



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

**MONDAY, JUNE 14, 2021  
2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf  
Alternate: Councilmember Lori Droste

**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/87954040397>. 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: **879 5404 0397**. 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: June 1, 2021**
2. **Review and Approve Draft Agenda:**
  - a. 6/29/21 – 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**
9. **Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

## **Unscheduled Items**

10. **Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## **Items for Future Agendas**

- **Discussion of items to be added to future agendas**

**Adjournment – Next Meeting Monday, June 28, 2021**

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## **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 June 10, 2021.



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, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*



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

**TUESDAY, JUNE 1, 2021**

**2:30 P.M.**

Committee Members:

Mayor Jesse Arreguin, Councilmembers Sophie Hahn and Susan Wengraf

Alternate: Councilmember Lori Droste

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

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To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and Enter Meeting ID: **859 4448 3096**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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**Roll Call:** 2:33 P.M. All present.

**Public Comment** – 6 speakers.

## **Review of Agendas**

**1. Approval of Minutes: May 17, 2021**

**Action:** M/S/C (Wengraf/Hahn) to approve the minutes of 5/17/21.

**Vote:** All Ayes.

**2. Review and Approve Draft Agenda:**

a. 6/15/21 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Hahn) to approve the minutes of 5/17/21.

- Item Added: Labor Agreement SEIU (City Manager)
- Item Added: Labor Agreement IBEW (City Manager)
- Item 3 Outdoor Dining (City Manager) – Moved to Action Calendar
- Item 32 Support AB 279 (Bartlett) – Revised item submitted
- Item 33 SB 9 (Wengraf) – Councilmember Hahn added as a co-sponsor
- Item 34 ADU Ordinance (City Manager) – Item scheduled for July 13, 2021
- Item 36 Systems Alignment (City Manager) – Moved to Consent Calendar
- Item 37 Commission Reorganization (Droste) – Scheduled for a special meeting on June 15, 2021 at 4:00 p.m.

Order of Action Calendar

Item 35 Street Lighting

Item 38 Proposed City Budget

Item 3 Outdoor Dining

**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** – received and filed

**7. Land Use Calendar** – received and filed

## Referred Items for Review

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

**Action:** 5 speakers. No action taken.

**9. Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies**

**Action:** 3 speakers. Presentation made and discussion held. No action taken. Item to be continued to the June 14, 2021 Committee agenda.

## Unscheduled Items

**10. Strengthening and Supporting City Commissions: Guidance on the Development of Legislative Proposals**

## Items for Future Agendas

- None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 4:00 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on June 1, 2021.

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Mark Numainville  
City Clerk

## Communications

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## DRAFT AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, June 29, 2021  
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

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

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

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*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.*

*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.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*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. **Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the council meetings of May 11, 2021 (regular), May 13, 2021 (closed), May 18, 2021 (closed and special), May 20, 2021 (closed) and May 25, 2021 (closed and regular).

**Financial Implications:** None

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

2. **Contract No. 099148-1 Amendment: Code Publishing Company for Berkeley Municipal Code Publishing Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 099148-1 (FUND\$ Contract No. 9541A) with Code Publishing Company for online and printed code publishing services for the Berkeley Municipal Code, increasing the contract by \$40,000 for a total not to exceed amount of \$139,000, and extending the contract to December 21, 2024.

**Financial Implications:** General Fund - \$40,000

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

3. **Appointment of Katherine J. Lee as Interim Director of Police Accountability**

**From: City Manager**

**Recommendation:** Adopt a Resolution confirming the appointment of Katherine J. Lee to be Interim Director of Police Accountability and approving an employment contract to be effective July 1, 2021.

**Financial Implications:** See report

Contact: Dee Williams-Ridley, City Manager, (510) 981-7000

4. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 29, 2021**

**From: City Manager**

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

**Financial Implications:** See report

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

5. **Appropriations Limit for FY 2022**

**From: City Manager**

**Recommendation:** Adopt a Resolution establishing the appropriations limit at \$311,493,168 for FY 2022 pursuant to Article XIII B of the Constitution of the State of California based on the calculations for the appropriations limit.

**Financial Implications:** See report

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

## Consent Calendar

- 6. FY 2022 Revision to the Investment Policy and Designation of Investment Authority**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting the changes to the Investment Policy and to confirm the delegation of investment authority to the Director of Finance to make investments for FY 2022.  
**Financial Implications:** None  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Request for Proposal for Project Homekey**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing City Manager to: 1. Release a Request for Proposals (RFP) for a Homekey Project; and 2. Allocate HOME-ARP funding and General Fund collected pursuant to Measure P Measure P, and/or other funding source, to support a future Homekey project.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Fiscal Year 2022 Community Development Block Grant Public Facility Improvement Program Funds for the West Berkeley Service Center**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: 1. Allocate all available Fiscal Year (FY) 2022 Community Development Block Grant funding (estimated at \$1,145,251) for one public facility improvement project at the City's West Berkeley Service Center; and 2. Allocate any additional FY 2021 CDBG program income to the West Berkeley Service Center renovation project, if needed, and in accordance with Resolution 69,830 –N.S.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 9. Contract No. 31900254 Amendment: Easy Does It to Provide Emergency Disability Services and Audit Recommendation Update for Fiscal Year 2022-2023**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving an amendment to Contract No. 31900254 to continue funding for Easy Does It (EDI) for Fiscal Year (FY) 2022 and FY 2023 in the amount of \$1,432,011 using Measure E funds to provide emergency disability services, as long as EDI continues to demonstrate progress towards resolving the audit findings.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 10. Fiscal Year 2022 and Fiscal Year 2023 Housing Retention Program Contract**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to: 1. Allocate the Fiscal Year (FY) 2022 and FY 2023 City of Berkeley Housing Retention Program (HRP) contract to the Eviction Defense Center (EDC), which operates the COVID-19 HRP; and 2. Amend Contract No. 32100023 with EDC to use General Fund U1 HRP funds for utility arrears or other expenses that would enable applicants to retain or obtain housing and/or employment.  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. General Plan and Housing Element Annual Progress Report (APR)**  
**From: City Manager**  
**Recommendation:** Review and accept the 2020 General Plan Annual Progress Report (APR) and Housing Element APR, which were submitted to the State of California's Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research (OPR) on April 1, 2021.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 12. Berkeley's Fleet Replacement: Fund Short by Millions**  
**From: Auditor**  
**Recommendation:** We recommend City Council request that the City Manager report back by the first City Council meeting in January 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.  
**Financial Implications:** See report  
Contact: Jenny Wong, Auditor, (510) 981-6750

## 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. 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

13. **Police Accountability Board – Appointment of Members** *(Continued from June 1, 2021)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution appointing nine members to the Police Accountability Board nominated by the Mayor and City Councilmembers, and appointing one alternate member. *(Note: Appointment of the alternate member is continued from the June 1, 2021 meeting.)*  
**Financial Implications:** See report  
Contact: Mark Numainville, City Clerk, (510) 981-6900

## Action Calendar – New Business

14. **FY 2022 Budget Adoption**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: a) Adopting the FY 2022 Budget as contained in the City Manager’s FY 2022 Proposed Budget that includes the Proposed Capital Budget, presented to Council on May 25, 2021, and as amended by subsequent Council action. b) Authorizing the City Manager to provide applicable advances to selected community agencies receiving City funds in FY 2022, as reflected in the attachment to the report, and as amended by subsequent Council action.  
**Financial Implications:** See report  
Contact: Rama Murty, Budget Office, (510) 981-7000
15. **FY 2022 Annual Appropriations Ordinance**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance adopting the FY 2022 Annual Appropriations Ordinance (AAO) in the amount of \$653,446,393 (gross appropriations) and \$565,924,122 (net appropriations).  
**Financial Implications:** See report  
Contact: Rama Murty, Budget Office, (510) 981-7000
16. **Borrowing of Funds and the Sale and Issuance of FY 2021-22 Tax and Revenue Anticipation Notes**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the borrowing of \$45,000,000 and the sale and issuance of Fiscal Year 2021-22 Tax and Revenue Anticipation Notes.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Action Calendar – New Business

**17. Adopt a Resolution to Upgrade Residential and Commercial Customers to East Bay Community Energy (EBCE) Renewable 100 Plan**

**From: Energy Commission**

**Recommendation:** Adopt a time-sensitive Resolution to upgrade all current and new Berkeley residential and commercial customer accounts from Bright Choice - 86% Green House Gas (GHG)-free including substantial hydroelectric and nuclear - to Renewable 100 (100% renewable energy from California solar and wind) for their default electricity service plan, excluding residential customers in low-income assistance programs. The Berkeley Energy Commission (Commission) recommends that the City Council adopt the resolution now to meet East Bay Community Energy's (EBCE) schedule of requiring an extensive lead time needed for the transition to be effective April 1, 2022 for residential customers and October 1, 2022 for commercial customers.

**Financial Implications:** See report

Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Action Calendar – Policy Committee Track Items

**18. Resolution Supporting Freedom for Nasrin Sotoudeh**

**From: Councilmember Taplin (Author)**

**Recommendation:** Adopt a Resolution in Support of Freedom for Nasrin Sotoudeh and All Other Political Prisoners and Prisoners of Conscience in the Islamic Republic of Iran.

**Financial Implications:** None

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

**19. Resolution Urging the Metropolitan Transportation Commission to Program and Prioritize American Rescue Plan Act Funds**

**From: Councilmember Harrison (Author)**

**Recommendation:**

1. Adopt a resolution directing the Metropolitan Transportation Commission (MTC) to program \$1.67 billion in American Rescue Plan Act (ARPA) funds immediately and prioritize them for immediate use to support Bay Area Transit riders and an equitable pandemic recovery.

2. Send a copy of the Resolution and an accompanying letter to the MTC Commissioners.

**Financial Implications:** None

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

## Action Calendar – Policy Committee Track Items

20. **Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**  
**From: Councilmember Harrison (Author)**  
**Recommendation:**  
1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.  
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Information Reports

21. **Voluntary Time Off Program for FY 2022**  
**From: City Manager**  
Contact: Rama Murty, Budget Office, (510) 981-7000
22. **FY 2022 Civic Arts Grant Awards**  
**From: Civic Arts Commission**  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
23. **FY 2021 Second Quarter Investment Report: Ended December 31, 2020**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
24. **FY 2021 Third Quarter Investment Report: Ended March 31, 2021**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
25. **2021 Commission on Aging Work Plan**  
**From: Commission on Aging**  
Contact: Richard Castrillon, Commission Secretary, (510) 981-5190

## 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.*

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



and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be 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:**

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

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CONSENT CALENDAR

June 29, 2021

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

**From:** Jenny Wong, City Auditor *zw*

**Subject:** Berkeley's Fleet Replacement: Fund Short by Millions

RECOMMENDATION

We recommend City Council request that the City Manager report back by the first City Council meeting in January 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.

FISCAL IMPACTS OF RECOMMENDATION

Upon adjusting the fleet funding model, Public Works may request a higher or lower contribution from departments to account for their fleet replacement and management needs.

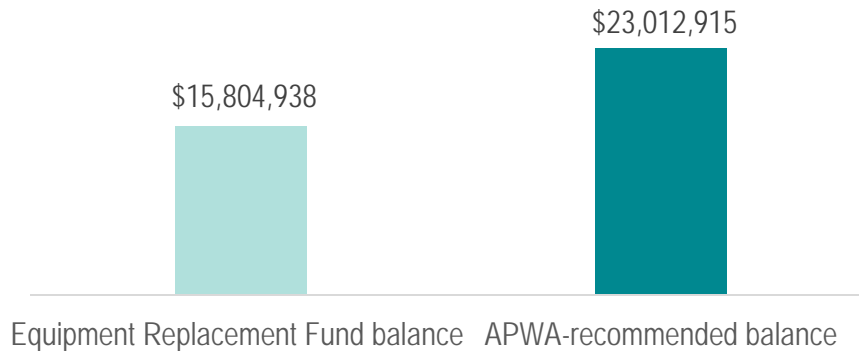
CURRENT SITUATION AND ITS EFFECTS

The Equipment Replacement Fund (Replacement Fund), an internal service fund made up of contributions from City departments to replace their fleet of vehicles and equipment, is underfunded. Its funding model is not working and may delay the City in accomplishing its goal to transition to an electric fleet. Additionally, Public Works lacks accurate information for replacing fleet units.

**Replacement Fund Is Insufficient and Underfunded**

The current funding level is not sufficient to address replacement needs. According to guidance from the American Public Works Association (APWA), the Replacement Fund is short by about \$7.2 million. Berkeley's Public Works Department is accredited by APWA, which recommends a local municipal fleet replacement fund have a reserve of 15 percent of the total fleet replacement value. Based on that guidance, in FY 2020, the City's Replacement Fund should have had a balance of approximately \$23 million including the funds collected towards the replacement of backlogged vehicles. However, the fund only had \$15.8 million.

**The Equipment Replacement Fund fell \$7.2 million short of American Public Works Association's recommended level in FY 2020.**



Source: Auditor's analysis of the City of Berkeley's vehicle and equipment data, end of FY 2020

In addition, the backlog of fleet units that surpassed their replacement date has grown from 54 to 174 fleet units between FY 2010 and 2020, or 36 percent of the fleet funded through the Replacement Fund. The estimated replacement cost for these 174 backlogged vehicles is \$13.2 million.

The Replacement Fund is underfunded because it was used for items beyond the direct cost of fleet replacement including personnel, reallocation of replacement funds, customization of vehicles, and purchase of replacement fleet without funding. There is gap of \$18.6 million between what was collected towards replacing fleet units and the existing balance in the fund. The Public Works Department did not have an accounting for how the \$18.6 million was spent, but the report highlighted a few ways that the City has spent fleet funds for other purposes that accounts for a large part of the discrepancy:

- The City charged a total of \$7.2 million in personnel costs to the Replacement Fund in 2006-2020. In the past 15 years, personnel costs averaged about \$477,000 annually. According to Public Works, the department is now working with a consultant to conduct a rate study that would clarify what its services should cost, including positions assigned to fleet management and replacement.
- In FY 2006, the City reallocated \$2 million from the Replacement Fund but did not replenish those funds. More recently, in FY 2021, the City budgeted to use over \$1 million from the Replacement Fund to lease fire vehicles. The City usually pays for these leases from the General Fund, but reallocated the \$1 million when it suffered low revenues caused by the COVID-19 pandemic.
- Public Works stated that historically, some fleet customization costs were paid for with Replacement Fund. Public Works does not have data on fleet customization costs, but staff reported that, in some cases, customization can cost about 40 percent or more of the purchase cost.
- According to its own data, Public Works may have used up to \$3 million from the Replacement Fund over the past 22 years to replace vehicles that departments had not funded.

The City's fleet replacement funding model is not aligned with how funding decisions are made. Any funding that departments contribute to the Replacement Fund goes into one account and may be spent on fleet throughout the City. The Budget Office may approve funding for proposed fleet replacements based on whether funds are available overall and does not have information about how much each department has contributed. We recommend that Public Works adjust the fleet funding model to ensure appropriate funding for fleet replacements and an accounting of the true costs of managing the fleet.

The underfunding may prevent the City from accomplishing its goal of transitioning its fleet to electric vehicles by 2030 in an effort to reduce greenhouse gas emissions. In July 2020, Public Works presented the City's Municipal Fleet Electrification Assessment, prepared by East Bay Community Energy, on the timeline and cost of transitioning to an electric fleet by 2030. The assessment estimated that it would cost about \$1.2 million to buy electric vehicles to replace 32 gas-powered and hybrid light-duty vehicles due for replacement in FY 2021, 29 of which are funded by the Replacement Fund. According to the City's fleet data, Public Works has only collected \$747,000 to replace those 29 vehicles with electric ones in FY 2021. Even if Public Works had collected enough funding, there is no guarantee that the City would have used those funds to purchase the specified electric vehicles due to the current funding model. Eight of the 174 fleet units overdue for replacement are scheduled to be replaced with new electric vehicles but there have been no contributions for their replacement. We recommend Public Works update its electric vehicle transition plan to take into consideration available funding.

### **Public Works Lacks Adequate Data and Information for Decision Making**

Public Works has incomplete and sometimes erroneous information in the current data system including fleet unit original and revised replacement dates, rationale for deferring or prioritizing replacement, estimated replacement costs, and how much a specific department has contributed towards and spent on replacing its fleet. Public Works stated that they started a contract with AssetWorks, a vehicle and equipment management system, which is expected to be capable of tracking accurate information once it is configured.

It will be important for staff to have policies and procedures in place to manage the data to ensure accuracy, transparency and accountability in the City's vehicle replacement process. Among our recommendations is that Public Works should conduct a needs assessment of vehicles overdue for replacement and create a plan that documents a timeline and cost for replacement in order to provide a more accurate estimate of funding needs to Council. Public Works should also fix errors and update the information in the current database prior to migrating it to the new one from AssetWorks. Additional recommendations are detailed in the report.

BACKGROUND

The City maintains a Replacement Fund that Public Works' Equipment Maintenance Division manages to replace the City's fleet. Departments make monthly payments into the Replacement Fund that are proportional to the estimated cost to replace their current fleet, and 75 percent of the City's fleet is funded through it. The Replacement Fund is an internal service fund. Internal service funds are used to account for the financing of goods or services provided by one department or program to other departments or programs on a cost-reimbursement basis.

ENVIRONMENTAL SUSTAINABILITY

The underfunding may prevent the City from accomplishing its goal of transitioning its fleet to electric vehicles by 2030 in an effort to reduce greenhouse gas emissions.

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will ensure appropriate funding for fleet replacements and accurate information to enable decision makers to make efficient and effective replacement decisions.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

- 1: Audit Report: Fleet Replacement Fund Short Millions

Audit Report

June 2, 2021

# Fleet Replacement Fund Short Millions



BERKELEY CITY AUDITOR





# Fleet Replacement Fund Short Millions



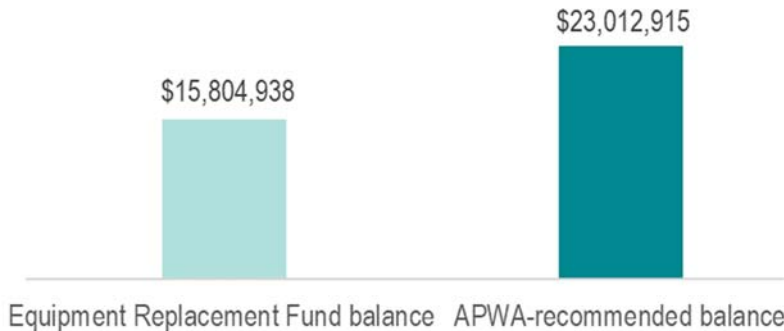
## Report Highlights

June 2, 2021



### Findings

The Equipment Replacement Fund fell \$7.2 million short of American Public Works Association’s recommended level in FY 2020.



Source: Auditor’s analysis of the City of Berkeley’s vehicle and equipment data as of the end of FY 2020

The City’s fleet replacement funding model is not working to ensure sufficient funding for timely replacement. The \$13.2 million needed to replace vehicles and equipment overdue for replacement would use most of the \$15.8 million fund balance, and the remaining funds would not be enough for future replacement needs. The funding shortage may have contributed to the threefold increase in backlogged fleet units that surpassed their replacement date between FY 2010 and FY 2020. This shortfall may also prevent the City from adhering to its plan to transition to an electric fleet by 2030. The fund also has a balance \$18.6 million lower than what departments have contributed, which is the result of paying for the following without contributions:

- Personnel costs
- Reallocation of funds to cover budget shortfalls
- Customization and specialized fleet gear
- Replacement of fleet units that have not been funded

It is difficult to know the exact cost of the City’s current fleet replacement funding needs because Public Works’ data about the number of vehicles and units of equipment that need to be replaced is not always accurate. Public Works cannot show that decisions to keep vehicles and equipment past their replacement date are beneficial or cost effective.

