aimed at recent homebuyers – such as the Seismic Transfer Tax Rebate Program – support racial exclusion. The Home Owners' Loan Corporation (HOLC), a federal agency

created in 1933 as part of President Roosevelt's New Deal legislation, was designed to provide relief for homeowners that were in default or at risk of foreclosure by refinancing mortgages; indeed, it successfully refinanced over one million mortgages, saving 80 percent of homes for the original owner.<sup>34</sup>

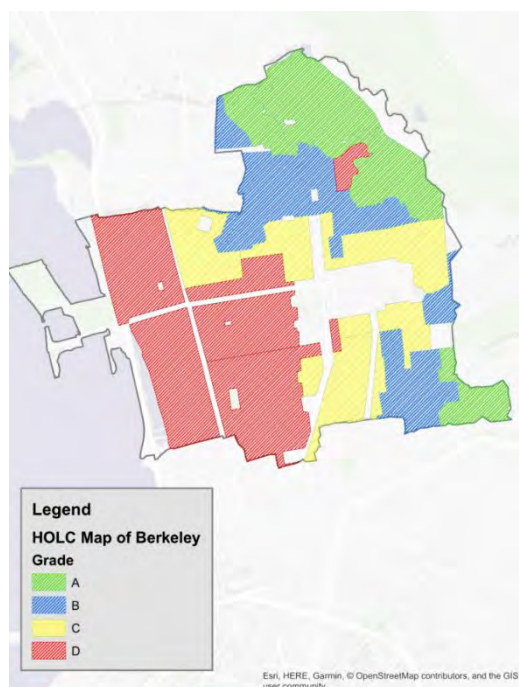
<sup>34</sup> TIME 1951

Figure 8: A 1937 San Francisco “residential security map” created by the Home Owners’ Loan Corporation



Source: Green 2016

Figure 9: Redlining in Berkeley



Source: Barber 2018

However, access to these government-backed, low-interest mortgages was not equal.<sup>35</sup> HOLC developed and relied on ‘residential security maps’ to evaluate mortgage lending risk in large American cities. Neighborhoods were classified as Best (green), Desirable (blue), Declining (yellow), or Hazardous (red) based on criteria such as: age and condition of housing stock, as well as economic class, employment status, and racial and ethnic composition of residents.<sup>36</sup> Potential borrowers in neighborhoods classified as Hazardous were often “redlined,” or denied access to credit based on the location of their property in minority or economically disadvantaged neighborhoods. As a result of limited access to traditional loans, many potential borrowers in these neighborhoods could not purchase property or fell victim to high-interest loans or other discriminatory practices. Because access to credit is a critical part of economic inclusion and purchasing a home can lead to building wealth within families over generations, we can see a lasting effect of redlining through racial disparities in poverty. On a national level, the median net worth of white families is nearly 10 times the size of black families, and nearly 1 in 5 black families have zero or negative net worth – twice the rate of white families.<sup>37</sup> In Berkeley today, “the proportion of families living in poverty is 8 times higher among African American families, 5 times higher among Latin[x] families, and 3 times higher among Asian families, compared to White families.”<sup>38</sup>

Although redlining was prohibited under the Fair Housing Act of 1968, its enduring effect is still evident across the US, including in Berkeley – not only in poverty rates, homeownership, and income, but also in segregation and displacement. According to the Urban Displacement Project, 83 percent of today’s

<sup>35</sup> Mitchell & Franco 2018

<sup>36</sup> Ibid.

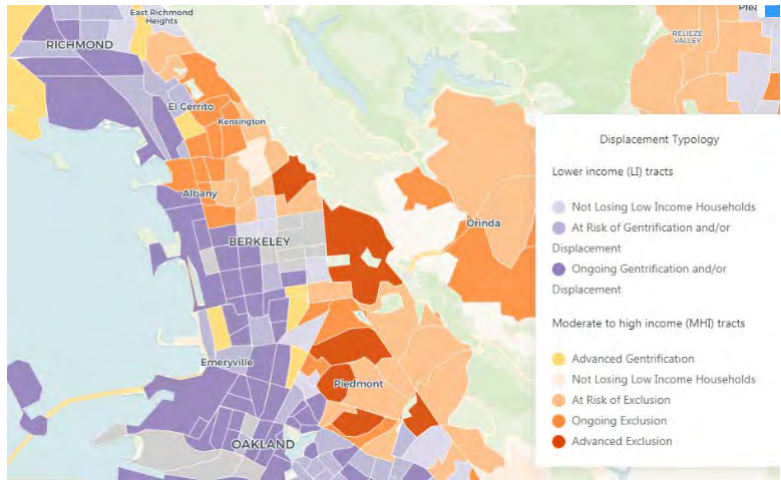
<sup>37</sup> Jan 2017

<sup>38</sup> City of Berkeley Health Status Report 2018



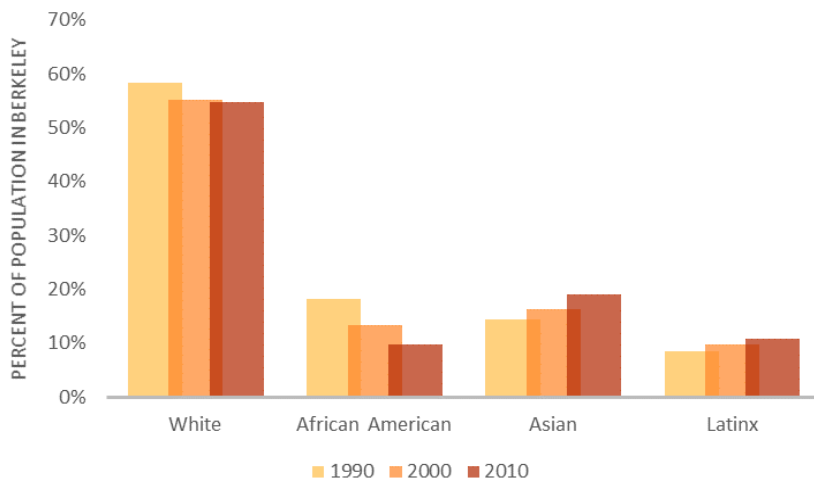
gentrifying areas in the East Bay were rated as hazardous (red) or declining (yellow) by HOLC, and 75 percent of today’s exclusionary areas were rated as best (green) or desirable (blue).<sup>39</sup> Redlining led to racial and economic segregation in cities, and South and West Berkeley – historically redlined communities – still contain more of Berkeley’s low-income communities and communities of color.<sup>40</sup> In addition, as the cost of living increases along with increased urbanization, these communities are also facing the greatest risk of gentrification and displacement (see Figure 10). As a result, Berkeley is losing its communities of color and low-income communities. For example, the African American population across Berkeley fell from 13.3 percent in 2000 to 9.7 percent in 2010 (see Figure 11). The change is even more pronounced in South and West Berkeley: between 2000 and 2017 the number of African American residents declined by 40 percent (see Figure 12). This trend is not only impacting the diversity of Berkeley, but also highlights the continual disenfranchisement of people of color.

Figure 10: Formerly redlined communities are experiencing higher rates of gentrification and displacement



Source: Urban Displacement Project

Figure 11: Berkeley is losing its African American population

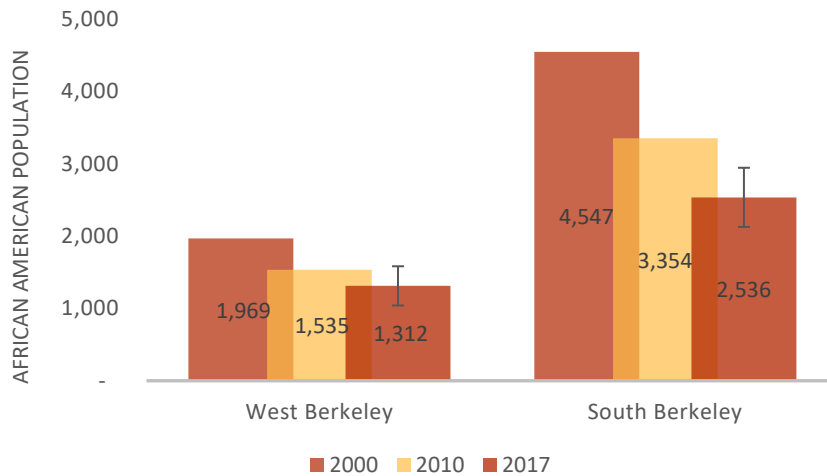


Source: Decennial Census 1990, 2000, 2010; Table DP-1 and Table P004; Universe: Total Population; Note: 1990 N=102,724, 2000 N=102,743, and 2010 N=112,580

<sup>39</sup> Urban Displacement Project

<sup>40</sup> City of Berkeley Agenda Item 22, April 30 2019

**Figure 12: West Berkeley and South Berkeley have experienced the highest rate of decline in the African American population**



Source: Decennial Census 2000 & 2010; Table DP-1; and ACS 2017 5-Year Estimates; Table B03002; Universe: Total Population; Note: Margins of Error expressed at 90 percent confidence level. Census tracts for West Berkeley include 4220, 4221, 4232, and South Berkeley include 4232, 4235, 4239.01, 4240.01

## VI. Recommendations

The City of Berkeley has committed to creating institutional change on racial equity,<sup>41</sup> and the Resilient Homes Equity Pilot Program is a perfect opportunity for the City to further its commitment. The City has already invested in creating a Racial Equity Lens Toolkit, which can be used to guide program expansion in a manner that reduces racial disparities and increases social resilience. As a result, this paper recommends Berkeley City Council take the following actions to build both physical and social resilience:

- 1. Approve the development of a Resilient Homes Equity Pilot Program that leverages the City's Racial Equity Lens Toolkit in collaboration with community organizations and stakeholders.**
- 2. Confirm a commitment to dedicate additional future funding to implement the Equity Pilot, with the exact annual amount to be determined during the program design phase.**

If these requests are approved by Council, staff will work with community-based organizations to determine a target group for the Equity Pilot and co-create it with community members. Using the City Toolkit as a guide, staff should also focus on creating an evaluation framework for the Equity Pilot that measures success through an equity lens, including program metrics that reflect data related to race/ethnicity, age, ability, gender, or other social factors when available.

<sup>41</sup> *City of Berkeley Resilience Strategy 2016*

At a high level, the Equity Pilot may enable underserved households to make seismic, sustainability, electrification and resilience upgrades through subsidies or other mechanisms leading to safer, healthier, and more sustainable living environments. More research is required to determine the most appropriate mechanism, but rebates (like the existing Program structure) will likely not be an effective method for low-income groups because they require households to have cash upfront to make costly improvements. More work is also required to determine the Pilot's specific target group. The Seismic Transfer Tax Rebate Program, as it is currently designed, reinforces economic inequality by benefitting recent homebuyers who are already economically advantaged.<sup>42</sup> To enable more equitable outcomes, the Equity Pilot should focus on reaching frontline communities, including communities of color, low-income communities, and long-term homeowners with limited incomes. More specifically, the Equity Pilot may target benefitting renters, residents with disabilities or elderly residents, and others who are not able to access the Seismic Transfer Tax Rebate Program.

### Potential Target Groups

One group the Pilot may target is renters. Renters are generally less secure financially<sup>43</sup> and more vulnerable to displacement,<sup>44</sup> and could benefit greatly from home improvements that they (or their landlords) could otherwise not afford. In California, 70 percent of low-income households are renters and 47 percent live in multifamily housing.<sup>45</sup> In Berkeley, 83 percent of households earning less than \$50,000 in annual income are renters.<sup>46</sup> Focusing on renters may also mean impacting more communities of color: 67 percent of Berkeley's African American households are renters<sup>47</sup> and 74 percent of Latinx households are renters.<sup>48</sup>

Other potential target groups for the Pilot include priority populations that are homeowners, such as differently abled residents, seniors, and communities of color. Differently abled homeowners have more complex energy reliability needs, and often need more support preparing for and after a disaster. Because senior homeowners often have fixed incomes, they may struggle with housing maintenance costs.<sup>49</sup> Additionally, research shows that seniors may be more vulnerable to displacement.<sup>50</sup> With the number of residents 65-years and older expected to more than double by 2030 in Berkeley,<sup>51</sup> the need for services or additional support may also increase. Another important trend is the change in Berkeley's diversity: between 2000 and 2010 the largest change to Berkeley's ethnic diversity was the decline in its African American population.<sup>52</sup> – and this trend has continued in recent years. Instituting

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<sup>42</sup> Recent buyers in Berkeley can be considered economically advantaged because they have the resources and capital to purchase a property in a highly-competitive housing market. However, we recognize there is a range of home prices in the City, and not all buyers can afford a million-dollar home. We believe the Program offers real value for buyers in the lower range of home prices and who may not have the disposable income to spend on important safety or sustainability upgrades.

