



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

MONDAY, SEPTEMBER 13, 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/85429927302>. 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: **854 2992 7302**. 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: August 30, 2021**
- 2. Review and Approve Draft Agenda:**
 - a. 9/28/21 – 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, September 27, 2021

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

**MONDAY, AUGUST 30, 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 access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/86311352473>. 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: **863 1135 2473**. 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 (Droste substituting for Hahn).

**Public Comment** – 4 speakers

## Review of Agendas

**1. Approval of Minutes: July 12, 2021**

**Action:** M/S/C (Wengraf/Droste) to approve the minutes of 7/12/21.

**Vote:** All Ayes.

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

a. 9/14/21 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Arreguin/Wengraf) to recommend to Councilmember Bartlett to revise Item 32 to be a referral to the City Manager and move the revised item to the Consent Calendar.

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Wengraf) to approve the agenda of the 9/14/21 meeting with the changes noted below.

**Vote:** All Ayes.

- *Item Added: PRW Contract Recess Item (City Manager)*
- *Item 6 Proclamation of Emergency (City Manager) – revised recommendation submitted*
- *Item 32 Predevelopment Allocation (Bartlett) – revision requested by Committee; Revised report will be placed on Consent Calendar*
- *Item 34 SB 459 (Commission) – Moved to Consent Calendar*
- *Item 36 Zero Waste Commission (Commission) – Moved to Consent Calendar*
- *Item 37 Fair Elections (Arreguin) – Revised item submitted; Vice-Mayor Droste added as a co-sponsor; Moved to Consent Calendar*
- *Item 38 Observance Resolution (Kesarwani) – Revision to Item Title; Councilmember Harrison added as a co-sponsor; Moved to Consent Calendar*
- *Item 39 License Plate Readers (Taplin) – Referred to Public Safety Committee*
- *Item 40 Wildfire Prevention (Wengraf) – Councilmember Taplin and Vice-Mayor Droste added as co-sponsors; Moved to Consent Calendar*

Order of Items of Action Calendar

Item 29 Zoning Ordinance  
Item 30 Objective Standards  
Item 31 Officeholder Accounts  
Item 33 Regulation of Bags  
Item 35 Open Government

## Selection of Item for the Berkeley Considers Online Engagement Portal

– None Selected

**3. Adjournments In Memory** – None (Mayor will introduce adjournments in memory at the meeting)

## Scheduling

4. **Council Worksessions Schedule** – received and filed
5. **Council Referrals to Agenda Committee for Scheduling** – received and filed
6. **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:** 3 speakers. Discussion held. No action taken.

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

**Action:** 2 speakers. Discussion held. No action taken.

## 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** - None

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 3:47 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on August 30, 2021.

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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).*



## DRAFT AGENDA



### BERKELEY CITY COUNCIL MEETING

**Tuesday, September 28, 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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*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

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

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

*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.*

## Recess Items

- 1. Contract No. 32100192 Amendment: California Constructores for Construction of Pedestrian Improvements at California Street/Dwight Way Intersection**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100192 with California Constructores for work on the Fiscal Year 2020 Sidewalk Repairs Project, Specification No. 20-11409-C, to perform safety-related pedestrian improvements at the California Street/Dwight Way intersection, increasing the current contract amount by up to \$175,900, for a total amount not to exceed \$2,175,900.  
**Financial Implications:** General Fund - \$175,900  
Contact: Liam Garland, Public Works, (510) 981-6300

## Consent Calendar

- 2. Contract No. 9712A Amendment: QuickCaption, Inc. for Real-Time Closed Captioning Stenography Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 9712A with QuickCaption, Inc. for the provision of real-time closed captioning stenography services, including captioning virtual meetings, at all work sessions, regular and special meetings of the City Council and Successor Agency to the former Redevelopment Agency, increasing the contract by \$120,000 for a total not to exceed amount of \$321,900.  
**Financial Implications:** General Fund - \$120,000  
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 3. Grant from the William and Flora Hewlett Foundation**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a \$10,525 grant from the William and Flora Hewlett Foundation, which augments a prior grant of \$20,000 awarded and accepted in 2019 for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in Berkeley.  
**Financial Implications:** \$10,525 (Grant)  
Contact: Dave White, City Manager's Office, (510) 981-7000
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 28, 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:** Various Funds - \$6,675,000  
Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 5. Contract: Genasys for Citywide Outdoor Warning System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into contract with Genasys, Inc. for consulting, planning, construction, installation, software hosting, and implementation of a Citywide Outdoor Warning System (OWS), for a total amount not to exceed \$1,974,457.  
**Financial Implications:** Measure FF - \$1,974,457  
Contact: Abe Roman, Fire, (510) 981-3473
- 6. Contract No. 31900132 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract amendment with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. The amendment will add \$100,000 to the current contract and extend it through June 30, 2022 for a total contract not to exceed amount of \$300,000.  
**Financial Implications:** Mental Health Service Act Fund - \$100,000  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 7. Contract: Berkeley Free Clinic for Laboratory Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments or extensions with the Berkeley Free Clinic (BFC) for laboratory services, in an amount not to exceed \$150,000 for the period July 1, 2021 through June 30, 2024.  
**Financial Implications:** General Fund - \$150,000  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 8. Memorandum of Understanding with Alameda County Behavioral Health Care Services for Wellness Center Operations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to adopt a Memorandum of Understanding between the City of Berkeley and Alameda County Behavioral Health Care Services for the term July 1, 2021 through June 30, 2023 for an expenditure of up to \$491,933 to fund the operational costs of a Mental Health Wellness Center located in Berkeley.  
**Financial Implications:** Mental Health Service Act Fund - \$491,933  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 9. Donation: Memorial Bench at Cesar Chavez Park in Memory of Nancy Park**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Nancy Park.  
**Financial Implications:** \$3,400 (donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 10. Donation: Memorial Bench at Greg Brown Park in memory of Michael, Anna, and John Wyman**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Greg Brown Park in memory of Michael, Anna, and John Wyman.  
**Financial Implications:** \$3,400 (donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 11. Donation: Memorial Bench at the Jane Hammond Softball Field at Corodonicos Park in memory of Dixie Lewis**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Jane Hammond Softball Field at Codornices Park in memory of Dixie Lewis.  
**Financial Implications:** \$3,400 (donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 12. Donation: Memorial Bench at Shorebird Park at the Berkeley Marina in Memory of Shay M. Finnegan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Shorebird Park in memory of Shay M. Finnegan.  
**Financial Implications:** \$3,400 (donation)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an Exclusive Negotiating Agreement with Innovation Properties Group to develop a pre-development agreement that could lead to a long-term lease of City property at 199 Seawall Drive and a short-term license for a portion of the adjacent parking lot.  
**Financial Implications:** None  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Consent Calendar

- 14. Contract No. 10508 Amendment: Ben Noble, City and Regional Planning for Zoning Ordinance Revision Project (ZORP)**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10508 with Ben Noble, City and Regional Planning, to develop objective standards in the Zoning Ordinance as ZORP Phase 2, increasing the contract amount by \$125,000 to a new total not-to-exceed contract amount of \$425,000, and extending the contract period to December 31, 2023.  
**Financial Implications:** General Fund - \$125,000  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 15. Purchase Orders: Bruce's Tire, Inc. for New Automobile and Truck Tires**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute yearly purchase orders for new tires for City owned vehicles and equipment with Bruce's Tire, Inc. in an amount not to exceed \$2,900,000 for FY 2022 through FY 2026.  
**Financial Implications:** Equipment Maintenance Fund - \$2,900,000  
Contact: Liam Garland, Public Works, (510) 981-6300
- 16. Extending the Requirements for Telestaff Time Reporting**  
**From: Disaster and Fire Safety Commission**  
**Recommendation:** The Disaster and Fire Safety Commission (DFSC) recommends that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Further, to assist determining what overtime is eligible to be charged to Measure GG as "Minimum Staffing" that overtime must be properly coded as supporting minimum staffing. (Currently, this would be code 00FS10 and 00FS11). This would not affect charges for Measure GG approved time or overtime. In addition, we recommend that in any future reports to the DFSC on Measure GG budget that the report include a breakdown of the time by labor purpose of both regular and overtime.  
**Financial Implications:** See report  
Contact: Keith May, Commission Secretary, (510) 981-3473
- 17. Appointment of Tommy Escarcega to Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution appointing: Tommy Escarcega as a representative of the Special Public Interest, Consumer Category, to complete her first 3-year term beginning September 29, 2021 and ending September 28, 2024.  
**Financial Implications:** None  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

## Action Calendar

*The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

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

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

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and 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.*

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

### 18. **ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107**

**From: City Manager**

**Recommendation:** Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0107 to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage, and dismiss the appeal.

**Financial Implications:** None

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

### 19. **Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04 (Continued from July 13, 2021)**

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.

**Financial Implications:** None

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

## Action Calendar – Public Hearings

**20. Adopt a Resolution and Ordinance for a Shared Electric Micromobility Permit Program**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion:

1. Adopt a Resolution approving a Shared Electric Micromobility Permit Program, establishing fees for the program, and designating the City Manager as custodian of the program; and
2. Adopt the first reading of an Ordinance adding Berkeley Municipal Code Chapter 14.63 and amending Chapter 14.68 to establish the Shared Electric Micromobility Permit Program and related parking regulations.

**Financial Implications:** See report

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

## Action Calendar – New Business

**21. Predevelopment Allocation, Ashby Recreation and Community Housing (ARCH) Consortium**

**From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Taplin (Co-Sponsor)**

**Recommendation:** *(Reviewed by the Budget & Finance Policy Committee)*

Refer to staff to work with the Ashby Recreation and Community Housing (ARCH) Consortium to develop a planning grant for the Ashby BART East Parking Lot.

*Policy Committee Recommendation: No final action was taken by the Budget & Finance Committee. The item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.*

**Financial Implications:** See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**22. Approval of Interim Regulations for the Police Accountability Board and Office of the Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department**

**From: Director of Police Accountability**

**Recommendation:** Approve Interim Regulations to be used by the Police

Accountability Board and Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II). The City Council is asked to choose between the Board's modified proposal, conditioned upon City Attorney approval, or the Interim Director's preferred version.

**Financial Implications:** None

Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950



## Action Calendar – Policy Committee Track Items

**23. Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone**

**From: Councilmember Kesarwani (Author)**

**Recommendation:** Refer to the City Manager to: Establish a procedure for enhanced review of use permits in the manufacturing zone for industrial facilities—upon initial submission or upon submission of an amended use permit—in order to ensure public health and environmental impacts are appropriately mitigated as a condition of the use permit. Further, if appropriate, consider mitigation that includes the use-permit applicant contracting with a certified third-party to install air quality monitoring device(s) that can enable periodic reporting on pollutants relevant to the particular industrial process proposed in the initial or amended use permit. Explore feasibility of increasing penalty fee schedule as a deterrence for use-permit violations related to public health and environmental impacts, such as air, noise, and water pollution.

**Financial Implications:** Staff time

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

## Action Calendar – Policy Committee Track Items

**24. Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley’s Bicycle Boulevards and on At-Risk West Berkeley Residential Streets**

**From: Councilmember Taplin (Author)**

**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on:

1. Ninth Street between Dwight Way and Heinz Avenue
2. Addison Street between San Pablo Avenue and Sixth Street;
3. Allston Way between San Pablo Avenue and Sixth Street;
4. Bancroft Way between San Pablo Avenue and Sixth Street;
5. Channing Way between San Pablo Avenue and Fourth Street;
6. Dwight Way between San Pablo Avenue and Sixth Street;
7. Camelia Street between Eighth Street and Ninth Street;
8. Eighth Street between Jackson Street and Camelia Street;
9. Ninth Street between Camelia Street and Cedar Street;
10. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
11. Virginia Street between Shattuck Avenue and Euclid Avenue;
12. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
13. Heinz Avenue between Ninth Street and San Pablo Avenue;
14. Russell Street between San Pablo Avenue and Shattuck Avenue;
15. Russell Street between Telegraph Avenue and Claremont Avenue;
16. California Street between Hopkins Street and University Avenue;
17. California Street between Dwight Way and Russell Street;
18. King Street between Russell Street and Stanford Avenue;
19. Milvia Street from Dwight Way to Russell Street;
20. Bowditch Street from Bancroft Way to Dwight Way;
21. Hillegass Avenue from Dwight Way to Woolsey Street

**Financial Implications:** See report

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

**25. Native and Drought Resistant Plants and Landscaping Ordinance Referral**

**From: Councilmember Taplin (Author)**

**Recommendation:** Refer to the City Manager the development of an ordinance amending the Berkeley Municipal Code to require that plant materials (1) native to Berkeley and Northern California and (2) resistant to drought conditions shall be used exclusively in designing, planting, maintaining, and managing the landscape features of all City roadsides, parks, public areas, and other City properties and facilities.