### Objectives

1. Is the City’s fund to replace its fleet of vehicles and equipment sufficient?
2. Does Public Works have key information about the City’s fleet replacement and funding needs?

### Why This Audit Is Important

The City of Berkeley maintains a Replacement Fund for 486 vehicles and units of equipment to provide citywide services from public safety to park maintenance. If the Replacement Fund is not sufficient to replace vehicles and equipment on time, it can cost the City more in the long run due to the excess maintenance and repair costs to keep an aging fleet running. It could also jeopardize the City’s goal to transition to an electric fleet by 2030.

### Recommendations

We recommend that Public Works work with the City Manager’s Office to adjust the fleet funding model to ensure appropriate funding for fleet replacements and account for the true costs of managing the fleet. Public Works should also update its electric vehicle transition plan to take into consideration available funding. We also recommend that Public Works ensure the new fleet and equipment management system has the accurate data needed to manage the Replacement Fund. Public Works management agreed with our recommendations.



BERKELEY CITY AUDITOR

For the full report, visit:  
<http://www.cityofberkeley.info/auditor>



CONSENT CALENDAR

June 29, 2021

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

**From:** Jenny Wong, City Auditor *zw*

**Subject:** Berkeley's Fleet Replacement: Fund Short by Millions

RECOMMENDATION

We recommend City Council request that the City Manager report back by the first City Council meeting in January 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Public Works Department.

FISCAL IMPACTS OF RECOMMENDATION

Upon adjusting the fleet funding model, Public Works may request a higher or lower contribution from departments to account for their fleet replacement and management needs.

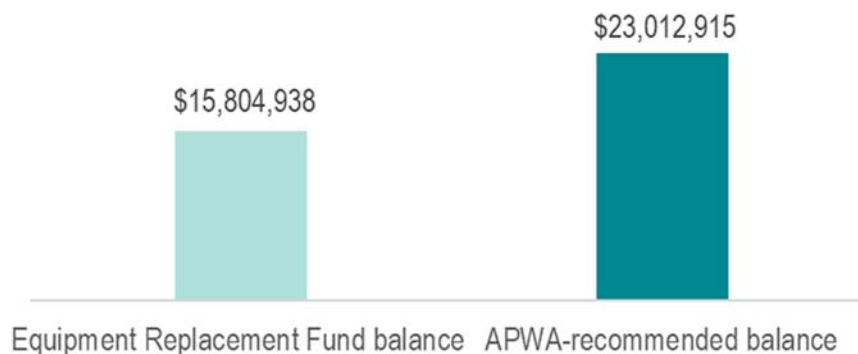
CURRENT SITUATION AND ITS EFFECTS

The Equipment Replacement Fund (Replacement Fund), an internal service fund made up of contributions from City departments to replace their fleet of vehicles and equipment, is underfunded. Its funding model is not working and may delay the City in accomplishing its goal to transition to an electric fleet. Additionally, Public Works lacks accurate information for replacing fleet units.

**Replacement Fund Is Insufficient and Underfunded**

The current funding level is not sufficient to address replacement needs. According to guidance from the American Public Works Association (APWA), the Replacement Fund is short by about \$7.2 million. Berkeley's Public Works Department is accredited by APWA, which recommends a local municipal fleet replacement fund have a reserve of 15 percent of the total fleet replacement value. Based on that guidance, in FY 2020, the City's Replacement Fund should have had a balance of approximately \$23 million including the funds collected towards the replacement of backlogged vehicles. However, the Fund only had \$15.8 million.

**The Equipment Replacement Fund fell \$7.2 million short of American Public Works Association's recommended level in FY 2020.**



Source: Auditor's analysis of the City of Berkeley's vehicle and equipment data, end of FY 2020

In addition, the backlog of fleet units that surpassed their replacement date between FY 2010 and 2020 has grown from 54 to 174 fleet units, or 36 percent of the fleet funded through the Replacement Fund. The estimated replacement cost for these 174 backlogged vehicles is \$13.2 million.

The Replacement Fund is underfunded because it was used for items beyond the direct cost of fleet replacement including personnel, reallocation of replacement funds, customization of vehicles, and purchase of replacement fleet without funding. There is gap of \$18.6 million between what was collected towards replacing fleet units and the existing balance in the fund. The Public Works Department did not have an accounting for how the \$18.6 million was spent, but the report highlighted a few ways that the City has spent fleet funds for other purposes that accounts for a large part of the discrepancy:

- The City charged a total of \$7.2 million in personnel costs to the fleet replacement fund in 2006-2020. In the past 15 years, personnel costs averaged about \$477,000 annually. According to Public Works, the department is now working with a consultant to conduct a rate study that would clarify what its services should cost, including positions assigned to fleet management and replacement.
- In FY 2006, the City reallocated \$2 million from the Replacement Fund but did not replenish those funds. More recently, in FY 2021 the City budgeted to use over \$1 million from the Replacement Fund to lease fire vehicles. The City usually pays for these leases from the General Fund, but reallocated the \$1 million when it suffered low revenues caused by the COVID-19 pandemic.
- Public Works stated that historically, some fleet customization costs were paid for with Replacement Fund. Public Works does not have data on fleet customization costs, but staff reported that, in some cases, customization can cost about 40 percent or more of the purchase cost.
- According to its own data, Public Works may have used up to \$3 million from the Replacement Fund over the past 22 years to replace vehicles that departments had not funded.

The City's fleet replacement funding model is not aligned with how funding decisions are made. Any funding that departments contribute to the Replacement Fund goes into one account and may be spent on fleet throughout the City. The Budget Office may approve funding for proposed fleet replacements based on whether funds are available overall and does not have information about how much each department has contributed. We recommend that Public Works adjust the fleet funding model to ensure appropriate funding for fleet replacements and an accounting of the true costs of managing the fleet.

The underfunding may prevent the City from accomplishing its goal of transitioning its fleet to electric vehicles by 2030 in an effort to reduce greenhouse gas emissions. In July 2020, Public Works presented the City's Municipal Fleet Electrification Assessment (assessment), prepared by East Bay Community Energy, on the timeline and cost of transitioning to an electric fleet by 2030. The assessment estimated that it would cost about \$1.2 million to buy electric vehicles to replace 32 gas-powered and hybrid light-duty vehicles due for replacement in FY 2021, 29 of which are funded by the Replacement Fund. According to the City's fleet data, Public Works has only collected \$747,000 to replace those 29 vehicles with electric ones in FY 2021. Even if Public Works had collected enough funding, there is no guarantee that the City would have used those funds to purchase the specified electric vehicles due to the current funding model. Eight of the 174 fleet units overdue for

replacement are scheduled to be replaced with new electric vehicles but there have been no contributions for their replacement. We recommend Public Works update its electric vehicle transition plan to take into consideration available funding.

### **Public Works Lacks Adequate Data and Information for Decision Making**

Public Works has incomplete and sometimes erroneous information in the current data system including fleet unit original and revised replacement dates, rationale for deferring or prioritizing replacement, estimated replacement costs, and how much a specific department has contributed towards and spent on replacing its fleet. Public Works stated that they started a contract with AssetWorks, a vehicle and equipment management system, which is expected to be capable of tracking accurate information once it is configured.

It will be important for staff to have policies and procedures in place to manage the data to ensure accuracy, transparency and accountability in the City's vehicle replacement process. Among our recommendations is that Public Works should conduct a needs assessment of vehicles overdue for replacement and create a plan that documents a timeline and cost for replacement in order to provide a more accurate estimate of funding needs to Council. Public Works should also fix errors and update the information in the current database prior to migrating it to the new one from AssetWorks. Additional recommendations are detailed in the report.

### **BACKGROUND**

The City maintains a Replacement Fund that Public Works' Equipment Maintenance Division manages to replace the City's fleet. Departments make monthly payments into the Replacement Fund that are proportional to the estimated cost to replace their current fleet, and 75 percent of the City's fleet is funded through it. The Replacement Fund is an internal service fund. Internal service funds are used to account for the financing of goods or services provided by one department or program to other departments or programs on a cost-reimbursement basis.

### **ENVIRONMENTAL SUSTAINABILITY**

The underfunding may prevent the City from accomplishing its goal of transitioning its fleet to electric vehicles by 2030 in an effort to reduce greenhouse gas emissions.

### **RATIONALE FOR RECOMMENDATION**

Implementing our recommendations will ensure appropriate funding for fleet replacements and accurate information to enable decision makers to make efficient and effective replacement decisions.

### **CONTACT PERSON**

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Audit Report: Fleet Replacement Fund Short Millions

## Table of Contents

Page 6	Introduction; Objectives, Scope, and Methodology; Background
Page 10	Finding 1: The Replacement Fund is underfunded by millions of dollars
Page 21	Finding 2: Public Works lacks information on vehicle and equipment replacement for decision making.
Page 28	Appendix I: Recommendations and Management Response
Page 33	Appendix II: Methodology and Statement of Compliance

## Introduction

The City of Berkeley used a fleet of 730 vehicles and units of equipment (e.g., trailers, generators, grass mowers) in FY 2020 to provide services from public safety to park maintenance. The City maintains an Equipment Replacement Fund (Replacement Fund) to replace some of these units as needed. In FY 2020, the City had 486 units that were originally purchased through the Replacement Fund. If the Replacement Fund is not sufficient to replace fleet as scheduled, it can cost the City more in the long run due to the excess maintenance and repair costs needed to keep an aging fleet running. Without sufficient funds, the City may not adhere to its plan to replace fossil-fuel vehicles with electric by 2030. To secure sufficient funding, the City needs accurate information about replacement costs. It is also important that the City takes care of and invests in its capital assets. Neglecting investments in capital assets such as fleet may increase maintenance and repairs costs for the City in the long run.

The City Auditor audited the Replacement Fund in 2010 and found that it was not sustainable to meet the City's future fleet replacement needs. The audit recommended that the City develop a plan to increase its fund and reduce its backlog. In this current audit, we revisited the Replacement Fund and found that it is still not sufficient. We also found that Public Works lacked key information about the City's fleet replacement funding needs.

To ensure that the City has sufficient funds to replace its fleet of vehicles and equipment on time and adhere to the plan of fleet electrification by 2030, we recommend that Public Works addresses ongoing funding shortages and improves its data management.

## Objectives, Scope, and Methodology

Our objectives were:

1. Is the City's fund to replace its fleet of vehicles and equipment sufficient?
2. Does Public Works have key information about the City's fleet replacement and funding needs?

The scope of our analysis included fleet units purchased through the Equipment Replacement Fund, and did not include those purchased through other funding sources except to describe the total fleet size. We analyzed the City's fleet database using a point-in-time dataset from May 29, 2020. We analyzed fleet funding and expenditures in FY 2020 and FY 2021. We examined the data for selected fleet units recorded in the database, reviewed documents for selected units, interviewed Public Works staff, and checked inventory for selected units. For more information about our methodology, see p. 33.

## Background

### Equipment Replacement Fund

The City has a fleet of vehicles and equipment units used to provide city services. Public Works' Equipment Maintenance Division manages an Equipment Replacement Fund (Replacement Fund) to replace vehicles and equipment as needed.

The Replacement Fund is an internal service fund. Internal service funds are used to account for the financing of goods or services provided by one department or program to another on a cost-reimbursement basis. Departments make monthly payments into the Replacement Fund based on the estimated cost to replace their current units.<sup>1</sup> Public Works determines departments' monthly fleet replacement charges based on purchase cost, estimated economic life, and an inflation factor. It is important to note that the City's Budget Office considers that these funds are not necessarily tied to any specific unit or department even though the fleet management data shows that the money is allocated to a specific fleet unit.

**Economic life**, sometimes referred to as useful life, is an estimate of the average number of years a unit is considered useable before its value is fully depreciated. By determining when units become less effective and uneconomic, agencies can effectively plan to replace such units with new ones at appropriate intervals and reduce maintenance and overall costs.

Public Works manages the Replacement Fund and buys new or replacement vehicles. The current Public Works' fleet replacement policy lists the economic life for vehicles that range from as low as four years to as high as 15 years. Public Works provides maintenance and repair services and bills departments directly for such services. These services are not funded through the Replacement Fund.

Public Works currently uses FUND\$, the City's financial and accounting system, to record information about fleet units including the estimated replacement cost and the total fees paid towards replacement per unit. The FUND\$ database tracks general information including the fleet unit's description, registration, purchase cost, estimated economic life, and replacement date. Public Works also enters billing information including account number and departments' monthly replacement fees.

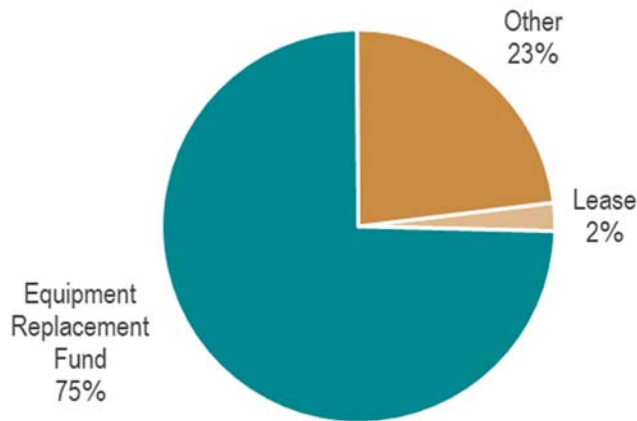
When a fleet unit approaches its estimated replacement date, Public Works' replacement policy states that staff assess it based on operating costs such as maintenance and repair costs, labor, part, fuel, and supply costs. Public Works stated that, based on their assessment, they inform departments about whether the fleet

<sup>1</sup> Public Works calculates the monthly payments based on the estimated cost of an equivalent fleet unit multiplied by an inflation factor, depending on the number of years in its economic life.

is in good enough condition to defer replacement or whether it should be replaced. We did not verify the communication between Public Works and departments about this because it was beyond the scope of this audit. The decision to replace fleet units is ultimately up to the departments.

The Replacement Fund does not pay for all fleet units (Figure 1). For some units such as trailers, mowers, generators, departments pay directly from their budgets or other funding sources such as grants. For leased fleet, the City transfers money from other funds into the Replacement Fund, from which Public Works makes lease payments. For example, the City transfers money from the General Fund to the Replacement Fund to make lease payments for fire engines.

Figure 1. Most of the City’s fleet is funded through the Equipment Replacement Fund.<sup>2</sup>



Note: “Other” includes funding sources such as department budgets or grants.  
Source: Auditor’s analysis of the City of Berkeley’s vehicle and equipment data as of end of FY 2020.



<sup>2</sup> These values do not include units kept as backups that are replaced with other retired units and not paid for through the Replacement Fund.

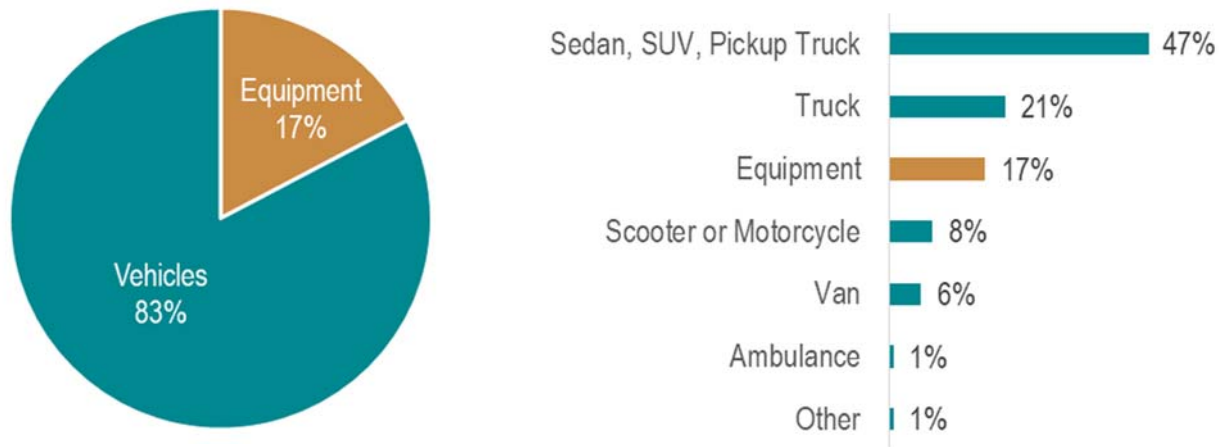


## Fleet Funded by the Equipment Replacement Fund

Berkeley’s entire fleet of city of vehicles and equipment can be funded through the leases or other funding, but most of the fleet, 486 units, is replaced through the Replacement Fund. About 83 percent of units funded through the fleet replacement fund are vehicles and include police sedans and SUVs, fire engines, refuse trucks, and pickup trucks (Figure 2). In this report, equipment units include construction and maintenance tools such as trailers, stump grinders, aerators, large grass mowers, generators, and high-pressure washers.

For the purposes of this report “fleet” refers to both vehicles and equipment. The City’s equipment Replacement Fund pays for the replacement of vehicles and equipment. Vehicles make up the majority of these units.

Figure 2. In FY 2020, the majority of the City’s Equipment Replacement Fund units were vehicles.



Source: Auditor’s analysis of the City of Berkeley’s fleet data at the end of FY 2020.

According to the fleet database, the departments that had the highest all time spending in the Replacement Fund were Public Works, Police, and Fire (Figure 3).

Figure 3. Public Works’ share of the fleet has the greatest estimated replacement cost.



Note: “Other” includes the City Manager’s Office, Library, Finance, and Information Technology. The Fire Department total does not include 17 leased fire trucks that are reimbursed through the General Fund. The total replacement cost for these fire trucks was estimated to be \$11.1 million as of May 2020.

Source: Auditor’s analysis of the City of Berkeley’s vehicle and equipment data at the end of FY 2020

## Finding 1: The Replacement Fund is underfunded by millions of dollars.

The City's Replacement Fund is short by \$7.2 million based on guidance from the American Public Works Association. The fleet replacement funding model is not working to ensure sufficient funding for timely replacement. The Replacement Fund also cannot cover the cost to replace the growing number of vehicles that have surpassed their estimated replacement date. The funding shortfall is in part due to the use of the Replacement Fund for other purposes. This lack of funding may increase delays in replacement leading to excessive maintenance and repair costs. It may also prevent the City from achieving its goal to transition from fossil fuel vehicles to an electric fleet by 2030.

### The Replacement Fund is underfunded by \$7.2 million.

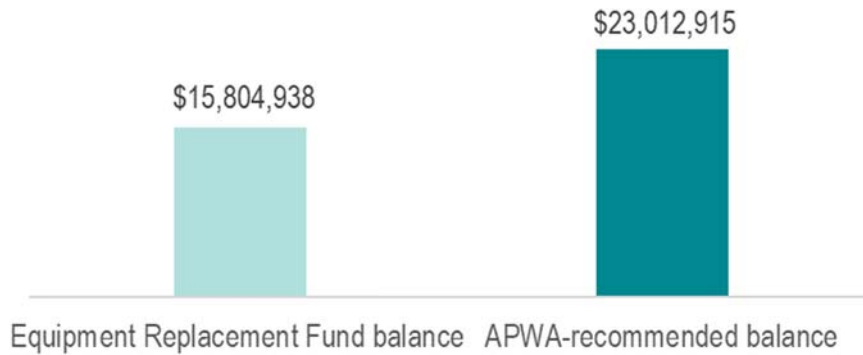
According to guidance from the American Public Works Association (APWA), the Replacement Fund is short by \$7.2 million. This estimate was used given that Public Works does not track the total fleet replacement needs and some data may be inaccurate, as we will discuss in the next finding (page 21). Public Works also does not have information about the total dollar value of the City's fleet replacement needs, so it is not possible to easily determine the exact amount of underfunding. However, the fund appears insufficient by a large margin based on APWA guidelines and the total fund balance compared to what was collected.