<sup>43</sup> Scally 2018

<sup>44</sup> Florida 2017

<sup>45</sup> Scavo 2016

<sup>46</sup> ACS 2017 5-Year Estimates; Table B25118; Universe: Occupied Housing Units

<sup>47</sup> ACS 2017 5-Year Estimates; Table B25003B; Universe: Occupied housing units with a householder who is Black or African American alone

<sup>48</sup> ACS 2017 5-Year Estimates; Table B25003I; Universe: Occupied housing units with a householder who is Hispanic or Latino

<sup>49</sup> City of Berkeley Housing Element 2015

<sup>50</sup> Nyden et al. 2006

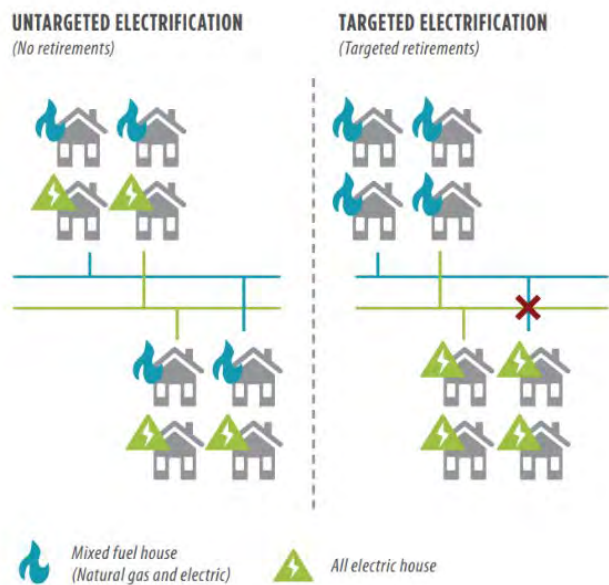
<sup>51</sup> Age-Friendly Berkeley Action Plan 2018

<sup>52</sup> City of Berkeley Housing Element 2015

additional anti-displacement measures, such as a Resilient Homes Equity Pilot, can slow this trend and enable more long-term members of the community to stay in their homes. Enabling homeowners to make important repairs is an effective strategy for preventing displacement.<sup>53, 54</sup>

Another way staff may choose to focus the Pilot is based on location of existing natural gas infrastructure. Targeting a group of underserved households that rely on the same segment of the gas distribution system, and helping them transition to all-electric, could lead to that entire gas line segment becoming decommissioned (see Figure 13). Strategic decommissioning of gas lines can help the overall system maintain sufficient pressure and reliable service, and may even lead to savings on maintenance costs.<sup>55</sup> Electrification of these homes would also provide health and safety benefits to the residents, as discussed in more detail below.

Figure 13: Approaches to neighborhood-level electrification



Source: Gridworks 2019

## VII. Potential Impact

An equity-centered Pilot offers several potential benefits for Berkeley residents. As previously mentioned, the Equity Pilot is a great opportunity to operationalize the City's existing Equity Toolkit – and can provide valuable learnings for how to integrate the Toolkit across other City programs. In addition, while the specifics of the Pilot need to be developed in partnership with community members and various stakeholders, several high-level impacts can be inferred based on a preliminary understanding of what the Pilot might include. Enabling underserved residents to improve their living space not only benefits them as individuals, but the community as a whole can benefit from a safer, healthier, more sustainable, and more inclusive environment.

### 1 | Increased Safety

It is estimated that in the event of a major earthquake over 600 housing units in Berkeley would be destroyed and 20,000 would be damaged, with low-income housing units experiencing the highest rate of damage.<sup>56</sup> Extending the Program to low-income residents (or landlords with low-income tenants) can enable them to make the necessary seismic improvements to better protect themselves and their homes during an earthquake. Improving the stability of buildings to withstand a major earthquake not

<sup>53</sup> The Housing Development Consortium of Seattle-King County 2019

<sup>54</sup> Alameda County 2018 The Housing Development Consortium of Seattle-King County 2019

<sup>55</sup> Gridworks 2019

<sup>56</sup> City of Berkeley Resilience Strategy 2016

Figure 14: Berkeley Seismic Transfer Tax Rebate Program Flier



Source: City of Berkeley

quality, which can have dramatic effects on health.<sup>61</sup> Gas stoves release nitrogen dioxide and other particulates while burning, and prolonged exposure to these can lead to asthma or other respiratory illnesses – especially among children and seniors.<sup>62</sup> One study found that children living in a home with a gas stove have a 42 percent increased risk of asthma and have a 24 percent increased risk of asthma over their lifetime.<sup>63</sup> Electric stoves do not emit particulates and, since electric stoves do not rely on combustion, there is also no risk of carbon monoxide poisoning. In addition, the risk of carbon monoxide poisoning can be reduced by replacing gas furnaces with electric heat pumps. According to the Center for Disease Control (CDC), approximately 50,000 people in the U.S. visit the emergency room each year as a result of accidental carbon monoxide poisoning and at least 430 people die from accidental exposure.<sup>64</sup> Electric heat pumps, which provide both heating and cooling, can also provide critical temperature control during heat waves. In 2017, 14 people died in the Bay Area as a result of extreme heat.<sup>65</sup> It is predicted that by 2100, Berkeley will have 6-10 additional heat waves each year,

only reduces an individual’s risk of displacement, loss of property or loss of life, but better positions the city as a whole to recover more rapidly after an earthquake.<sup>57</sup> The Berkeley Seismic Transfer Tax Rebate Program flier says it best: “Get Involved. Get Ready. No One’s Prepared Until Everyone’s Prepared” (see Figure 14).

Offering qualifying electrification upgrades as part of the Equity Pilot can also significantly reduce the risk of gas leaks following an earthquake. Gas leaks in general pose a safety risk, as can be seen in the Porter Ranch incident.<sup>58</sup> and San Bruno gas explosion,<sup>59</sup> thus lessening the City’s reliance on natural gas can improve public safety. In addition, because repairing electric infrastructure post-disaster can happen faster than repairing gas lines, increasing electrification can position the city to recover more quickly post-disaster.<sup>60</sup>

## 2 | Improved Health Outcomes

Many aspects of the physical environment can directly affect people’s health. Enabling more households to switch to electric appliances can improve indoor air

<sup>57</sup> FEMA 2016

<sup>58</sup> Siders 2016

<sup>59</sup> Bowe et al. 2015

<sup>60</sup> City of Berkeley Adopt an Ordinance, Item 21, July 9, 2019

<sup>61</sup> Barron 2017

<sup>62</sup> The Greenlining Institute 2019

<sup>63</sup> Lin et al. 2013

<sup>64</sup> CDC 2020

<sup>65</sup> Peterson 2018



which will disproportionately impact seniors, children under five, and low-income community members.<sup>66</sup> As heat waves grow more frequent and more severe due to climate change, enabling low-income and underserved communities to access clean cooling technology can be an important public health strategy.<sup>67</sup>

By prioritizing communities of color, the Equity Pilot can also contribute to reducing health disparities. People of color in Berkeley are more likely than white people to experience a wide variety of health problems throughout their lives and die prematurely.<sup>68</sup> Asthma hospitalization rates for African American children under five is 10 times higher than the rate among white children, and for Latinx children it is 2.8 times higher.<sup>69</sup> A key piece to improving health outcomes is ensuring access to environments that support health,<sup>70</sup> and a program that enables low-income and communities of color to improve their living environment and have access to clean technology can support better health and lead to better health outcomes.

### 3 | Reduction in GHG Emissions

Berkeley has been a longtime leader in climate change mitigation. In 2006, Berkeley voters overwhelmingly endorsed a ballot measure to reduce the community's GHG emissions by 80 percent below 2000 levels by 2050,<sup>71</sup> and three years later the City adopted a Climate Action Plan that included a vision to achieve zero net energy consumption for all new and existing buildings by 2050.<sup>72</sup> In 2018, the City Council declared a Climate Emergency and established a goal of becoming a Fossil Fuel Free City. That same year, Berkeley Mayor Jesse Arreguin set a goal to reach 100 percent renewable electricity by 2035 and achieve net-zero carbon emissions by the year 2050. Because energy use in homes and commercial buildings is the second largest contributor of greenhouse gases in Berkeley (making up almost 40 percent of overall GHG emissions),<sup>73</sup> electrification of buildings is essential to reducing emissions and energy usage. Roughly 72 percent of Berkeley residents rely on gas for heating their homes, thus strategies aimed at accelerating the electrification of buildings could contribute significantly to the City's goal of achieving Fossil Fuel Free status (see Figure 15).

The City has made progress toward these goals and is leading the state and nation in pursuing stricter green building standards through the adoption of a natural gas ban in new residential buildings as well as through stretch and reach codes (codes beyond the minimum imposed by the state).<sup>74</sup> However, more action is needed if the City intends to meet its goals.<sup>75</sup> Council has identified building retrofits as a key strategy, and recommended staff consider offering financial incentives to subsidize the transition toward sustainable buildings, including expanding the existing transfer tax subsidy.<sup>76</sup> The Equity Pilot

<sup>66</sup> *City of Berkeley Local Hazard Mitigation Plan 2014*

<sup>67</sup> *E3 2019*

<sup>68</sup> *City of Berkeley Health Status Report 2018*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *City of Berkeley Electric Mobility Roadmap 2019*

<sup>72</sup> *Arreguin 2018*

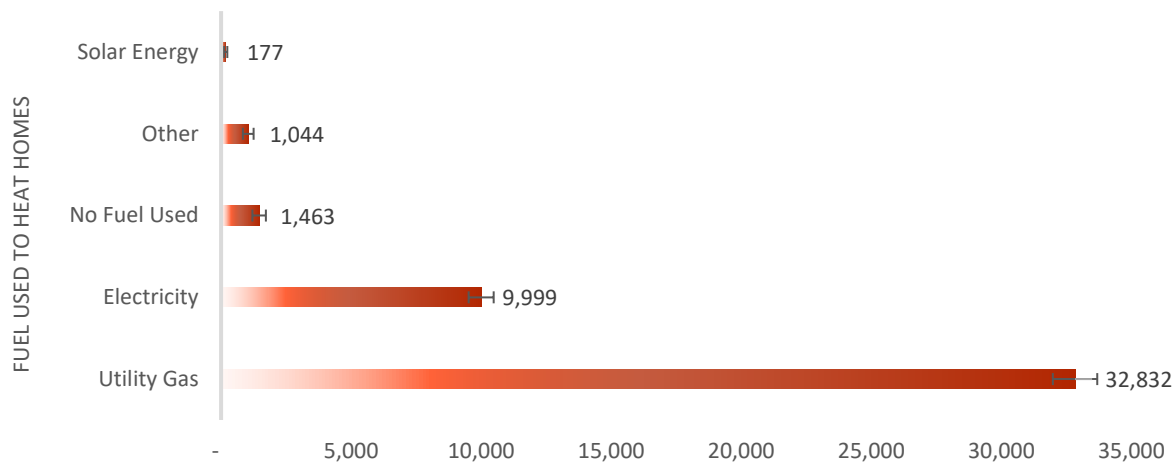
<sup>73</sup> *City of Berkeley Pathway to Clean Energy Building Report RFP March 20, 2019*

<sup>74</sup> *City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018*

<sup>75</sup> *According to the 2016 GHG emissions inventory, the City has achieved 15 percent reductions below 2000 levels.*

<sup>76</sup> *City of Berkeley Short-Term Referral Item 24, Nov. 27, 2018*

Figure 15: Roughly 72 percent of Berkeley households rely on natural gas for heating



Source: ACS 2017 5-Year Estimates; Table B25040; Universe: Occupied Housing Units;  
 Note: Margins of Error expressed at 90 percent confidence level

builds on this strategy of encouraging fuel switching to clean energy, and helps prevent low-income households from being left behind. All residents, regardless of their income or whether they own or rent their home, should have the opportunity to benefit from clean energy and contribute to Berkeley’s climate action goals.