**Financial Implications:** See report

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

## Action Calendar – Policy Committee Track Items

26. **Resolution in Support of Afghan Refugees**  
**From: Councilmember Taplin (Author), Mayor Arreguin (Author)**  
**Recommendation:** Adopt a Resolution in support of refugees from Afghanistan.  
**Financial Implications:** None  
**Contact:** Terry Taplin, Councilmember, District 2, (510) 981-7120
27. **Adopt a Resolution Renewing and Re-Affirming Wildfire Prevention and Safety**  
**From: Councilmember Wengraf (Author)**  
**Recommendation:** Request that the Berkeley City Council adopt a resolution re-affirming that wildfire prevention and safety is a top priority in the City of Berkeley.  
**Financial Implications:** None  
**Contact:** Susan Wengraf, Councilmember, District 6, (510) 981-7160
28. **Amending BMC Section 14.56.040 to Reduce the Commercial Weight Limit on Marin Ave**  
**From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.040 to reduce the commercial vehicle weight limit from four tons gross weight to three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.  
**Financial Implications:** See report  
**Contact:** Susan Wengraf, Councilmember, District 6, (510) 981-7160

## Information Reports

29. **Sanctuary City Contracting Compliance Report for FY 2020**  
**From: City Manager**  
**Contact:** Henry Oyekanmi, Finance, (510) 981-7300
30. **Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents**  
**From: Auditor**  
**Contact:** Jenny Wong, Auditor, (510) 981-6750

## Public Comment – Items Not Listed on the Agenda

## Adjournment

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

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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>.

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**COMMUNICATION ACCESS INFORMATION:**

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Disaster and Fire Safety Commission

CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Disaster and Fire Safety Commission
 Submitted by: Jose Bedolla, Chairperson, Disaster and Fire Safety Commission
 Subject: Extending the Requirements for Telestaff Time Reporting

RECOMMENDATION

The Disaster and Fire Safety Commission (DFSC) recommends that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Further, to assist determining what overtime is eligible to be charged to Measure GG as “Minimum Staffing” that overtime must be properly coded as supporting minimum staffing. (Currently, this would be code 00FS10 and 00FS11). This would not affect charges for Measure GG approved time or overtime.

In addition, we recommend that in any future reports to the DFSC on Measure GG budget that the report include a breakdown of the time by labor purpose of both regular and overtime.

FISCAL IMPACTS OF RECOMMENDATION

Utilizing the purpose codes for minimum staffing should significantly reduce the time required to properly determine the overtime charges which can be legitimately charged to Measure GG.

CURRENT SITUATION AND ITS EFFECTS

Currently, the tendency is to report a large percentage of worked overtime to Measure GG. The DFSC believes that much of this overtime is not demonstrably in alignment with the intent of the measure - to enable the city to keep fire stations open and improve medical emergency response and disaster preparedness - resulting in overcharges to the Measure GG Budget. As a partial result, the funds for measure GG support to the Berkeley Fire Department are in danger of running out without meeting all of the intended purposes intended by the measure.

BACKGROUND

The DFSC has sent several previous recommendations or communications to City Council to discuss what the commission saw as excess charges to the Measure GG

fund. The feeling of the commission has been, and still is, that more overtime is being charged to the Measure GG accounts than is actually justifiable.

In the past the claim has been made that the accounting system was not adequate to properly separate out the overtime required for minimum staffing. However, the current system both has the ability to track this time with more accuracy and the ability to extract reports based on that tracking. At the time of this writing, the supervisors are apparently not coding overtime assignments in Telestaff, however that coding is both possible and fairly easy.

At the August 4, 2021 Disaster and Fire Safety Commission regular meeting, the commission voted to recommend that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Motion: Rader, Second: Degenkolb, Vote: 6 Ayes: Couzin, Rader, Dean, Bradstreet, Degenkolb, Stein; 0 Noes; 2 Absent: Simmons, Bedolla; 0 Abstain.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There is no environmental or climate impact to this recommendation.

RATIONALE FOR RECOMMENDATION

Measure GG clearly specifies what the funds generated by the voter approved tax were to be used for. In the past the excuse that our accounting system was not up to properly tracking that information provided an impetus to charge all fire suppression overtime as applicable to Measure GG. With the new accounting system, that rationale is no longer valid. As such, improper charges of overtime to Measure GG has become a matter of misappropriation of public funds. This recommendation is intended to make it easier to properly separate out charges that are appropriate to the intent of the Measure GG tax.

ALTERNATIVE ACTIONS CONSIDERED

While previous recommendations have been made, none have been practical until now.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Disaster and Fire Commission's Report. At the time of this report, details regarding how the information was being transferred from the Telestaff program and added to Enterprise Resource Management Application (ERMA) was not fully realized by the Disaster and Fire Safety Commission.

Telestaff records all overtime of personnel with various codes that relates to specific reasons that personnel are being hired to work. Those codes are noted and assigned in ERMA when payroll is being completed by finance staff. The Commission's recommendation is a standard practice when staff is completing payroll procedures.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508



Mental Health Commission

CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Mental Health Commission
 Submitted by: Margaret Fine, Chairperson, Mental Health Commission
 Subject: Appointment of Tommy Escarcega to Mental Health Commission

RECOMMENDATION

Adopt a Resolution appointing: Tommy Escarcega as a representative of the Special Public Interest, Consumer Category, to complete her first 3-year term beginning September 29, 2021 and ending September 28, 2024.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently five vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will keep the one position filled, and allow the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or nine of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership.

Tommy Escarcega is a resident of Berkeley and has experience with community advocating and organizing in the area of Re-entry and voting. She has the compassion to help others and believes in using other models of treatment such as community

engagement and consumers not only having voice but a meaningful vote in the system. She would like to join the Mental Health Commission because she has experience with Berkeley Mental Health services and homelessness. This would be her first term participating on the Mental Health Commission.

The Mental Health Commission passed the following motions at the July 22, 2021 meeting:

Interview and vote on the nomination of Tommy Escarcega on the Mental Health Commission.

M/S/C (Fine, Prichett) Make a motion to nominate Tommy Escarcega to join us on the Mental Health Commission

PASSED

Ayes: Blanton, cheema, Fine, Jones, Opton, Prichett, Noes: None; Abstentions: None; Absent: Moore, Taplin

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, HHCS, 510-981-7721

Attachments:

1: Resolution

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

APPOINTMENT OF TOMMY ESCARCEGA TO THE MENTAL HEALTH
COMMISSION

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Ms. Escarcega has an investment in the community advocating and organizing and is prepared to contribute to helping others.

WHEREAS, the Mental Health Commission at its July 22, 2021 meeting recommends appointment of Tommy Escarcega.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Tommy Escarcega as a representative of the Special Public Interest, Consumer category, to complete her first-term ending September 28, 2024.



BEN BARTLETT

CITY COUNCILMEMBER, DISTRICT 3

ACTION CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor)
 and Councilmember Terry Taplin (Co-Sponsor)
 Subject: Predevelopment Allocation, Ashby Recreation and Community Housing
 (ARCH) Consortium

RECOMMENDATION

Refer to staff to work with the Ashby Recreation and Community Housing (ARCH) Consortium to develop a planning grant for the Ashby BART East Parking Lot.

POLICY COMMITTEE RECOMMENDATION

No final action was taken by the Budget & Finance Committee. The item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

BACKGROUND

A joint non-profit housing and recreation proposal is being proposed for the BART lot east of the Ed Robert's Campus (ERC). The proposal, ARCH (Ashby Recreation and Community Housing) envisions a state-of-the-art recreation facility coupled with deeply affordable housing. The partners are BORP (Bay Area Outreach & Recreation), EBSHC (East Bay Supportive Housing Collaborative) and the ERC. ARCH has a managing developer for the entire site and is contacting non-profit housing developers.

ARCH will be a destination for the Bay Area's disabled community providing a fully adaptive recreation center, including a warm pool, all also available to the public. This will be combined with a deeply affordable housing complex for those living with mental illness, those with physical disabilities, and persons who are homeless or at risk of homelessness." On-site services will be included as needed. The housing complex will provide, as feasible, a right of return for displaced South Berkeley residents.

RECREATIONAL COMPONENT: Bay Area Outreach & Recreation Program (BORP) has 45 years of providing adaptive sports and recreation for people with physical disabilities in the East Bay. We are committed to leading a partnership of individuals and organizations to develop a facility that will provide the disability community with reliable and permanent opportunities for fitness and recreational activities. Situated next to BART and the Ed Roberts Campus, and built using universal design and green building principles, the facility will leverage public transit and existing services to provide broad access to the disability community.

The envisioned complex will be more than an athletic facility or recreation center; it will be a community hub, providing an inspirational environment for individuals with disabilities, offering regular opportunities for fitness, wellness, recreation, enjoyment and competition. The opportunity to merge with affordable housing only strengthens our vision. Recognizing the tremendous need for increased recreational programming for

people with disabilities, the Wayne & Gladys Valley Foundation has generously made a \$5 million-dollar matching grant commitment to the BORP project.

HOUSING COMPONENT: The recreational structure will be surrounded by deeply affordable housing, the need for which has never been greater. Aside from our general housing crisis there is a critical shortage of homes for those with disabilities and mental illness. Board and Care homes have historically provided housing for the mentally ill and are closing at an alarming rate. A “slice” of the ARCH housing will serve this population and provide staff and services for the special needs residents.

The number of housing units, their configuration, height and bulk, is to be determined and will evolve as the zoning and agreements between the City and BART are finalized. The EBSHC envisions between 50 to 100 units of completely universal design. It is too early in the BART/City process to predict further. Funds from a variety of sources will be needed: Conventional financing, Section 8, and every government and private source will be pursued--as is often the case with non-profit endeavors.

ACTIVITIES

ARCH members have been actively engaged in efforts to prevent homelessness and influencing critical policy decisions. In 2020 EBSHC worked successfully with Assemblyman David Chiu and State Senator Nancy Skinner to pass AB 2377, which requires Board and Care facilities to give the counties and cities in which they are located 6-month notice before closure, and local government the first opportunity to offer to purchase. Having stable and affordable living places, with supportive services when needed, is key to solving the problems of homelessness in our community.” A City of Berkeley predevelopment allocation will enable ARCH to create feasibility and architectural scenarios, assemble research and background materials, all necessary to apply for various funding from County, State and Federal sources and to respond to calls for proposals.

CURRENT SITUATION

The push for affordable housing has been growing in the past few years. In September 2018, California authorized BART to construct housing on its property in order to address the housing crisis. Since then, there have been ongoing discussions between community members and city officials to clarify the planning process and provide a unified vision for how to best use the land. In December 2020, the City passed the Adeline Corridor plan, which aims to transform South Berkeley’s housing landscape through the creation of affordable housing. To build off of this momentum, the City should explore the feasibility of ARCH.

RATIONALE FOR RECOMMENDATION

ARCH provides an opportunity to infuse recreational activities with housing. Ultimately, its goals align with the City’s plans to expand access to affordable housing and, therefore, should be explored.

FISCAL IMPACTS OF RECOMMENDATION

To be determined by staff.

CONTACT PERSON

Councilmember Ben Bartlett
James Chang

510-981-7130
jchang@cityofberkeley.info



Office of the Director
of Police Accountability

ACTION CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board and
Office of the Director of Police Accountability

Submitted by: Katherine J. Lee, Interim Director of Police Accountability

Subject: Approval of Interim Regulations for the Police Accountability Board and Office
of the Director of Police Accountability for Handling Complaints Against
Sworn Officers of the Police Department

RECOMMENDATION

Approve Interim Regulations to be used by the Police Accountability Board and Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II). The City Council is asked to choose between the Board's modified proposal, conditioned upon City Attorney approval, or the Interim Director's preferred version.