Public Works is accredited by the APWA, which recommends that local municipalities maintain a reserve of 15 percent of the total fleet replacement value for timely replacement and unexpected or changing needs. Based on Berkeley's fleet data, for 2020, that would require a total fund balance of \$23 million which would consist of a reserve of \$7.5 million plus the \$15.5 million that departments already contributed toward the replacement of 174 vehicles past due for replacement. However, the total fund balance of \$15.8 million falls below the level recommended by APWA, yielding a shortfall of \$7.2 million (Figure 4).

The American Public Works Association (APWA) is a professional accreditation organization for public works agencies. APWA provides varied educational and networking opportunities that help public works personnel grow in their professionalism and improve the quality of life in the communities they serve. Berkeley's Public Works department is an APWA-accredited agency.



Figure 4. The Equipment Replacement Fund fell \$7.2 million short of American Public Works Association's recommended level in FY 2020.



Source: Auditor's analysis of the City of Berkeley's vehicle and equipment data as of the end of FY 2020

### The current funding model is not working.

The City's fleet replacement funding model is not aligned with how funding decisions are made. Public Works, which manages the fund, bases decisions to replace fleet units in part on whether departments have paid enough towards the replacement of a specific vehicle. However, the City's Budget Office makes decisions about whether to approve funding for proposed fleet replacements based on whether funds are available overall. Public Works does not provide the Budget Office with information about whether departments have paid enough per unit into the fund to cover the replacement costs or what the overall fleet funding needs are for the year. In the Capital Improvement Program biennial budget, the City lists the vehicles that need to be replaced over the next five years, but the list does not match the vehicles that are purchased. Without information about the City's overall fleet replacement funding needs, it is difficult to determine how best to prioritize fleet replacement needs to avoid impacts such as delays in replacement.

Although it may be reasonable for the City to use the Replacement Fund as a central funding source rather than tying it to specific vehicles and departments, this use of the Replacement Fund does not line up with how it is funded, which is by specific vehicles. As an internal service fund, contributions to the Replacement Fund from departments are to fund specific vehicles. However, any funding that departments contribute goes into one central account, the Replacement Fund, which in practice may not be dedicated to any specific department's vehicles, and has been spent on other fleet throughout the City. It is also difficult to determine how best to prioritize fleet replacement needs to avoid impacts such as delays in replacement without information about the City's overall fleet replacement funding needs.

Public Works is generally responsible for the ultimate decision about when to replace a fleet unit. According to Public Works, there are some cases when departments make a different decision, such as replacing a unit but keeping it as a backup or replacing with a different type of unit. The current fleet replacement policy does not clarify Public Works' authority and responsibilities in making decisions about fleet replacement.

**Timely fleet replacement:** The fleet replacement funding shortage may have contributed to the more than threefold increase in the number of backlogged fleet units that surpassed their replacement date between FY 2010 and FY 2020.<sup>3</sup> According to Public Works' data, the number has grown to 174 fleet units. This represents 36 percent of the fleet funded through the Replacement Fund. The estimated replacement cost for these 174 vehicles is \$13.2 million. Replacing the backlog would take up most of the Replacement Fund's balance of \$15.8 million, leaving only \$2.6 million for the rest of the City's fleet replacement. This would fall short of the \$4.2 million spent to replace vehicles in FY 2020 and \$9 million planned for replacements in FY 2021. The \$13.2 million backlog replacement cost also represents a nearly \$10 million increase in the cost reported in the 2010 audit.

It should be noted that the actual number of overdue fleet may be higher or lower due to inaccuracies in the data which we will discuss in more detail in the our second finding (page 21). According to Public Works, one reason for delays in fleet replacement is that they are not expecting to receive new police vehicles until early 2021 as the Ford Motor Company was retooling its plants in the fall of 2019. However, police vehicles make up only 51 vehicles, or 29 percent, of the total 174 vehicles. Public Works also stated that they did not replace the fleet right away because they were waiting for the results of the City's fleet electrification assessment which took eight months to complete and was issued in May of 2020. Nevertheless, even if Public Works did not face these setbacks, the current funding level is not sufficient to address all overdue vehicles and equipment.

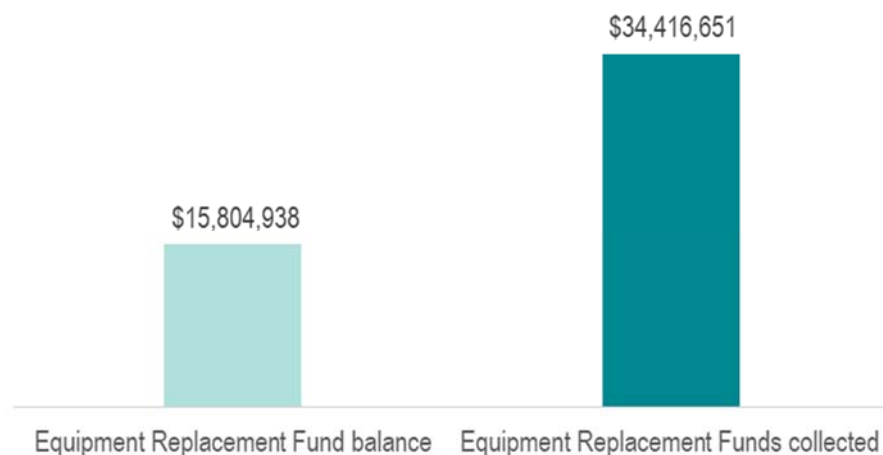
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<sup>3</sup> These figures only refer to the backlogged vehicles to be replaced with the Replacement Fund. The total fleet backlog is greater.

This underfunding also poses a risk that the Replacement Fund cannot cover the City's fleet needs in the coming years without other funding sources to cover the funding shortages. Such reallocations have already occurred. For example, in November of 2019, the City requested that City Council allow the use of \$48,000 from the Zero Waste Fund to cover a funding shortage for the total replacement cost for seven refuse vehicles. According to the Budget Office staff, they usually consider such requests based on funding availability.

**Total fund balance compared to what was collected:** The Replacement Fund has a balance significantly lower than what departments have contributed for the replacement of their fleet. As of the end of FY 2020, departments had contributed over \$34.4 million toward the replacement of 486 units,<sup>4</sup> but the Replacement Fund had a balance of only \$15.8 million, which is \$18.6 million less than what was collected (Figure 5). The \$34.4 million collected is higher than the estimated APWA-recommended balance of \$23 million and may be more than is needed for vehicle replacement only. Based on the current funding model, the \$34.4 million does not include the total cost of fleet management, including personnel, as we will discuss in the following section.

Figure 5. The Equipment Replacement Fund was short of what was collected by \$18.6 million at the end of FY 2020.



Source: Auditor's analysis of the City of Berkeley's vehicle and equipment data as of the end of FY 2020

The gap between the Replacement Fund balance and the total funding collected may be due in large part to the City's use of the Replacement Fund

<sup>4</sup> Though the entire fleet is comprised of 730 units, only 486 of them are funded through the City's Replacement Fund. This number excludes vehicles that are replaced but kept as backups and are not funded, but does include 10 such vehicles planned to be replaced with new electric vehicles in FY 2021 using Replacement Fund dollars.

for other purposes. According to Public Works, it is difficult to determine from the current data and historical records exactly what happened to the \$18.6 million. We estimate that several categories of spending could explain most of the gap, which we will discuss in more detail in the next section.

### The Replacement Fund has been used for other purposes.

The Replacement Fund is underfunded in large part because the City uses the Replacement Fund to pay for expenses other than the direct cost of fleet replacements, but does not factor those costs into charging departments for fleet units and fleet management services. Departments make monthly payments towards the eventual replacement of their fleet.<sup>5</sup> However, the formula does not factor in the following significant expenditures made with the Replacement Fund. Without a funding model that accounts for how the fund is used, it is difficult to ensure funding sufficiency, transparency and accountability.

**Personnel costs:** The City charged a total of \$7.2 million in personnel costs to the Replacement Fund in 2006-2020. While it may make sense to use the Replacement Fund for this purpose, Public Works does not factor personnel costs into the calculation of departments' contributions to the Replacement Fund. Each year, the City has used the Replacement Fund to pay for personnel costs related to managing fleet replacement. However, it is not accounted for as a regular expense from the Replacement Fund. In the past 15 years, personnel costs averaged about \$477,000 annually. Without revenue to cover these expenses, they add up to a significant amount of funds that cannot be used for fleet replacement over time.



Additionally, some of these personnel costs may not be related to fleet replacement. For example, the City currently pays 100 percent of a senior buyer's salary from the Replacement Fund though fleet purchasing responsibilities make up less than 100 percent of their time. In FY 2020, the Finance Department also erroneously charged \$133,207 to the Replacement Fund for the salary and benefits of an employee who worked as an interim General Services Manager in Finance for six months, a position that is normally not charged to the Replacement Fund. This error went unnoticed until this audit.

According to the Public Works director, the department is working with a consultant to conduct a rate study that would clarify what its services should cost, including positions assigned to fleet management and replacement. The Public Works director stated that the rate study is intended to make costs associated with fleet management more transparent by providing a breakdown of the costs charged to departments. The outcomes of the rate study could provide information about how much fleet-related personnel time should be accounted for and charged to departments.

It is important to note that this personnel cost issue is not new. The earliest records available show that the City has paid an average of \$477,000 in personnel costs each year since 2006. The 2010 audit found that from FY 2008 to FY 2010, the City paid over \$1.3 million for personnel costs from the Replacement Fund and recommended that the City consider establishing administrative fees to cover personnel costs. The City decided not to establish a fee but did not provide a rationale for its decision, and continued paying personnel costs from the Replacement Fund.

**Funding reallocation:** In FY 2006, the City reallocated \$2 million from the Replacement Fund, but did not replenish those funds. The Budget Office stated that the City repays inter-fund loans but generally does not replenish funds that are reallocated from one internal service fund to another to support City operations. To cover a budget shortfall in FY 2021 due to the impact of COVID-19 on City revenues, the City budgeted to use over \$1 million from the Replacement Fund to pay for a lease of fire vehicles, which the City usually pays from the General Fund. The City also budgeted to defer the Police Department's payments into the Replacement Fund in the amount of \$412,483. The Public Works' vehicle and equipment replacement policy does not provide any guidance on managing the fund to ensure that it is sufficient to meet the City's needs.



According to Budget Office staff, the City makes decisions to reallocate the money from the Replacement Fund for other, non-fleet purposes with input from Public Works based on the available Replacement Fund balance. They also reported that Public Works does not provide any analysis of the impact of using Replacement Funds for non-fleet purposes, such as delays in fleet replacement or increased maintenance and repair costs as the fleet ages. This can lead the Budget Office to approve expenditures from this fund based on if there are available funds to cover the expenditure. However, available funds are a misleading indicator of the fund's sufficiency if they do not also have information about what the annual fleet funding needs are citywide.

**Fleet customization costs:** According to Public Works, some of the funding gap could be due to substantial vehicle customization costs charged to the Replacement Fund. Over the years, this could account for millions of dollars in the gap, particularly for public safety vehicles. However, Public Works does not have data on these costs.

Customization can include installing specialized detailing and gear needed to provide services, such as painting the exterior or installing radios, safety features, and light bars. These costs are not included in the payments that Public Works collects from departments, but they can be significant. Public Works staff reported that in some cases, customization can cost about 40 percent or more of the purchase cost. After this audit was initiated, Public Works stated that they have begun including customization costs in the estimated replacement costs for all fleet purchased in FY 2020 and later, but have not adjusted costs for all other fleet and did not include it in the past.

**Purchase of replacement fleet without funding:** According to its own data, Public Works may have used up to \$3 million from the Replacement Fund over the past 22 years to replace 50 vehicles that departments had not funded. Of the \$3 million, over \$1.7 million, or 58 percent, was spent on vehicles for Public Works.

For context, Public Works' share of the fleet makes up 65 percent of the total fleet replacement value. Nearly one third was spent on vehicles for the Police Department. Given the insufficiency of the fund, it is likely that using



the Replacement Fund to replace unfunded vehicles contributed significantly to the funding gap we identified. According to Budget Office staff, the money that departments contribute may fund any City fleet replacement depending on priority, and funding of their own replacements is not guaranteed. In practice, Public Works considers funds contributed towards the replacement of a specific vehicle to be dedicated to that vehicle. It is important to note that Public Works cannot verify the \$3 million because it does not track Replacement Fund use by department as we discuss in more detail on page 25. However, this is another example of the misalignment between the funding model and use of the fund that may contribute to a funding shortfall.

Using the Replacement Fund to replace unfunded vehicles with new ones can increase the size of fleet, along with the cost to maintain and replace those added vehicles. According to the fleet data, there are 68 vehicles initially purchased with the Replacement Fund that have been replaced but are still in use. Currently, Public Works does not have a documented optimal fleet size that can ensure efficient and effective service at a reasonable cost. The City also does not have a policy that specifies how to manage vehicles that are replaced but kept as backups or require that departments secure new funding to cover the cost to replace those backup vehicles with new ones.<sup>5</sup>

### Lack of funds may delay the transition to an electric fleet.

The underfunding may prevent the City from accomplishing its goal of transitioning its fleet to electric vehicles by 2030 in an effort to reduce greenhouse gas emissions. Transportation is responsible for 60 percent of Berkeley's greenhouse gas emissions. In 2006, Berkeley voters endorsed a ballot measure to reduce the community's greenhouse gas emissions by 80 percent by 2050. In 2018, City Council passed a resolution endorsing the declaration of a climate emergency to mobilize efforts to reduce greenhouse gas emissions. In response, the City adopted a Climate Action Plan in 2009, which focused on actions to help the City reach this goal. Understanding that it cannot reach the 80 percent goal by 2050 without transitioning to electric transportation options, in 2019, the City adopted a Berkeley Electric Mobility Roadmap that set goals and strategies to do so. The roadmap included a goal of transitioning the City's fleet to electric vehicles by 2030.

The City's funding need for electric vehicles is more clearly defined than the City's overall fleet funding needs. Recognizing the urgency in reducing the City fleet's greenhouse gas emissions, the City Council also directed the City to

<sup>5</sup> These vehicles are sometimes referred to as reserve, backup, or pool vehicles.

create a plan to “aggressively accelerate” electrification of the City’s fleet and phase out fossil fuel vehicles by 2030. In July 2020, Public Works presented the City’s Municipal Fleet Electrification Assessment (assessment) prepared by East Bay Community Energy on the timeline and cost to transition to an electric fleet by 2030. The assessment estimated that it would cost about \$1,156,200 to buy electric vehicles to replace 32 gas-powered and hybrid light-duty vehicles in FY 2021. Some of the City’s 174 backlogged vehicles are medium-, heavy-duty, or emergency vehicles that the City cannot currently replace with electric vehicles because the current market does not offer practical electric alternatives.

The City of Berkeley Municipal Fleet Electrification Assessment (assessment) evaluates the short- and long-term cost savings associated with the transition to electric vehicles, determines impacts and benefits to the City, and outlines steps to efficiently integrate electric vehicles and charging infrastructure at municipal facilities in a fiscally responsible manner.

According to the City’s fleet data, Public Works has only collected \$747,000 to replace 29 vehicles scheduled to be replaced with electric ones in 2021.<sup>6</sup> Even if Public Works had collected enough funding, there is no guarantee that the City would have used those funds to purchase the specified electric vehicles. According to Budget Office staff, the money departments contribute into the Replacement Fund may not necessarily be used for replacement of their vehicles. As discussed earlier, the Replacement Fund’s current balance is not sufficient to cover the cost to replace 174 vehicles that have surpassed their estimated replacement date. Eight of those 174 are scheduled to be replaced with new electric vehicles but do not have any funding for replacement. One vehicle that has been decommissioned and auctioned is also scheduled to be replaced with an electric vehicle.

Given the City’s use of the Replacement Fund for purposes other than fleet replacement, there is a risk that the City may not have all the funds collected for electric vehicles when it is time to replace them. Additionally, Public Works stated that competing fleet needs and an effort to reduce the vehicle backlog may mean that there are not enough funds overall to buy all the electric vehicles due for purchase in FY 2021 even though some of those vehicles appear to be funded. If these delays continue, it is possible that the City will fall behind its goal of transitioning to an electric fleet by 2030.

**Light-duty** vehicles include all sedans, sport utility vehicles (SUVs), and parking enforcement scooters. **Medium-duty** vehicles include pickup trucks, cargo vans, and passenger buses. **Heavy-duty** vehicles include refuse collection vehicles and dump trucks.

<sup>6</sup> East Bay Community Energy’s plan estimated the cost to buy electric vehicles to replace 32 gas-powered vehicles in FY 2021, but only 29 of those vehicles are funded through the Replacement Fund.



Further, how Public Works prioritizes vehicle replacements may further delay the City in reaching its fleet electrification goal. Public Works does not have a consistent, documented method for prioritizing which vehicles to replace with the limited funding. While it is reasonable that priorities need to be flexible to adapt to the City's changing fleet needs, it is difficult to ensure that funding will be available for high-priority initiatives like fleet electrification without a transparent method for prioritizing the use of replacement funds.

Another barrier to meeting the City's fleet electrification goal is the funding needed to install the charging infrastructure to provide power to electric vehicles. This is a capital expense that would not normally be paid for through the equipment Replacement Fund. In FY 2021, Public Works requested a budget allocation to pay for electric vehicle charging infrastructure.

## Recommendations

To address the challenges identified, we recommend that Public Works:

- 1.1 Calculate the dollar value of the City's replacement needs. Use results from the recent rate study to adjust departments' replacement fees to cover their share of the costs associated with vehicle replacement, including customization and personnel.
- 1.2 Conduct an analysis of the City's current fleet and determine the optimal fleet size to provide services efficiently and effectively. This analysis should include fleet units identified as reserve, backup, and "pool" vehicles. The outcome of the analysis should be a plan to achieve and provide funding for the optimal fleet size.
- 1.3 Work with the City Manager's Office to adjust the funding model of the Equipment Replacement Fund or adopt a new one to ensure appropriate funding for timely fleet replacement, such as annually transferring money from the General Fund based on an assessment of the City's overall fleet needs and priorities. Expand the current vehicle and equipment replacement policy to ensure transparency of key provisions of the new or updated model.
- 1.4 Revise the vehicle and equipment replacement policy to include that Public Works should regularly assess the personnel expenditures related to vehicle and equipment replacement and ensure that they are appropriate and proportional to their duties.
- 1.5 Revise the vehicle and equipment replacement policy to prevent replacing unfunded vehicles by ensuring that contributed funds are available for the purchase.

- 1.6 Develop an Administrative Regulation that clarifies Public Works' responsibilities to manage the fleet and maintain sufficient fleet replacement funding. Include the following provisions:
- Public Works should provide an analysis of the impact on fleet replacement and overall costs when the City considers reallocating replacement funds or stopping payments into the Fund.
  - The City Manager should provide documented justification when deciding to use the Equipment Replacement Fund for non-replacement needs. The decision must be supported with a documented cost analysis from Public Works showing potential impact of insufficient funds on fleet replacement.
  - Public Works should report to Council annually on fleet funding needs and Replacement Fund sufficiency.
  - Public Works has the ultimate authority to make decisions about fleet replacement in consultation with departments and with consideration for departments' fleet needs. Departments can appeal decisions to the City Manager if they disagree with the decision.
  - The Replacement Fund is an internal service fund. Internal service funds are used to account for goods or services provided by one department or program to another on a cost-reimbursement basis. Any funding departments contribute to the Replacement Fund is not dedicated to any specific department, but can be spent on fleet units throughout the City.
- 1.7 To help secure the funding needed for transitioning to electric vehicles by 2030, work with the City Manager's Office to develop a budgetary plan to purchase electric vehicles. The plan should align with the City's fleet electrification goals and take into consideration the current economic downturn, funding availability, available infrastructure, and electric vehicle availability.



## Finding 2: Public Works lacks information on vehicle and equipment replacement and funding.

Public Works cannot accurately determine the City’s current Replacement Funding needs because its data is sometimes inaccurate or incomplete. Public Works also cannot show that decisions to keep vehicles and equipment units past their replacement date are beneficial or cost effective. There is also a lack of information about whether funds are distributed based on priority or department needs. Some of the information issues may stem from the fact that Public Works’ fleet replacement policy does not provide guidance on managing the fleet data to ensure accuracy and transparency.