#### 4 | Enables a Just Transition

Accelerating progress towards the City’s Fossil Fuel Free goal is an important part of Berkeley’s fight against climate change; however, efforts to achieve this goal must be carried out in a manner that reduces (not perpetuates) harmful inequalities. Council urged staff to consider “the framework for a just and equitable transition,” and the Equity Pilot helps to enable a just transition. More specifically, it can address three critical elements:

- Transitioning buildings away from fossil fuels to cleaner electricity is a key strategy for Berkeley; however, high upfront costs can make this transition difficult for low-income homeowners. For example, electrical panel upgrades range between \$2,000-\$4,000.<sup>77</sup> and heat pump water heaters are currently more expensive than traditional gas water heaters. Subsidies or similar mechanisms can help households cover the higher upfront cost of such technologies, enabling households to benefit from cleaner, more efficient appliances.
- As more buildings transition away from natural gas, the cost of gas will inevitably rise: the gas distribution system is expensive to maintain, and as the number of ratepayers decreases the costs will be distributed across fewer ratepayers – leading to higher bills for those who are still using it.<sup>78</sup> The cost today for natural gas is roughly \$1.50 per therm, and estimates place the cost as high as \$19 per therm by 2050.<sup>79</sup> The last customers relying on the gas system could experience unreasonably high rates; and these customers “may well be those among us who

<sup>77</sup> E3 2019

<sup>78</sup> Gridworks 2019

<sup>79</sup> Ibid.

are least able to afford high rates and least able to finance the new appliances needed to convert to electricity.”<sup>80</sup> It is therefore critical to develop strategies that enable more low-income communities to transition to all-electric and not be left to pay for an expensive, aging gas system. The City is in the process of developing an Existing Building Electrification Strategy, which will identify and assess the potential pathways to phasing out fossil fuels across all existing buildings in Berkeley as soon as possible and will incorporate an emphasis on a just transition.

- Because many low-income households are renters, strategies must consider how to incentivize landlords to invest in clean technology in a way that does not lead to higher rents (and prevents the cost of upgrades being passed through to tenants). Furthermore, tenants should benefit from the bill savings of more energy efficient appliances.

## VIII. Conclusion

Berkeley’s Seismic Transfer Tax Rebate Program has no doubt contributed to making the City more resilient to earthquakes and expanding the Program to include sustainability and energy efficiency upgrades will further build the City’s resilience to natural disasters and climate change. However, the current Program fails to reach underserved members of the community despite the fact that low-income and minority communities are more vulnerable to natural disasters and the impacts of climate change.<sup>81</sup> Exclusion not only keeps resilience out of reach for frontline communities, but it perpetuates social and racial inequality in the City. Establishing a new, equity-centered program that incorporates key strategies from the City’s Racial Equity Lens Toolkit can enable all residents to contribute to and benefit from building Berkeley’s resilience – especially those most in need and historically underserved. With Council’s support, a Resilient Homes Equity Pilot Program can help the City further its commitment to social and racial equity and secure its position as a leader in climate change, while also building a safer, healthier, more inclusive and more resilient community.

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***A Resilient Homes Equity Pilot can help Berkeley further its commitment to social and racial equity and secure its position as a leader in climate change, while also building a safer, healthier, more inclusive and more resilient community.***

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<sup>80</sup> *Gridworks 2019*

<sup>81</sup> *City of Berkeley Resilience Strategy 2016*



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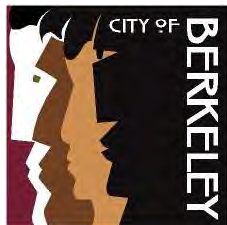
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Kate Harrison  
Councilmember, District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 27, 2018

**Item Number:** 24

**Item Description:** Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

**Submitted by:** Councilmember Harrison

Added Councilmember Hahn as a cosponsor.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
November 27, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison, ~~and Davila~~ and Hahn

Subject: Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

RECOMMENDATION

Short-term referral to the City Manager and the Office of Energy and Sustainable Development to draft an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.52, reducing tax imposed for qualifying electrification, energy efficiency, and water conservation retrofits.

BACKGROUND

The City of Berkeley faces climate change and water usage emergencies. A recent UN Intergovernmental Panel on Climate Change report highlighted the immediacy of the climate emergency, suggesting that in order to keep warming under 1.5 degrees Celsius, carbon emissions would need to be cut 45% by 2030.<sup>1</sup> Though California is no longer in extreme drought, Berkeley is still categorized as abnormally dry, almost 50% of the state is in moderate drought or worse, and we can expect to face major droughts in the future.<sup>2</sup>

The City is already leading the state and nation in pursuing stricter green building standards through the adoption of stretch and reach codes (codes beyond the minimum imposed by the state) favoring sustainable buildings and time of sale energy audits, but progress is still hindered by a significant lack of financial incentives to encourage the replacing and phasing-out of energy inefficient, carbon and water-intensive infrastructure in new and existing buildings. For example, even though electric heat pump water heaters can prevent significant carbon emissions and save money on heating bills, the relatively higher purchase and installation costs associated with heat pumps as compared to gas-fired heaters remains a major disincentive.

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<sup>1</sup> IPCC Press Release, Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by Governments, 8 October 2018,

[http://www.ipcc.ch/pdf/session48/pr\\_181008\\_P48\\_spm\\_en.pdf](http://www.ipcc.ch/pdf/session48/pr_181008_P48_spm_en.pdf)

<sup>2</sup> National Integrated Drought Information System, Drought in California, <https://www.drought.gov/drought/states/california>.

The City has identified building retrofits as a key part of reducing emissions and energy and water usage. To achieve the ambitious sustainability goals set by the Council, the City cannot rely solely upon the market, state, federal and utility level incentives. It would do well to explore offering significant financial incentives to subsidize the transition towards sustainable building, including expanding the existing transfer tax subsidy for seismic retrofits to include qualifying sustainability retrofits.

Following the devastating 1989 Loma Prieta earthquake, the Council passed Ordinance 6072-NS in 1991 to reduce up to one-third of the transfer tax imposed on property owners who seismically retrofit any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units. In passing the ordinance, forward-looking leaders acted independently of the state and federal government to subsidize critical building improvements in anticipation of relatively infrequent but exceedingly devastating earthquake emergencies. The seismic retrofit subsidy program offers a model for accelerating opportunities to address the major emergencies of our time.

This referral asks the City Manager and Office of Energy & Sustainable Development (OESD) to develop amendments to BMC Chapter 7.52 that expand the existing seismic retrofit subsidy in order to include appropriate reductions in transfer tax imposed on sales of property for qualifying electrification, energy efficiency, and water conservation retrofits. According to a 2018 City Manager report, 737 Berkeley residences were transferred in 2017.<sup>3</sup>

In drafting the ordinance, staff should consider existing City sustainability goals such as the 2009 Berkeley Climate Action Plan, and the framework for a just and equitable transition as set out in the Climate Emergency Declaration. Staff should tailor the subsidy to be commensurate with the emergency at hand and should design it to result in quantifiable reductions in emissions as well as energy and water waste.

OESD staff recently issued a request for proposals (RFP) for expert analysis identifying a set of measureable policies and programs to transition Berkeley's building stock to efficient and 100% clean energy.<sup>4</sup> The resulting analysis report should help inform staff in determining which types of greenhouse gas reduction measures transfer tax reductions could fund. Additionally, within the context of the City's sustainability goals

<sup>3</sup> Placing a Measure on the November 6, 2018 Ballot to Increase the Transfer Tax on Property Sales to Pay for General Municipal Services Including Funding Homeless Services, City Manager, July 31, 2018, [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/07\\_Jul/Documents/2018-07-31\\_Item\\_05\\_Placing\\_a\\_Measure\\_on\\_the\\_November\\_6.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/07_Jul/Documents/2018-07-31_Item_05_Placing_a_Measure_on_the_November_6.aspx)

<sup>4</sup> Request for Proposals (RFP) Specification No. 19-11256-C for Pathway to Clean Energy Buildings Report: Existing Building Program Evaluation and Recommendations, OESD, October, 10, 2018, [https://www.cityofberkeley.info/uploadedFiles/Finance/Level\\_3\\_-\\_General/19-11256-C%20-%20RFP%20Pathway%20to%20Clean%20Energy%20Building%20Report\\_rev%201017.pdf](https://www.cityofberkeley.info/uploadedFiles/Finance/Level_3_-_General/19-11256-C%20-%20RFP%20Pathway%20to%20Clean%20Energy%20Building%20Report_rev%201017.pdf).

and the RFP analysis, staff should specifically consider developing and codifying definitions of qualifying improvements, including but not limited to:

- Electric service panel upgrades for the purpose of transitioning to electric appliances
- Transitioning home appliances to efficient electric versions, e.g. replacing gas burning appliances and systems such as fossil fuel HVACs, cooktops and ovens, washers and dryers, and water heaters.
- Solar or other clean energy generation installations
- Electric vehicle charging stations
- Building weatherization upgrades in coordination with the Building Energy Saving Ordinance (BESO)
- Graywater recapture systems
- Water efficient fixtures and irrigation systems

The seismic retrofit program was limited to residential and mixed use buildings, but staff should consider the appropriateness and effectiveness of extending the subsidy program to commercial and/or industrial properties for the purpose of achieving city-wide sustainability goals. It should also review whether the existing requirement for completing seismic retrofits following property transfers is appropriate for the sustainability retrofits outlined in this referral.

Finally, staff should attempt to estimate the carbon, electrical, and water savings that are likely to result from adoption of their proposal, and determine whether alternatives exist which, at a similar cost the city, would result in greater reductions.

This referral is compatible with OESD's 2017 Climate Action Report update suggesting that the Council take bold steps to meet Berkeley's 2050 emission reduction goals. The report highlighted the urgency of identifying resources for incentivizing electrification measures, building efficiency, generation of renewable electricity, and transitioning buildings and vehicles away from fossil fuel.<sup>5</sup>

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<sup>5</sup> Berkeley Climate Action Plan Update, Office of Energy and Sustainable Development, December 7, 2017, [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/2017-12-07%20WS%20Item%2001%20Climate%20Action%20Plan%20Update.pdf)

Short-Term Referral to City Manager and Office of Energy and Sustainable Development to Draft Ordinance Amending Berkeley Municipal Code Chapter 7.52, Reducing Tax Imposed for Qualifying Electrification, Energy Efficiency and Water Conservation Retrofits

CONSENT CALENDAR  
November 27, 2018

**FINANCIAL IMPLICATIONS**

Possible reduction in tax revenue, the magnitude of which is dependent on which retrofits are found to be qualifying.

**ENVIRONMENTAL SUSTAINABILITY**

Incentivizing electrification, energy efficiency, and water savings is directly in line with the City's climate and environmental goals.

**CONTACT PERSON**

Councilmember Kate Harrison, Council District 4, (510) 981-7140

**Attachments:**

1. BMC Section 7.52.060



**7.52.060 Exceptions.**

A. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

B. Any deed, instrument or writing to which the United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.

C. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

Subdivisions 1 to 4, inclusive, of this section shall only apply if the making, delivering or filing of instruments of transfer of conveyance occurs within five years from the date of such confirmation, approval or change.

D. Any tax imposed pursuant to this chapter shall not apply to the making or delivering of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
2. Such order specifies the property which is ordered to be conveyed;
3. Such conveyance is made in obedience to such order.

E.

1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:

a. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

b. Such continuing partnership continues to hold the realty concerned.

2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

3. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subdivision 2, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

F.

1. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse or domestic partner to the other in order to create a joint tenancy or tenancy in common of their common residence.

2. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Any tax imposed pursuant to this chapter also shall not apply to any transfer from one domestic partner, as that term is used in the City of Berkeley's policy establishing domestic partnership registration, to another, where (1) prior to such transfer an affidavit of domestic partnership has been filed with the City Clerk pursuant to Section IV of the City of Berkeley's policy establishing domestic partnership registration; (2) subsequent to the filing of such affidavit of domestic partnership, either or both domestic partner(s) files a statement of termination with the City Clerk pursuant to Section V of the domestic partnership policy; (3) such transfer of real property is made pursuant to a written agreement between the domestic partners upon the termination of their domestic partnership; and (4) the real property was acquired by either or both domestic partner(s) prior to the filing of the statement of termination.

G. Any tax imposed pursuant to this chapter shall not apply to transfers, conveyance, lease or sub-lease without consideration which confirm or correct a deed previously recorded or filed.

H. Any tax imposed pursuant to this chapter shall not apply to transfers recorded prior to the effective date of the ordinance codified in this chapter.

I. The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

J. Reserved.

K.

1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to "seismically retrofit" either any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units.