SUMMARY

Ballot Measure II, passed in November 2020, amended the City Charter to establish a Police Accountability Board (Board) and Director of Police Accountability (Director) to perform civilian oversight of the Berkeley Police Department. (Measure II was codified as City Charter Article XVIII, Section 125 [Attachment 1].) The Board and the Office of the Director of Police Accountability became operational in July 2021, and need procedures in place to receive and process complaints from members of the public alleging misconduct against Berkeley police officers. Because establishing a permanent set of policies and procedures will take several months, Interim Regulations are needed so that complaint processing may continue. Under Section 125(13)(c) of the City Charter, the City Council must ratify rules of conduct governing the Board's conduct of business.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Several complaints alleging police misconduct have been filed with the Office of the Director of Police Accountability since it began operations on July 1, 2021. Despite the fact that no regulations have been adopted, the Berkeley Police Department and its sworn members have been cooperating with the Office of the Director in good faith in

the handling of these complaints: the BPD has responded to requests for police reports and body-worn camera footage related to the incidents in question, and subject officers and witness officers have appeared for interviews by the DPA Investigator.

To ensure that Interim Regulations were formalized as quickly as possible, the Interim Director agendaized for the first meeting of the Police Accountability Board the establishment of a Regulations Subcommittee. The Subcommittee was formed, and had time to meet once to consider Interim Regulations proposed by the Interim Director. The Subcommittee modified the proposed draft in significant ways, however. The Board approved the Subcommittee's proposal with a modification to one provision.

Because some provisions of the Board's proposal could trigger an obligation to meet-and-confer with the Berkeley Police Association, it is unknown whether the Office of the Director will be able to continue conducting its investigations of complaints against officers if the Board's proposed Interim Regulations are adopted.

BACKGROUND

Overview

The purpose of the Charter amendment creating the Police Accountability Board and Director of Police Accountability is promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide for community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. The Board replaced the Police Review Commission and created a new position, the Director of Police Accountability.

The Charter amendment language was the culmination of a lengthy meet-and-confer process between City staff and the Berkeley Police Association, who bargained in good faith over the impacts of the proposed Charter amendment.

Under the Charter amendment, the functions of the new Board and Director were to go into operation no later than January 1, 2022. Under Resolution No. 69,531-N.S., the City Council directed that the functions, duties, and responsibilities of the Board and Director be implemented by July 1, 2021, six months earlier than the timeline set forth in the Charter amendment. The Office of the Director of Police Accountability became operational on July 1, 2021, with Police Review Commission staff serving as interim staff of the new Office. The Mayor and City Councilmembers appointed Police Accountability Board members on June 1, 2021, and the Board held its first meeting on July 7, 2021.

Interim Regulations Proposed by Interim Director of Police Accountability

Under Section 125(18)(a) of the Charter amendment, the Director and Board shall adopt regulations for handling complaints filed by any member of the public alleging misconduct by sworn employees of the Police Department. However, it will take time for the Board to develop permanent regulations due to their detailed nature. For this reason, the Interim Director developed proposed Interim Regulations so that the Office of the Director of Police Accountability could expeditiously commence investigations on complaints filed before a complete set of permanent regulations is finalized. [Attachment 2, before redlines.]

The Interim Director's proposal implements the new provisions and procedures put into place by the Charter amendment. Among the most significant are:

- **Timeframe.** The time to complete investigations and notify a sworn officer of discipline is 240 days, instead of the previous 120-day limit.
- **Standard of proof.** The standard of proof applied in determining whether a sworn officer can be charged with committing misconduct is "preponderance of the evidence," rather than the more stringent "clear and convincing evidence."
- **Findings and recommendations; hearings.** For cases filed with the Office of the Director of Police Accountability, following an investigation, the Director will present to the Board investigative findings and, if warranted, disciplinary recommendations; in certain cases, a recommendation on the level of discipline will be made. The Board then decides whether to accept the Director's recommendation or hold a confidential personnel hearing. The findings and recommendations of the Director or the Board are sent to the Chief of Police, who may agree or disagree. If the Chief disagrees, a process for the Director to request City Manager review follows.
- **Review of Internal Affairs (IA) investigative record if complainant objects.** For cases filed with the Berkeley Police Department and not the Office of the Director, a complainant may contest a finding other than a "sustained" finding on a misconduct allegation to the Director. The Director may dismiss the objection or convene a review panel of the Board to review IA's investigative record. The Board may dismiss the case, agree with IA's decision, or disagree with IA on certain grounds. If the Board disagrees with IA, the Chief may send a report to the City Manager, who will make a final decision.

As the Charter amendment does not address many of the details of the process for handling complaints from the public, the Interim Director recommends for the most part that many of the provisions of the former Police Review Commission's Regulations be used, to the extent they are not inconsistent with the Charter amendment. The PRC Regulations are the product of periodic negotiations with the Berkeley Police Association over many years.

Police Accountability Board Revisions

At its first meeting, the Police Accountability Board established a Regulations Subcommittee. This Subcommittee met on July 28, 2021, to consider the Interim Regulations proposed by the Interim Director. [Attachment 2. Redlines show Board's changes to Interim Director's proposal.] In addition to her proposed draft, the Interim Director submitted to the Subcommittee a memorandum with an overview of her work [Attachment 3] and a copy of the Police Review Commission Regulations, annotated for reference [Attachment 4]. The Subcommittee approved the recommended Interim Regulations in large part, but decided to enact three significant changes. The full Board, at its August 4, 2021 meeting, accepted the Subcommittee's recommendations, except that it modified one of the changes. Other, minor changes were made for clarity, as were the Interim Director's corrections to her own erroneous cross-references.

The Board's major changes to the proposed Interim Regulations are as follows:

1. Expanding who may file a complaint. Formerly limited to "aggrieved parties" – those directly affected by alleged police misconduct, the Board proposes that eyewitnesses to alleged misconduct be allowed to file complaints. The Board further expanded their own ability to initiate an investigation, to do so upon a vote of five Board members. Previously the Board could initiate an investigation only in cases involving a death or if no complainant was available to file a complaint. (Interim Regs., Sections I.A.8 and II.A.2.)
2. Extending the filing deadline. The proposed Interim Regulations provide for a 90-day time limitation for filing complaints and a late-filing period, for those who can show good cause for not filing earlier, for complaints filed between 91 and 180 days. The Board instead proposes a 180-day filing period, with no provision for filing after that date. (Interim Regs., Section II.A.3.)
3. How testimony is taken at hearings. The procedures the Interim Director proposed adhere to the process used by the Police Review Commission. At hearings, the complainant must answer questions from the Board and the subject officer or their representative, but is then excused from the hearing. The complainant and their representative are not allowed to question the subject officer or even to be present while the subject officer testifies and is questioned by the Board. These provisions were enacted as a result of the Berkeley Police Association's successful lawsuit against the City (*Berkeley Police Association v. City of Berkeley* (2008) 167 Cal.App.4th 385) that required the PRC's investigative records and hearing process to comport with the Public Safety Officers Procedural Bill of Rights Act ("POBRA") and confidentiality provisions of Penal Code section 832.5, 832.7, and 832.8.

The Board revised the Interim Director's proposal to place the complainant and subject officers on equal footing with respect to asking questions and being present during the hearing. (Interim Regs., Section II.I.6.) However, the Board understands that the City Attorney's opinion is needed regarding whether the Board's proposal comports with state law and case law. The Interim Director has sought the City Attorney's legal advice on this matter, which is expected to be completed by the time Council is considering this item.

The Board voted unanimously to recommend that the Council approve the Interim Regulations as shown on Attachment 2 (with redlines), with its recommendation of the changes in how testimony is taken conditioned on the City Attorney's opinion that they are lawful. M/S/C (Calavita/Leftwich): Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey; Noes – None; Abstentions – None; Absent – None.

The Interim Director respectfully disagrees that the above three major changes should be approved at this time, and accepts all other modifications to the draft that were approved by the Board.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental or climate impacts.

RATIONALE FOR RECOMMENDATIONS

Board's rationale

Regarding expanding the group of people who may file, the Board points out that other civilian oversight agencies allow eyewitnesses to misconduct to file complaints. Additionally, this is a "best practice" according to the National Association for Civilian Oversight of Law Enforcement (NACOLE).

As for the timeline for filing complaints, the Board believes that 90 days is too short, and referenced a 180-day timeline typical in the federal system. The Board also believes that the current 91- to 180-day deadline for a "late-filed" complaint, which the Board may accept upon the complainant's showing of good cause for filing late, is virtually a de facto 180-day deadline, save for the obligation to explain the reason for the lateness.

Finally, with respect to complainants' presence throughout the hearing and ability to question the subject officer, the Board feels strongly that maintaining the former Police Review Commission process is lopsided and unfair to complainants, and that state law and case law could be interpreted differently than they were in 2007 and 2008.

Overall, the Board believes that, as a new body created with overwhelming support of Berkeley voters, it need not be beholden to the rules of the body it replaced, and should instead be responsive to the community's desires without delay.

Interim Director's rationale

The Interim Director does not disagree with the sentiment behind the three major changes proposed by the Board, and understands the eagerness to make the process more accessible and friendly to complainants. However, if any of the major changes are subject to meet-and-confer with the Berkeley Police Association, that will delay adoption of Interim Regulations, and could cause a delay or temporary suspension of investigations of pending and future complaints filed with the Office of the Director.

ALTERNATIVE ACTIONS CONSIDERED

Two alternatives are being presented for Council's consideration.

CONTACT PERSON

Katherine J. Lee, Interim Director, Office of the Director of Police Accountability
(510) 981-4950

Attachments:

- 1: City Charter, Article XVIII, Section 125
- 2: Proposed Interim Regulations
- 3: July 20, 2021 Memorandum from Interim Director Lee to Police Accountability Board Regulations Subcommittee, Lt. Dan Montgomery (BPD), and Sgt. Scott Castle (BPD) regarding Draft Interim Regulations
- 4: Annotated PRC Regulations, dated April 4, 2018.

**CHARTER OF THE CITY OF BERKELEY
Section 125, Article XVIII**

**ARTICLE XVIII
POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE
ACCOUNTABILITY**

Section 125. Police Accountability Board and Director of Police Accountability

(1) Establishment and purpose.

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

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

(2) Definitions.

The following definitions apply to this Article:

(a) "Commissioners' Manual" refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) "Complainant" shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Accountability Board, or the Police Department.

(c) "Director of Police Accountability" or "DPA" refers to an individual fulfilling the police oversight role established pursuant to section 1 of this Article.

(d) "Effective Date" shall be the date that the Secretary of State accepts and files this Article.

(e) "Police Accountability Board" or "Board" refers to the Police Accountability Board established in Section 1 of this Article, which shall be the successor agency to the Berkeley Police Review Commission in accordance with Section 27.

CHARTER OF THE CITY OF BERKELEY
Section 125, Article XVIII

(f) Except as otherwise specifically provided, all references in this Article to California code sections shall refer to such Code sections as they may be amended or re-codified from time to time.

(3) Police Accountability Board powers and duties.

(a) The Police Accountability Board has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations;

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

(5) To access records of City Departments, compel attendance of sworn employees of the Police Department, and exercise the power of subpoena as necessary to carry out its functions;

(6) To adopt rules and regulations necessary for the conduct of its business; and

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Accountability Board shall limit the City Council's, Chief of Police's or City Manager's authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.

CHARTER OF THE CITY OF BERKELEY
Section 125, Article XVIII

(c) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

(4) Independent agency; budget authority and allocation.

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Accountability Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Accountability Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

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(5) Composition of Police Accountability Board; eligibility.

(a) The Police Accountability Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

(1) Be a resident of the City;

(2) Be at least 18 years old;

(3) Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and

(4) Be fair minded and objective with a demonstrated commitment to community service.

(b) Desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations.

(c) All appointees to the Board shall be subject to background checks before final appointment.

(6) Board member selection.

(a) Candidates for the Board must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the City Council.

(b) The City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for the position of Board member, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.

(7) Terms; term limits.

(a) Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two years.

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(b) To the extent not in conflict with subsection (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding Board member term limits and the effect of interruption in service, apply.