### Public Works lacks accurate information about the City’s vehicle and equipment replacement needs.

Public Works cannot accurately determine the City’s current replacement funding needs because data about when vehicles and equipment should be replaced is often inaccurate. All City vehicles have an estimated replacement date based on vehicle type, which is automatically recorded when staff enter a new vehicle into the database (Table 1).

Table 1. Vehicles’ estimated economic life varies by type.<sup>7</sup>

Vehicle Type	Estimated Economic Life
Police Cars	4 years or 100,000 miles
Ambulances	5 years or 100,000 miles
Fire Trucks	10 years or 100,000 miles
Refuse Trucks	10 years or 25,000 hours
Dump Trucks	15 years or 75,000 miles
Light Duty Trucks	10 years or 100,000 miles
Sedans	4 years or 100,000 miles <sup>7</sup>

Source: Public Works Equipment Maintenance Management Practices/Replacement Policy

When a vehicle nears its replacement date, Public Works stated that its staff examine the vehicle based on the estimated economic life (years, miles, or

<sup>7</sup> The policy states that the estimated economic life of sedans is four years, but the Director of Public Works informed us that this has been updated to 10 years.

hours of use), operating costs, user needs, and current condition to decide whether it can remain in service or needs to be replaced. Public Works stated that departments may decide to defer replacement if they have limited funding or would prefer to continue using a vehicle. However, Public Works does not provide departments with total maintenance and repair costs of a vehicle to determine whether it is cost-effective to keep it or replace it.

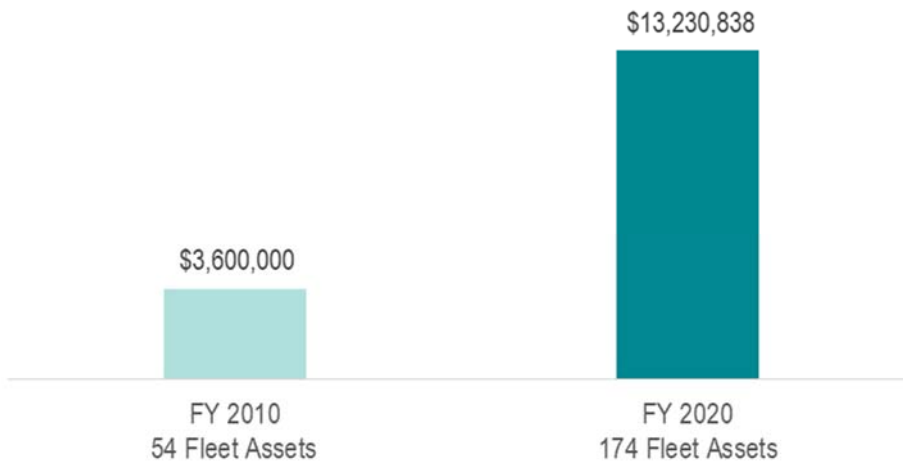
It is unclear from the data how many vehicles have been intentionally deferred and how many would be more cost-effective or practical to replace. If a decision is made to defer replacement for any reason, Public Works staff does not update the estimated replacement date in the database. According to Public Works, the database does not easily allow such a change.

Incorrect replacement dates mean that Public Works cannot determine exactly when vehicles should be replaced and what level of funding is needed in a fiscal year. According to the data, the number of vehicle and equipment units that have met or exceeded their estimated replacement date has increased (Figure



6). In December 2009, 54 vehicles had surpassed their replacement date with a total replacement value of \$3.6 million. By the end of FY 2020, the number had grown by more than 222 percent to 174 units at an estimated replacement cost of \$13.2 million. In the 2010 audit, the City Auditor recommended that Public Works identify all fleet units due and past due for replacement at least annually. Today, Public Works lists the vehicles that it plans to replace in its Capital Improvement Program budget, but does not report the total number of vehicles due and past due for replacement. As a result, though the fund appears to be underfunded overall, it is not clear what the City's actual vehicle and equipment funding needs are.

Figure 6. The cost of vehicles past their estimated replacement date has substantially increased since FY 2010.



Source: Auditor's analysis of the City of Berkeley's vehicle and equipment data as of the end of FY2017 and FY 2020. Data for FY 2010 comes from the 2010 audit report.

Public Works cannot show that decisions to keep vehicles past their replacement date are beneficial or cost-effective because it does not document why such decisions are made. According to APWA guidance, it may be reasonable for some vehicles to still be in service if they do not incur excessive maintenance and repair costs and are in good condition to maintain operations and service delivery. On the other hand, APWA states that using fleet units beyond their economic useful life is generally a short-term budget fix that invariably will lead to a long-term increase in cost and a degradation of the unit's overall effectiveness and efficiency. For example, by June 2020, the City spent nearly \$1.5 million in maintenance and repair costs on seven refuse trucks and a wheel-loader after they surpassed their replacement dates between fiscal years 2014 and 2019. For some deferred replacements, the cost of avoidable maintenance and repair in the long run may exceed any short term savings.

According to APWA, retaining units after they surpass their replacement time leads to the following adverse conditions:

- Increase in total operating cost and fleet budget
- Increase in turnaround time as the complexity of repairs increase and parts availability decreases
- Decrease in overall unit availability
- Increase in fleet failure—the older the fleet, the greater the opportunity a catastrophic failure will occur
- Decrease in salvage (residual) value as a unit ages
- Customer satisfaction with the fleet will dissipate and it may become underutilized
- Diminished public perception of the entity as a whole
- Operator safety is compromised as vehicle and equipment components are subject to increased wear and tear; safety enhancements available on new units are bypassed when fleet units are not replaced
- Fleet creep occurs as customers seek to have more backup units to fill the void created when fleet units are in for service more often and for longer periods of time
- Potential non-compliance with new regulatory requirements (i.e. emissions)
- Defer implementation of “green” sustainability initiatives for fuel economy and greenhouse gas emissions reductions

Source: Adapted from the American Public Works Association

It is not clear that the City is appropriately prioritizing vehicle replacements to reduce overall costs or ensure effective operations and service delivery. Given that the City has a funding shortage and a growing number of vehicles seemingly past due for replacement, it is important that the City make the best use of limited resources by prioritizing replacements to meet the City’s operational and service goals. Public Works states that staff assess vehicles to decide whether they should be replaced based on the estimated economic life, operating costs, user needs, and current conditions. However, it is not clear how that information leads to replacement priorities because Public Works does not have documentation supporting its decisions for replacement prioritization. Without a transparent method for prioritization, it is not clear that the City is appropriately prioritizing vehicle replacements to ensure effective operations and service delivery.



Public Works staff reported that in light of competing fleet needs and limited funding, they have shifted to prioritizing reducing the backlog of old vehicles. The City's FY 2020-2021 Capital Improvement Program budget states that the goal is to replace backlogged equipment as of FY 2024 as funds become available. However, it does not include a specific plan for how Public Works plans to accomplish this. Further, the FY 2024 timeframe suggests there have been delays in addressing the backlog because the FY 2018-2019 Capital Improvement Program budget stated a timeframe of FY 2022. The backlog has also substantially increased since FY 2010 (page 12).

Public Works stated that they have just started a contract with AssetWorks, a vehicle and equipment management system, which is expected to be capable of tracking accurate information about replacement date, cost data to determine whether deferred replacements will be cost effective, and to help prioritize replacements. However, the vendor will need to configure the system to allow Public Works to track and report this information. It will also be important for staff to have procedures in place to manage the data to ensure transparency and accountability in the City's vehicle replacement process.

In addition to the data issues identified, there is a risk that Public Works relies on information from the vehicle and equipment database that contains errors when assessing the City's funding needs. We found that the vehicle and equipment database shows some incorrect replacement fees. For example, from May of 2016, through January of 2017, Public Works contributed \$18.63 instead of \$29.88 in monthly replacement fees for a generator before it corrected the amount. Incorrect amounts may contribute to insufficient or excessive funding.

There is also a risk that Public Works does not have the complete data it needs to make funding and replacement decisions. Our review of the database shows that numerous database fields were empty. For example, as of May 2020, out of 730 records, 100 records did not have a purchase cost and 110 records did not have a replacement cost.

### **The current system does not track replacement funds by department.**

Public Works does not know how much funding each department has paid toward replacement of their fleet because the current system does not allow Public Works to track funding contributed by department. As a result, Public

Works cannot verify how much money departments have contributed towards the replacement of their fleet. However, Public Works bases its decisions to schedule a vehicle replacement based on whether departments have contributed enough funding to cover the cost of the new one. Overall, this fleet funding model in which Public Works assesses sufficiency of replacement funds based on what departments have contributed is at odds with how funding is used. Funding distribution may not be based on need or priority among departments. The fleet funding model also makes it difficult to ensure transparency and accountability in how the fund is used.

Public Works also stated that departments sometimes purchase vehicles that are cheaper than the amount they contributed and used the leftover funds to purchase other vehicles. However, they cannot verify this because the current system does not report total collected funds by department nor does it capture when departments have leftover funds.

Additionally, the current fleet management system does not automatically update when departments use the Replacement Fund to replace a vehicle. This can create the appearance that funding is still available even after a department has replaced a vehicle and exhausted the funds they contributed. Public Works may have used up to \$3 million from departments that had contributed funds to the Replacement Fund for their own vehicle replacements or to replace other departments' underfunded or unfunded vehicles, as we discussed in the first finding. Public Works staff stated that records of these purchases were created by staff who are no longer working with the City. Public Works states that the new AssetWorks fleet management system it plans to implement in FY 2021 is expected to allow the tracking of funding by department.

### **Public Works has no written policies or procedures for how to manage the data.**

Public Works does not have a policy guiding its fleet data management. Without a policy, there is a risk of inconsistency in decisions about vehicle replacements. Additionally, the current database is out-of-date and does not have the functionality for effective replacement. Specifically, the department uses database fields that does not capture key information. For example, under current management, Public Works enters years "1977" or "2077" into a replacement year field to identify a vehicle that does not have sufficient funding. Under previous management, Public Works used those years to identify vehicles that are replaced but kept as backups. According to the



Public Works staff, a new fleet management software should address the shortcomings in the current database if they configure the system to do so.

## Recommendations

To ensure that Public Works has key information about the City's vehicle and equipment and funding needs, we recommend Public Works:

- 2.1 Conduct a needs assessment of vehicles overdue for replacement and create a plan that documents a timeline and cost for replacement. Report the findings to City Council.
- 2.2 Update the vehicle and equipment replacement policy to include criteria for prioritizing fleet replacement. The policy should include a requirement to communicate a delay in replacement of their fleet to affected departments. In Administrative Regulation described in recommendation 1.6, specify that the vehicle and equipment replacement policy should include such criteria.
- 2.3 Work with the vendor of the new fleet management system to configure it to address the data issues identified in this report, including:
  - Tracking Replacement Funds collected and leftover funds by department;
  - Zeroing out the balance after a vehicle is replaced;
  - Adjusting the replacement date and reporting the rationale if a replacement is deferred; and
  - Displaying any information needed to prioritize replacements based on specified criteria.
- 2.4 Clean and update the vehicle and equipment database before migrating it to the new fleet management system to ensure accuracy and data integrity.
- 2.5 Update the vehicle and equipment replacement policy or develop a separate policy to require staff manage the City's data appropriately to ensure accurate complete information to support management decisions.

## Appendix I. Recommendations and Management Response

Public Works agreed with our findings, conclusions, and recommendations.

To address the challenges identified, we recommend that Public Works:

- 1.1** Calculate the dollar value of the City's replacement needs. Use results from the recent rate study to adjust departments' replacement fees to cover their share of the costs associated with vehicle replacement, including customization and personnel.

**Management Response:** Agree

**Proposed Implementation Plan:** Accept and share results of recent Equipment Replacement Fund and Equipment Maintenance Fund rate study with City Manager's Office and customer City Departments. Adjust as necessary amortization values for vehicles to incorporate adjusted rates.

**Proposed Implementation Date:** July 1, 2022

- 1.2** Conduct an analysis of the City's current fleet and determine the optimal fleet size to provide services efficiently and effectively. This analysis should include fleet units identified as reserve, backup, and "pool" vehicles. The outcome of the analysis should be a plan to achieve and provide funding for the optimal fleet size.

**Management Response:** Agree

**Proposed Implementation Plan:** Issue RFP for a consultant to evaluate fleet size and standardization, develop recommendations. Incorporate recommended changes into FY 23 & 24 Budget Development.

**Proposed Implementation Date:** December 1, 2022

- 1.3** Work with the City Manager's Office to adjust the funding model of the Equipment Replacement Fund or adopt a new one to ensure appropriate funding for timely fleet replacement, such as annually transferring money from the General Fund based on an assessment of the City's overall fleet needs and priorities. Expand the current vehicle and equipment replacement policy to ensure transparency of key provisions of the new or updated model.

**Management Response:** Agree

**Proposed Implementation Plan:** Implementation of any proposed changes to Equipment Replacement rates will be part of a budget adoption process. Staff will evaluate replacement schedule and model for vehicle amortization, implement Assetworks fleet management tool and integration with ERMA financial software. Propose changes for adoption in FY 2023 Budget.

**Proposed Implementation Date:** July 1, 2022

- 1.4** Revise the vehicle and equipment replacement policy to include that Public Works should regularly assess the personnel expenditures related to vehicle and equipment replacement and ensure that they are appropriate and proportional to their duties.

**Management Response:** Agree

**Proposed Implementation Plan:** Department will review, revise the current draft policy to incorporate appropriate language, and distribute to the City Manager's Office for complete policy approval.

**Proposed Implementation Date:** September 1, 2021

- 1.5** Revise the vehicle and equipment replacement policy to prevent replacing unfunded vehicles by ensuring that contributed funds are available for the purchase.

**Management Response:** Agree

**Proposed Implementation Plan:** Department will review, revise the current draft policy to incorporate appropriate language, and distribute to the City Manager's Office for complete policy approval.

**Proposed Implementation Date:** September 1, 2021

- 1.6** Develop an Administrative Regulation that clarifies Public Works' responsibilities to manage the fleet and maintain sufficient fleet replacement funding. Include the following provisions:
- Public Works should provide an analysis of the impact on fleet replacement and overall costs when the City considers reallocating replacement funds or stopping payments into the Fund.
  - The City Manager should provide documented justification when deciding to use the Equipment Replacement Fund for non-replacement needs. The decision must be supported with a documented cost analysis from Public Works showing potential impact of insufficient funds on fleet replacement.
  - Public Works should report to Council annually on fleet funding needs and Replacement Fund sufficiency.
  - Public Works has the ultimate authority to make decisions about fleet replacement in consultation with departments and with consideration for departments' fleet needs. Departments can appeal decisions to the City Manager if they disagree with the decision.
  - The Replacement Fund is an internal service fund. Internal service funds are used to account for goods or services provided by one department or program to another on a cost-reimbursement basis. Any funding departments contribute to the Replacement Fund is not dedicated to any specific department, but can be spent on fleet units throughout the City.

**Management Response:** Public Works agreed that the items in this recommendation could be addressed by an administrative regulation or a policy as described in the proposed implementation plan.

**Proposed Implementation Plan:** Evaluate with City Manager's Office the benefits of an AR vs a well communicated Equipment Replacement Policy document. Items recommended in 1.6 could be adopted in either an AR or Policy document.

**Proposed Implementation Date:** September 1, 2021

**1.7** To help secure the funding needed for transitioning to electric vehicles by 2030, work with the City Manager's Office to develop a budgetary plan to purchase electric vehicles. The plan should align with the City's fleet electrification goals and take into consideration the current economic downturn, funding availability, available infrastructure, and electric vehicle availability.

**Management Response:** Agree

**Proposed Implementation Plan:** Staff will develop estimates and projections for electrification, beginning with the current fleet and available technology on the market. The cost for installation of infrastructure will be part of the costs estimates. Timing of plan will align with FY 23 & 24 Budget Development. Full fleet electrification as electric options may not be available yet, so budgetary estimates may be very preliminary.

**Proposed Implementation Date:** March 1, 2022

To ensure that Public Works has key information about the City's vehicle and equipment and funding needs, we recommend Public Works:

## 2.1 Conduct a needs assessment of vehicles overdue for replacement and create a plan that documents a timeline and cost for replacement. Report the findings to City Council.

**Management Response:** Agree

**Proposed Implementation Plan:** Staff will create a fleet inventory report and note vehicles still in the fleet past their scheduled replacement date based on expected life. The reporting will include information on replacement funds collected to date and note any shortfalls that would require additional funds to be budgeted at the time of replacement. Report will include explanation/justification as appropriate for each vehicle it was kept past replacement date.

**Proposed Implementation Date:** September 1, 2021

## 2.2 Update the vehicle and equipment replacement policy to include criteria for prioritizing fleet replacement. The policy should include a requirement to communicate a delay in replacement of their fleet to affected departments. In Administrative Regulation described in recommendation 1.6, specify that the vehicle and equipment replacement policy should include such criteria.

**Management Response:** Agree

**Proposed Implementation Plan:** Department will revise the current draft policy to incorporate appropriate language, and distribute to the City Manager's Office for complete policy approval. Development of AR vs Policy pending further staff evaluation.

**Proposed Implementation Date:** September 1, 2021

## 2.3 Work with the vendor of the new fleet management system to configure it to address the data issues identified in this report, including:

- Tracking Replacement Funds collected and leftover funds by department;
- Zeroing out the balance after a vehicle is replaced;
- Adjusting the replacement date and reporting the rationale if a replacement is deferred; and
- Displaying any information needed to prioritize replacements based on specified criteria.

**Management Response:** Agree

**Proposed Implementation Plan:** Assetworks fleet management system project kickoff scheduled for March 2021, project/implementation schedule to be developed soon.

Implementation plan with vendor will include items listed above.

**Proposed Implementation Date:** January 30, 2022 (tentative)

## 2.4 Clean and update the vehicle and equipment database before migrating it to the new fleet management system to ensure accuracy and data integrity.

**Management Response:** Agree

**Proposed Implementation Plan:** Assetworks fleet management system project kickoff scheduled for March 2021, project/implementation schedule to be developed soon. Equipment information will be reviewed and validated before entry into Assetworks.

**Proposed Implementation Date:** July 1, 2021 (tentative)

## 2.5 Update the vehicle and equipment replacement policy or develop a separate policy to require staff manage the City's data appropriately to ensure accurate complete information to support management decisions.

**Management Response:** Agree

**Proposed Implementation Plan:** Update the draft replacement policy to include language committing Public Works Fleet staff to track and manage equipment replacement funds, and is trackable per vehicle and by department. Data should be reportable and regularly shared with departments and the City Manager's Office. Finalization of policy language and implementation timing will depend on implementation of Assetworks fleet management system, and department's understanding and development of its tracking and reporting tools.

**Proposed Implementation Date:** July 1, 2022

## Appendix II. Methodology and Statement of Compliance

### Methodology

To meet our audit objectives, we reviewed the following:

- The Equipment Replacement Fund (Replacement Fund) audit report issued in 2010
- Six information items the City reported to the Council from 2011 through 2017 on implementation of 2010 audit recommendations
- The Standards for Internal Control in the Federal Government
- FY 2018 – 2019, FY 2020 – 2021 Adopted Biennial Budget Capital Improvement Programs
- FY 2022 Proposed Annual Budget
- City Council resolutions for climate change
- Plans and policies for fighting climate change and fleet electrification
- Policies and procedures Public Works uses for managing vehicle and equipment replacement
- Forms Public Works uses in managing the City’s vehicles and equipment
- Another municipality’s vehicle and equipment management assessment

We also conducted interviews with:

- Staff from departments responsible for monitoring their vehicles and equipment
- Public Works staff responsible for managing the Replacement Fund, purchasing new vehicles and equipment, and disposing of aged vehicles and equipment
- Special advisor from Management Partners, a professional management consulting firm, to gain their perspective on backlog

We analyzed:

- Data for selected City’s vehicles and equipment as of FY 2017 and FY 2020 recorded in the FUND\$ vehicle and equipment management database
- Maintenance and repair costs for seven refuse trucks and one wheel loader
- Data for personnel costs charged to the Replacement Fund
- Physical inventory check for 82 selected vehicles and equipment

We performed a risk assessment of the City’s practices and procedures in managing the Replacement Fund to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. We reviewed the action plans the City reported it had put in place to address the recommendations from the Replacement Fund audit issued in 2010 to determine whether these plans are still in use and, if not, why.