2. The term "seismically retrofit" within the meaning of this chapter means any of the following:

a. That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;

b. Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;

c. Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

d. Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

3. The work to seismically retrofit structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to seismically retrofit the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one year to complete all seismic retrofit work and submit a seismic retrofit verification application to the codes and inspection division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited to the applicant upon submission of a seismic retrofit verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.

a. "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic retrofit work.

b. "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.



Office of the Mayor

02a.13

CONSENT CALENDAR  
November 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street

RECOMMENDATION

Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.

BACKGROUND

Traffic in West Berkeley has steadily increased over the years as more development takes place and as businesses and manufacturers thrive. On October 7<sup>th</sup>, the Mayor's Office participated in a Manufacturing Roundtable orchestrated by the Office of Economic Development as part of Manufacturing Week. At the meeting, businesses located in the light-industrial/mixed use residential neighborhood around Eighth Street at Carleton Street and Pardee Street raised safety concerns in regards to traffic. Specifically, the following issues were raised:

- Cars frequently speed through these intersections, especially at Carleton Street which has no painted crosswalk.
- Parked cars and trucks double parking cause visibility issues at these intersections, leading to near misses.
- There has been increased pedestrian traffic from both customers and businesses transporting goods between buildings.

Currently, these two intersections are two way stops, with traffic travelling on Eighth Street having the right of way. Out of the 22 intersections on Eighth Street, which runs from Jackson Street/Red Oak Avenue at University Village, Albany to Heinz Avenue near Berkeley Bowl West in Southwest Berkeley, the only intersection besides Carleton Street and Pardee Street not to have a stop sign or traffic light on Eight Street is Bataan Avenue, a small one-block residential road in Northwest Berkeley. Given that, drivers going down Carleton Street and Pardee Street may wrongly assume that those intersections at Eighth Street are a four-way stop, creating unsafe conditions.

In November 2019, the City Council approved the Transportation Commission's Stop Sign Warrant Policy as a way to determine when stop signs may be warranted to protect pedestrians, wheelchair users and/or bicyclists in the City of Berkeley (Attachment 1). This was in response to a referral from the Council in October 2017 which was created after two middle school students were injured after being hit by a car

at an intersection that did not meet the criteria for stop sign installations at the time. If such installations are warranted, this can help Berkeley meet its goals to improve traffic safety via our Pedestrian and Bike Plans and Vision Zero.

FINANCIAL IMPLICATIONS

Staff time and cost associated with the stop sign installation.

ENVIRONMENTAL SUSTAINABILITY

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Policy Guidelines for Multiway Stop Applications



Attachment 1



Department of Public Works  
Transportation Division

## **Policy Guidelines for Multiway Stop Applications**

### **INTRODUCTION:**

Multiway stop control (a.k.a. all-way stops) can be useful as a safety measure if certain traffic conditions exist. Safety concerns associated with multiway stops include pedestrians, bicyclists, and all road users expecting other road users to stop. Multiway stop control is used where the volume of traffic on the intersecting roads is approximately equal.

The City of Berkeley's policy guideline on multiway stop applications is based on the exact language from California Vehicle Code (CVC) <sup>1</sup> and the California Manual on Uniform Traffic Control Devices (MUTCD) <sup>2</sup>.

### **I. General Policy on Traffic Signs**

The California Vehicle Code (CVC) provides that "(a) Except as provided in Section 21374 [relating to directional signs for tourists] only those official traffic control devices that conform to the uniform standards and specifications promulgated by the Department of Transportation shall be placed upon a street or highway..." Hence, the City of Berkeley Public Works Department follows standard professional engineering practices as prescribed in the California Department of Transportation (Caltrans) Manual on Uniform Traffic Control Devices. The Manual has the following provisions, among others, that guide the City's policy and procedures for sign installation:

- A. Excessive use of signs should be avoided.
- B. Signs should be used where warranted by facts and field studies.
- C. No traffic sign or its support shall bear any message that is not essential to traffic control.
- D. Effective traffic control depends not only on appropriate application of devices, but on reasonable enforcement of regulations as well.

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<sup>1</sup> State of California Vehicle Code

<sup>2</sup> 2014 Manual on Uniform Traffic Control Devices, Rev. 4



- E. Data obtained from traffic engineering studies of physical and traffic related factors should be used in determining where signs are necessary.
- F. Care should be taken not to install too many signs. A conservative use of regulatory and warning signs is recommended as these signs, if used to excess, tend to lose their effectiveness.

## II. Legal Authority for Stop Sign Installation

The California Vehicle Code (CVC) includes the following excerpts regarding local authority on stop signs.

- A. *Local Authority, CVC §21351*: Local authorities in their respective jurisdictions shall place and maintain or cause to be placed and maintained such traffic signs, signals and other traffic control devices upon streets and highways as required hereunder, and may place and maintain or cause to be placed and maintained such appropriate signs, signals and other traffic control devices as may be authorized hereunder or as may be necessary properly to indicate and to carry out the provisions of this code or local traffic ordinances or to warn or guide traffic.
- B. *Stop Signs on Local Highways, CVC §21354*: ...a local authority may designate any highway under its jurisdiction as a through highway and may erect stop signs at entrances thereto or may designate any intersection under its exclusive jurisdiction as a stop intersection and erect stop signs at one or more entrances thereto.
- C. *Stop Signs, CVC §21355*: ...The Department of Transportation and local authorities in their respective jurisdictions may erect stop signs at any location so as to control traffic within an intersection.
- D. *Stop Requirements, CVC §22450(b)*. Notwithstanding any other provision of law, a local authority may adopt rules and regulations by ordinance or resolution providing for the placement of a stop sign at any location on a highway under its jurisdiction where the stop sign would enhance traffic safety.

## III. Specific Policy on Stop Signs

The California MUTCD provides the following general policies with respect to the installation of Stop signs, which the Public Works Department will uphold:

- A. Stop signs should not be used for speed control.
- B. Stop signs shall not be erected at any entrance to an intersection when such entrance is controlled by an official traffic control signal, nor at any railroad grade crossing which is controlled by automatic signals, gates, or other train-actuated

control devices except as provided in *CVC §21355, Stop Signs*. The conflicting commands of two types of control devices are confusing.

- C. Portable or part-time Stop signs shall not be used except for emergency purposes.

#### IV. Multiway Stop Installation Warrants

The California MUTCD recommends that the decision to install multiway stop control should be based on an engineering study. The Public Works Department will conduct or sponsor an engineering study to determine the appropriateness of multiway stop control based on the warrants described below.

The California MUTCD specifies that any of the following locations (or conditions) may warrant multiway stop sign installation:

- A. Where traffic control signals are warranted and urgently needed, the multiway stop may be an interim measure that can be installed quickly to control traffic while arrangements are being made for the signalization installations.
- B. An accident problem, as indicated by 5 or more reported accidents within a 12-month period of a type susceptible of correction by a multiway stop installation. Such accidents include right- and left-turn collisions as well as right-angle collisions.
- C. Minimum volumes:
  - 1. The total vehicular volume entering the intersection from all approaches must average at least 500 vehicles per hour for any 8 hours of an average day, and
  - 2. The combined vehicular and pedestrian volume from the minor street or highway must average at least 200 units per hour for the same 8 hours, with an average delay to minor-street vehicular traffic of at least 30 seconds per vehicle during the maximum hour, but
  - 3. When the 85<sup>th</sup>-percentile approach speed exceeds 64 km/hr (40 mph), the minimum vehicular volume warrant is 70 percent of the above requirements.

#### V. Special Conditions

Based on the optional criteria prescribed by the MUTCD, the Transportation Division may require an engineering study for special situations on a case-by-case basis. In special situations where the multiway stop warrants from Section IV are not satisfied, the Transportation Division may recommend the installation of multiway stop control to protect pedestrians, wheelchair users, and bicyclists for the following specific special conditions,

based on professional engineering judgment and as determined by the Transportation Manager:

- A. The need to control vehicle/pedestrian conflicts near locations that generate high pedestrian volumes, such as intersections adjacent to schools, commercial center or park.
- B. The need to control vehicle/bicyclist conflicts where a street that is designated as a bikeway in Berkeley's bicycle plan crosses a major street. Bikeways include all routes shown as part of the bikeway network in Figure 3.1: Existing Bikeway Network or in Figure 5.1: Low Stress Bikeway Network Vision in the Berkeley Bicycle Plan adopted on May 2, 2017.
- C. Locations where a road user, after stopping, cannot see conflicting traffic and is not able to safely negotiate the intersection unless conflicting cross traffic is also required to stop.

Four-way stop signs may be installed but will not necessarily be installed at intersections that meet these supplemental criteria. The Transportation Division should compare the effects of stop signs and alternate controls on all forms of transportation, including public transit buses which employ professional drivers, before deciding whether to install it. For example, to protect bicyclists, HAWK Beacons may be more appropriate than stop signs at intersections where bikeways cross major streets with transit or very high traffic volume, to minimize the disruption of traffic flow on those major streets. Likewise, to protect pedestrians, Rectangular Rapid Flashing Beacons (RRFBs) may be more appropriate than stop signs on major streets with transit or very high traffic volumes to minimize the disruption of traffic flow.

If stop signs are allowed under these new criteria, it is not necessary to meet state criteria. Analyses for stop signs in all locations in Berkeley should consider the benefits of proposed stop signs, including safety benefits, and this analysis should be made available to the public before the decision is made.



02a.14



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Implement Protocols for managing the City Council Meetings on Zoom

RECOMMENDATION

Adopt a Resolution with the following actions:

1. Implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.

2. Designate a third party community organization to host and manage the meeting with neutrality.

BACKGROUND

Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently.

Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment.

Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

#### FINANCIAL IMPLICATIONS

To be determined.

#### ENVIRONMENTAL SUSTAINABILITY

City Council must honor and respect the voices of our community, especially the most marginalized, in order to make sound policy decisions to protect our communities during this health and climate crisis.

#### CONTACT PERSONS

Cheryl Davila  
Councilmember District 2  
510.981.7120  
[cdavila@cityofberkeley.info](mailto:cdavila@cityofberkeley.info)

Eshal Sandhu  
Jovi Tseng  
Sanjita Pamidimukkala  
District 2 Interns

#### ATTACHMENTS:

1. Resolution

REFERENCE:

1. [Berkeley City Council Rules of Procedure and order effective June 16, 2020](#)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
IMPLEMENTING PROTOCOLS MANAGING CITY COUNCIL MEETINGS ON ZOOM

WHEREAS, Since March 2020, the Berkeley City Council has held its Council Meetings on Zoom due to the COVID-19 pandemic. For the last several Council meetings, many community members and public commenters have expressed concerns how the meetings are handled, currently; and

WHEREAS, Community members do not feel there's full transparency of the meetings:

- There is no attendee list present nor gallery view of attendees;
- The meeting setup doesn't allow members of the audience to yield their time to a current member of the public while in line, as was the case prior to COVID;
- Timer inequities where the on-screen timer handled by the City for Public Comment would start early or late as community members speak;
- Some speakers receive more time and/or less time, or are cut off;
- There is no transparent way to know when the public raise their hand to speak on Zoom, how they were chosen and in what order?

WHEREAS, Prior to the COVID-19 pandemic, when the City Council was holding its meeting in public, any member of the public who would like to give public comment to the City Council on any agenda item had to line up in order. Also, the public was able to see who was in the City Council meeting room. Finally, audience members were able to yield their time to the speaker on public comment; and

WHEREAS, Other protocols to consider for all zoom meetings throughout the COB:

- Implement the recorded message at the beginning of all meetings including commission meetings and eliminate it being read by individuals;
- All meeting utilize timers for all items, on consent and action calendars throughout the City in all zoom meetings;

WHEREAS, Currently, Berkeley Community Media has a contract with the City of Berkeley to conduct the broadcast of the City Council meetings, whether they were held in person or on Zoom. Berkeley Community Media could be considered to manage the neutrality of the City Council Meetings on Zoom and implement the protocols.

WHEREAS, It is imperative that we must conduct our City Council meetings as accessible, equitable, fair, and transparent.