(8) Conflicts of interest and Avoiding Bias.

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Accountability Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

(9) Expiration of term; termination; leaves of absence; removal.

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits, as provided in Section 7.

(b) The term of a Board member who fails to remain eligible to serve on the Board (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

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(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Board members, apply to the Police Accountability Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

(10) Board Chairperson and Vice-Chairperson.

(a) The Board shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

(11) Board member stipends.

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

(12) Board member training; At will Status; Oath of Maintaining Confidentiality.

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights Act;

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(5) Police Department operations, policies, practices, and procedures;
and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by a two-thirds vote of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

(13) Board meetings; quorum; rules of procedure; subcommittees.

(a) At the beginning of each calendar year, the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.

(b) A majority of appointed Board members constitutes a quorum to conduct business and take any action.

(c) The Board shall establish rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment and removal of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners' Manual.

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(14) Office of the Director of Police Accountability.

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights;
- (5) Police Department operations, policies, practices, and procedures;

and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Accountability Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the Police Accountability Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures, and personnel rules of the City and Berkeley Police Department.

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(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Accountability Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work of the Police Accountability Board and the Office of the Director of Police Accountability.

(15) Legal counsel.

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

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(16) Board reports.

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

- (1) A description of the Board's activities during the year, including:
 - i. A summary of the number, type, and disposition of complaints filed with the Board;
 - ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;
 - iii. Policy complaints undertaken; and
 - iv. Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Accountability Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department, and the Police Department General Order on Fair and Impartial Policing.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

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(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

(17) Policy review and approval.

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

(18) Complaints filed with the Director of Police Accountability.

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Accountability Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

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(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(f) No City employee, officer, official or member of the Police Accountability Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Accountability Board, and to each identified sworn employee of the Police Department against whom the complaint has been filed.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Accountability Board and, if warranted, the Board may agree to hold a personnel hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Accountability Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

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(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Accountability Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Accountability Board, if the Chief of Police and Director of Police Accountability or Police Accountability Board are in accord, the Chief of Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Accountability Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Accountability Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

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(19) Review of complaints filed with the Berkeley Police Department.

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is "not sustained", "unfounded" or "exonerated", within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Accountability Board will convene to conduct a review based upon the investigative record provided by the Department; or

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ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Accountability Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Accountability Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police.

(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager, Director of Police Accountability, and the Chief of Police, as applicable.

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(20) Access to records of City departments; compelling testimony and attendance.

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Director of Police Accountability, Police Accountability Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Accountability Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Accountability Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

(21) Advice regarding Police Department budget.

The Board is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

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(22) Hiring of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

(23) Chief of Police or command staff to attend Board meetings.

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

(24) Berkeley Police Department written reports to the Board.

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, may prescribe. At least one report per year shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

(25) Contract negotiations.

The City Manager shall inform the Police Accountability Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

(26) Commendation program.

The Board shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to members of the public, the community at large, or the Department.

(27) Transition from Police Review Commission to Police Accountability Board.

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022

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(b) To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

(c) The Police Review Commission staff shall transfer all Police Review Commission files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Accountability Board.

(28) Review of processes.

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

(29) Enabling Legislation.

The Board may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

(30) Repeal of Ordinance No. 4,644-N.S., as amended.

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Accountability Board established by this Article.

(31) Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Police Accountability Board Office of the Director of Police Accountability

Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II)

Preamble

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

I. GENERAL PROVISIONS

A. Definitions

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

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4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: ~~An aggrieved party~~ A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODP staff will likewise have access to

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such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

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II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

A. Initiating a complaint

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. ~~Only an "aggrieved party"ies, as well as eyewitnesses to alleged police misconduct,~~ may file a complaint, ~~except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate.~~ Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within ~~180~~ days of the alleged misconduct, except that the ~~180~~ days shall be tolled if:
 - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
 - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
 (PRC Reg. Sec. II.A.2.)
- ~~4. Late-filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)~~
- ~~5.4.~~ Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be

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submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

6-5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPA is notified that a complainant or subject officer is represented, then the ODPA shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

B. Mediation

1. Election

- a. ODPA staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPA staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPA staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

C. Complaint investigation

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1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
 - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPA shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPA shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
 - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPA shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPA staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
 - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

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- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
 - I. The original Communications Center tapes relevant to the complaint.
 - II. All police reports, records, and documentation, including body-worn camera video.
 - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act¹ ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

D. Pre-hearing complaint disposition.

1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.

¹ Government Code Sec. 3300 et seq.

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- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPA staff to timely complete its investigation, as set forth in Section II.C.1.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a regularly-scheduled meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

E. Initial submission and consideration of investigative findings and recommendations.

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec.

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125(18)(i.) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
 - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
 - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
 - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
 - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)

4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
 - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II. ~~OM.2~~.
 - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

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2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

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G. Board member impartiality; recusals; challenges

1. Conduct.
 - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
 - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
 - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendaize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
 - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
 - i. a familial relationship or close friendship with the complainant or subject officer;
 - ii. witnessing events material to the inquiry;
 - iii. a financial interest in the outcome of the inquiry;
 - iv. a bias for or against the complainant or subject officer.

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b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
 - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
 - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
 - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
 - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

H. Continuance requests; other pre-hearing motions

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or

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witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation,: expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)

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- ~~6. Presentation of findings and recommendations. The Director shall, outside of the presence of the complainant, complainant's representative, and witnesses, present the investigative findings and a recommendation of discipline, if any; and the level of discipline in appropriate cases. (Derived from Art. XVIII, Sec. 125(18)(i).)~~
- ~~7.6.~~ Taking testimony at the hearing.
- a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; ~~b~~c) the subject officer or his or her representative may ask questions; ~~e~~d) Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7., modified)
 - b. ~~The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)~~
 - c. The subject officers and any witness officers will be called into the hearing room to testify separately. The complainant and their representative may be present during their testimony. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Questioning will then proceed as follows: 1. Subject officers' representatives may ask questions. 2. Board members may ask questions. The officer may then be questioned by 2 Board members unless the officer waives this requirement. 3. Complainant or their representatives may ask questions. 4. Board members may ask follow up questions. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
 - d. ~~The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.) All except Board members and staff will then be excused from the hearing room.~~
- ~~8-7.~~ Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

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9-8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

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Section II.J.

J. Evidence

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
 - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
 - b. Oral evidence shall be taken only under oath.
 - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
 - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
 - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
 - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
 - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
 - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

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K. Deliberation and Findings

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPA staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.~~OM.2~~. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
 - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
 - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
 - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.~~GE~~.5.a. above, or from the Hearing Panel under Section II.~~MK~~.3.b. above, the Chief of Police shall take one of the following actions
 - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
 - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.OM.2. (Art. XVIII, Sec. 125(18)(m).)

M. Time limits; extensions.

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.**A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

B. Procedure

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)

Section III.B.

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
 - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
 - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)
4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
 - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
 - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
 - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)
5. The Review Panel must, within 45 days of the date the Director accepts an objection:
 - a. Dismiss the complainant's objection; or
 - b. Issue a report agreeing with the Chief's determination; or
 - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)
6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief,

Section III.B.

and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)

8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

IV. INFORMAL COMPLAINTS

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPa staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

V. AVAILABILITY AND AMENDMENT OF REGULATIONS

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

July 20, 2021

To: Police Accountability Board Regulations Subcommittee,
Lt. Dan Montgomery (BPD), Sgt. Scott Castle (BPA)

From: Katherine J. Lee, ^{KA} Interim Director of Police Accountability

Re: Draft Interim Regulations for Handling Complaints Filed with the PAB/ODPA
Against Sworn Members of the Police Department

Attached for your review are draft Interim Regulations governing the handling of complaints filed with the Police Accountability Board / Office of Director of Police Accountability. These draft regulations are intended to allow the ODPA and PAB to perform investigations, hold hearings, and conduct reviews, pending adoption of permanent regulations.

These draft regulations reflect a merger of the provisions of City Charter Article XVIII, Section 125 (aka Measure II) and the Police Review Commission (PRC) Regulations for Handling Complaints Against Members of the Police Department (latest edition, dated April 4, 2018) that do not conflict with Measure II. I've included a copy of Charter Article XVIII, and an annotated copy of the PRC Regulations, with cross-references to where sections were placed in the draft Interim Regulations and showing which sections were omitted.

Specific notes:

1. **The most important aspect of your review is to carefully study Draft Sections E, I, K, L, and M**, which implement Charter Art. XVIII, Sections 125(18) (i), (j), (k), and (m), and 125(19) (e) through (i). These reflect the new procedures of the Charter amendment. Charter Section 125(18), especially subsection (i), is somewhat difficult to plow through, so I created a flowchart to help visualize the process. (Flowchart on Section 19 to come.)
2. Confidentiality provisions, scattered in several places in the PRC Regs, are gathered in one section. (Draft Sec. I.B.)
3. The following decisions, formerly in the hands of the Commission or the Board of Inquiry, have been put in the hands of the Director for efficiency's sake. This is also consistent with a bit more authority being placed in the hands of the Director under Measure II:

Draft Interim Regulations
July 20, 2021
P. 2 of 2

- a. Challenge to Board member (Draft Sec. II.I.3.) – Note also that the PRC Regulations provided for the PRC Officer to poll the other two Commissioners, which violates the Brown Act. (PRC Reg. VI.C.2.d.)
- b. Request for continuance (Draft Sec. II.J.)

General notes:

1. Police Accountability Board, Board member, Office of the Director of Police Accountability, and Director, have replaced Police Review Commission, Commissioner, PRC staff and PRC Officer, respectively.
2. I have removed all provisions relating to policy complaints. These are best left to a separate document, or perhaps incorporation into the Board's Standing Rules.
3. "Business days" have been converted to calendar days in almost all instances. I thought going back and forth between business and calendar days in the PRC Regulations was unnecessary and confusing.

This is a lot of information to go through, and I welcome any questions or concerns you may have. Subcommittee members can discuss with me without fear of violating the Brown Act; I just cannot transmit your thoughts to other subcommittee members until we're in a meeting.

Attachments:

- Draft Interim Regulations, dated July 20, 2021
- Annotated PRC Regulations, dated April 4, 2018
- City Charter Article XVIII, Section 125
- Flowchart, Section 125(18)

CITY OF BERKELEY

REGULATIONS

**For Handling Complaints Against
Members of the Police Department**

Effective April 4, 2018

POLICE REVIEW COMMISSION

POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, First Floor, Berkeley, CA 94704
Tel: 510.981.4950 • TDD: 510.981.6903 • Fax: 510.981.4955
e-mail: prc@cityofberkeley.info • website: www.cityofberkeley.info/prc/

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in left margin are
to DRAFT
Interim
Regulations dated
7-20-2021

BERKELEY POLICE REVIEW COMMISSION

**REGULATIONS FOR HANDLING COMPLAINTS AGAINST
MEMBERS OF THE POLICE DEPARTMENT**

(Adopted May 13, 1975. Amended August 8, 1984; April 30, 1990; May 26, 1993;
November 7, 2007; July 14, 2010; July 9, 2014; March 28, 2016; April 4, 2018)

PREAMBLE

Revised

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations.

Accordingly, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley, as long as they are consistent with the powers granted to it by the enabling Ordinance, current California case law, the Public Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300-3319), and Penal Code sections 832.5 and 832.7, governing the confidentiality of peace officer personnel records.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it shall not be disclosed to any unauthorized person or organization, and it is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law.

I. GENERAL

A. Application of Regulations - Confidentiality of Complaint Proceedings

I.B.

The following regulations govern the receipt and processing of complaints submitted to the Police Review Commission (PRC or Commission). All Board of Inquiry (BOI) and Commission proceedings relating to the investigation of an individual complaint against an officer shall be closed to the public. Records of these investigations shall be treated as confidential and will not be disclosed to members of the public. Any

Section I.A.

public records included in, or attached to, any investigative reports shall remain public records, and copies shall be made available to the complainant and subject officer.

I.A.
(substantive provisions removed from definitions.)