## Data Reliability

We assessed the reliability of FUND\$ vehicle and equipment management data by reviewing it for accuracy and completeness, interviewing data and data-system owners and managers, gaining an understanding of data access controls, conducting a physical inventory, and tracing to and from source documents. Our review of the data revealed the following errors and system limitations:

- The system does not allow Public Works staff to capture all the relevant information needed to manage the City’s vehicle and equipment, so they work around these limitations by entering information into other fields not designated for it.
- Some fields need to be manually entered, which creates a risk for errors.
- Public Works does not consistently enter information into fields.
- Public Works does not consistently update information to reflect fleet changes.
- The system does not prevent a user from entering a wrong equipment number in the “equipment number replaced” field.
- The system does not allow to easily update replacement dates.
- The system does not allow to track funding by a department.
- The system does allow to zero out amounts used for replacement.
- Some estimated replacement costs are inaccurate because Public Works staff does not update them if replacement costs change.

We assessed the reliability of the data by tracing a selection of the records to the source documents and did not find any significant issues in the context of our audit objectives that would make the data unreliable for our audit purposes. Therefore, we determined that the data was sufficiently reliable for the purposes of this report. Where we could not rely on the data, we clearly identified it in the report.

## Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Mission Statement**

Promoting transparency and accountability in Berkeley government.

**Audit Team**

Claudette Biemeret, Audit Manager (Former)  
Caitlin Palmer, Senior Auditor  
Farkhad Askarov, Auditor II (Former)

**City Auditor**

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BERKELEY CITY AUDITOR





Energy Commission

## ACTION CALENDAR

June 29, 2021

To: Honorable Mayor and Members of the City Council

From: Berkeley Energy Commission

Submitted by: Janet Stromberg, Chair, Berkeley Energy Commission

Subject: Adopt a Resolution to Upgrade Residential and Commercial Customers to East Bay Community Energy (EBCE) *Renewable 100* Plan

### RECOMMENDATION

Adopt a time-sensitive Resolution to upgrade all current and new Berkeley residential and commercial customer accounts from *Bright Choice* - 86% Green House Gas (GHG)-free including substantial hydroelectric and nuclear - to *Renewable 100* (100% renewable energy from California solar and wind) for their default electricity service plan, excluding residential customers in low-income assistance programs. The Berkeley Energy Commission (Commission) recommends that the City Council adopt the resolution now to meet East Bay Community Energy's (EBCE) schedule of requiring an extensive lead time needed for the transition to be effective April 1, 2022 for residential customers and October 1, 2022 for commercial customers.

### FISCAL IMPACTS OF RECOMMENDATION

The Commission anticipates minimal fiscal impact. EBCE will cover the costs associated with a municipality member's first change to a default rate product. Staff is currently engaged in outreach and education around EBCE service plans. Outreach and education for the opt-up period can be incorporated into ongoing efforts. Berkeley residents and businesses can opt to choose a different EBCE or PG&E service plan at any time.

Based on 2019 data for an average EBCE E1 Rate Schedule, residential customer consuming 359 kWh/month, the switch from *Bright Choice* to *Renewable 100* will cost an average \$4.02 more per month as compared to *Bright Choice*, and \$3.59 more than PG&E's basic service rate.

Based on 2019 data for an average EBCE A1 Rate Schedule, business customer consuming 1518 kWh/month, the switch from *Bright Choice* to *Renewable 100* will cost an average \$17 more per month as compared to *Bright Choice*, and \$15 more than PG&E's basic service rate.

### CURRENT SITUATION AND ITS EFFECTS

On April 28, 2021, the Berkeley Energy Commission voted to send this recommendation to upgrade residential and commercial customers to EBCE's *Renewable 100* electricity plan, moved by Commissioner Guliasi, second by Commissioner O'Hare, motion carried by vote 6-0-2-0; Ayes: Stromberg, Moore, O'Hare, Gil, Guliasi, Leger. Noes: None. Abstain: Paulos, Zuckerman. Absent: None.

EBCE established a new Default Rate Product Change Policy in March 2021. This new policy allows for any EBCE member agency to change the default rate product only one (1) time every two (2) years. EBCE will cover the costs associated with a JPA member's first change to a default rate product. For any subsequent approved change, the member agency must cover EBCE's administrative costs, such as operational adjustments and customer notification.

City of Berkeley has a unique opportunity to opt-up all accounts, excluding residential customers in low income assistance programs<sup>1</sup>, into *Renewable 100* electricity service plan, with minimal cost to the City while empowering residents to opt-down at any time. Energy procurement is a central piece of Berkeley's path to meeting its Climate Action Goals.

By adjusting the default service to Renewable 100, this single action could result in as much as a 7% immediate reduction (an unknown number of commercial accounts buy electricity on the open market via PG&E's direct access program) in Berkeley's greenhouse gas emissions contingent upon the number of accounts that agree to keep the *Renewable 100* plan.<sup>2</sup> Additionally, through higher participation in the *Renewable 100* service plan, City of Berkeley is supporting the California solar and wind sectors, as well as continuing to support EBCE's local green jobs program.

Implementation of approved requests to change the default rate product for certain customers will occur only in March or October. Implementing product changes in March and October minimizes the potential financial impact to customers as the rates are lower in these non-summer months. Requests must be approved by the Board six (6) months in advance of implementation (i.e., Board approval in September for March implementation and April for October implementation).

EBCE will mail two co-branded notifications, with at least one sent prior to the changed rates. In addition to the two required notices, EBCE staff will coordinate with Berkeley to develop and distribute additional customer notices and/or conduct additional communications such as social media campaigns, jurisdictional newsletters, and Member press release. Berkeley will be responsible for the costs of additional communications

## BACKGROUND

In June 2018, City of Berkeley joined neighboring cities to establish EBCE as the default electricity provider. As a public agency serving the majority of Alameda County, EBCE reinvests its profits into our community's economy, supporting good green energy jobs and building a more resilient local grid. EBCE buys its power from clean energy sources and its greenhouse gas emissions rate for *Renewable 100* is less than PGE's emissions rates per kWh given that it includes no large hydroelectric power, which is known to release GHGs through the release of methane as a result of decaying organic matter trapped at the bottom of reservoirs. As compared to PG&E's power mix, which includes 44% nuclear power,

<sup>1</sup> CARE and FERA are state discount programs; eligibility requirements are shown in the Appendix B. The Medical Baseline Program assists residential customers who have qualifying medical conditions with a lower rate on monthly energy bills and extra notifications in advance of a Public Safety Power Shutoff.

<sup>2</sup> OESD July 2020 Climate Action Plan and Resilience Update.

*Renewable 100* is 100% nuclear-free. 100% renewable energy from our CCA also makes our region more resilient and participation in *Renewable 100* promotes the green economy.

The EBCE Board of Directors established three levels of service or products for its customers in 2018 and has subsequently set the value proposition for each product as follows:

- Bright Choice – basic service (includes large hydro-electric and nuclear).
- Brilliant 100 – 100% carbon-free service (includes large hydro-electric).
- Renewable 100 – 100% California wind and solar power.

EBCE has since eliminated the Brilliant 100 option.

As of this time, *Renewable 100* for residential customers on the E-1 Rate Schedule, is 1 cent more than PG&E's default product and 1.12 cents more than EBCE's default (*Bright Choice*). The average non-CARE residential customer uses about 359 kWh per month so the average monthly increase is estimated at \$4.02. CARE, FERA and medical baseline customers will not be opted-up and will experience no change in their current rates.

*Renewable 100* for A-1 business customers, is 1 cent more than PG&E's default product and between 1.09 – 1.13 cents more than EBCE's default (*Bright Choice*). The average business customer uses about 1518 kWh/month, so the average monthly increase is \$16.85.

This action can be seen as guidance to Berkeley ratepayers on a cost-effective means of reducing greenhouse gas emissions. It does not constitute a new tax. Rate payers may opt-out of *Renewable 100* at any time. Research has shown time and again, only a very small percentage of rate payers will change their enrollment, even if they support paying more for a cleaner product. In fact, it is because of this inertia that the community choice program was established as an opt-out program rather than an opt-in one.

In January 2021, the City Council of Dublin passed a resolution requesting that East Bay Community Energy opt-up all residential accounts to *Renewable 100* service to meet their greenhouse gas emission reduction goals adopted in their "Climate Action Plan 2030 and Beyond." This change excluded customers in the CARE, FERA, and medical baseline programs (which would remain on Bright Choice). The City of Dublin's request to change default service plans sparked a new precedent and EBCE established a Default Rate Product Change Policy (Attachment 2).

Currently, Berkeley's city-wide default at enrollment for residential and commercial customers was EBCE's *Bright Choice* (86% carbon-free, including hydroelectric, nuclear and an amount of system power generated from mixed sources that may include those producing GHGs, such as natural gas. Since 2020, the City's municipal accounts are enrolled in the top tier of renewable energy, *Renewable 100* (100% renewable energy from California solar and wind).

#### ENVIRONMENTAL SUSTAINABILITY

Energy procurement is a central piece of Berkeley's path to decarbonization. This single action of changing Berkeley's accounts to *Renewable 100* service could result in an immediate

reduction of as much as 7% in Berkeley’s greenhouse gas emissions,<sup>3</sup> with minimal cost to the City of Berkeley. Because of the reinforcing feedback loop effects of carbon emissions in the atmosphere, these immediate near-term reductions in emission will have a more significant impact on climate change than policies that go into effect in the longer term. In addition, defaulting to *Renewable 100* will set the stage for even greater reductions with time as a larger and larger percentage of buildings and transport are electrified, consistent with Berkeley’s ban on natural gas in new buildings and its Electric Mobility Roadmap.

The City Council has the opportunity and obligation to execute this meaningful and achievable climate action.

#### RATIONALE FOR RECOMMENDATION

On June 12, 2018, the Berkeley City Council passed item 49 “Declaration of a Climate Emergency” which refers “to the Energy Commission to study and report back to Council on a path for Berkeley to become a “Carbon Sink” as quickly as possible, and to propose a deadline for Berkeley to achieve this goal” ideally by 2030.

Despite the trajectory of the Berkeley Climate Action Plan’s 2030 emission reduction targets, Berkeley is significantly behind in achieving the Climate Action Plan 2020 and 2030 reduction goals.<sup>4</sup>

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Energy Commission Report. City Council might consider modifying the action to phase in the effective date for different types of customer accounts.

The need for reducing greenhouse gas emission is urgent and 100% renewable electricity is an important element of Berkeley’s goal to be Fossil Fuel Free. Nevertheless, there are equity implications for even small increases to electricity costs that could exacerbate pre-existing wealth and racial disparities. Societal structural inequities and racism are reflected in energy pricing and policies. According to studies:

- Black renters pay an average of 16% more in energy costs than white renters (controlling for factors such as income and household size).<sup>5</sup>
- Black and Latino communities, as well as older adults, renters, and those residing in low-income multifamily buildings, are disproportionately impacted by high and severe

<sup>3</sup> OESD July 2020 Climate Action Plan and Resilience Update

<sup>4</sup> OESD July 2020 Climate Action Plan and Resilience Update

<sup>5</sup> Lyubich, Eva, [The Race Gap in Residential Energy Expenditures](#), Energy Institute at Haas, June 2020.



energy cost burdens.<sup>6</sup> High energy burden is associated with poor health outcomes and housing insecurity.<sup>7</sup>

- A national study conducted by the NAACP in 2017 found utility shutoff policies disproportionately impact low-income and Black households.<sup>8</sup> According to EBCE, there were 1,160 customers who had their electricity disconnected in 2019, and data is still pending on shutoffs that have occurred during the COVID-19 pandemic.

Concerns about the negative impacts of electricity cost increases come at a time when the California Public Utilities Commission reports residential electricity usage has increased by 15-20%<sup>9</sup>, due to the increased number of students and adults working and learning from home. Time of Use rates, effective early 2021, increase the cost of energy used between 4 pm and 9 pm and may have an impact on monthly bills for some customers who are not able to shift their energy use. Increased electricity bills will challenge commercial customers, as many small businesses have suffered economic losses due to a year of closures under COVID-19 restrictions. Electricity usage varies widely in the commercial sector and therefore the cost of opting up will vary greatly from one business to the next.

If City Council takes action to opt up customer accounts in Berkeley, staff would plan to partner with EBCE to analyze the effects of this policy on different population segments – both households and businesses – in order to tailor outreach to customers who may be disproportionately impacted by higher energy cost. Staff would develop outreach strategies focused on reducing cost impacts by enrolling eligible households in low-income programs, opting down to *Bright Choice* for low income households that exceed the income threshold for low income programs, and educating customers to understand ways to shift electricity use and manage bills under the new Time-of-Use rates. Given the challenges of reaching the most vulnerable community members, which include language and technology barriers, this outreach will require significant staff resources and close collaboration with community partners. Staff preliminarily estimates the additional cost of this outreach at up to \$50,000, which would include funding for community partners to assist with direct outreach; the Planning & Development Department would likely seek to budget for these costs during the FY22 mid-year budget process in November 2021.

#### CONTACT PERSON

Billi Romain, Secretary, Energy Commission, 510-981-7432

#### Attachments:

- 1: Resolution
- 2: EBCE Policy on Member Requests to Change the Default Rate Product for Certain Customers, 03.17.2021

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<sup>6</sup> High energy burdens are often defined as greater than 6% of income, while severe energy burdens are those greater than 10% of income (APPRISE 2005). Referenced in Ross, Drehobl, and Stickles, *How High Are Household Energy Burdens?*, ACEEE, 2020.

<sup>7</sup> Ross, Drehobl, and Stickles, [How High Are Household Energy Burdens?](#), ACEEE, 2020.

<sup>8</sup> Daniel, Joseph, [Should the Electric Grid be Antiracist?](#), Union of Concerned Scientists Blog, January 2021.

<sup>9</sup> Referenced in Ross, Drehobl, and Stickles, ACEEE, 2020, pg. 6.

Attachment 1

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

REQUESTING THE EAST BAY COMMUNITY ENERGY ENROLL CITY OF BERKELEY RESIDENTIAL AND COMMERCIAL ACCOUNTS IN RENEWABLE 100 AS THE DEFAULT ELECTRICITY PRODUCT

WHEREAS, Fossil fuel extraction and combustion is a primary cause of the present climate emergency that threatens the well-being of all living things; and

WHEREAS, according to scientists and engineers, transitioning society to less greenhouse gas (GHG) intensive forms of energy, namely cleaner electricity, is fundamental to decarbonization; and

WHEREAS, according to City data from 2018, Berkeley's residential electricity sector accounts for 3% of city-wide emissions, the commercial electricity sector accounts for 4% of city-wide emissions, while another 31% and 59% of emissions are attributed respectively to natural gas appliances and fossil fuel-powered transportation that can be cleanly phased out through electrification fueled by 100% GHG-free electricity; and

WHEREAS, the City of Berkeley has committed to a policy of decarbonization, including through Measure G (Resolution No. 63,518-N.S.) in 2006, calling for the City to reduce greenhouse gas emissions by 33% below 2000 levels by 2020, and 80% by 2050, the 2009 Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), the Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), and the Fossil Free Referral; and

WHEREAS, Berkeley's Climate Action Plan identifies Community Choice Aggregation (CCA) agencies such as East Bay Community Energy (EBCE), which procure cleaner electric power from low-carbon sources on behalf of electricity customers, as a key strategy to meet local clean energy goals and greenhouse gas reduction targets; and

WHEREAS, on November 1, 2016, the City of Berkeley City Council adopted Resolution No. 67,730-N.S. authorizing Berkeley's participation in Alameda County's Community Choice Aggregation program known as East Bay Community Energy (EBCE) and subsequently appointed representatives to its Board of Directors; and

WHEREAS, on October 27, 2020 the City Council adopted Resolution No. 68,404-N.S., selecting the *Renewable 100* (100% GHG-free) electric service plan for all municipal accounts in recognition of the importance of supporting California's expanding solar and wind energy sector; and

WHEREAS, Cities have the authority to designate greenhouse gas-free default electric service plans as the default plan for eligible residential and commercial customers, allowing those customers to return to Bright Choice; and

WHEREAS, the City Councils of other EBCE participating jurisdictions such as Albany, Piedmont and Hayward selected default service plans featuring 100% GHG-free electricity for their customers; and

Attachment 1

WHEREAS, on March 17, 2021, EBCE approved the City Council of Dublin request to opt up all residential customers, excluding those in the CARE, FERA, and medical baseline programs, to *Renewable 100* service to meet their greenhouse gas emission reduction goals adopted in their “Climate Action Plan 2030 and Beyond;” and

WHEREAS, given the present climate emergency and the fact that the City of Berkeley is behind in meeting its Climate Action Plan targets, establishing a new default for residential and commercial customers while maintain current plans for price sensitive groups will likely yield substantially more GHG savings than the best marketing campaign aimed at encouraging customers to opt-up individually; and

WHEREAS, it is in the public interest to position city-wide residential and commercial customers to take advantage of electricity service with the lowest emissions factor and best environmental profile by replacing *Bright Choice* with *Renewable 100* as the default service plan and would cost the average homeowner approximately four dollars per month and the average commercial customer seventeen dollars per month more than current electricity rates; and

WHEREAS, customers receiving subsidies through the California Alternate Rates for Energy Program, Family Electric Rate Assistance, and Medical Baseline Allowance Programs will see no change in their plans or service; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley requests that East Bay Community Energy hereby enroll the City of Berkeley in the Renewable 100 electric power portfolio as the default electricity product for all residential accounts, except for CARE, FERA, and medical baseline accounts which would remain on the Bright Choice electric power portfolio, as of April 1, 2022 and all commercial accounts as of October 1, 2022.

BE IT FURTHER RESOLVED that the City Council of the City of Berkeley requests that the EBCE Board consider Berkeley’s Renewable 100 default power portfolio request at the earliest possible upcoming EBCE Board Meeting.

BE IT FURTHER RESOLVED, the City of Berkeley commits to working with EBCE staff to develop and implement a customer communication plan and agrees to co-brand customer notifications with the City of Berkeley’s seal to communicate the change in service plans in accordance with East Bay Community Energy’s Default Rate Product Change Policy adopted March 17, 2021.



### Staff Report Item 13

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Annie Henderson, VP Marketing and Account Services  
**SUBJECT:** Policy on Member Requests to Change the Default Rate Product for Certain Customers (Action Item)  
**DATE:** March 17, 2021

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#### Recommendation

Review and adopt a Resolution approving a policy on Joint Powers Authority (JPA) member requests to change the default rate product for certain customers within their jurisdiction (“Default Rate Product Change Policy”).

#### Background

The EBCE Board of Directors established three levels of service or products for its customers in 2018 and has subsequently set the value proposition for each product as follows:

- **Bright Choice** - basic service level at a 1% discount to PG&E rates with 5% more renewable energy than PG&E’s annual forecast
- **Brilliant 100** - 100% carbon-free service set at the same rate as PG&E, closed to new customers in original service territory as of August 1, 2020 and set to close for all customers January 2022.
- **Renewable 100** - 100% California wind and solar power set at \$0.01 per kWh over PG&E rates

There are certain member jurisdictions that selected a product other than *Bright Choice* to be the default selection at the time of initial customer enrollment. Specifically, Albany, Hayward, and Pleasanton selected *Brilliant 100* and Piedmont selected *Renewable 100*.