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley hereby implement the following protocols and criteria for City Council Meetings held on the Zoom Video Conferencing

service, which shall take effect upon adoption, as well as adding the following section to the City Council Rules of Procedures:

- A. Gallery view showing the list of all participants and attendees;
- B. Display the timer, during public comment on any item on the agenda, the timer for each speaker shall be displayed. The timer countdown shall start when the person starts speaking, and shall notify the speaker their time has exceeded the allotted time; but will stop when the speaker stops speaking. In the event of technical difficulties during a speaker presentation, the speaker time will stop and will resume when the speaker resumes speaking.
- C. Time yielded, in order to yield extra time to the current speaker, attendees speaking shall state the name of the person yielding their time prior to speaking, each person yielding time must be on the zoom as an attendee at the time, time is yielded;
- D. The designated meeting host shall keep track of a list and record attendees requesting to speak in the order when they raised their hands for public comment. The list shall be presented on screen publicly that shows who raised their hand to speak on Zoom, how they were chosen and in what order.
- E. Notify speakers they have exceeded their time, and allow to complete their sentence and state you are moving on to the next speaker, prior to cutting the speaker off;
- F. Allow chat and reactions capabilities for attendees and participants;
- G. The chat should be saved and part of the public record.

BE IT FURTHER RESOLVED, that the City Council designate a third party community organization to host and manage the meeting with neutrality.





02a.15

Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
November 10, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Wengraf  
Subject: Consider Fire Safety Options for Fire Pit at Codornices Park

RECOMMENDATION

Referral to the Parks & Waterfront Commission to consider safety options regarding the future of the fire pit at Codornices Park. Please consider 1) Complete removal of fire pit or 2) Manufacture of a cover that can be secured and locked.

FINANCIAL IMPLICATIONS

Staff time to remove the fire pit. Unknown financial implications to design, craft and install the cover.

BACKGROUND

Codornices Park, situated in the High Hazard Fire Zone on Euclid Avenue in the North-East Berkeley Hills, has a playground, basketball courts, an open field and a forest of dawn redwood trees. The 12 foot by 12 foot fire pit, tucked away behind the meadow in the secluded, wooded area of Codornices Park, sits under the canopy of the trees. It has been a matter of concern for neighbors who fear a fire can easily start if users are careless and irresponsible. With climate change and the number of red flag days increasing, options for the fire pit and how and if it can be safely used should be considered.

The large fire pit, is difficult to monitor because it is situated behind the meadow and not visible from Euclid Avenue. Over the years, our office has received numerous calls of concern about the potential danger it presents.

ENVIRONMENTAL SUSTAINABILITY

This item supports the City's environmental sustainability goals. Fire prevention is critical for environmental sustainability.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160



| Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i> |                                                                                                                                 |
|-------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Scheduled Dates                                                               |                                                                                                                                 |
| Jan. 12                                                                       | <ol style="list-style-type: none"> <li>1. Update: Zero Waste Priorities</li> <li>2. Undergrounding Task Force Update</li> </ol> |
| Feb. 16                                                                       | <ol style="list-style-type: none"> <li>1. BMASP/Berkeley Pier-WETA Ferry</li> <li>2.</li> </ol>                                 |
| March 16                                                                      | <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol>                                                                |

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

| Unscheduled Presentations (City Manager)                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Systems Realignment</li> <li>2. Digital Strategic Plan/FUND\$ Replacement/Website Update</li> <li>3. Update: Berkeley's 2020 Vision</li> </ol> |

|    | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <p><b>47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow</b> <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i><br/> <b>From: Councilmember Harrison</b><br/> <b>Recommendation:</b><br/>           1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.<br/>           2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.<br/> <b>Financial Implications:</b> See report<br/>           Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p> |
| 2. | <p><b>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers</b> <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i><br/> <b>From: City Manager</b><br/> <b>Recommendation:</b> Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.<br/> <b>Financial Implications:</b> None<br/>           Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000<br/> <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>                                                                                                                                                                                                |
| 3. | <p><b>Vote of No Confidence in the Police Chief</b><br/> <b>From: Councilmember Davila (Author)</b><br/> <b>Recommendation:</b> Adopt a resolution taking a Vote of No Confidence in the Police Chief.<br/> <b>Financial Implications:</b> See report<br/>           Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120<br/> <i>Note: Item referred to the Agenda &amp; Rules Committee as unfinished business from the 9/15/2020 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 11/14/20.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 4. | <p><b>22. Support Community Refrigerators</b> <i>(Continued from September 22, 2020)</i><br/> <b>From: Councilmember Davila (Author)</b><br/> <b>Recommendation:</b><br/>           1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.<br/>           2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.<br/> <b>Financial Implications:</b> See report<br/>           Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120<br/> <i>Note: Item referred to the Agenda &amp; Rules Committee as unfinished business from the 10/13/2020 meeting pursuant to the Rules of Procedure. Deadline to appear on a Council meeting agenda: 12/12/20.</i></p>                                                                                                                                 |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                                         |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-----------------------------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                                         |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Determination<br>on Appeal<br>Submitted | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                                         |                   |
| 1510 Walnut St, Units A-F (establish pet store use)                         | ZAB                  | 10/30/2020            |                                         |                   |
| 1920 Vine St (modify dwelling unit and replace accessory building)          | ZAB                  | 10/30/2020            |                                         |                   |
| 2221 Carleton St (single-family dwelling)                                   | ZAB                  | 10/30/2020            |                                         |                   |
| 2795 San Pablo Ave (construct mixed-use development)                        | ZAB                  | 11/3/2020             |                                         |                   |
| 2724 Mabel St (single-family dwelling)                                      | ZAB                  | 11/3/2020             |                                         |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                                         |                   |
| 0 (2435) San Pablo Ave (construct mixed-use building)                       | ZAB                  |                       |                                         | 1/21/2021         |
| 1915 Berryman St (Payson House)                                             | LPC                  |                       |                                         | TBD               |
| 1850 Arch St (add bedrooms to multi-family residential building)            | ZAB                  |                       |                                         | TBD               |
| 1862 Arch St (add bedrooms to multi-family residential building)            | ZAB                  |                       |                                         | TBD               |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
| <b>Notes</b>                                                                |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |
|                                                                             |                      |                       |                                         |                   |

10/20/2020





Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

From: *Dee* Dee Williams-Ridley, City Manager

Subject: Commission Meetings During COVID-19 Emergency

This memo serves to provide a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration.

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

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

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

Effective October 12, 2020, all City boards and commissions may meet once to develop and finalize their work plan for 2021 and to complete any Council referrals directly related to the COVID-19 pandemic response. A second meeting may be held to complete this work with specific authorization by the City Manager. It is recommended that the meeting(s) occur by the end of February 2021.

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

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

To assist commissions with the development of their work plan and to provide the City Council with a consistent framework to review the work plans, the City Manager has developed the following items to consider in developing the work plan that is submitted to the City Council agenda.

Prompts for Commissions to use in work plan:

- What commission items for 2021 have a direct nexus with the COVID-19 response or are the result of a City Council referral pertaining to COVID-19?
- What commission items for 2021 are required for statutory reasons?
- What commission items for 2021 are required for budgetary or fund allocation reasons?
- What commission items for 2021 support council-adopted or voter-adopted mission critical projects or programs?
- What are the anticipated staff demands (above and beyond baseline) for analysis, data, etc., to support commission work in 2021 (baseline duties = posting agendas, creating packets, attend meetings, minutes, etc.)?

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

Meeting frequency for boards and commissions will continue to be evaluated on a regular basis by the City Manager in consultation with Department Heads and the City Council. More frequent meetings by commissions will be permitted as the conditions under COVID-19 dictate.

Thank you for your service on our boards and commissions. The City values the work of our commissions and we appreciate your partnership and understanding as we address this pandemic as a resilient and vibrant community.

Attachments:

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

cc: Mayor and City Councilmembers  
Senior Leadership Team



RESOLUTION NO. 69,331-N.S.

RATIFYING THE RECOMMENDATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES AND THE PUBLIC HEALTH OFFICER REGARDING MEETINGS OF BERKELEY LEGISLATIVE BODIES IN RESPONSE TO THE COVID-19 (NOVEL CORONAVIRUS) PANDEMIC

WHEREAS, on March 3, 2020, pursuant to Berkeley Municipal Code section 2.88.040, the City Manager, serving as the Director of Emergency Services, proclaimed the existence of a local emergency; and

WHEREAS, the proclamation was warranted by virtue of the extreme peril to the safety of persons and property in the City caused by pandemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus ("COVID-19"), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, the proclamation of the Director of Emergency Services was ratified by the City Council on March 10, 2020; and

WHEREAS, the continued spread of COVID-19 and increase in community transmission cases in surrounding counties warrant further measures be taken by the City to protect the community; and

WHEREAS, the Public Health Officer has issued guidelines for limiting mass gatherings; and

WHEREAS, certain limitations on the meetings of legislative bodies in the City of Berkeley is warranted; and

WHEREAS, the continued essential functions of the City and certain legislative bodies must continue for time-sensitive, legally mandated actions; and

WHEREAS, the Director of Emergency Services presented recommendations to the Agenda & Rules Committee on March 12, 2020 regarding the meetings of legislative bodies; and

WHEREAS, the Agenda & Rules Committee recommended that said recommendations be forwarded to the City Council for acknowledgement and ratification.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following recommendations issued by the Director of Emergency Services and the Public Health Officer regarding limitations and practices for legislative bodies of the City of Berkeley are hereby acknowledged and ratified:

## Section 1. Boards and Commissions

Commissions listed below may continue to meet only if they have time-sensitive, legally mandated business to complete, as determined by the Director of Emergency Services. The City may consider teleconferencing for these commissions, if feasible.

Design Review Committee  
Fair Campaign Practices Commission  
Housing Advisory Commission (limited to quasi-judicial activities)  
Joint Subcommittee on the Implementation of State Housing Laws  
Landmarks Preservation Commission  
Open Government Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Zoning Adjustments Board

Commissions in Category B shall not meet for a period of 60 days. This will be re-evaluated at the Agenda & Rules Committee meeting on April 13, 2020. A Commission in Category B may convene a meeting if it has time-sensitive, legally-mandated business to complete, as determined by the Director of Emergency Services.

### Category B

Animal Care Commission  
Cannabis Commission  
Civic Arts Commission  
Children, Youth, and Recreation Commission  
Commission on Aging  
Commission on Disability  
Commission on Labor  
Commission on the Status of Women  
Community Environmental Advisory Commission  
Community Health Commission  
Disaster and Fire Safety Commission  
Elmwood Business Improvement District Advisory Board  
Energy Commission  
Homeless Commission  
Homeless Services Panel of Experts  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Measure O Bond Oversight Committee  
Mental Health Commission  
Parks and Waterfront Commission  
Peace and Justice Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Sugar-Sweetened Beverage Product Panel of Experts

Transportation Commission  
Youth Commission  
Zero Waste Commission  
Loan Administration Board

Section 2. City Council Policy Committees

The Agenda & Rules Committee and the Budget & Finance Committee may continue to meet to fulfill their legislative and advisory responsibilities. All other Policy Committees (Facilities, Infrastructure, Transportation, Environment & Sustainability, Public Safety, Land Use, Housing & Economic Development, and Health, Life Enrichment Equity & Community) are suspended indefinitely. The 120-day deadline to consider an item will be tolled during the suspension of business.

Section 3. City Council


For City Council meetings, the City will continue to advise and implement social distancing by limiting the capacity of the Council Chambers, providing an overflow room, attempting to limit the duration of the meeting, only conducting essential business, and limiting or suspending ceremonial items. The City will adhere to and implement the provisions of the Governor's Executive Order #N-25-20 related to the Brown Act and the utilization of technology to facilitate participation.

The foregoing Resolution was adopted by the Berkeley City Council on March 17, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numalville, City Clerk





Lori Droste  
Councilmember, District 8

## **ACTION CALENDAR**

June 30, 2020

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

**From:** Councilmember Lori Droste (Author) and Councilmembers Rigel Robinson (Co-Sponsor) and Rashi Kesarwani (Co-Sponsor)

**Subject:** Commission Reorganization for Post-COVID19 Budget Recovery

### **RECOMMENDATION**

- 1) Reorganize existing commissions with the goal of achieving 20 total commissions.
- 2) Reorganize existing commissions within various departments to ensure that no single department is responsible for more than five commissions.
- 3) Reorganize commissions within the Public Works Department to ensure Public Works oversees no more than three commissions.
- 4) Refer to the City Manager and every policy committee to agendaize at the next meeting available to discuss commissions that are in their purview and make recommendations to the full Council on how to reorganize and address the various policy areas. Commission members should be notified and chairs should be invited to participate. Policy committee members are encouraged to consider the renaming of some commissions in order to ensure that all policy areas are addressed.