B. Definitions.

The following definitions shall apply in these regulations:

1. Administrative Closure: Complaint closure before a BOI hearing. [Administrative closure requires a majority vote of the Commissioners, in closed session, at a regularly scheduled meeting, and does not constitute a judgment on the merits of the complaint.] See II.D.1.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct. Only an aggrieved party may file a complaint, except that a complaint by an aggrieved minor must be filed by the minor's parent or guardian.] See II.A.2.
3. Allegation: A specific assertion of police misconduct by a complainant or the Commission.
- ~~4.~~ Board of Inquiry (BOI): Three Commissioners impaneled to hear and render findings on complaints; ~~a~~ BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.] replaced by Hearing Panel
- ~~5.~~ BOI Hearing Packet: Evidence and information for the hearing, issued no later than 10 business days before the scheduled hearing.
- ~~6.~~ Commissioner: A resident of Berkeley appointed by a City Council member or the Mayor to serve on the PRC.
7. Complaint: A declaration that alleges misconduct by a Berkeley Police Department (BPD) employee [(including employees of the Public Safety Communications Center) while engaged in official duties.] deleted
8. Complainant: Any aggrieved party who files a complaint with the PRC.
9. Duty Command Officer (DCO): A sworn BPD officer designated by the BPD's Chief of Police to appear at a Board of Inquiry and answer procedural questions clarifying BPD policy.
- ~~10.~~ Findings Report: Summary of the BOI's findings, provided to the City Manager and the Chief of Police.
11. Mediation: A process of reaching a mutually agreeable resolution to a complaint, which is facilitated by ~~a~~ local mediation agency.] revised
- ~~12.~~ Policy Complaint: A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised.
13. PRC Investigator: A person employed by the City Manager and assigned to the PRC to investigate complaints.
- ~~14.~~ PRC Officer: A person employed by the City Manager and assigned to the PRC as the office administrator and secretary to the Commission.
- ~~15.~~ Report of Investigation: Report issued within 80 calendar days of the filing date of the complaint.

Section I.B.

16. Subject Officer: A sworn BPD officer, [or other BPD employee] against whom a complaint is filed.
17. Summary Dismissal: Dismissal of any or all of the allegations in a complaint prior to the start of a BOI hearing; requires a unanimous vote of the BOI Commissioners, and constitutes a judgment on the merits.
18. Toll: Stop the running of the clock/investigation timeline.
19. Witness Officer: A sworn BPD officer, [or other BPD employee,] who has personal knowledge of events described in a complaint, but is not the subject officer.

II. INITIATING THE PROCESS

A. Filing a Complaint

II.A.1.

1. Complaint Form

Complaints and policy complaints must be filed on a form provided by the PRC and, except as provided in section 3, signed by the complainant. Non-policy complaint forms will include information about the difference between mediation and an investigation; and language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint. Non-policy complaint forms will conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board of Inquiry shall be given under oath."

II.A.3.,
II.A.4.

2. Filing Period

- a. To be considered timely, a complaint must be filed within 90 calendar days of the alleged misconduct, except that the 90-day period shall be tolled when a complainant is incapacitated or otherwise prevented from filing a complaint. Any complaint filed after 90 calendar days of the alleged misconduct shall be dismissed, unless accepted as a late-file. A complaint filed between 91 and 180 calendar days of the alleged misconduct must include a late-file form, and can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to file in a timely fashion. The PRC staff will submit a late-file to the Commission for a vote in closed session at the next regularly scheduled meeting. Any complaint filed after 180 calendar days of the alleged misconduct will not be accepted.
- b. If a person is the subject of a criminal proceeding related to the subject matter of the complaint, the time for that person to file a complaint shall be tolled until the criminal matter has been adjudicated or dismissed.

II.A.2.

3. Unavailability of Complainant

If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate.

Section II.A.

II.A.5.

4. Sufficiency of Complaint

a. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory shall be referred by the PRC staff to the Commission for administrative closure at the next regularly scheduled meeting, provided there is sufficient time to give the complainant notice (see Sec. V.A.2.), and before the Notice of Allegations is issued. If a majority of the Commissioners agree, the case will be closed; if not, the Notice of Allegations will be issued within 10 calendar days after the date of the vote rejecting the PRC Officer's recommendation for closure, unless the complainant has elected mediation. This Section II.4.a. does not apply to complaints initiated by the Commission under Section II.A.3.

Policy complaints
not included in
Interim Regs.

b. [Policy complaints will be brought to the Commission for discussion or action within 30 calendar days of filing or at the next regularly scheduled meeting of the PRC if the 30 days has expired. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.]

II.A.6.

5. Right to Representation

Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but an attorney is not required. If PRC staff is notified that a complainant or subject officer is represented by an attorney, PRC staff shall thereafter send copies of any materials and notification provided to the complainant or the subject officer(s) to their representative.

B. Mediation

II.B.1.,
modified

1. Election

- a. PRC staff shall provide the complainant with information about the option to select mediation. The complainant may elect to enter into mediation up until notice of the Board of Inquiry hearing has been issued. PRC staff shall make every effort to ensure complainants understand the mediation option.
- b. If the complainant elects mediation, the PRC staff shall provide the subject officer with a copy of the complaint, if not previously provided, and notify him or her of the complainant's election, within 5 business days.
- c. If the subject officer agrees to mediation, she or he shall notify PRC staff within 10 calendar days of being informed of the complainant's election. A subject officer who agrees to mediation must agree to toll the City's 120-day disciplinary deadline should the officer later withdraw from mediation before the start of the mediation session.
- ~~x~~. If notice of a Board of Inquiry hearing has been issued, the hearing shall be cancelled upon both parties agreeing to mediation.

Section II.B.

- e. Once both parties agree to mediation, the complainant no longer has the option to proceed to a Board of Inquiry hearing unless the subject officer withdraws from mediation.

2. Notice of completion

After receiving notice from the mediator that a mediation has concluded, PRC staff shall close the case and inform the Commission.

III. COMPLAINT INVESTIGATION

A. Priority of Investigations

Recognizing that the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association places a 120-day limit on the imposition of officer discipline, it shall be the priority of staff in those cases where a BOI is convened, that the BOI findings be issued within 105 days of the filing of the complaint.

II.C.3.

B. Notice and Availability of Complaint

1. Notice of Allegations

Within 20 business days of the date a timely-filed complaint is received at the PRC office, unless it is submitted to the Commission for administrative closure or the complainant elects mediation, PRC staff shall prepare a Notice of Allegations. The Notice of Allegations shall be sent in hard copy or electronically, to the complainant, the Chief of Police and/or BPD Internal Affairs, and, by delivery to the BPD, each identified subject officer. [If the Notice of Allegations is not issued in the time required, PRC staff shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.] ~~deleted~~

[II.C.2,
II.C.3.]

X. Availability of Complaint

The complaint shall be available at the PRC office, [and a copy shall be provided to the subject officer with the Notice of Allegations] PRC staff shall maintain a central register of all complaints filed.

II.C.5.

C. Investigation Process

1. Nature of Investigation

The investigation of a complaint shall consist of conducting recorded interviews with the complainant, the subject officer(s), and any witnesses to the incident that gave rise to the complaint;¹ collecting relevant documentary evidence, including, but not limited to: police reports and records, photographs, and visual or audio records; and issuing a Notice of Allegations and Report of Investigation.

¹ Recordings of interviews shall be kept for 100 days or until the Board of Inquiry's Findings Report has been provided to the City Manager, whichever is later.

Section III.C.

2. Time for Investigation

- ~~X~~ PRC staff shall make every effort to complete the Report of Investigation within 80 days of filing.
- ~~X~~ If the Report of Investigation is not completed within 80 days, PRC staff shall make an oral report to the full Commission in a closed session at its next regularly scheduled meeting.
- ? c. The investigation must be completed within one year, unless a Government Code Sec. 3304(d) exception applies.
- ? d. If the investigation is not completed within one year, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the case shall be closed, unless the Commission determines that a Government Code Sec. 3304(d) exception applies.
- ? e. If a Government Code Sec. 3304(d) exception to the one-year limitation period applies, the BOI Hearing Packet shall state the applicable exception.

Unsure if one-year limit is applicable

3. Pending Criminal Action

If the complainant or the subject officer is the subject of criminal proceedings related to the matter of the complaint, the PRC shall not undertake an investigation until the criminal matter has been adjudicated or dismissed. All time limitations applicable to the processing of PRC complaints shall be tolled during the pendency of any such criminal proceedings. Within one week of the filing of the complaint, or as soon thereafter as possible, the PRC Officer shall determine the status and anticipated resolution of the criminal proceedings by communicating, in writing, directly with the District Attorney's Office.

II.C.1.a.

D. Interviews

II.C.8.

1. Conduct

Interviews should be conducted in a manner that will produce a minimum of inconvenience and embarrassment to all parties. BPD officer interviews must be conducted in compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3303. When possible, BPD employees should not be contacted at home, and others should not be contacted at their places of employment.

II.C.7.

2. Notice

PRC staff shall notify subject and witness officers at least 9 calendar days before a scheduled interview date by providing a hard copy and, when feasible, an electronic mail notification. An officer who is unavailable for an interview shall contact the PRC Officer or the Investigator immediately to state the reason for his/her unavailability.

II.C.8.

3. Exercise of Constitutional Rights

Subject officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit A). While all BPD employees have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the PRC regarding conduct and observations that arise in the course of their employment

Section III.D.

and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not be considered by the Commission in its disposition of a complaint.

E. BPD Reports

- See II.C.6. ~~1.~~ The PRC should receive un-redacted police reports from BPD once the PRC Officer has established and implemented security and chain of custody procedures that satisfy the City Manager and the Chief of Police. Police reports will be redacted when distributed to BOI Commissioners, but un-redacted reports will be available at the PRC Office for BOI Commissioners to review.
- II.C.6.b. 2. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
- a) The original Communications Center tapes relevant to the complaint.
 - b) All police reports, records, and documentation.
 - c) Names, addresses, telephone numbers, and statements of all witnesses.

~~F.~~ Report of Investigation

1. PRC staff shall assemble all relevant information in a confidential Report of Investigation. The Report shall list the allegations, provide a summary of the complaint, provide the applicable BPD, state or local rules and regulations, and include a copy of the interview transcripts.
2. Upon completion, the Report of Investigation shall be provided to subject officers, and any known representatives, with a copy to the Chief of Police and the Duty Command Officer.

IV. CONFIDENTIALITY OF PERSONNEL MATTERSI.B.1. A. Responsibilities of PRC Commissioners

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, no Commissioner shall disclose it to any unauthorized person or organization.

B. Conduct

- I.B.2,
I.B.4. 1. It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure.
2. At any proceeding in which confidential information was distributed to the Commissioners, each Commissioner shall return all confidential material to the PRC staff at the close of the proceeding or as soon thereafter as practicable.

Section V.

V. PRE-HEARING COMPLAINT DISPOSITION**A. Administrative Closure****II.D.1.a.****1. Grounds**

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- a) Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- b) Request for closure by complainant.
- c) Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- d) Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means (e.g. mediation)
- e) Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a Board of Inquiry hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- f) Failure to timely issue the Notice of Allegations, as set forth in Section III.B.1.
- g) Failure to timely issue the Report of Investigation, as set forth in Section III.C.2.b.
- h) Failure to timely complete its investigation, as set forth in Section III.C.2.d.
- i) A policy complaint that has been considered by the Commission.

II.D.1.a.**2. Procedure**

A complaint may be administratively closed by a majority vote of Commissioners during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the commission during closed session at this meeting and such notice shall be sent no later than 5 calendar days prior to said meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

A policy complaint may be administratively closed by a majority vote of Commissioners during open session at a regularly scheduled meeting.

II.D.1.c.**3. Effect of Administrative Closure**

Administrative Closure does not constitute a judgment on the merits of the complaint.

Section V.

II.D.2. B. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before a hearing. Upon receipt of a "no contest" response, the PRC Officer or Investigator shall refer the file and the response to the City Manager and the Chief of Police for appropriate action.

Ø. Waiver of Hearing

Either the complainant or the subject officer may request that findings be rendered without a hearing. If both the complainant and the subject officer sign a written waiver of their right to a hearing, a Board of Inquiry may issue findings based on interview statements and documentary evidence.

Replaced by Hearing Panels

[VI. BOARDS OF INQUIRY]

II.F.3,
II.I.5. A. Composition

A Board of Inquiry (BOI) shall consist of 3 Commissioners, who shall designate one of them to be Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of 6 Commissioners, the Commission shall sit as a Board of the whole, with a minimum of 6 Commissioners.