On January 12, 2021, the City Council of Dublin considered selecting *Renewable 100* as the default electricity product for most Dublin residents to facilitate meeting

greenhouse gas emissions reductions goals adopted in their “Climate Action Plan 2030 and Beyond”.

The City Council of Dublin passed a resolution requesting that East Bay Community Energy opt up all residential accounts to *Renewable 100* service except for customers in the CARE, FERA, and medical baseline programs (which would remain on *Bright Choice*). This request marks the first time a JPA member within EBCE has requested a default rate product change of customer accounts after initial enrollment. EBCE does not currently have a standard process or policy for facilitating rate product changes by JPA members.

Changes to the product default after enrollment have been implemented by only one other community choice energy program. The Clean Power Alliance (CPA) changed the residential and commercial default products for the cities of Malibu and Sierra Madre in October 2020, per the CPA “Policy on Default Product Changes”<sup>1</sup>. As part of this transition, CPA sent two customer notifications via the mail in August and October. The City of Malibu issued a press release which was covered by the local Patch news website and a couple other local media outlets. Materials provided to the CPA Board of Directors indicated a low opt out rate during the time following the transition in Malibu and Sierra Madre, with 0.5% of customers opting-out and 3% of customers choosing a different service option.

### **Analysis & Discussion**

The proposed EBCE Default Rate Product Change Policy is included as Exhibit A to the attached Resolution. A summary of the Policy is as follows:

- Implementation of approved requests to change the default rate product for certain customers will occur only in March or October. Implementing product changes in March and October minimizes the potential financial impact to customers as the rates are lower in these non-summer months.
- Requests must be approved by the Board six (6) months in advance of implementation (i.e. Board approval in September for March implementation and April for October implementation). This timeline gives EBCE staff sufficient time to plan for additional renewable energy procurement and other operational adjustments and to notify customers.
- A JPA Member may change the default rate product only one (1) time every two (2) years.
- The requesting JPA Member must work with EBCE on a customer communication plan and co-brand customer notifications.
- EBCE will cover the costs associated with a JPA member’s first change to a default rate product. For any subsequent approved change, the JPA Member

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<sup>1</sup> [https://cleanpoweralliance.org/wp-content/uploads/2020/02/CPA2020-013\\_Policy-for-Changes-to-Default-Rate-Product.pdf](https://cleanpoweralliance.org/wp-content/uploads/2020/02/CPA2020-013_Policy-for-Changes-to-Default-Rate-Product.pdf)

must cover EBCE's costs associated with implementation such as operational adjustments and customer notification.

This Policy was presented as an informational and discussion item at the February 2021 EBCE Board meeting. At that time, it was requested that the report and Policy be amended to provide potential cost estimates and address default product changes when a product is being closed. The potential cost estimates are listed below under Financial Impact. The scenario of a product closures is addressed in the introduction section of the Policy.

### **Financial Impact**

The initial implementation of a default rate product change may incur costs for operational adjustments (~\$15,000) and for the cost of customer notification mailers (~\$40,000 for a customer base of 40,000 accounts). The Policy proposes that costs associated with subsequent default rate product changes are covered by the JPA Member.

Based on the results in CPA, there may be a small increase in customer opt outs following a default rate product change and therefore a small reduction in revenue.

### **Attachments**

- A. Resolution to Approve a Default Rate Product Change Policy
- B. Exhibit A to Resolution: EBCE Default Rate Product Change Policy

**RESOLUTION NO. R-2021-xx**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO APPROVE A  
DEFAULT RATE PRODUCT CHANGE POLICY**

**WHEREAS**, the East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Castro Valley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, San Leandro, and Union City, to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

**WHEREAS**, in 2018, the Board of Directors approved three product offerings—a product called Bright Choice offered at a discounted price, a product called Brilliant 100 that is 100% carbon-free at price parity with PG&E rates, and a 100% renewable energy product called Renewable 100 offered at a premium cost.

**WHEREAS**, in 2020, the Board of Directors voted to eliminate the Brilliant 100 product as of 2022.

**WHEREAS**, on January 12, 2021, the City Council for the City of Dublin adopted a resolution requesting that the EBCE Board of Directors change the default product for its residential customers to Renewable 100.

**WHEREAS**, although EBCE’s Joint Powers Agreement contemplates that JPA members may change their default rate products, the Joint Powers Agreement does not specify a process or policy.

**WHEREAS**, changes to JPA members’ default rate products can have a fiscal impact on EBCE due to the need for additional renewable energy procurement, customer notification requirements, and other operational adjustments.

**WHEREAS**, EBCE will benefit from having a standard policy for addressing requests of default rate product changes from its JPA members.

**THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY  
DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:**

Section 1. The Board of Directors hereby approves the Default Rate Product Change Policy attached hereto as Exhibit A.



Section 2. This resolution shall become effective immediately upon its adoption.

**ADOPTED AND APPROVED** this 17<sup>th</sup> day of March 2021.

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Dan Kalb, Chair

ATTEST:

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Adrian Bankhead, Assistant Clerk of the Board

**EAST BAY COMMUNITY ENERGY**  
**DEFAULT RATE PRODUCT CHANGE POLICY**

The purpose of this Default Rate Product Change Policy is to specify a process for a Joint Powers Authority (JPA) member agency (“Member”) to change its Default Rate Product<sup>1</sup> and to ensure that East Bay Community Energy (EBCE) is provided with sufficient notice and time to prepare for the change.

When approving a request from a Member to change the Default Rate Product (“Default Rate Product Change”) after the Member’s initial service enrollment, the EBCE Board (“Board”) and Member shall adhere to this Policy, which requires specific cooperation from the Member. This Policy shall not apply to a change in the Default Rate Product which is the result of a rate product closure.

Under this Policy, the Default Rate Product Change request from a Member and subsequent implementation must comply with the following requirements:

1. **Timeline for Board Approval and Implementation:** Any request for a Default Rate Product Change must be approved by the Board. The Board will consider Members’ requests for Default Rate Product changes in the spring and the fall, based on the following schedule:
  - a. If the Board approves a Member’s request for a Default Rate Product Change by April 30 the Default Rate Change will be implemented in October of the same year.
  - b. If the Board approves a Member’s request for a Default Rate Change by September 30, the Default Rate Change will be implemented in March of the following year.
  - c. Notwithstanding the foregoing, the EBCE Chief Executive Officer (“CEO”) and the Member may mutually agree upon a different implementation schedule, provided that the CEO provides the Board with notification of the agreed-upon schedule.

Board Approval By	Implementation By
April 30 of Year A	October 31 of Year A
September 30 of Year A	March 31 of Year A+1

2. **Exceptions to Implementation of Default Rate Product Change:** Notwithstanding anything contained in this Policy, in no event shall a Member’s Board-approved Default Rate Product Change affect the following:

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<sup>1</sup> For purposes of this Policy, the “Default Rate Product” is the EBCE rate product option that each Member selected as the default for EBCE customers within the Member’s jurisdiction.

- a. Prior customer enrollment actions. Any customer account that has affirmatively taken action to change its rate product will remain on the selected product.
  - b. Prior customer opt-out actions. Any customer account that has affirmatively taken action to opt out of EBCE service will remain opted out.
3. **Frequency of Default Rate Product Change by a Member:** A Member may not change its Default Rate Product more than one (1) time every two (2) years.
4. **EBCE Agency Requirements:** Upon the Board's approval of a Member's request for a Default Rate Product Change, EBCE staff may engage in any of the following activities:
  - a. Purchase or prepare to purchase the appropriate amount of resources to meet the expected change in demand associated with the Default Rate Product Change;
  - b. Complete or prepare to complete additional regulatory compliance and reporting requirements, if any;
  - c. Coordinate with EBCE's data and call center services manager to make necessary operational adjustments;
  - d. Evaluate fiscal impacts of the Default Rate Product Change;
  - e. Examine EBCE rates and any rate impacts;
  - f. Coordinate and work with PG&E on billing considerations, if any;
  - g. Prepare for and deploy customer communication efforts;
  - h. Identify and address any other operational impacts or issues and take steps to mitigate those impacts/issues; or,
  - i. Take any other action necessary to effectuate the Member's approved Default Rate Product Change.
5. **Member Requirements:** The Member requesting a Default Rate Product Change must commit to the following conditions for the change to be implemented:
  - a. Collaboration. The Member shall work with EBCE staff to develop and implement a customer communication plan;
  - b. Co-Branding. The Member must agree to co-brand customer notifications with the Member's seal; and,
  - c. Cost Coverage. EBCE will cover the cost of any operational adjustments and the required customer notices, as detailed in Section 6.a, for the Member's first approved Default Rate Product Change. Costs associated with any subsequent Default Rate Product Changes will be charged to the Member.
6. **Customer Communication:** EBCE will notify customers subject to a Member's approved Default Rate Product Change. EBCE will lead, with support from the Member, the development and dissemination of customer notices.
  - a. Required Notifications. Any customer accounts subject to a Member's approved Default Rate Product Change shall be sent a minimum of two

(2) notifications. A minimum of one (1) notice shall be sent prior to the change going into effect.

- b. Optional Additional Notifications. In addition to the two (2) required notices referenced in Section 6.a., above, EBCE staff will coordinate with a Member who wishes to develop and distribute additional customer notices and/or conduct additional communications such as social media campaigns, jurisdictional newsletters, Member press release, etc. The Member shall be responsible for the costs of such additional communications.
7. A customer may take an enrollment action to change their EBCE rate product, to opt in to EBCE service, or to opt out of EBCE service at any time by notifying EBCE through the standard channels of phone, interactive voice recording, or online form.



CONSENT CALENDAR

June 29, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Resolution Supporting Freedom for Nasrin Sotoudeh

RECOMMENDATION

Adopt a Resolution in Support of Freedom for Nasrin Sotoudeh and All Other Political Prisoners and Prisoners of Conscience in the Islamic Republic of Iran.

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

According to the Iran Prisoners Atlas, there are currently 586 political prisoners detained in the Islamic Republic of Iran.<sup>1</sup> Feminist and human rights attorney Nasrin Sotoudeh has been imprisoned since 2018, and despite being told she was taken to the hospital, was moved to the Qarchak Women's Prison in October 2020—an overcrowded prison with 1,400 female inmates that has been described as “hell on earth,”<sup>2</sup> with no proper sewage, where she contracted COVID-19.<sup>3</sup>

According to Amnesty International, the government of Iran has suppressed information on the COVID-19 pandemic, while regularly inflicting torture on political prisoners and restricting inmates' access to adequate healthcare and due process.<sup>4</sup>

BACKGROUND

Sotoudeh was granted a brief medical leave in January 2020, but it was abruptly ended on January 19, 2020, when the government of Iran also froze her family's bank accounts.<sup>5</sup> Known as “Iran's Nelson Mandela,” a documentary about Sotoudeh's activism and imprisonment, *Nasrin*, was released in 2020.

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<sup>1</sup> <https://ipa.united4iran.org/en/prisoner/>

<sup>2</sup> <https://msmagazine.com/2021/01/22/feminist-lawyer-nasrin-sotoudeh-returned-iran-qarchak-prison/>

<sup>3</sup> <https://msmagazine.com/2021/05/10/unbearable-reza-khandan-husband-of-nasrin-sotoudeh-on-the-ground-in-irans-qarchak-prison/>

<sup>4</sup> <https://www.amnesty.org/en/countries/middle-east-and-north-africa/iran/report-iran/>

<sup>5</sup> Kaufman, J. (2021, Jan. 26). Opinion: ‘Iran's Nelson Mandela’ is back in prison. Biden must push for her freedom. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/opinions/2021/01/26/nasrin-sotoudeh-iran-prison-biden/>

[Title of Report]

CONSENT CALENDAR  
June 15, 2021

The Alameda County Democratic Party Central Committee approved a similar resolution on May 5, 2021, sponsored by Berkeley resident Igor Tregub. The European Parliament issued a resolution in support of Sotoudeh in December of 2018.<sup>6</sup>

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin, District 2, 510-981-7120

Attachments:

1: Resolution

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<sup>6</sup> [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0525\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0525_EN.html)

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

RESOLUTION IN SUPPORT OF FREEDOM FOR NASRIN SOTOUDEH AND ALL  
OTHER POLITICAL PRISONERS AND PRISONERS OF CONSCIENCE IN THE  
ISLAMIC REPUBLIC OF IRAN

WHEREAS Nasrin Sotoudeh, widely recognized as Iran's Mandela, is currently imprisoned in Qarchak Women's Prison. A distinguished lawyer and human rights activist, Sotoudeh has become a symbol of the Iranian people's nonviolent struggle for justice, dignity and equality; and

WHEREAS women in Iran are systematically subject to an apartheid state with much harsher restrictions than men; and

WHEREAS many individuals have been imprisoned, tortured and executed for being defenders of human rights by the Islamic Republic of Iran;

BE IT RESOLVED that the City Council of the City of Berkeley supports the immediate release of Nasrin Sotoudeh and all other political prisoners and prisoners of conscience in the Islamic Republic of Iran; and

Be It Further Resolved, that the City Council of the City of Berkeley affirms its support of human rights in Iran, including equal rights for women and minorities and the end of apartheid against women and targeted religious, nonreligious and cultural minorities.







Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
June 29, 2021

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Resolution Urging the Metropolitan Transportation Commission to Program and Prioritize American Rescue Plan Act Funds

#### RECOMMENDATION

1. Adopt a resolution directing the Metropolitan Transportation Commission (MTC) to program \$1.67 billion in American Rescue Plan Act (ARPA) funds immediately and prioritize them for immediate use to support Bay Area Transit riders and an equitable pandemic recovery.
2. Send a copy of the Resolution and an accompanying letter to the MTC Commissioners.

#### CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Over the duration of the COVID emergency, MTC has reduced its level of service in accordance with guidance from the state of California to ensure the safety of its employees and riders. With these reduced levels of service have come reduced income from fares. MTC has received and distributed funding from many sources to support local transit agencies; including nearly \$180 million from the Coronavirus Response and Relief Appropriations Act (CRRSAA), and \$1.3 billion from the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Now, the Agency has access to \$1.67 billion from the American Rescue Plan Act (ARPA) but has communicated that they will not program the funds immediately, even though many agencies, including AC Transit, are in desperate need of funding to return to pre-pandemic levels of service. As a result, these agencies would not be able to plan for this funding in the next fiscal year budgets that are forthcoming with the nearing end of the fiscal year.

Should these funds not be programmed, service will remain at current levels as the Bay Area begins to reopen, leaving many mass transit riders to look to other methods of transportation. This will decrease the chances of returning to pre-pandemic ridership levels in the near and long-term futures. This would represent an economic and environmental failure. An influx of new automobile drivers would increase congestion and wear on city streets, but this would also result in a loss of environmental gains accrued through use of mass transit.

With increasingly reassuring vaccination rates and falling infection, Berkeley and the Bay Area will need to focus on how to equitably recover. The recovery should not just be to pre-pandemic levels – the city and our region must take every possible opportunity to build back stronger. Delaying implementation of the use of possible funding to strengthen our public transit does not fit with the goals of a just and equitable recovery.

#### BACKGROUND

Reliable and affordable public transportation plays a critical role in environmental sustainability, equal access to transportation and economic opportunities and economic recovery. Compared to personal gas-powered cars, buses, trains and shared micro-mobility options represent not only a vastly lighter carbon footprint for those using transportation but also provide cleaner air quality for the broader community. Use of mass transit is a net benefit for local businesses and the economy by providing workers and customers a means to reach their destinations. For Berkeley in particular, mass transit remains a primary source of transportation for many middle- and low-income riders

While the benefits of robust public transit to the environment and the public are undeniable, this has not resulted in an appropriate level of funding for Bay Area public transportation agencies.<sup>1</sup> Even before the pandemic, a cycle of funding cuts, reduced service and subsequent reduced ridership had affected many transit agencies in the Bay Area.<sup>2</sup> Although the Bay Area, like many other places, has decreased the level of public transit service it has offered as a result of the COVID-19 pandemic, continuing to do so, unless required for public health, will unnecessarily harm transit users.

The Coronavirus Aid, Relief, and Economic Security Act, provides public transit agencies with a path to recovery. Bay Area public transit providers received \$1.67 billion in federal stimulus funding to pay workers, and continue transit operations.<sup>3;4</sup> However, the Metropolitan Transportation Commission, which manages the money, has stated that it intends to save those funds for future use, as opposed to returning to pre-pandemic levels of transit service now. If stimulus funding is not used now, the Bay Area and Berkeley will continue to fall behind in its efforts to regain pre-COVID-19 levels of service and economic output.<sup>5</sup> Given that the next fiscal year for these transit agencies begins July 1, and that time is needed to budget funds for workers and operations, MTC should program these federal funds and prioritize them for immediate use as soon as possible.

#### ENVIRONMENTAL SUSTAINABILITY

By using funds stimulus funds now, MTC can help bring about a decreased carbon footprint in the Berkeley and other cities, resulting from reduced vehicle emissions.

#### FISCAL IMPACTS OF RECOMMENDATION

None

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<sup>1</sup> Baldassari, Erin. "For Struggling VTA, an Existential Crisis: How to Woo Riders amid Budget Cuts?" *The Mercury News*, The Mercury News, 20 June 2019, [www.mercurynews.com/2019/04/07/for-struggling-vta-an-existential-crisis-how-to-woo-riders-amid-budget-cuts/](http://www.mercurynews.com/2019/04/07/for-struggling-vta-an-existential-crisis-how-to-woo-riders-amid-budget-cuts/).

<sup>2</sup> Ibid

<sup>3</sup> United States, Congress. H.R. 748. *Coronavirus Aid, Relief, and Economic Security Act*. <https://www.congress.gov/116/bills/hr48/BILLS-116hr748enr.pdf>

<sup>4</sup> Staff, Curtis Driscoll Daily Journal. "Caltrain to Get Fed Money for Electrification." *San Mateo Daily Journal*, 12 Mar. 2021, [www.smdailyjournal.com/news/local/caltrain-to-get-fed-money-for-electrification/article\\_2dc563be-82ee-11eb-8862-d3452190bf38.html](http://www.smdailyjournal.com/news/local/caltrain-to-get-fed-money-for-electrification/article_2dc563be-82ee-11eb-8862-d3452190bf38.html).

<sup>5</sup> Srikant, Ahalya, and Julia Cooper. "Bay Area transit is running almost empty in midst of COVID-19 shutdown." *Bizjournals.com*, [www.bizjournals.com/sanfrancisco/news/2020/03/31/bay-area-transit-is-running-almost-empty-in-midst.html](http://www.bizjournals.com/sanfrancisco/news/2020/03/31/bay-area-transit-is-running-almost-empty-in-midst.html).

CONTACT PERSON

Councilmember Kate Harrison  
KHarrison@cityofberkeley.info  
(510) 981-7140

ATTACHMENTS

1. Resolution
2. Letters to the MTC Commissioners

RESOLUTION NO. –N.S.

RESOLUTION URGING THE METROPOLITAN TRANSPORTATION COMMISSION (MTC) TO IMMEDIATELY PROGRAM \$1.67 BILLION IN AMERICAN RESCUE PLAN ACT (ARPA) TRANSIT FUNDS FOR USE IN RESTORING BAY AREA TRANSIT SERVICE

WHEREAS, public transit is an essential public service, especially for low-income and Black and brown community members, our frontline workers, and elders, students, and people with disabilities;

WHEREAS, transportation emissions are the highest source of greenhouse gas emissions in the country, as well as a source of toxic pollution that is hazardous to our constituents' health;

WHEREAS, public transit is a crucial method to drastically reduce transportation emissions;

WHEREAS, stimulating the economy through federal stimulus funds in the near-term is crucial;

WHEREAS, Congress has apportioned to Bay Area transit agencies a generous stimulus package of \$1.67 billion dollars to hire workers and restore service, but MTC is not planning to program these funds until late July, after agencies adopt fiscal year 2021-2022 budgets, resulting in an inability by transit agencies to factor the ARPA funds into next year's budget;

WHEREAS, MTC has publicly stated that it is prioritizing saving those funds for years in the future as opposed to restoring service to pre-pandemic levels by the end of fiscal year 2021-2022;

WHEREAS, the transit agencies in our districts need to budget these funds now in order to plan to hire workers, fund operations, and restore service in the fiscal year that begins July 1;

WHEREAS, as mid-pandemic stimulus funding, it should be distributed immediately to stimulate our local economies by hiring workers and taking shoppers and diners to their destinations to spend money in our communities;

WHEREAS, the longer service levels remain reduced, the more likely it is that riders will give up on transit and find permanent, more polluting alternatives;

WHEREAS, waiting to restore pre-pandemic service may lead to permanent damage to public transportation, lead to unnecessary congestion on our streets and freeways and undermine our climate, equity and economic recovery goals;

NOW, THEREFORE BE IT RESOLVED, that we urge MTC to appropriate ARPA funds immediately, so that it can be put to immediate use in restoring service and creating good union jobs;

BE IT FURTHER RESOLVED, that we urge MTC to prioritize the ARPA funds for immediate use and not years in the future.