## **PROBLEM/SUMMARY STATEMENT**

Demand for city workers staffing commissions is larger than the City's ability to supply it at an acceptable financial and public health cost. Thirty-seven commissions require valuable city staff time and funding that could be better spent providing essential services. The COVID-19 pandemic has impacted the City of Berkeley in a myriad of ways, resulting in enormous once-in-a-lifetime socioeconomic and public health impacts. While the City Manager and department heads are addressing how to best prepare and protect our residents, particularly our most vulnerable, they are also required to oversee an inordinate amount of commissions for a medium-sized city at a significant cost.

The City of Berkeley faces many challenges, including the COVID-19 pandemic and its resultant budget and staffing impacts. Prior to the onset of COVID-19, the City Council and staff spent significant Council time on items originating with the City's advisory commissions. As the Shelter in Place is gradually lifted, critical city staff will resume staffing these 37 commissions. As a result, too much valuable staff time will continue to be spent on supporting an excessive amount of commissions in Berkeley rather than addressing the basic needs of the City.

## **BACKGROUND**

### **Review of Existing Plans, Programs, Policies, and Laws**

The City of Berkeley has approximately thirty-seven commissions overseen by city administration, most of which have at least nine members and who are appointed by individual councilmembers. These commissions were intended to be a forum for public participation beyond what is feasible at the City Council, so that issues that come before the City Council can be adequately vetted.

Some commissions are required by charter or mandated by voter approval or state/federal mandate. Those commissions are the following:

1. Board of Library Trustees (charter)
2. Business Improvement Districts (state mandate)
3. Civic Arts Commission (charter)
4. Community Environmental Advisory Commission (state/federal mandate--CUPA)
5. Fair Campaign Practices Commission/Open Government (ballot measure)
6. Homeless Services Panel of Experts (ballot measure)
7. Housing Advisory Commission (state/federal mandate)
8. Human Welfare and Community Action (state/federal mandate)
9. Measure O Bond Oversight Committee (ballot measure)
10. Mental Health Commission (state/federal mandate)
11. Personnel (charter)

- 12. Police Review Commission (ballot measure)
- 13. Sugar-Sweetened Beverages (ballot measure)

Berkeley must have its own mental health commission because of its independent Mental Health Division. In order to receive services, the City needs to have to have an advisory board. Additionally, Berkeley’s Community Environmental Advisory Commission is a required commission in order to oversee Certified Unified Program Agency (CUPA) under California’s Environmental Protection Agency. Additionally, some commissions serve other purposes beyond policy advisories. The Children, Youth and Recreation Commission, Housing Advisory Commission, and the Human Welfare and Community Action Commission advise Council on community agency funding. However, some of the aforementioned quasi-judicial and state/federal mandated commissions do not need to stand independently and can be combined to meet mandated goals.

In comparison to neighboring jurisdictions of similar size, Berkeley has significantly more commissions. The median number of commissions for these cities is 12 and the average is 15.

| Comparable Bay Area City | Population (est.) | Number of Commissions | Links                                                                                                                                                                                                         |
|--------------------------|-------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Berkeley                 | 121,000           | 37                    | <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/External%20Roster.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - Commissions/External%20Roster.pdf</a> |
| Antioch                  | 112,000           | 6                     | <a href="https://www.antiochca.gov/government/boards-commissions/">https://www.antiochca.gov/government/boards-commissions/</a>                                                                               |
| Concord                  | 130,000           | 14                    | <a href="https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm">https://www.cityofconcord.org/264/Applications-for-Boards-Committees-Comm</a>                                             |
| Daly City                | 107,000           | 7                     | <a href="http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm">http://www.dalycity.org/City_Hall/Departments/city_clerk/Commissions_Information/boards.htm</a>         |
| Fairfield                | 117,000           | 7                     | <a href="https://www.fairfield.ca.gov/gov/comms/default.asp">https://www.fairfield.ca.gov/gov/comms/default.asp</a>                                                                                           |
| Fremont                  | 238,000           | 15                    | <a href="https://www.fremont.gov/76/Boards-Commissions-Committees">https://www.fremont.gov/76/Boards-Commissions-Committees</a>                                                                               |
| Hayward                  | 160,000           | 12                    | <a href="https://www.hayward-ca.gov/your-government/boards-commissions">https://www.hayward-ca.gov/your-government/boards-commissions</a>                                                                     |
| Richmond                 | 110,000           | 29                    | <a href="https://www.ci.richmond.ca.us/256/Boards-and-Commissions">https://www.ci.richmond.ca.us/256/Boards-and-Commissions</a>                                                                               |
| San Mateo                | 105,000           | 7                     | <a href="https://www.cityofsanmateo.org/60/Commissions-Boards">https://www.cityofsanmateo.org/60/Commissions-Boards</a>                                                                                       |

|           |         |    |                                                                                                                                                           |
|-----------|---------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sunnyvale | 153,000 | 10 | <a href="https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804">https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?blobid=22804</a> |
| Vallejo   | 122,000 | 17 | <a href="http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192">http://www.ci.vallejo.ca.us/cms/one.aspx?pageId=22192</a>                                 |

### Consultation and Outreach

To understand the impact on various departments and staffing capacity, the following table shows which departments are responsible for overseeing various commissions.

| Commission Name                                                | Overseeing Department<br>(Total Commissions in<br>Department) |
|----------------------------------------------------------------|---------------------------------------------------------------|
| Animal Care Commission                                         | City Manager (7)                                              |
| Civic Arts Commission                                          | City Manager (7)                                              |
| Commission on the Status of Women                              | City Manager (7)                                              |
| Elmwood BID Advisory Board                                     | City Manager (7)                                              |
| Loan Administration Board                                      | City Manager (7)                                              |
| Peace and Justice Commission                                   | City Manager (7)                                              |
| Solano Ave BID Advisory Board                                  | City Manager (7)                                              |
|                                                                |                                                               |
| Cannabis Commission                                            | Planning (8)                                                  |
| Community Environmental Advisory Commission                    | Planning (8)                                                  |
| Design Review Committee                                        | Planning (8)                                                  |
| Energy Commission                                              | Planning (8)                                                  |
| Joint Subcommittee on the Implementation of State Housing Laws | Planning (8)                                                  |
| Landmarks Preservation Commission                              | Planning (8)                                                  |
| Planning Commission                                            | Planning (8)                                                  |
| Zoning Adjustments Board                                       | Planning (8)                                                  |
|                                                                |                                                               |
| Children, Youth, and Recreation Commission                     | Parks (3)                                                     |
| Parks and Waterfront Commission                                | Parks (3)                                                     |
| Youth Commission                                               | Parks (3)                                                     |
|                                                                |                                                               |
| Commission on Aging                                            | Health, Housing, and<br>Community Services<br>(HHCS) (10)     |
| Commission on Labor                                            | HHCS (10)                                                     |
| Community Health Commission                                    | HHCS (10)                                                     |



|                                                               |                     |
|---------------------------------------------------------------|---------------------|
| Homeless Commission                                           | HHCS (10)           |
| Homeless Services Panel of Experts                            | HHCS(10)            |
| Housing Advisory Commission                                   | HHCS (10)           |
| Human Welfare & Community Action Commission                   | HHCS (10)           |
| Measure O Bond Oversight Committee                            | HHCS (10)           |
| Mental Health Commission                                      | HHCS (10)           |
| Sugar-Sweetened Beverage Product Panel of Experts             | HHCS (10)           |
|                                                               |                     |
| Disaster and Fire Safety Commission                           | Fire (1)            |
|                                                               |                     |
| Commission on Disability                                      | Public Works (5)    |
| Public Works Commission                                       | Public Works (5)    |
| Traffic Circle Task Force                                     | Public Works (5)    |
| Transportation Commission                                     | Public Works (5)    |
| Zero Waste Commission                                         | Public Works (5)    |
|                                                               |                     |
| Fair Campaign Practices Commission/Open Government Commission | City Attorney (1)   |
|                                                               |                     |
| Personnel Board                                               | Human Resources (1) |
|                                                               |                     |
| Police Review Commission                                      | Police (1)          |
|                                                               |                     |
| Board of Library Trustees                                     | Library (1)         |

Gray=charter  
 Red=state/federal mandate  
 Yellow=quasi-judicial  
 Blue=ballot initiative  
 Orange=state/federal mandate and quasi-judicial  
 Green=quasi-judicial and ballot initiative

The departments that staff more than five commissions are Health, Housing, and Community Services (10 commissions), Planning (8 commissions), and the City Manager’s department (7 commissions). At the same time, some smaller departments (e.g. the City Attorney’s office) may be impacted just as meaningfully if they have fewer staff and larger individual commission workloads.

With the recent addition of policy committees, proposed legislation is now vetted by councilmembers in these forums. Each policy committee is focused on a particular

content area aligned with the City of Berkeley's strategic plan and is staffed and an advisory policy body to certain city departments. Members of the public are able to provide input at these committees as well. The policy committees currently have the following department alignment:

### **Department and Policy Committee alignment**

1. **Agenda and Rules**—all departments
2. **Budget and Finance**—City Manager, Clerk, Budget, and Finance
3. **Land Use and Economic Development**—Clerk, Planning, HHCS, City Attorney, and City Manager (OED)
4. **Public Safety**—Clerk, City Manager, Police, and Fire
5. **Facilities, Infrastructure, Transportation, Environment and Sustainability** (Clerk, City Manager, Planning, Public Works, and Parks)
6. **Health, Equity, Life Enrichment, and Community** (Clerk, City Manager, HHCS)

### **CRITERIA CONSIDERED**

#### **Effectiveness**

*How does this proposal maximize public interest?* For this analysis, the effectiveness criterion includes analysis of the *benefits* to the entire community equitably with specific emphasis on public health, racial justice and safety.

#### **Fiscal Impacts/Staffing Costs**

*What are the costs?* The fiscal impact of the proposed recommendation and various alternatives considered includes direct costs of commissions.

#### **Administrative Burden/Productivity Loss**

*What are the operational requirements or productivity gains or losses from this proposal?*

The administrative burden criterion guides the analysis in considering operational considerations and productivity gains and losses. While operational considerations and tradeoffs are difficult to quantify in dollar amounts, productivity losses were considered in its absence.

#### **Environmental Sustainability**

The environmental sustainability criterion guides legislation in order to avoid depletion or degradation of the natural resources and allow for long-term environmental quality.

## **ALTERNATIVES**

### **Alternative #1–The Current Situation**

The current situation is the status quo. The City of Berkeley would retain all commissions and no changes would be made.

### **Alternative #2–Collaborative Approach with Quantity Parameters**

This approach would specify a specific number (20) of commissions the City of Berkeley should manage and set parameters around individual department responsibilities. Furthermore, it requires a collaborative approach and outreach to address specific policy areas by referring it to the Council policy committees for further analysis and specific recommendations.

### **Alternative #3–Committee Alignment, Mandated and Quasi-Judicial Commissions**

This alternative would consist of five commissions aligned directly with the policy committees in addition to quasi-judicial bodies and ones required by charter, ballot measure or law.

- *Budget and Finance Commission*
- *Facilities, Infrastructure, Transportation, Environment and Sustainability Commission (state/federal mandate--CUPA)*
- *Health, Equity, and Life Enrichment*
- *Land Use and Economic Development*
- *Public Safety*
- Board of Library Trustees (charter)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission (state/federal mandate--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Housing Advisory Commission (state/federal mandate)
- Human Welfare and Community Action (state/federal mandate)
- Landmarks Commission (quasi-judicial)
- Measure O Bond Oversight Committee (ballot measure)
- Mental Health Commission (state/federal mandate)
- Planning (quasi-judicial)
- Personnel (charter)
- Police Review Commission (ballot measure)
- Sugar-Sweetened Beverages (ballot measure)
- Zoning Adjustments Board (quasi-judicial)

**Alternative #4: Extreme Consolidation**

This alternative represents a prescriptive approach with maximum consolidation in content area and mandated commissions, absent charter amendments.