II.F.4. B. Designation

1. Obligation to Serve

Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the factual dispute to be heard. PRC staff will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period. A BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.

II.F.4. 2. Unavailability of BOI Member

If any member of a Board of Inquiry becomes unavailable, s/he shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to the subject officer. If a Commissioner is substituted within 7 calendar days of a Board of Inquiry, the subject officer will retain the right to challenge said Commissioner for cause under Section VI.B.4.C. below. The notice of challenge of a substituted Commissioner must be made at least 3 business days prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the hearing.

II.F.5. 3. Effect of Continuance

If a hearing is rescheduled due to the unanticipated unavailability of the complainant(s), the subject officer(s) or the complainant's or subject officer's attorney, the case may be reassigned to another Board of Inquiry. The Board composition shall not change once a hearing has been convened, however.

Section VI.

II.G.3.

C. Challenge of BOI Commissioner

1. Basis for Challenge

A Commissioner who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

- a) a familial relationship or close friendship with the complainant or subject officer;
- b) witnessing events material to the inquiry;
- c) a financial interest in the outcome of the inquiry;
- d) a bias for or against the complainant or subject officer.

2. Procedure

- a. Within 7 calendar days from the date of mailing of the Board of Inquiry hearing packet, which includes the names of the Commissioners constituting that Board, the complainant or the subject officer(s) may file a written challenge for cause to any Commissioner. Such challenge must specify the nature of the conflict of interest.
- b. The PRC Officer or his/her designee shall contact the challenged Commissioner as soon as possible after receipt of the challenge.
- c. If the Commissioner agrees, PRC Officer or his/her designee shall ask another Commissioner to serve.
- d. If the Commissioner does not agree that the challenge is for good cause, PRC Officer or his/her designee shall [poll the other members of the Board and, if both agree that the challenge is for good cause,] shall inform the challenged Commissioner and ask another to serve.
- e. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be part of the record of the complaint.

3. Replacement of Commissioners

Any Commissioner who is unable to serve for any reason shall be replaced by another Commissioner, except in cases involving a death.

D. Responsibilities of BOI Commissioners

1. Confidentiality

- a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.
- b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

[revised - poll is
Brown Act
violation]

I.B.2,
I.B.4

Section VI.D.

II.G.1.b.

2. Conduct

In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall: publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.

I.B.5.,
II.G.1.c.

3. Violation

- a. A violation of Sections VI.D.1. or VI.D.2. above, before or during a BOI shall automatically disqualify a Commissioner from a BOI.
- b. In addition, a Commissioner or PRC staff may agendize an alleged violation of Sections VI.D.1. or VI.D.2. for discussion and action at a regularly scheduled meeting. Any action adverse to a Commissioner requires a two-thirds vote of the Commissioners present. Such action may include: notice of the violation to the Commissioner's appointing City Councilmember; a communication to the City Council; or a prohibition from sitting on future BOIs for the remainder of the Commissioner's term.

~~E.~~ Function

The BOI members shall review the confidential Hearing Packet and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and advise the Chief of Police and the City Manager of its findings.

II.I.8.

F. Subpoena Power

The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

VII. HEARINGSA. Scheduling and Notice

II.F.2.

1. BPD Schedules

The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Hearings shall not be held on an officer's regular days off, scheduled vacation or any authorized leave of absence, except if subject officers in the same complaint do not share a common day on duty. In such cases, a hearing may be scheduled on an officer's regular day off, but not during a scheduled vacation or any authorized leave of absence. PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.

II.F.7.

2. Notice

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide written notice of the date, time and location of the hearing, and the composition of the Board of Inquiry, to the complainant, the subject officer(s), any representatives, civilian witnesses, witness officers, the BOI members and the Chief of Police.

Section VII.

B. Board of Inquiry Hearing Packet

See II.F.7.

No later than 10 business days before the hearing date, PRC staff shall provide a Hearing Packet to the BOI members, the complainant, the subject officer(s), any representative(s), any witnesses, the DCO and the Chief of Police.

1. The BOI Hearing Packet distributed to the BOI members shall contain:
 - a) The Report of Investigation referenced in Section III.F.
 - b) .Any supplemental evidence or analysis staff deems necessary.
 - c) A copy of the complaint, if not contained in the report of investigation.
 - d) Police reports and any other relevant documentary evidence, including evidence submitted by the complainant.
 - e) The PRC staff's recommendations, if any, concerning summary disposition or procedural matters.
2. The BOI Hearing Packet distributed to the subject officer(s), the officer's representative, the DCO, and the Chief of Police shall contain:
 - a) Any supplemental evidence or analysis staff deems necessary.
 - b) A copy of the complaint, if not included in the Report of Investigation.
 - c) Any evidence submitted by the complainant.
3. The BOI packet distributed to the complainant shall contain:
 - a) A copy of the complaint.
 - b) Police reports and any other non-confidential, relevant documentary evidence, including evidence submitted by the complainant.
 - c) A copy of the complainant's interview transcript.
4. Each witness shall receive a copy of his/her interview transcript.

C. Pre-Hearing Motions

II.H.2.

1. Newly Discovered Evidence and/or Witnesses

The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the PRC Officer or Investigator no later than 10 business days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. The PRC Officer or Investigator shall inform the BOI of the newly discovered evidence or witnesses as soon as possible.

The BOI shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and the PRC Officer or Investigator shall notify both the complainant and the subject officer of the Board's decision.

II.H.3.

2. Procedural Issues

The complainant and subject officer shall raise any procedural issues, by submitting them to the PRC Officer in writing, no later than 5 business days before the scheduled hearing date. Procedural issues can include, but are not

Section VII.C.

limited to, the expiration of the 1-year limitation period and/or whether an officer should testify.

3. Summary Dismissal

- a. After issuance of the BOI Hearing Packet, and upon the motion of the subject officer or its own motion, the BOI may summarily dismiss any or all of the allegations that it finds clearly without merit based on the evidence contained in the BOI Hearing Packet. A vote to summarily dismiss an allegation must be unanimous.
- b. A subject officer's motion for summary dismissal must be in writing and submitted no later than 7 calendar days before the date of the BOI Hearing. The BOI shall consider the motion either at a special BOI meeting or at the scheduled BOI hearing. Parties to the complaint shall be notified of the request for summary dismissal.
- c. The BOI may summarily dismiss, upon its own motion at a scheduled BOI hearing, any or all of the allegations.
- d. When the summary dismissal is being considered the BOI shall not hear arguments or ask questions of the parties to the complaint. Following public comment, the BOI shall excuse everyone, except PRC staff, from the meeting and deliberate. The BOI shall consider only the information included in the BOI Hearing Packet when making its decision on summary dismissal. The decision of the BOI will be announced orally and issued in writing.

4. Continuances

- a. A continuance may be granted by a [majority of the BOI.] In considering whether to grant such a continuance, the BOI members shall consider the reason for the request; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; previous continuance requests; and other relevant information.
- b. A continuance request shall be presented to the BOI as soon as the cause for continuance arises. Whenever possible, requests for continuance shall be considered at a specially convened meeting of the BOI. Such a meeting shall be convened in accord with existing procedures and regulations.
- c. A continuance shall not be granted in the absence of good cause.
- d. A request for continuance made within 3 business days of the hearing date shall not be granted unless the requesting party is unable to attend due to a personal emergency, or can demonstrate substantial prejudice if a continuance is denied.
- e. A continuance granted at the request of the subject officer shall toll any BPD disciplinary time period.

II.H.1., giving authority to grant continuance to DPA

Section VII.

D. Procedure

- II.I.1. 1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO shall be present for all but the Commissioners' deliberations.
- II.I.1. 2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel's presence at the hearing.
- II.I.2. 3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative.
- II.I.3. 4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained.
- II.I.4. 5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous.
- See II.I.6. ~~6.~~ The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them.
- II.I.7. 7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer's representative may be present during the complainant's and the civilian witnesses' testimony. The complainant may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) Commissioners may ask questions; b) the subject officer or his or her representative may ask questions; c) Commissioners may ask follow-up questions. After questioning is completed, the complainant will have up to 15 minutes to provide a summary of his/her case and/or closing statement.
- II.I.7. 8. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.
- II.I.7. 9. The subject officers and any witness officers will be called into the hearing room to testify separately. Any subject officers' representative(s) will be allowed to remain in the hearing room through the duration of all testimony. Each subject officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.
- II.I.9. 10. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The

Section VII.D.

burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.

II.J.

E. Evidence

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

1. Evidence shall be taken in accordance with the following provisions:
 - a) The complainant and subject officer(s) shall have the right to testify and refer to any relevant documentary evidence and exhibits. If the complainant or subject officer does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.
 - b) Oral evidence shall be taken only under oath.
 - c) The Chairperson shall exclude irrelevant and unduly repetitious evidence.
 - d) The Chairperson shall exclude unruly or disruptive persons from the hearing.
 - e) The Chairperson will conduct the hearing subject to being overruled by a majority of the BOI members. BOI members shall be primarily responsible for obtaining testimony. The PRC Officer or his/her designee will answer Commissioner's questions on the evidence, points of law, and procedure.
 - f) The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
 - g) If the BOI needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
 - h) If upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
2. Either party may present to the BOI evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the BOI shall accept those findings as true.

VIII. DELIBERATION AND FINDINGS

II.K.1.

A. Deliberation

After the hearing has been concluded, the Board will deliberate outside of the presence of the complainant, the subject officer(s), and any witnesses or representatives. The Board shall not consider any information not received in the Hearing Packet or during the hearing.

II.K.2.

B. Majority Vote

All action by the Board under Section VIII of these regulations shall be by majority vote of those Commissioners present. Each dissenting member shall set forth the

Section VIII.B.

reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.

II.E.2.

C. Standard of Proof

No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

II.E.3.

D. Categories of Findings

1. If the evidence shows that the alleged act did not occur, the finding shall be "Unfounded."
2. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained."
3. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated."
4. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be "Sustained."

E. Findings Report and Notification

1. Within 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing.
2. Within 15 calendar days of the hearing, the PRC office shall submit a Findings Report, together with the Hearing Packet, to the City Manager and the Chief of Police, except that for late-filed complaints, the Findings Report shall be filed within 30 calendar days of the hearing.

F. Petition for Rehearing

1. Within 15 calendar days of the mailing of the Board's findings, any party to the complaint may petition in writing for a rehearing. A rehearing may be granted only if the applicant establishes that: there is newly discovered, material evidence that, with reasonable diligence, could not have been discovered and produced at the hearing; or, that there was substantial procedural error likely to have affected the outcome.
2. After receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it at its next regularly scheduled meeting for which there is adequate time to meet Brown Act requirements. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 60 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period and the requirement that the Commission's investigation be completed within one year, provided the request is granted; tolling reverts back to the date the request is submitted and continues until the

Section VIII.F.

hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.

3. If a petition for rehearing is granted, the Board of Inquiry shall be composed of the same Commissioners who presided over the original hearing unless circumstances make such composition impossible.

Sec. V.

IX. AMENDMENT AND AVAILABILITY OF REGULATIONS

- Amendments to the Regulations for Handling Complaints Against Members of the Police Department (Regulations) require a majority vote of the Commission.
- Amendments shall be distributed to Commissioners, the Berkeley Police Association, the City Manager, the City Attorney, and the Chief of Police.
- The PRC office shall maintain a complete set of the current Regulations.

SUBJECT OFFICER TESTIMONY

MEMORANDUM

July 20, 1990

To: Ronald D. Nelson, Chief of Police
Police Review Commission
Berkeley Police Association

From: Michael F. Brown, City Manager

Subject: SUBJECT OFFICER TESTIMONY

The purpose of this memorandum is to set forth my policy regarding testimony by accused officers at Police Review Commission (PRC) Boards of Inquiry.

Subject officer testimony has been required since July 1, 1983 based on agreements reached in negotiations between the PRC, the Berkeley Police Association (BPA), and the City Manager's Office (CMO) in the fall of 1982.

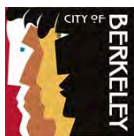
The requirement is as follows:

Each Subject Officer, each BPD Member Witness, the Duty Command Officer (DCO), the Complainant, and the Police Review Commission's Investigator shall be present at PRC Boards of Inquiry and shall testify unless otherwise directed by the City Manager.