June XX, 2021

[Commissioner Name]

Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA 94105-2066

**Re: Berkeley City Council Resolution Urging the Metropolitan Transportation Commission to Program and Prioritize American Rescue Plan Act Funds**

Dear Honorable Commissioners:

Public transit is an essential public service, especially for low-income and Black and brown community members, our frontline workers, and elders, students, and people with disabilities. Transportation emissions are the highest source of greenhouse gas emissions in the country, as well as a source of toxic pollution that is hazardous to our constituents' health. Mass public transit is a crucial method to drastically reduce transportation emissions.

Congress has apportioned to Bay Area transit agencies a generous stimulus package of \$1.67 billion dollars to hire workers and restore service, but we understand that MTC is not planning to program these funds until late July, after agencies adopt fiscal year 2021-2022 budgets, resulting in an inability by transit agencies to factor the ARPA funds into next year's budget. We also understand that MTC has publicly stated that it is prioritizing saving those funds for years in the future as opposed to restoring service to pre-pandemic levels by the end of fiscal year 2021-2022. However, the transit agencies that serve Berkeley need to budget these funds now in order to plan to hire workers, fund operations, and restore service in the fiscal year that begins July 1.

ARPA funds are intended as mid-pandemic stimulus funding, and as such, it should be distributed immediately to stimulate our local economies by hiring workers and taking shoppers and diners to their destinations to spend money in our communities. We are concerned that the longer service levels remain reduced, the more likely it is that riders will give up on transit and find permanent, more polluting alternatives. We are also concerned that waiting to restore pre-pandemic service may lead to permanent damage to public transportation, lead to unnecessary congestion on our streets and freeways and undermine our climate, equity and economic recovery goals.

As the elected representatives of the people of Berkeley, we urge MTC to appropriate ARPA funds immediately – not for use in future years – so that these funds can be put to immediate use in restoring service, creating good union jobs, supporting our local economy, and reducing our greenhouse gas emissions.

Sincerely,

The Berkeley City Council





Kate Harrison  
Councilmember District 4

ACTION CALENDAR

June 29, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

RECOMMENDATION

1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

As the City of Berkeley addresses disparate policing outcomes, it is critical to consider potential bias stemming from community-initiated calls for service. Over the past year, there have been numerous high-profile instances, including in the Bay Area, of people allegedly calling law enforcement on innocent people on purely discriminatory grounds. It is likely that numerous additional instances go unreported each year. Such incidents cause serious harm to the person falsely accused of a crime, contribute to defamation, cause anxiety and distrust among people of color and other people, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls. Berkeley is not immune to such discriminatory calls and therefore it is the public interest to explicitly expand existing laws regarding false police reports such that it is explicitly unlawful to engage in such behavior and that any aggrieved person may seek restitution through civil means.

BACKGROUND

This Ordinance is modelled upon the City and County of San Francisco's recently unanimously adopted 2020 Caution Against Racially and Exploitative Non-Emergencies (CAREN) Act. A similar bill also passed in the State of Virginia.<sup>1</sup>

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<sup>1</sup> Ebrahimji, Alisha, and Amanda Jackson, "San Francisco's 'CAREN Act,' Making Racially Biased 911 Calls Illegal, Is One Step Closer to Becoming a Law," *CNN*, October 21, 2020, [www.cnn.com/2020/10/20/us/caren-act-911-san-francisco-board-passes-first-read-trnd/index.html](http://www.cnn.com/2020/10/20/us/caren-act-911-san-francisco-board-passes-first-read-trnd/index.html).  
2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7140 • TDD: (510) 981-6903 • Fax: (510) 981-6903 E-Mail: KHarrison@cityofberkeley.info



Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

These laws were passed in the wake of the global protest movement in response to the murder of George Floyd, which highlighted discriminatory calls to law enforcement, including notable incidents in New York City's Central Park and Oakland's Lake Merritt.<sup>2</sup>

In addition to causing serious harm to the person(s) falsely accused of a crime, anxiety and distrust among people of color and other groups, such incidents put an unnecessary strain on law enforcement officers responding to frivolous and false calls. However, this ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime.

The Berkeley Police Review Commission's 2017 "To Achieve Fairness and Impartiality: Report and Recommendations" cited a number of anecdotal reports from community members alleging discriminatory calls for law enforcement service, including:

- A racially-mixed family was having pizza at Bobby G's on University. Another diner called police saying that the mixed couple were "abusing their child by drinking beer and wine in front of their child." Two police cars arrived with lights flashing. The owner attested that the family were regulars, and were minding their own business watching a football game. Police interrogated the African American father for one hour in a hallway at the restaurant.
- An African American man, a security guard in uniform with a licensed gun, was talking with a Caucasian female on the corner of Bonar and Allston Way after a ceremony at the Berkeley Youth Association. A Caucasian man drove by, parked the car, got out and started videotaping the couple. The African American man asked the driver to stop videotaping. The man answered that it was his right to do so and started making statements such as "don't bring a gun into my neighborhood." After a heated back-and-forth, the driver called the police. Eight cars arrived. The lead officer reviewed the credentials of the African-American man, was satisfied and departed. One of the remaining officers stayed and continue to ask the same questions for another 15 minutes. The African American security guard registered that he felt he was "unduly questioned" and was being "badgered."
- The owners of "44 Restaurant and Lounge" lodged a complaint with NAACP and police. During happy hour to 8p.m.the guests that frequent the bar are a racially mixed crowd. After 8p.m.the guests are predominantly African American. After a minor complaint to police from a resident, the police parked a car with lights off across the street from the establishment for a period of four months. "44" has no history of rowdiness or spillover from bar patrons onto the sidewalk or the street. The bar down the street, Nick's Lounge, has spillover into the street almost every night. The owners of "44" and the NAACP observed there is no police presence at Nick's.<sup>3</sup>

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<sup>2</sup> Nir, Sarah Maslin, "How 2 Lives Collided in Central Park, Rattling the Nation," *The New York Times*, June 14, 2020, [www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html](http://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html); Fearnow, Benjamin, "A Black Family's Sunday Barbecue Was Interrupted after a Woman Called out Their Charcoal Grill and Phoned the Cops," *Newsweek*, May 10, 2018, [www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355](http://www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355).

<sup>3</sup> Berkeley Police Review Commission, "To Achieve Fairness and Impartiality: Report and Recommendations from the Berkeley Police Review Commission," November 15, 2017, [https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Level\\_3\\_-\\_General/FAIR%20%20IMPARTIAL%20POLICING%20REPORT%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Level_3_-_General/FAIR%20%20IMPARTIAL%20POLICING%20REPORT%20final.pdf)

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

The Berkeley Police Review Commission's 2017 report was not exhaustive and it is likely that there were numerous additional unreported incidents involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Berkeley Police Department staff also cited biased calls for service as a potential factor in racially disparate policing outcomes during the Mayor's Fair and Impartial Working Group meetings. The intent of this ordinance and referral is to prohibit and daylight these incidents, and to provide an avenue for restitution through the court system.

The misuse of law enforcement by members of the public to discriminate against others is intolerable. Creating a civil cause of action for damages will also discourage this type of behavior and provide a tangible compensation for victims.

Berkeley Municipal Code 13.08 already prohibits persons from knowingly reporting or causing to be reported:

"any false or fictitious request for protection or assistance, or any false or fictitious information indicating that a crime has been or is about to be committed, or to knowingly cause the Police Department to respond to any such false or fictitious report, or to request any assistance or investigation in connection with or as a result of any such false or fictitious report or false or fictitious information."

This ordinance expands the scope of this existing law to explicitly prohibit false reports involving individuals who contact law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory calls are defined as those that are made on the basis of a person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, social class, weight, or height, and with the intent to do any of the following:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

In addition, any aggrieved person may enforce the provisions of this ordinance by means of a civil action, including special, general and punitive damages.

#### FINANCIAL IMPLICATIONS

Staff time will be necessary to implement and enforce this ordinance. However, this ordinance already in part tracks existing law and practices regarding false police reports.

#### ENVIRONMENTAL SUSTAINABILITY

No immediately identifiable environmental impact.

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

CONTACT

Councilmember Kate Harrison  
kharrison@cityofberkeley.info | 510-981-7140

ATTACHMENTS:

1. Ordinance

ORDINANCE NO. -N.S.

ADDING A NEW CHAPTER 13.09 TO THE BERKELEY MUNICIPAL CODE  
PROHIBITING DISCRIMINATORY REPORTS TO LAW ENFORCEMENT

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

Section 1. The Berkeley Municipal Code Chapter 13.09 is added to read as follows:

**Chapter 13.09**  
**Discriminatory Reports to Law Enforcement**

**Sections:**

**13.09.010 Findings and Purpose.**

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

**13.09.030 Civil Cause of Action.**

**13.09.040 Undertaking for the General Welfare.**

**13.09.050 Severability.**

**13.09.010 Findings and Purpose.**

The Council finds and expressly declares as follows:

- A. There have been numerous incidents across the country involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory law enforcement reports against people of color for racially motivated reasons are common enough that many people of color have experienced one or more incident of being contacted by law enforcement when engaging in normal day-to-day activities. These incidents cause serious harm to the person falsely accused of a crime, cause anxiety and distrust among people of color, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls.
- B. The misuse of law enforcement by members of the public to discriminate against others should not be tolerated and the City should take action to stop such behavior in every way possible. Creating a means for people who suffer this kind of discrimination to seek redress from those who have targeted them through a civil cause of action for damages will discourage this type of behavior and provide a tangible way for these victims to be compensated for this wrong.
- C. This ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime. It will allow individuals who have been reported to law enforcement for unfair and unnecessary reasons to seek justice and restitution, and will motivate people who contact law enforcement to consider the reasons they are making the report.

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

(a) It shall be unlawful to knowingly cause a peace officer to arrive at a location to contact a person, with the specific intent to do any of the following on the basis of the person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, social class, gender identity, weight, or height:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

**13.09.030 Civil Cause of Action.**

(a) Any aggrieved person may enforce the provisions of this Section by means of a civil action.

- (1) A person found to have violated Section 13.09.020 (a) in a cause of action under subsection (a) shall be liable to the aggrieved person for special and general damages, but in no case less than \$1,000 plus attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in a proper case.
- (2) Nothing in this Section shall preclude any person from seeking any other remedies, penalties, or procedures provided by law.

**13.09.040 Undertaking for the General Welfare.**

In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**13.09.050 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

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





Commission on Aging

## INFORMATION CALENDAR

June 29, 2021

To: Honorable Mayor and Members of the City Council  
 From: Commission on Aging  
 Submitted by: Ethel Murphy, Chairperson, Commission on Aging  
 Subject: 2021 Commission on Aging Work Plan

### INTRODUCTION

To enhance the quality of life for people 55 years and older in the Berkeley Community, and to increase public awareness of their contributions and needs by actively promoting their health, safety, independence and participation in our community.

Having built both a policy-focused and service-focused framework of senior needs in Berkeley, the Commission on Aging has adopted a set of priorities to advance to the City Council which will serve to organize and direct the Commission's work in the coming years.

### CURRENT SITUATION AND ITS EFFECTS

The Commission on Aging has focused much of its energy on identifying the spectrum and intricacies of senior needs within the city. The Commission has worked to establish a broad knowledge base of City projects, services, and resources which it can use to best address these needs and meet policy and service shortcomings which affect daily life for Berkeley seniors. Given the Commission's consistent work and communication with City commissions, City task forces, the Aging Services Division, and Berkeley's citizenry, the Commission plans to use this information and knowledge to construct a cohesive set of priorities through which it will hold itself accountable to the needs of the public.

### **Finalization of Work Plan 2021**

Motion/Second: Porter/ Cochran

Ayes: Porter, Collins, Murphy, Cochran, Blumstein, Futran, Acampora

Noes: None

Abstain: None

### **PRIORITIES**

#### **1. Referrals from Council**

- a. Staff time will be used to gather the needed official documents for the commission and, when necessary, coordinate presentations from and



communications with the relevant City departments and Commissions regarding these referrals

- b. Commission will take up these issues during regular meetings and, when necessary, create sub-committees to examine these in greater depth.
- c. Reports to Council will be submitted when asked to respond to the specific request in order to reinforce the practice of ensuring that the needs of Seniors are taken into consideration during the development of municipal policy.

## **2. Support Berkeley Age Friendly Initiatives**

- a. Staff time will be used to coordinate Age Friendly “town halls” when necessary, for coordination of presentations to the commission from guests relevant to Age Friendly issues and for assistance in the preparation of recommendations to Council.
- b. If and when needed, the commission will hold “town halls” to better inform the public of the progress of Age Friendly Initiatives in relation to “The Age-Friendly Berkeley Action Plan”. The commission will also seek public input and discussion regarding that Action Plan. Commission will identify key issues in the Age Friendly Initiatives strategic plan and communicate with relevant commissions urging support for the policies that reflect these.
- c. Increased awareness of and communication regarding “The Age-Friendly Berkeley Action Plan” will be maintained as well as recommendations to City Council regarding Age Friendly Initiatives. Short-term desired change is broader community and municipal consideration of age-friendliness. Long-term desired changes are Age-friendly concerns being reflected in the development of all, relevant, city policies.
- d. Enhancing broad participation, public policy engagement, and involvement of the community in Commission meetings.

## **3. Advocate for Needs of Older Citizens in the Implementation of alternative & senior-friendly transportation modes in conjunction with “Safe-Streets” and parking issues.**

- a. Staff time will be used for coordination of presentations to the commissions from guests relevant to the changes in both emerging transportation options and the public policies surrounding these.
- b. Commission will seek public input from Berkeley citizens regarding this changing landscape. The Commission will also designate two commissioners to research the ramifications of these changes specifically as regards Berkeley’s growing senior population. When necessary, the commission will send liaisons to Transportation Commission to directly communicate any concerns we might have.
- c. The Commission will make recommendations to other commissions regarding these concerns. Commission will develop recommendations for

City Council regarding these transportation and associated issues as regards the elder population.

- d. Short-term desired changes: more public awareness of the senior specific concerns surrounding these issues and how these concerns apply to making changes to our current situation. Long-term desired changes: to ensure that these concerns are taken into account as the situation changes resulting in new policy proposals. To report to council about these and make suggestions as to how any senior-specific negative effects can be mitigated and/or positive effects be enhanced.
- 4. Advocate for Affordable Housing for Older Adults as well as other housing policies that are consistent with Berkeley's commitment to encouraging "Aging in Place" and/or "Aging in Community"**
    - a. Staff time will be used for coordination of presentations to the commission from guests with information relevant to these issues and to give aid in communication with Council and other City entities.
    - b. The commission will designate two commissioners to identify relevant City Council agenda items and report back to commission. When necessary, the commission will send liaisons to other commissions to address concerns during public comment. The commission may form a subcommittee in order to better prepare any recommendations it may have for council. The commission will invite relevant speakers to present on key issues related to housing policy at commission meetings.
    - c. Commission will actively seek input from Berkeley's aging citizens regarding housing. A clearer understanding of the range of housing concerns facing Berkeley's increasing older population as well as better communication between the City, its various departments and the elder population itself regarding the issue. Recommendations to Council addressing policies that will enable our elder citizens to remain in Berkeley will be made if necessary.
    - d. Short-term desired changes are that current housing policies don't discourage our older citizens from remaining in Berkeley. Long-term desired changes are that any changes to our housing policies not only support the current living situations of elder residents when possible, but also allow for changing residence while still remaining in Berkeley.
  - 5. Examine the work-plans and agendas of other commissions for elder relevant items.**
    - a. Individual commissioners (with some assistance of staff) will be encouraged to examine the work-plans and agendas of certain, other commissions of their choice for items that may affect the health, well-being, and community participation of the aging population and report back to the full commission regarding these.

- b. When deemed helpful, the CoA will send liaisons to these other commissions to state our position on relevant items. In other cases, we will simply communicate via email with these other commissioners.
- c. Timely input given to other commissions regarding policies early in the process of development. When necessary, communication to City Council regarding those elements of other commission's policy development and/or planning that we deem relevant to senior concerns.
- d. Short term desired changes are other commissions considering the needs of elders as these relate to specific items on their calendar and ensuring that the concerns of our elder community are reflected in all phases of the policy making and planning process.

### BACKGROUND

The City of Berkeley's Commission on Aging is naming the following advocacy categories as "Commission Priorities" on which its members will focus their collective efforts. The Commission will prioritize policy and programming in these priority categories in order to impact and benefit the lives of older adults in a Berkeley whose senior population continues to grow. Each category includes a sampling of priority projects on which the Commission will focus subsequent Commission meetings and discussions.

### ENVIRONMENTAL SUSTAINABILITY

The Commission's work plan does not directly affect the environmental sustainability of the city, yet many of our priorities may lead to a more economical use of City land and commercial/residential spaces. Our work plan may positively impact City expenditures by reducing numbers of homeless individuals and reducing the physical and mental health needs of our seniors that may require emergency attention.

### POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, the Commission will draft and submit recommendations and communications to Council when necessary.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The Commission's work plan does not itself does not have any fiscal impact. The execution of many projects outlined in the work plan, however, may require the allocation of existing City funds and services.

### CONTACT PERSON

Richard Castrillon, Commission Secretary, HHCS, 510-981-7777  
Alex Blumstein, Vice Chair, Commission on Aging

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
July 20	<ol style="list-style-type: none"> <li>1. Bayer Development Agreement</li> <li>2. Measure FF and Fire Prevention</li> </ol>
Sept. 21	<ol style="list-style-type: none"> <li>1. Housing Element</li> </ol>
Oct. 19	<ol style="list-style-type: none"> <li>1. Update: Zero Waste Rates &amp; Priorities</li> <li>2. Berkeley Police Department Hiring Practices</li> <li>3. Crime Report</li> </ol>
Dec. 7	<ol style="list-style-type: none"> <li>1. Review and Update on City's COVID-19 Response</li> <li>2. WETA / Ferry Service at the Marina</li> <li>3. Presentation by Bay Restoration Authority</li> </ol>

Unscheduled Workshops
<ol style="list-style-type: none"> <li>1. Cannabis Health Considerations</li> </ol>

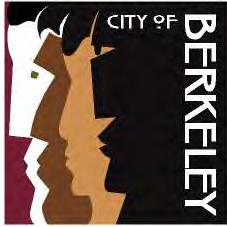
Unscheduled Presentations (City Manager)
<ol style="list-style-type: none"> <li>1. Civic Arts Grantmaking Process &amp; Capital Grant Program</li> </ol>

	<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></p> <p><b>From: Councilmember Harrison</b></p> <p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.</li> </ol> <p><b>Financial Implications:</b> See report  Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  <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></p> <p><b>From: City Manager</b></p> <p><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.</p> <p><b>Financial Implications:</b> None  Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000  <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>
3.	<p><b>17. Objective Standards Recommendations for Density, Design and Shadows</b> <i>(Item contains supplemental material.) (Referred from the March 23, 2021 agenda.)</i></p> <p><b>From: Joint Subcommittee for the Implementation of State Housing Laws</b></p> <p><b>Recommendation:</b> Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.</p> <p><b>Financial Implications:</b> See report  Contact: Alene Pearson, Commission Secretary, (510) 981-7400  <i>Note: Referred to Agenda &amp; Rules for future scheduling.</i></p>

CITY CLERK DEPARTMENT				
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL				
Address	Board/ Commission	Appeal Period Ends	Determination on Appeal Submitted	Public Hearing
<b>NOD – Notices of Decision</b>				
1730 Blake Street (construct one, three-story, single-family dwelling)	ZAB	6/8/2021		
600 Addison Street (two buildings totaling 470,986 square feet)	ZAB	6/15/2021		
2737 Durant Avenue (construct a three-story, four dwelling unit)	ZAB	6/15/2021		
<b>Public Hearings Scheduled</b>				
2943 Pine Street (construct second story on existing one story)	ZAB			9/28/2021
1205 Peralta Avenue (conversion of an existing garage)	ZAB			10/12/2021
770 Page Street (demolish existing unit and construct four detached)	ZAB			TBD
<b>Remanded to ZAB or LPC</b>				
<b>Notes</b>				

6/9/2021





Office of the City Manager

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

**Meeting Date:** November 10, 2020

**Item Number:** 20

**Item Description:** Annual Commission Attendance and Meeting Frequency Report

**Submitted by:** Mark Numainville, City Clerk

The attached memo responds to issues and questions raised at the October 26 Agenda & Rules Committee Meeting and the October 27 City Council Meeting regarding the ability of city boards and commissions to resume regular meeting schedules.