- Board of Library Trustees (charter)
- Business Improvement District (state/federal mandate)
- Civic Arts Commission (charter)
- Community Environmental Advisory Commission/Energy/Zero Waste (state/federal--CUPA)
- Fair Campaign Practices Commission/Open Government (ballot measure)
- Homeless Services Panel of Experts (ballot measure)
- Human Welfare and Community Action (state/federal mandate)
- Measure O Bond Oversight Committee (ballot measure)/Housing Advisory Commission (state/federal mandate)
- Mental Health Commission (state/federal mandate)
- Personnel (charter)
- Planning Commission (quasi-judicial and appeals)
- Board of Appeals (land use appeals)
- Police Review Commission (ballot measure)
- Health and Sugar-Sweetened Beverages (ballot measure)

**PROJECTED OUTCOMES (CRITERIA X ALTERNATIVES)**

|                                       | <b>Current Situation</b> | <b>Collaborative Approach</b> | <b>Policy Committee Alignment</b> | <b>Extreme Consolidation</b> |
|---------------------------------------|--------------------------|-------------------------------|-----------------------------------|------------------------------|
| <b>Benefit/ Effectiveness</b>         | medium                   | high                          | medium                            | low                          |
| <b>Cost</b>                           | high                     | medium                        | low                               | low                          |
| <b>Administrative Burden</b>          | high                     | low                           | low                               | medium                       |
| <b>Relative Environmental Benefit</b> | low                      | medium                        | medium                            | high                         |

**Current Situation and Its Effects (Alternative #1)**

*Effectiveness of the Current Situation*

Commissions serve a vital role in the City of Berkeley’s rich process of resident engagement. An analysis of agendas over the past several years shows that the

commissions have created policy that have benefited the community in meaningful and important ways. In 2019, approximately two-thirds of commission items submitted to Council passed. From 2016-2019, an average of 39 items were submitted by commissions to Council for consideration. Every year roughly 15-18 (~40-45%) commissions do not submit any items for Council policy consideration in any given year. The reason for this varies. Some commissions don't submit policy recommendations (BIDs) and some commissions recommendations may not rise to Council level at all or come to Council as a staff recommendation (e.g. ZAB and DRC). Additionally, a few commissions struggle to reach monthly quorum as there are currently 64 vacancies on the various commissions, excluding alternative commissioners.

It is also important to consider equitable outcomes and the beneficiaries as well. For example, the City's Health, Housing and Community Development department serves an important role in addressing COVID-19, racial disparities, inequitable health outcomes, affordable housing, and other important community programs. Additionally, Health, Housing, and Community Development also staffs ten commissions, more than many cities of Berkeley's size. Council needs to wrestle with these tradeoffs to ensure that we seek the maximum benefit for *all* of the Berkeley community, particularly our most vulnerable.

**Staffing Costs**

Based upon preliminary calculations of staff titles and salary classifications, the average staff secretary makes roughly \$60-\$65/hour. Based upon recent interviews with secretaries and department heads, individual commission secretaries work anywhere from 8-80 hours a month staffing and preparing for commission meetings. To illustrate this example, a few examples are listed below.

| Commission                        | Step 5 Rate of Pay | Reported Hours a Month | Total <b>Direct</b> Cost of Commission <b>per Month</b> |
|-----------------------------------|--------------------|------------------------|---------------------------------------------------------|
| Animal Care                       | \$70.90            | 8                      | \$567.20                                                |
| Landmarks Preservation Commission | \$57.96            | 80                     | \$4,636.80                                              |
| Design Review Commission          | \$52.76            | 60                     | \$3,165.60                                              |
| Peace and Justice                 | \$60.82            | 32                     | \$1946.24                                               |

It is extremely challenging to estimate a specific cost of commissions in the aggregate because of the varying workload but a safe estimate of salary costs dedicated to commissions would be in the six-figure range.

Many commissions--particularly quasi-judicial and land use commissions-- require more than one staff member to be present and prepare reports for commissions. For example, Zoning Adjustment Board meetings often last five hours or more and multiple staff members spend hours preparing for hearings. The Planning Department indicates that *in addition* to direct hours, additional commission-related staff time adds an extra 33% staff time. Using the previous examples, this means that the Landmarks Preservation Commission would cost the city over \$6,000 in productivity while the Design Review Commission would cost the City over \$4,000 a month.

#### *Productivity Losses and Administrative Burden*

Current productivity losses are stark because of the sheer amount of hours of staffing time dedicated to commissions. As an example, in 2019 one of the City of Berkeley's main homeless outreach workers staffed a commission within the City Manager's department. She spent approximately 32 hours a month working directly on commission work. While this is not a commentary on a particular commission, this work directly impacted her ability to conduct homeless outreach. The Joint Subcommittee on the Interpretation of State Housing Laws is another example. Planners dedicate 50 hours a month to that commission. Meanwhile, this commission has limited ability in affecting state law and the City Attorney's office is responsible for interpreting state law. While this commission does important work on other issues, there is little nexus in interpreting state housing laws and could be disbanded and consolidated with an existing commission. If this commission were disbanded, the current planner could dedicate significant hours to Council's top priorities in Planning. This year's top Council priority is the displacement of Berkeley's residents of color and African Americans (Davila).

#### *Environmental Sustainability*

The current commission structure doesn't have a large impact on the environment but, in relative terms, is the most burdensome because of the potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs associated with a large number of commissions.

## **ALTERNATIVES CONSIDERED**

### **Effectiveness**

#### *Alternative #2--Collaborative approach*

While the outcome is unknown, a collaborative approach with a specified target quantity of commissions and departmental responsibility would likely yield significant benefit to the community. Due to the projected budget cuts, city staff will need to have more bandwidth to deliver baseline services and priority projects. Civic engagement will still be retained due to a myriad of ways to provide public input but more importantly, current commissioners and civic partners are invited to provide feedback to the policy committees for consideration. Additionally, this approach is a less prescriptive approach which allows Council to acknowledge that the current number of commissions is unsustainable and impacts baseline services. Instead of recommending specific commission cuts at this moment, this approach simply allows Council to state an appropriate number of commissions (20) and acknowledge the severe staffing impacts of the current configuration. Furthermore, twenty commissions is a reasonable starting point, especially when considering that most area cities that are approximately Berkeley's size have seven commissions.

#### *Alternative 3--Policy Committee Alignment*

This approach would yield some benefit in that commissions would reflect current policy committees and would directly advise those bodies. This is beneficial because commissions directly aligned with policy committees would be an independent civic replica of the appointed policy committee bodies. It further retains mandated commissions. However, this prescriptive approach doesn't allow for flexibility in retaining historically important commissions and it does not address the benefit of potentially consolidating two commissions that address the same policy content area. For instance, it may be possible to combine the sugar-sweetened beverage oversight panel with the Health, Life, and Equity commission or the CEAC with the Facilities, Infrastructure, Transportation, Environment and Sustainability.

#### *Alternative 4--Extreme Consolidation--*

This approach is the most drastic alternative and the overall effectiveness is likely low, mainly due to potential community backlash due to Berkeley's long history of civic engagement. Furthermore, the Planning Commission would likely become overburdened and less effective because land use appeals would have to be routed through the Planning Commission.

## **Costs/Fiscal Impact**

### *Alternative 2--Collaborative Approach*

The fiscal impact of the Collaborative Approach is unknown at this time because this recommendation does not prescribe specific commission consolidations or cuts. However, if commissions are reorganized such that Berkeley will have 20 instead of 38, there will be significant direct cost savings. One can reasonably assume that the direct financial cost could reduce to almost half the current amount.

### *Alternative 3--Policy Committee Alignment*

The fiscal impact of Policy Committee Alignment would yield significant savings due to commission consolidation. One can reasonably assume that the direct financial cost could reduce to more than half the current amount.

### *Alternative 4--Extreme Consolidation*

Extreme Consolidation would yield the most savings due to commission consolidation. One can reasonably assume that the direct financial cost would reduce to 25%-30% of the current amount spent on commission work.

## **Productivity**

### *Alternative 2--Collaborative Approach*

The most glaring impact on the current commission structure is administrative impacts and productivity. Whether City Council consolidates commissions or not, attributable salary costs will still exist. The primary benefit of pursuing the Collaborative Approach would center on productivity. The City of Berkeley is likely to garner significant productivity gains by specifying a target number of commissions overall and within departments. Using the Peace and Justice and Joint Subcommittee on the Interpretation of State Housing Laws examples above, more staff will be able to focus on core services and priority programs. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.

### *Alternative 3--Policy Committee Alignment*

This alternative likely will yield the same productivity benefits as the collaborative approach, if not more. The City of Berkeley would likely garner significant productivity gains by specifying less than twenty commissions. Thousands of hours may be regained by dedicated staff to tackle the tough issues our community faces, especially in light of COVID-19 and concerns around racial equity.



*Alternative 4–Extreme Consolidation*

This alternative would likely provide the most productivity gains and lessen administrative burdens overall. However, there could be unintended consequences of productivity within the planning department absent additional policy changes. For example, the quasi-judicial Zoning Adjustments Board and Planning Commission agendas are packed year round. It is unclear whether eliminating one of these commissions would lessen the administrative burden and increase productivity in the Planning Department or whether those responsibilities would merely shift commissions. At the same time, the Planning Department could benefit from reducing commissions to increase productivity within the planning department.

**Environmental Sustainability**

*Alternative 2–Collaborative approach*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 3--Policy Committee Alignment*

This alternative doesn't have a large impact on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs. However, these environmental impacts could be cut in half with commission reorganization.

*Alternative 4–Extreme Consolidation*

This alternative would have negligible impacts on the environment other than potential vehicle miles travelled by hundreds of commissioners (VMT) and printing costs.

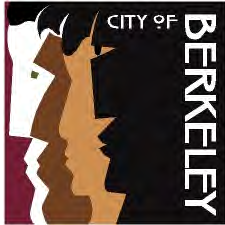
**RATIONALE FOR RECOMMENDATION**

The Collaborative Approach is the best path forward in order to pursue Berkeley's commitment to

- Create affordable housing and housing support services for our most vulnerable community members
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment
- Champion and demonstrate social and racial equity
- Provide an efficient and financially-healthy City government
- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities
- Foster a dynamic, sustainable, and locally-based economy
- Create a resilient, safe, connected, and prepared City

- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community
- Attract and retain a talented and diverse City government workforce

The status quo—37 commissions— is too costly and unproductive. At the same time, civic engagement and commission work absolutely deserve an important role in Berkeley. Consequently, this legislation retains commissions but centers on overall community benefit, staff productivity, and associated costs. This is imperative to address, especially in light of COVID-19 and community demands for reinvestment in important social services.



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

## **SUPPLEMENTAL REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

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

**Submitted by:** Councilmember Hahn

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

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



**SOPHIE HAHN**  
Berkeley City Council, District 5  
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Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

ACTION CALENDAR  
February 4, 2020

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

RECOMMENDATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

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

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

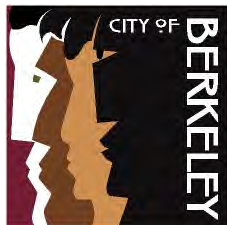
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of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

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

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

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



Fair Campaign Practices Commission

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** February 4, 2020

**Item Number:** 2

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

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

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





Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

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

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

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

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

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

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

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE 1. and IILG.

CCM

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

## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff CounselSUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSESBACKGROUND AND ISSUE

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

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

CONCLUSION

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

ANALYSIS

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

The BERA defines contribution, in part, as follows:

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

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

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

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

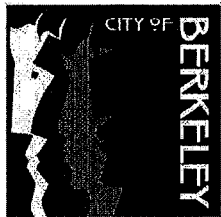
However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since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

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

Attachment

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



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

## MEMORANDUM

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

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4<sup>1</sup>. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

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

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

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

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

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

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

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

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

1. FN-024 payment voucher: available in Administration Regulation 3.14<sup>4</sup>, on the City's intranet<sup>5</sup>, or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

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

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

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

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

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

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

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

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

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



RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

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

## II. Reimbursement of Actual and Necessary Expense of Office

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

### A. Authorized Activities.

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

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

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

### B. Unauthorized Expenses

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

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

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

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

**C. Particular Types of Authorized Expenditures Defined**

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

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

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

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

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

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

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

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

**E. Expense Report Content and Submission Deadline**

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

**F. Audits of Expense Reports**

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

**G. Reports**

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

**H. Compliance with Laws**

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

**I. Violation of This Policy**

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

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

\*\*\*\*\*


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

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## Councilmember Office Budget Relinquishment and Grant Policy

### Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

### Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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



# CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

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

## **SUBJECT: Purchasing Policy & Purchasing Manual**

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### **PURPOSE**

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

### **POLICY**

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

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

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

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

### PROCEDURE

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

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

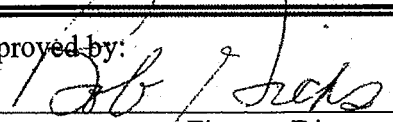
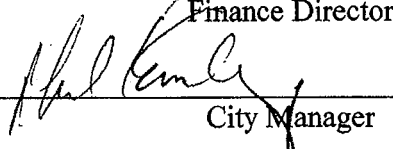
### DEFINITIONS

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

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

**Attachments:**

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

|                                                                                                                   |                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p> | <p>Approved by:</p> <p><br/>_____<br/>Finance Director</p> <p><br/>_____<br/>City Manager</p> |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

ATTACHMENT 1

ORDINANCE NO. 6,875-N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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ATTACHMENT 2

ORDINANCE NO: 7,035-N.S.