If the DCO observes actions which in his/her opinion constitute a violation of PRC rules and Regulations, the DCO shall request of the Chairperson that the violation be corrected. If the violation is not corrected, the DCO may direct the Subject Officer to leave the hearing. Such a decision should only be reached under very extreme circumstances after all other means of resolving the situation have failed.

The requirement of the Subject Officer to testify shall not apply in cases where the complaint was filed during the 90-day filing extension period.

The requirements to testify before the PRC shall not apply to non-sworn employees of the Parking Division.



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR

September 28, 2021

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani

SUBJECT: Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

RECOMMENDATION

Refer to the City Manager to:

- Establish a procedure for enhanced review of use permits in the manufacturing zone for industrial facilities—upon initial submission or upon submission of an amended use permit—in order to ensure public health and environmental impacts are appropriately mitigated as a condition of the use permit. Further, if appropriate, consider mitigation that includes the use-permit applicant contracting with a certified third-party to install air quality monitoring device(s) that can enable periodic reporting on pollutants relevant to the particular industrial process proposed in the initial or amended use permit.
- Explore feasibility of increasing penalty fee schedule as a deterrence for use-permit violations related to public health and environmental impacts, such as air, noise, and water pollution.

CURRENT SITUATION AND ITS EFFECTS

Industrial facilities can be in compliance with the requirements of their use permit without necessarily utilizing industry-standard best practices intended to safeguard public health and mitigate environmental impacts of their operations. For example, the City's use permit for the LeHigh Hanson asphalt plant requires an enhanced enclosure for the asphalt loading area, but it does not require installation of a Blue Smoke Abatement System to control the emission of pollutants. The City Planning Department issues a use permit in perpetuity, and therefore, is unable to change the conditions for a use permit unless the applicant seeks a use-permit amendment in order to alter their operations in some capacity. In effect, use permits issued many years ago for industrial facilities lack a clear mechanism to be updated in order to

adapt to evolving technologies and industry standards. While the California Air Resources Board (CARB) is the primary agency responsible for protecting the public from the harmful effects of air pollution, we note that CARB does not regulate asphalt plants. This Council referral seeks to ensure that initial and amended use permit applications from industrial facilities receive appropriate review and include conditions that safeguard public health and mitigate any environmental impacts.

Possible appropriate mitigation to safeguard public health and mitigate environmental impacts may include:

- Requirements to install new equipment and/or technologies to address air, noise, and water pollution as well as disposal of hazardous materials;
- State-of-the-art containment and enclosure mechanisms in order to ensure that release of noise, particulate matter, and/or chemical compounds are reduced or eliminated;
- Requirements to install monitoring systems in order for third parties to easily discern when pollutants exceed regulatory limits;
- Increased penalty fees for violations as a means of deterring unwanted behavior by industrial actors.

BACKGROUND

Portions of West Berkeley are zoned specifically for heavy manufacturing and industrial uses. Over time, the area has been home to an array of industries that have provided blue-collar union jobs, such as the now-closed Pacific Steel Casting and Macauley Foundry. Currently, the LeHigh Hanson Aggregates asphalt plant—located on Virginia Street between Second and Fourth streets—and Berkeley Forge—located on Eastshore Highway between Camelia and Gilman—continue to operate in West Berkeley. Over the years, industrial facilities in West Berkeley have elicited neighbor complaints and concerns related to public health and environmental impacts, such as air and noise pollution.

History of Impacts from LeHigh Hanson (formerly Berkeley Asphalt)

In 1999, the Oceanview Neighborhood Association entered into a settlement agreement (attached) with both the City of Berkeley and Berkeley Asphalt Company (now LeHigh Hanson) to specify terms for mitigating noise and air quality impacts on neighbors. The terms of the agreement focused on: traffic patterns in order to prevent trucks from driving through residential neighborhoods; air quality controls to reduce dust and odors, such as enclosures for loading facilities; noise mitigations and sound barrier installations; and implementation of a complaint and response mechanism for resident concerns.

In 2015, Councilmembers Linda Maio and Lori Droste presented two informational status reports on West Berkeley Industries (attached) as a result of continued complaints from West Berkeley neighbors residing in close proximity to Pacific Steel Casting and LeHigh Hanson. According to a January 2015 Council item submitted by

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the Community Health Commission, more than 100 complaints were made in the 2012 to 2013 timeframe by Berkeley residents and community groups to the Bay Area Air Quality Management District (BAAQMD)—the regional air pollution control agency charged with regulating pollution emissions in the nine Bay Area counties.

Most recently, beginning in the end of October 2020, the office of Councilmember Rashi Kesarwani began receiving multiple complaints of a noxious, sulfuric smell, most strongly noticed in West Berkeley, though also experienced as far east as neighborhoods surrounding the North Berkeley BART station. According to a BAAQMD December 9, 2020 fact sheet (attached), the agency fielded more than 190 complaints about this odor in less than a two-month span of time.

Current Enforcement Actions Against LeHigh Hanson

While BAAQMD has regulatory authority over industries that negatively impact air quality, the City of Berkeley regulates the 1999 Settlement Agreement and use permit conditions. As the noxious odors continued into February 2021, BAAQMD issued four Notices of Violation (NOVs) related to nuisances due to odors on Dec. 3, 2020 through Feb. 5, 2021. The last reported complaint about the odor occurred on Feb. 12, 2021. BAAQMD staff indicated that the facility's plan to construct an enhanced enclosure for loading, in addition to adding a Blue Smoke Abatement System would help alleviate the odors, according to April 2, 2021 correspondence from Planning Director Jordan Klein.¹

The City of Berkeley began issuing NOVs on Jan. 11, 2021 as recent inspections uncovered insufficient enclosures of the asphalt truck loading area. LeHigh Hanson was required to resubmit application materials for a building permit for construction of an enhanced enclosure as well as a Blue Smoke Abatement System that the company was opting to install in the loading area. As LeHigh Hanson failed to resubmit the materials by the stated February 1, 2021 deadline, the City issued a citation warning on February 10, 2021, indicating that if the company failed to comply within 15 days, the City would issue daily administrative citations with penalties. Additionally, a second violation was added to the warning related to their failure to entirely vacuum sweep the required portion of their facility to control dust. LeHigh Hanson was able to comply shortly thereafter, resubmitting their plans by Feb. 16, 2021; the city approved the plans on March 1, 2021. Two days later, on March 3, the City issued another citation warning to complete construction and inspections associated with the enhanced enclosure system and Blue Smoke Abatement System. While the asphalt plant was able to complete construction of the enhanced enclosure shortly thereafter, it wasn't until July 2021 that the company secured the permitting for the electrical work for the Blue Smoke Abatement System and made it

¹ See Planning Director Jordan Klein's letter to the Sierra Club regarding enforcement of pollution control measures at Lehigh Hanson's asphalt plant, attached.

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operational. In total, City staff conducted seven different inspections from Dec. 2020 to April 2021.

Health Outcomes in West Berkeley

One of the major contributing causes of asthma, which itself is a leading cause of childhood hospitalizations, is air pollution, according to Berkeley's 2018 Health Status Report.² The report finds that the West Berkeley zip code 94710 has the highest rates of asthma hospitalizations, particularly among children 0 to 14. The report also finds significant racial disparities, with asthma rates among our Black residents 10 times higher than white residents.³ Given these health outcomes, we find that it is incumbent upon the City to fully exercise its permitting authority in order to ensure that industrial facilities mitigate any public health and environmental impacts.

FISCAL IMPLICATIONS

Staff time.

ENVIRONMENTAL IMPACTS

Strengthening the requirements of a use permit for industrial facilities is likely to result in mitigations that enhance environmental indicators, leading to a cleaner, safer environment for all.

CONTACT PERSON

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

Attachments:

1999 Settlement Agreement

May 26, 2015 Status Report: Berkeley Asphalt; Pacific Steel Casting: Air Quality Inquiries (#38)

July 14, 2015 Status Report: West Berkeley Industry (#69)

January 20, 2015 Community Health Commission Council item (#25): West Berkeley Industrial Plants Air Quality

Bay Area Air Quality Management's Fact Sheet on Berkeley Asphalt, Dec. 9, 2020

Planning Director Jordan Klein's email to the Sierra Club regarding enforcement of pollution control measures at Lehigh Hanson's asphalt plant

² See [City of Berkeley Health Status Report 2018](#), pages 42 & 43

³ [City of Berkeley Healthy Status Report 2018](#), p. 43

SETTLEMENT AGREEMENT

WHEREAS, Communities for a Better Environment ("CBE") brought an action in the Alameda County Superior Court against the City of Berkeley ("City") under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., for approving modifications to Use Permit #3033, which enables Berkeley Asphalt Company ("BAC") to replace its pug mill and expand its operation, without preparing an environmental impact report;

WHEREAS, BAC, a company in the business of making asphalt located at 699 Virginia Street, intends to expand operations by inter alia increasing nighttime and weekend production;

WHEREAS, Berkeley Ready Mix Company ("BRM"), a business which manufactures ready mix cement, operates a facility located at 699 Virginia Street, Berkeley, California;

WHEREAS, in October 1998, the Ocean View Neighborhood Association ("ONA") filed a public nuisance complaint with the City against BAC and BRM (collectively referred to as "BARM");

WHEREAS, CBE, ONA, BARM, and the City (collectively referred to as "the parties") have met to discuss ways to resolve the disputes now pending between them;

WHEREAS, the parties agree to this Settlement Agreement to resolve all of CBE's CEQA claims against the City and ONA's now pending administrative public nuisance complaint against BARM; and

THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Traffic. The City has proposed to design and install a traffic roundabout at the intersection of the Eastshore Freeway a.k.a. Frontage Road and Gilman Street ("Gilman Interchange Project"). The City will use its best efforts to obtain completion of the Gilman Interchange Project within the following timeline:

- (a) No later than September 1999, retain consultant to design traffic roundabout;
- (b) No later than November 1999, consultant completes design;
- (c) No later than January 2000, confirm preferred design and request CalTrans to prepare project report;
- (d) No later than February 2000, retain environmental consultant;
- (e) No later than March 2000, CalTrans completes project report;
- (f) No later than April 2000, CalTrans begins preparing Cooperative Agreement;
- (g) No later than May 2000, CalTrans completes environmental analysis;
- (h) No later than June 2000, CalTrans completes Cooperative Agreement;
- (i) No later than August 2000, CalTrans and the City sign Cooperative Agreement after City Council approval;
- (j) No later than September 2000, project bid;
- (k) No later than November 2000, construction begins;
- (l) No later than February 2001, project completed.

The parties recognize that the foregoing schedule is subject to a number of contingencies that are not within the control of the City and that completion of the proposed improvements may consequently take longer. First, actions by CalTrans are not within the City's control and may take longer than estimated. Second, CalTrans may ultimately not approve the City's proposal, thus creating a delay while the City develops an alternative proposal. Third, the time allotted for environmental review assumes that the project will not require an environmental impact report ("EIR"). However, if CalTrans, other agencies, or the public demands an EIR and produces substantial evidence that the proposal may have a significant adverse impact on the environment, an EIR will be required. This will also delay completion.

The parties further agree to use their best efforts to encourage CalTrans to meet the schedule set out herein.

2. The parties agree that upon completion of the Gilman Interchange Project, BARM will direct all trucks traveling to and from the BARM facilities to and from I-80 and I-580 to use the Frontage Road except trucks going to jobs in Berkeley.

3. Interim Measures to Divert Truck Traffic Away from Residential Blocks and to Eastshore Freeway and Gilman Street. BARM shall be responsible for assuring that all trucks traveling to and from its facility use exclusively the Gilman/I-80 interchange, Frontage Road and Cedar Street to gain access to, or return from I-80 or I-580; except that trucks traveling during the peak commute hours of 4 p.m. to 6 p.m., and trucks which are exclusively bound for jobs within Berkeley, are not subject to the limitations of this paragraph.