Office of the City Manager

November 9, 2020

To: Mayor and Council  
From: Dee Williams-Ridley, City Manager  
Subject: Commission Meetings Under COVID-19 Emergency (Item 20)

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This memo provides supplemental information for the discussion on Item 20 on the November 10, 2020 Council agenda. Below is a summary and update of the status of meetings of Berkeley Boards and Commissions during the COVID-19 emergency declaration and the data collected by the City Manager on the ability of commissions to resume meetings in 2021.

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.

In response to questions from the Agenda & Rules Committee and the Council, the City Manager polled all departments that support commissions to obtain information on their capacity to support the resumption of regular commission meetings. The information in Attachment 1 shows the information received from the departments and notes each commission's ability to resume a regular, or semi-regular, meeting schedule in 2021.

In summary, there are 24 commissions that have staff resources available to support a regular meeting schedule in 2021. Seven of these 24 commissions have been meeting regularly during the pandemic. There are five commissions that have staff resources available to support a limited meeting schedule in 2021. There are seven commissions that currently do not have staff resources available to start meeting regularly at the beginning of 2021. Some of these seven commissions will have staff resources available later in 2021 to support regular meetings. Please see Attachment 1 for the full list of commissions and their status.

With regards to commission subcommittees, there has been significant discussion regarding the ability of staff to support these meetings in a virtual environment. Under normal circumstances, the secretary's responsibilities regarding subcommittees is limited to posting the agenda and reserving the meeting space (if in a city building). With the necessity to hold the meetings in a virtual environment and be open to the public, it is likely that subcommittee meetings will require significantly more staff resources to schedule, train, manage, and support the work of subcommittees on Zoom or a similar platform. This additional demand on staff resources to support commission subcommittees is not feasible for any commission at this time.

One possible option for subcommittees is to temporarily suspend the requirement for ad hoc subcommittees of city commissions to notice their meetings and require public participation. Ad hoc subcommittees are not legislative bodies under the Brown Act and are not required to post agendas or allow for public participation. These requirements are specific to Berkeley and are adopted by resolution in the Commissioners' Manual. If it is the will of the Council, staff could introduce an item to temporarily suspend these

requirements which will allow subcommittees of all commissions to meet as needed to develop recommendations that will be presented to the full commission.

The limitations on the meetings of certain commissions are due to the need to direct staff resources and the resources of city legislative bodies to the pandemic response. Some of the staff assigned as commission secretaries are engaged in work with the City Emergency Operations Center or have been assigned new duties specifically 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 and the Health Officer in consultation with Department Heads and the City Council.

Attachments:

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

**November 10, 2020 - Item 20  
Supplemental Information**

<b><u>Boards and Commissions</u></b>	<b><u>Meetings Held Under COVID March - Oct</u></b>	<b><u>Regular Mtg. Date</u></b>	<b><u>Secretary</u></b>	<b><u>Dept.</u></b>	<b><u>Resume Regular Schedule in January 2021?</u></b>	<b><u>Note</u></b>
Fair Campaign Practices Commission	9	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Open Government Commission	6	3rd Thur.	Sam Harvey	CA	YES	Have been meeting regularly under COVID Emergency
Animal Care Commission	0	3rd Wed.	Amelia Funghi	CM	YES	
Police Review Commission	10	2nd & 4th Wed.	Katherine Lee	CM	YES	Have been meeting regularly under COVID Emergency
Disaster and Fire Safety Commission	4	4th Wed.	Keith May	FES	YES	
Community Health Commission	0	4th Thur.	Roberto Terrones	HHCS	YES	
Homeless Commission	0	2nd Wed.	Josh Jacobs	HHCS	YES	
Homeless Services Panel of Experts	5	1st Wed	Josh Jacobs	HHCS	YES	
Human Welfare & Community Action Commission	0	3rd Wed.	Mary-Claire Katz	HHCS	YES	
Mental Health Commission	1	4th Thur.	Jamie Works-Wright	HHCS	YES	
Sugar-Sweetened Beverage Product Panel of Experts	0	3rd Thur.	Dechen Tsering	HHCS	YES	
Civic Arts Commission	2	4th Wed.	Jennifer Lovvorn	OED	YES	
Elmwood BID Advisory Board	1	Contact Secretary	Kieron Slaughter	OED	YES	
Loan Administration Board	0	Contact Secretary	Kieron Slaughter	OED	YES	
Solano Avenue BID Advisory Board	2	Contact Secretary	Eleanor Hollander	OED	YES	
Design Review Committee	6	3rd Thur.	Anne Burns	PLD	YES	Have been meeting regularly under COVID Emergency
Energy Commission	0	4th Wed.	Billi Romain	PLD	YES	
Landmarks Preservation Commission	6	1st Thur.	Fatema Crane	PLD	YES	Have been meeting regularly under COVID Emergency
Planning Commission	3	1st Wed.	Alene Pearson	PLD	YES	Have been meeting regularly under COVID Emergency
Zoning Adjustments Board	11	2nd & 4th Thur.	Shannon Allen	PLD	YES	Have been meeting regularly under COVID Emergency
Parks and Waterfront Commission	4	2nd Wed.	Roger Miller	PRW	YES	
Commission on Disability	0	1st Wed.	Dominika Bednarska	PW	YES	
Public Works Commission	4	1st Thur.	Joe Enke	PW	YES	
Zero Waste Commission	0	4th Mon.	Heidi Obermeit	PW	YES	
Commission on the Status of Women	0	4th Wed.	Shallon Allen	CM	YES - LIMITED	Secretary has intermittent COVID assignments

**November 10, 2020 - Item 20  
Supplemental Information**

<b><u>Boards and Commissions</u></b>	<b><u>Meetings Held Under COVID March - Oct</u></b>	<b><u>Regular Mtg. Date</u></b>	<b><u>Secretary</u></b>	<b><u>Dept.</u></b>	<b><u>Resume Regular Schedule in January 2021?</u></b>	<b><u>Note</u></b>
Commission on Aging	0	3rd Wed.	Richard Castrillon	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Housing Advisory Commission	0	1st Thur.	Mike Uberti	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Measure O Bond Oversight Committee	0	3rd Monday	Amy Davidson	HHCS	REDUCED FREQUENCY	Significant Dept. resources assigned to COVID response
Transportation Commission	2	3rd Thur.	Farid Javandel	PW	REDUCED FREQUENCY	Staff assigned to COVID response
Children, Youth, and Recreation Commission	0	4th Monday	Stephanie Chu	PRW	NO - SEPT 2021	Staff assigned to COVID response
Youth Commission	0	2nd Mon.	Ginsi Bryant	PRW	NO - SEPT 2021	Staff assigned to COVID response
Community Environmental Advisory Commission	0	2nd Thur.	Viviana Garcia	PLD	NO - JUNE 2021	Staff assigned to COVID response
Cannabis Commission	0	1st Thur.	VACANT	PLD	NO - JAN. 2022	Staff vacancy
Peace and Justice Commission	0	1st Mon.	VACANT	CM	NO	Staff vacancy
Commission on Labor	0	3rd Wed., alternate mon	Kristen Lee	HHCS	NO	Staff assigned to COVID response
Personnel Board	1	1st Mon.	La Tanya Bellow	HR	NO	Staff assigned to COVID response

## 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





Office of the City Manager

October 22, 2020

To: Berkeley Boards and Commissions

From: *DWR* 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

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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

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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:

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Open Government Commission  
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Police Review Commission  
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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.

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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







## OFFICE OF THE GOVERNOR

June 2, 2021

### **VIA EMAIL**

Graham Knaus, Executive Director  
CA State Assoc. of Counties  
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Jean Kinney Hurst, Legislative Advocate  
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

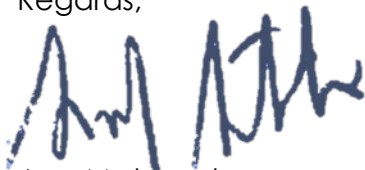
Thank you for your correspondence of May 18, 2021, inquiring what impact the anticipated June 15 termination of the Blueprint for a Safer Economy will have on Executive Order N-29-20, which provided flexibility to state and local agencies and boards to conduct their business through virtual public meetings during the COVID-19 pandemic.



Please be assured that this Executive Order Provision will not terminate on June 15 when the Blueprint is scheduled to terminate. While the Governor intends to terminate COVID-19 executive orders at the earliest possible date at which conditions warrant, consistent with the Emergency Services Act, the Governor recognizes the importance of an orderly return to the ordinary conduct of public meetings of state and local agencies and boards. To this end, the Governor's office will work to provide notice to affected stakeholders in advance of rescission of this provision to provide state and local agencies and boards time necessary to meet statutory and logistical requirements. Until a further order issues, all entities may continue to rely on N-29-20.

We appreciate your partnership throughout the pandemic.

Regards,

A handwritten signature in blue ink, appearing to read 'Ana Matosantos', written in a cursive style.

Ana Matosantos  
Cabinet Secretary



## NEWS RELEASE

Release

June 4, 2021

Number: 2021-58

### Standards Board Readopts Revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards

**The revised Cal/OSHA standards are expected to go into effect no later than June 15**

**Sacramento** — The Occupational Safety and Health Standards Board on June 3 readopted Cal/OSHA's revised COVID-19 prevention emergency temporary standards.

Last year, the Board adopted health and safety standards to protect workers from COVID-19. The standards did not consider vaccinations and required testing, quarantining, masking and more to protect workers from COVID-19.

The changes adopted by the Board phase out physical distancing and make other adjustments to better align with the state's June 15 goal to retire the Blueprint. Without these changes, the original standards, would be in place until at least October 2. These restrictions are no longer required given today's record low case rates and the fact that we've administered 37 million vaccines.

The revised emergency standards are expected to go into effect no later than June 15 if approved by the Office of Administrative Law in the next 10 calendar days. Some provisions go into effect starting on July 31, 2021.

The [revised standards](#) are the first update to Cal/OSHA's temporary COVID-19 prevention requirements adopted in November 2020.

**The Board may further refine the regulations in the coming weeks** to take into account changes in circumstances, especially as related to the availability of vaccines and low case rates across the state.

The standards apply to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases [standard](#). Notable revisions include:

- **Face Coverings:**
  - Indoors, fully vaccinated workers without COVID-19 symptoms do not need to wear face coverings in a room where everyone else is fully vaccinated and not showing symptoms. However, where there is a mixture of vaccinated and unvaccinated persons in a room, all workers will continue to be required to wear a face covering.
  - Outdoors, fully vaccinated workers without symptoms do not need to wear face coverings. However, outdoor workers who are not fully vaccinated must continue to wear a face covering when they are less than six feet away from another person.
- **Physical Distancing:** When the revised standards take effect, employers can eliminate physical distancing and partitions/barriers for employees working indoors and at outdoor mega events if they provide respirators, such as N95s, to unvaccinated employees for voluntary use. After July 31, physical distancing

and barriers are no longer required (except during outbreaks), but employers must provide all unvaccinated employees with N95s for voluntary use.

- **Prevention Program:** Employers are still required to maintain a written COVID-19 Prevention Program but there are some key changes to requirements:
  - Employers must review the California Department of Public Health’s [Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments](#).
  - COVID-19 prevention training must now include information on how the vaccine is effective at preventing COVID-19 and protecting against both transmission and serious illness or death.
- **Exclusion from the Workplace:** Fully vaccinated workers who do not have COVID-19 symptoms no longer need to be excluded from the workplace after a close contact.
- **Special Protections for Housing and Transportation:** Special COVID-19 prevention measures that apply to employer-provided housing and transportation no longer apply if all occupants are fully vaccinated.

The Standards Board will file the readoption rulemaking package with the Office of Administrative Law, which has 10 calendar days to review and approve the temporary workplace safety standards enforced by Cal/OSHA. Once approved and published, the full text of the revised emergency standards will appear in the Title 8 sections [3205](#) (COVID-19 Prevention), [3205.1](#) (Multiple COVID-19 Infections and COVID-19 Outbreaks), [3205.2](#) (Major COVID-19 Outbreaks) [3205.3](#) (COVID-19 Prevention in Employer-Provided Housing) and [3205.4](#) (COVID-19 Prevention in Employer-Provided Transportation) of the [California Code of Regulations](#). Pursuant to the state’s [emergency rulemaking process](#), this is the first of two opportunities to readopt the temporary standards after the initial effective period.

The Standards Board also convened a representative subcommittee to work with Cal/OSHA on a proposal for further updates to the standard, as part of the emergency rulemaking process. It is anticipated this newest proposal, once developed, will be heard at an upcoming Board meeting. The subcommittee will provide regular updates at the Standards Board monthly meetings.

The [Occupational Safety and Health Standards Board](#), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The Standards Board’s objective is to adopt reasonable and enforceable standards at least as effective as federal standards. The Standards Board also has the responsibility to grant or deny applications for permanent variances from adopted standards and respond to petitions for new or revised standards.

The California Division of Occupational Safety and Health, or [Cal/OSHA](#), is the division within the Department of Industrial Relations that helps protect California’s workers from health and safety hazards on the job in almost every workplace. [Cal/OSHA’s Consultation Services Branch](#) provides free and voluntary assistance to employers to improve their health and safety programs. Employers should call (800) 963-9424 for assistance from Cal/OSHA Consultation Services.

**Contact:** Erika Monterroza / Frank Polizzi, [Communications@dir.ca.gov](mailto:Communications@dir.ca.gov), (510) 286-1161.

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The [California Department of Industrial Relations](#), established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners, and helps their employers comply with state labor laws. DIR is housed within the [Labor & Workforce Development Agency](#)



Office of the City Manager

June 1, 2021

To: Agenda & Rules Committee

From: Dee Williams-Ridley, City Manager

Subject: Preliminary Analysis of Return to In-Person Meetings of City Legislative Bodies

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### Introduction

This memo responds to the request from the Agenda & Rules Committee on May 17, 2021 for information from the City Manager on the options and timing for a return to in-person meetings for City legislative bodies. The analysis below is a preliminary summary of the considerations and options for returning to in-person meetings.

With the onset of the COVID-19 pandemic, the shelter-in-place order, and the issuance of Executive Order N-29-20 (“Executive Order”) in the spring of 2020, the City quickly adjusted to a virtual meeting model. Now, almost 15 months later, with the Blueprint for a Safer Economy scheduled to sunset on June 15, 2021, the City is faced with a new set of conditions that will impact how public meetings may be held in Berkeley. While the June 15, 2021 date appears to be certain, there is still a great deal of uncertainty about the fate of the Executive Order. In addition, the City is still awaiting concrete, specific guidance from the State with regards to regulations that govern public meetings and public health recommendations that will be in place after June 15, 2021.

For background, Executive Order N-29-20 allows legislative bodies to meet in a virtual setting and suspends the following Brown Act requirements:

- Printing the location of members of the legislative body on the agenda;
- Posting the agenda at the location of members of the legislative body that are remote; and
- Making publicly available remote locations from which members of the legislative body participate.

Meeting Options

There are three groups of City Legislative bodies that are considered in this memo

- City Council;
- City Council Policy Committees; and
- Boards and Commissions.

The three meeting models available are:

- In-person only;
- Virtual only; or
- Hybrid (in-person and virtual).

The scenarios below show the options available for each given set of facts.

Summary Recommendations of Meeting Options	Physical Distancing			No Physical Distancing		
	In-Person	Hybrid	Virtual*	In-Person	Hybrid	Virtual*
	City Council	X	X	X	X	X
Policy Committees			X	X		X
Board and Commissions			X	X		X

\* The ability to hold virtual-only meetings is dependent on the status of Executive Order N-29-20

Currently, the Centers for Disease Control recommends physical distancing for unvaccinated persons. While the City and the community have made tremendous progress with regards to vaccination, the City would use the guidelines for unvaccinated persons when making determinations regarding public meetings.

Meeting Type Considerations

Our previous experience pre-pandemic and our experience over the past 15 months demonstrates that the City can conduct all in-person and all virtual meetings. However, the possibility of hybrid meetings presents new questions to consider. The primary concern for a return to in-person meetings using a hybrid model is the impact on the public experience and the legislative process.

*Will the legislative body be able to provide a transparent, coherent, stable, informative, and meaningful experience for the both the public in attendance and virtually?*

*Will the legislative body be able to conduct the legislative process in an efficient, coherent, and meaningful manner with the members split between in-person and virtual, and considering the additional delays and logistical challenges of allowing for public participation in a hybrid model?*

For the City Council, testing has shown that the larger space and technology infrastructure at the Boardroom will allow the Council to conduct all three types of meetings (in-person, hybrid, virtual).

For Policy Committees and Commissions, only the “all virtual” or “all in-person” meetings are recommended. Preliminary testing has shown that the audio/visual limitations of the meeting rooms available for these bodies would result in inefficient and cumbersome management of the proceedings in a hybrid model. In addition, there are considerations to analyze regarding the available bandwidth in city facilities and all members having access to adequate devices. Continuing the all virtual model for as long as possible, then switching to an all in-person model when conditions permit provides the best access, participation, and legislative experience for the public and the legislative body.

#### Other Considerations

Some additional factors to consider in the evaluation of returning to in-person or hybrid meetings are:

- How to address vaccination status for in-person attendees.
- Will symptom checks and/or temperature checks at entry points be required?
- Who is responsible for providing PPE for attendees?
- How are protocols for in-person attendees to be enforced?
- Physical distancing measures for the Mayor and City Councilmembers on the dais.
- Installation of physical barriers and other temporary measures.
- Will the podium and microphone need to be sanitized after every speaker?
- High number of touch points in meeting rooms.
- Will chairs for the public and staff need to be sanitized if there is turnover during the meeting?
- Determining the appropriate capacity for meeting locations.
- The condition and capacity of meeting room ventilation system and air cycling abilities.
- How to receive and share Supplemental Items, Revisions, Urgent Items, and submissions by the public both in-person and virtually.
- Budget including costs for equipment, physical improvements, A/V, PPE, and sanitization.

Conclusion

As stated above, conditions are changing daily, and there is a high degree of uncertainty surrounding the future guidance, regulations, and actions at the state level. Planning, testing and analysis are already underway to prepare for an eventual return to in-person meetings. Staff will continue to monitor the evolving legislative and public health circumstances and advise the committee at future meetings.

Attachment:

1. Executive Order N-29-20



**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-29-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

**WHEREAS** the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

**WHEREAS** time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

**WHEREAS** social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of



otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.



All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State