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

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

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

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

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

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

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

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

Noes: Spring and Worthington.

Absent: None.

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

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

Noes: Spring and Worthington.

Absent: None.

ATTEST: [Signature] Deanna Despain, Deputy City Clerk

[Signature] Tom Bates, Mayor

Date signed: [Signature]

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

# CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

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

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## PURPOSE

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

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

## POLICY

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

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## I. APPROVALS

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

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

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

## II. EXPENDITURES BASICS

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

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

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

In addition:

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

See item V. Advance Payments and Reconciliation.

### III. ALLOWABLE EXPENSES

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

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



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

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

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

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

#### IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

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

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

#### V. ADVANCE PAYMENTS & RECONCILIATION

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

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In addition:

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

#### **A. Requesting an Advance**

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

#### **B. Reconciling an Advance**

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

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

## VI. EXPENSE REIMBURSEMENT

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

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

## VII. OTHER EXCEPTIONS

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

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

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

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

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

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

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

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

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

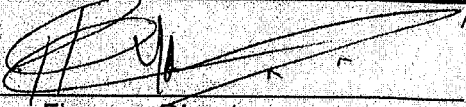
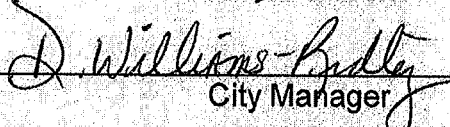
**Payment Documentation:** Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original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

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

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

**IX. ATTACHMENTS/LINKS**

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

|                                                      |                                                                                                                       |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>Finance Department | Approved by: <br>Finance Director |
| <b>TO BE REVIEWED/REVISED:</b><br>Every year         | <br>City Manager                  |

## Attachment A

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

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



RESOLUTION NO. 66,295-N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

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

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

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

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

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

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

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

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

**CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS**

**I. City Expenditures for Mayor and Council**

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

## II. Reimbursement of Actual and Necessary Expense of Office

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

### A. Authorized Activities.

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

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

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

### B. Unauthorized Expenses

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

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

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

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

**C. Particular Types of Authorized Expenditures Defined**

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

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

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

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

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

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

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

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

**E. Expense Report Content and Submission Deadline**

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

**F. Audits of Expense Reports**

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

**G. Reports**

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

**H. Compliance with Laws**

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

**I. Violation of This Policy**

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

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

\*\*\*\*\*

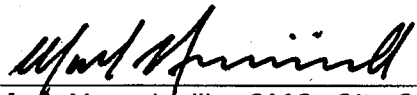
The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

## **Councilmember Office Budget Relinquishment and Grant Policy**

### Introduction – Limitations on the Expenditure of Public Funds

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

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

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

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

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

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

### Criteria for Grants of City Funds from Councilmember Office Budgets

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

Table 1.

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

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



RESOLUTION NO. 63,413-N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR  
BOARD AND COMMISSION MEMBERS

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

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

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

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

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

**TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS**

**A. Authorized Activities.**

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

**B. Unauthorized Expenses**

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

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

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

**C. Particular Types of Authorized Expenditures Defined**

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

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

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

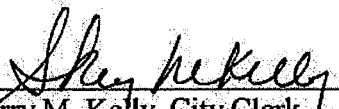
The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

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

Noes: None.

Absent: None.

Attest:

  
\_\_\_\_\_  
Sherry M. Kelly, City Clerk

  
\_\_\_\_\_  
Tom Bates, Mayor

CITY OF BERKELEY  
ADMINISTRATIVE REGULATIONS

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

**SUBJECT: FN-024 Voucher Processing**

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**PURPOSE**

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

**POLICY**

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

- A. City Employees, Mayor and Councilmembers, Commissioners<sup>1</sup>, or Library Trustees:
1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
  2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
  3. Mayor and Council reimbursement for authorized expenses<sup>2</sup> (see Resolution 63,412-NS)
  4. Commissioner and Library Trustee<sup>3</sup> payments<sup>Note</sup> (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)
- B. Refunds
- C. Other Designated Payments:
1. State and Federal taxes
  2. Loan repayment
  3. Various payments associated with payroll and employee benefits
  4. Certain 1-time miscellaneous items under \$5,000
  5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)\*

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<sup>1</sup> “Commissioner” includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

<sup>2</sup> Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

<sup>3</sup> These payments to Commissioners (not including Rent Board) and Library Trustees, are for “... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ...” See AR 3.2 for complete details.

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All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases \$50 and under.

### **PROCEDURE**

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

### **FN-024 Payments**

Use FUNDS\$ GMBA Master Inquiry [FUNDS\$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUNDS\$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.
2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.
  - a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.
  - b. Tax Payer ID & Certification Form W-9, or go to <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

### **Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees**

#### **A. Vendor Information**

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

- 
2. VENDOR NO.: enter the number for the individual, as found in FUNDS\$ GMBA Vendor Master Inquiry.
  3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
  4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.  
Payments to qualifying Commissioners<sup>4</sup> or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
  2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.
- C. Invoice Information
  1. INVOICE #: enter conference invoice # or date/s. (FUNDS\$ limit of approximately 15 characters)
  2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner\*, enter the date of the conference or the last date of the reimbursement period.

### Payments for Refunds

- A. Vendor Information
  1. VENDOR NAME: enter payee name followed by "MISC REFUND" and **highlight** it.
  2. VENDOR NO.: enter the assigned miscellaneous vendor number.
  3. ADDRESS: enter the payee mailing address.
  4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
  5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.
- B. Description & Purpose (FUNDS\$ limits this to approximately 25 characters per description field)
  1. DESCRIPTION 1: enter nature of purchase or service.

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<sup>4</sup> Including members of the Rent Stabilization Board for reimbursements or other approved payments.

2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUND\$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

**Other Designated Payments** (see list under Policy on 1<sup>st</sup> page)

A. Vendor Information

**FIRST** – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUND\$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUND\$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUND\$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUND\$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

**Additional Instructions for all FN-024 Payment Vouchers**

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1.

PREPARED BY: signature of the person responsible for completing the FN-024.

- 
2. **AUTHORIZED DEPT SIGNATURE:** must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.
- C. Limitations & Justification for 1-time Miscellaneous Items
1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than \$5,000.
  2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.
- D. Compiling the FN-024 Package: Form & Attachments
1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
  2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
  3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
  4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.

### **Check Printing & Disbursement**



1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and **highlight** the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.



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**EXCEPTIONS**

Any exceptions to this AR must be approved in writing by the Director of Finance.

|                                                              |                                                                                                                                   |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <p><b>RESPONSIBLE DEPARTMENT:</b><br/>Finance Department</p> | <p>Approved by:<br/><br/>Finance Director</p> |
| <p><b>TO BE REVIEWED/REVISED:</b><br/>Every year</p>         | <p><br/>City Manager</p>                      |

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**The following items are related to this AR, and can be found on Groupware – Finance:**

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms



Fair Campaign Practices Commission

CONSENT CALENDAR

July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

POLICY COMMITTEE RECOMMENDATION

On June 29, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Wengraf) to make a Positive Recommendation to the City Council that the item be referred to the Agenda & Rules Committee to be considered with other related referrals from the Fair Campaign Practices Commission. The item will be calendared for the Consent Calendar on the July 28, 2020 agenda. Vote: All Ayes.

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action:** M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the “double green light” process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

### BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

### **Definition of an Officeholder Account**

Under state law, an “officeholder account” refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for “paying expenses associated with holding public office.” Officeholder Account funds cannot be used to pay “campaign expenses.” This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, [Section 18531.62](#) (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA’s reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley’s [Public Access Portal](#).) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### **Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. ([Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10](#))

#### **Part 8 - OFFICEHOLDER ACCOUNTS**

##### **12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

#### **2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

#### **2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)

- C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPCC guidelines.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identified environmental effects related to the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

#### ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

#### CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

#### Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate’s ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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




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## GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

### ARTICLE 3. Contribution Limitations [85300 - 85321]

( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

*(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)*

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder-



account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office.

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of



organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

- (A) Paying outstanding officeholder expenses.
- (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

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

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

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



Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

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

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

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinion Index: ILE.1. and IILG.

CCM

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

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

**Published:** January 24, 2020 – The Berkeley Voice  
Pursuant to Berkeley Municipal Code Section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 30, 2020.

Mark Numainville, City Clerk



Open Government Commission

ACTION CALENDAR
September 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Open Government Commission
 Submitted by: Brad Smith, Chair, Open Government Commission
 Subject: Relinquishments and grants from Councilmembers' office budgets

RECOMMENDATION

Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The issue of D-13 accounts (Council Budget Funds) being used for purposes other than office expenses has been raised at the OGC. While commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may provide unfair advantage to an incumbent.

The two main concerns identified by some commissioners with the current practice are:

1. Councilmembers are able to initiate grants to organizations, at their discretion, which may raise their public profile.
2. Attaching the name of a Councilmember to a grant from the City of Berkeley may confer an advantage for the incumbent over would-be challengers.

The current practice was established in the early 2000's because councilmembers were granting public money to individuals and organizations, without approval of the Council.

This led to a concern about the potential for corruption and favoritism. The City Attorney established the existing system, though because the councilmembers' names are attached to the grants, some concern remains.

From recent discussion at OGC, commissioners are in general agreement that ending the practice of attaching the name of a councilmember to a grant will help to alleviate the main concerns: 1 & 2 above. At the OGC's April 23, 2020 meeting, commissioners unanimously approved forwarding a recommendation to Council to not include the name of an individual councilmember attached to a discretionary grant.

A review of the grants and relinquishment of funds from city council members for 2019 amounts to \$30,130. These are funds that could have been used for office, travel (on city business) and other expenses.

Commission members have discussed recommending to Council for consideration options to address the issue:

1. An amendment requiring that all disbursements from the General Fund be designated as coming from the Council as a whole, without individual names attached to the donations.
2. Create another account specifically for discretionary grants, without reducing the D-13 account budget, to allow Councilmembers to continue recommending a grant or donation to a particular organization, without an individual name attached to the donation.
3. Eliminate discretionary grants.

BACKGROUND

On May 21, 2020, the OGC directed four of its members to draft a proposed recommendation to Council related to relinquishment of Councilmembers' office budget funds.

On June 18, 2020, the OGC voted to present this recommendation to Council.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

An advisory committee will enable collaborative discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

ALTERNATIVE ACTIONS CONSIDERED

The OGC has discussed recommending removal of councilmember names from office budget relinquishments, banning relinquishments for grants to organizations, and

creating and funding a separate account for donations to organizations that Council would control, but which would not have councilmember names attached to it.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Brad Smith, Chair, Open Government Commission

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION CREATING A TEMPORARY JOINT ADVISORY COMMITTEE TO
REVIEW COUNCIL OFFICE BUDGET RELINQUISHMENTS AND GRANTS

WHEREAS, pursuant to Berkeley Municipal Code § 2.06.190.A.2, the Open Government Commission (“OGC” or “Commission”) may “advise the City Council as to any . . . action or policy that it deems advisable to enhance open and effective government in Berkeley”; and

WHEREAS, while Commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers’ names to the donation may raise the public profile of a Councilmember and provide unfair advantage to an incumbent; and

WHEREAS, the Commission has expressed a desire to work collaboratively with the City Council to consider recommendations governing grants made from relinquishments of funds from Councilmembers’ office budgets.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that a temporary joint advisory committee consisting of three (3) members of the City Council and three (3) members of the Open Government Commission is hereby created to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers’ office budgets.

BE IT FURTHER RESOLVED that the City Council and the Open Government Commission each shall, as soon as practicable and by majority vote, appoint three members to the committee created by this resolution.

BE IT FUTHER RESOLVED that the committee created by this resolution shall hold its first meeting within 60 days of passage of this resolution and at that first meeting shall determine the need for any subsequent meetings and shall adopt a schedule for any such subsequent meetings.