4. BARM shall institute the following measures to increase compliance with the established truck routes:

- (a) Notify customers in regular invoices of the established truck routes that must be taken by means of the notice attached hereto as Exhibit A or a substantially similar notice;
- (b) Inform customers by means of a notice such as the one attached hereto as Exhibit A or a substantially similar notice that after three violations of the truck routing requirements, customers will no longer be allowed to send trucks to BARM;
- (c) Notify suppliers of the established truck routes in a letter such as the one attached hereto as Exhibit B or a substantially similar notice;
- (d) Give a flyer with the established truck route to each truck as it leaves the BAC or BRM facility;
- (e) Post a visible, lighted sign at the exit gate clearly stating the established truck routes.

5. BARM shall perform the activities listed on the Traffic Compliance Checklist, jointly developed by the parties, attached hereto as Exhibit C. The Traffic Compliance Checklist

contains tasks agreed upon by the parties in this Agreement in addition to activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist daily to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Traffic Compliance Checklist.

6. BARM and the City shall implement a complaint and response mechanism for complaints about truck traffic as follows:

- (a) BARM will have either an employee or have a Pacific Bell voicemail system answer its regularly listed telephone number, (510) 526-1611, at all times the concrete plant or asphalt plant is in operation to receive complaints by neighbors about truck drivers violating the established truck routes, or other traffic complaints;
- (b) BARM will assure that the voicemail automatically records the date and time of a call and allows the caller sufficient time to explain the nature of the complaint;
- (c) The City will send a letter drafted by ONA and approved by the City to residents of Cedar Street and Virginia Street between 2nd Street and 6th Street, residents of Fifth Street and Sixth Street between University Avenue and Gilman Street, and to all ONA members informing them of the procedures for making a complaint about truck traffic, a copy of which is attached hereto as Exhibit D;
- (d) All complaints received by a BAC or BRM employee or on the Pacific Bell voicemail system regarding trucks shall be recorded on the Complaint Log, a copy of which is attached hereto as Exhibit E;

- (e) A BAC or BRM employee shall respond by phone and/or in writing to the complainant by the end of the next business day after the complaint is received;
- (f) The BAC or BRM employee shall investigate each complaint and shall complete a Complaint Report Form, which is attached hereto as Exhibit F, summarizing the complaint and follow-up taken;
- (g) BARM shall send to the City's Zoning Compliance Officer, on a monthly basis, copies of the Complaint Log and Report Forms from the previous month.

7. Air Quality: Dust. BARM shall use its best efforts to minimize the amount of dust generated at the facilities from entering residential streets.

8. Each day that the BAC facility is operating, it shall use the vacuum sweeper to sweep the asphalt plant (dry area) from fenceline to fenceline between 2nd and 3rd Streets as needed, but at least once a day.

9. Each day that the BAC or BRM facilities are operating, BARM shall use the vacuum sweeper to sweep the roads outside of its facility, specifically Virginia and Cedar Streets between 2nd and 3rd Streets, as needed, but at least once a day.

10. Each day that BRM is operating, the tires of concrete trucks shall be washed before the trucks leave the plant.

11. BARM will upgrade the vacuum sweeper to one that is a larger size, with an improved filtration system, to prevent both large and finer particles of dust from re-releasing into the sweepers' air output.

12. If and when BRM has concrete customers, it will require that they use trucks that are loaded according to State Statutory requirements, and will encourage the truck drivers of its customers' trucks to wash the tires of their trucks before leaving the plant.

13. BRM will ensure that its suppliers conform to applicable California Statutes (including a 6" clearance of materials from top of trucks and wetting materials) regarding transportation of materials to and from the facility.

14. BAC shall encourage its asphalt customers to place tarps on their trucks before leaving the plant.

15. BARM shall regularly, but not less than annually, instruct its staff about their responsibilities for the housekeeping and maintenance measures agreed upon in this Settlement Agreement.

16. BARM shall develop a Procedural Handbook which details the procedures that must be taken and the rationale for diligently performing the housekeeping and maintenance measures agreed upon in this Settlement Agreement. This Procedural Handbook shall be distributed to each employee at the training(s) and shall be made available for reference at a central location at each facility.

17. BARM shall perform the activities listed on the Housekeeping and Maintenance Checklist, a copy of which is attached hereto as Exhibit G. The Housekeeping and Maintenance Checklist contains tasks agreed upon by the parties in this Agreement in addition to activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Housekeeping and Maintenance Checklist.

18. Noise. BARM shall implement the following measures to reduce noise from its facilities:

- (a) A sound barrier at the eastern side of the asphalt plant burner, dryer and exhaust fan shall be installed. The barrier shall be located adjacent to the burner and dryer along the foundation, will follow the foundation around the bag house and fan, and turn the corner and extend westward along the south

side of the exhaust fan foundation for approximately 8 feet. The northern end of the barrier shall extend about 20 feet north of the burner inlet. The height of the barrier shall be about 20 feet as measured from the ground. The barrier shall have sufficient sound transmission loss to control sound transmitted through the barrier and shall include absorption treatment on the surface facing the asphalt plant. Design and specification of barrier materials will be forwarded to Wilson, Ihrig & Associates, Inc. for review prior to purchase and construction of the barrier. In the event the experts disagree about the design and specification of barrier materials, the City's Noise Control Officer determination will determine the design and specification of the barrier materials;

- (b) Sound absorbing barriers shall be provided around the bucket elevator head and its motor. The barriers shall have sufficient sound transmission loss to control sound transmitted through the barrier and shall include sound absorption treatment on the surface facing the equipment to control reflections between the barrier and surfaces of the plant equipment. Design and specifications of barrier materials and locations shall be forwarded to Wilson, Ihrig & Associates, Inc. for review prior to purchase and construction of the barriers. In the event the experts disagree about the design and specification of barrier materials, the City's noise expert's determination will determine the design and specification of the barrier materials;
- (c) As the pneumatic vibrators expire, they will be replaced with electric vibrators or with equally quiet equipment;
- (d) Exhaust from electric air valves will be muffled.

19. Experts representing CBE, ONA, and BARM conducted an on-site noise audit of the BARM facilities on June 17, 1999. The parties agree that a second visit will take place after

equipment for the asphalt plant, back ordered and expected to be delivered in July 1999, is installed and in operation. BARM agrees to pay \$200 toward the cost of CBE's and ONA's noise expert. In addition to the measures set forth in paragraphs 18, 20, and 21 herein, BARM will implement any mitigation measures to reduce noise identified and agreed upon by the experts as a result of the second noise audit visit.

20. BARM shall perform the maintenance activities listed on the Noise Checklist, a copy of which is attached here to as Exhibit H. The Noise Checklist contains tasks agreed upon by the parties as measures necessary to reduce the impact of noise from BARM on the neighborhood. In addition, the Noise Checklist includes activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist daily to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Noise Checklist.

21. BARM shall implement a complaint and response mechanism for noise as follows:

- (a) BARM will have either an employee or have a Pacific Bell voicemail answer its regularly listed telephone number, (510) 526-1611, at all times the concrete plant or asphalt plant is in operation to receive complaints by neighbors about noise;
- (b) BARM will assure that the voicemail automatically records the date and time of a call and allows the caller sufficient time to explain the nature of the complaint;
- (c) All complaints received by a BAC or BRM employee or on the Pacific Bell voicemail system regarding noise shall be recorded on the Complaint Log, a copy of which is attached hereto as Exhibit E;

- (d) A BAC or BRM employee shall respond by phone and/or in writing to the complainant by the end of the next business day after the complaint is received;
- (e) The BAC or BRM employee shall investigate each complaint and shall complete a Complaint Report Form, which is attached hereto as Exhibit F, summarizing the complaint and follow-up taken; and
- (f) BARM shall send to the City's Zoning Compliance Officer, on a monthly basis, copies of the Complaint Log and Report Forms from the previous month.

22. The City shall implement the Noise Complaint Response Protocol attached hereto as Exhibit I.

23. Wherever a noise measurement is taken in response to a noise complaint, the following methodology shall be used: Noise measurements shall be taken using a sound level meter that meets ANSI specifications for Type II Precision at a sample of residential properties, including the property of the complainant, along 5th Street in sight of the asphalt plant burner and along 4th Street in sight of the asphalt plant. If any violations are noted, the noise measurements shall include identification, to the extent possible, of sources of aurally identifiable sounds such as impacts, impulse noise, pure tones, and rattling, etc., operating conditions, and wind and temperature conditions.

24. The parties agree that it may be useful to revise and/or update the Berkeley Community Noise Ordinance. The parties also agree that it may be useful to revisit the manner in which the Ordinance is implemented and enforced. Therefore, by authorizing execution of this Agreement, the Berkeley City Council directs staff to provide, within 12 months of the execution of this Agreement, recommendations for (a) how to revise and update the language of the Berkeley Community Noise Ordinance; and (b) how to improve implementation and

enforcement of the Ordinance. The City Council shall also direct staff to provide the City Council with an estimate of resources necessary to carry out the recommended improvements.

25. Odors. BAC shall implement the following measures to reduce odors from its facilities:

- (a) BAC shall enclose the asphalt product truck loading operations;
- (b) BAC shall vent vapors from the truck loading operations to the baghouse;
- (c) BAC shall hire an inspector acceptable to all parties to conduct a one time odor audit of the asphalt silo storage truck loading operation when it is fully operating to determine if this loading operation versus the background odors of the general plant is a source of odor problems at the BAC facility's property line, and if so, BAC shall implement measures to mitigate the odor problem. BAC shall pay no more than \$200 for the cost of the odor inspector;
- (d) BAC shall close up vent openings and other fugitive leaks in the conveyor system leading to the asphalt cement storage silos;
- (e) BAC shall add condensers to the two storage tanks now without such equipment;
- (f) BAC shall follow good engineering practice for minimizing emissions for all fugitive sources, such as pumps, hatches, valves, flanges, and other pipe connections. Such practices include, among other things, ensuring that: all hatches are closed during operation, pumps are outfitted with appropriate seals, the pug mill is kept under sufficient negative pressure, the vent line from the pug mill to baghouse is inspected at least daily to ensure that it is not plugged, the baghouse magnehelic measurement is inspected for pressure drop (such as zero pressure drop indicating broken bags and high pressure indicating plugged bags should be shaken down more often), and the truck loading doors are kept in good repair; and

(g) BAC shall keep in a clearly marked and readily accessible binder the manufacturers' specifications for all air pollution control and manufacturing equipment. All equipment will be operated according to manufacturers' specifications, and logs will be developed and maintained to record on a daily basis recording actions taken to keep operation within specified parameters. These logs shall be available for inspection.

26. BAC shall perform the activities listed on the Odor Checklist attached hereto as Exhibit J. The Odor Checklist contains tasks agreed upon by the parties as measures necessary to reducing the impact of odor from BARM on the neighborhood. In addition, the Odor Checklist includes activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist daily to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Odor Checklist.

27. Post-Settlement Monitoring by the City. For a period of 3 years following the execution of this Agreement, the City shall conduct a semiannual audit of all logs associated with the Traffic Compliance Checklist, the Housekeeping and Maintenance Checklist, the Noise Checklist, and the Odor Checklist.

28. Post-Settlement Inspection for Dust by the City. For a period of 3 years following the execution of this Agreement, the City shall conduct semiannual on-site inspections of the BARM facilities to ensure compliance with the terms of this Agreement. The semiannual audit and on-site inspection of the BARM facilities shall be unannounced. The inspections shall include, but are not limited to, the following elements:

- (a) Assess whether there is substantial visible dust present on the general grounds that is likely to be tracked or blown off site;
- (b) Assess whether there is substantial visible dust present on the driveways exiting the facility that is likely to be tracked or blown off site;

- (c) Assess whether there is substantial visible dust present on tires of trucks leaving the property;
- (d) Assess whether the facilities are clear of significant dust build-up;
- (e) Assess whether there is substantial visible dust present on Cedar and Virginia between 2nd and 3rd Streets near the facility; and
- (f) Assess whether it appears that the Berkeley Asphalt and Ready Mix Company site is the likely source of substantial visible dust on roadways and properties surrounding the facility.

29. Post-Settlement Monitoring for Noise by the City. The City shall conduct a noise assessment of the BARM facilities on a quarterly basis, as required by Condition #14 of the Notice of Decision Modifying Use Permit #3033. Noise measurements shall be taken using a sound level meter that meets ANSI specifications for Type II Precision at a sample of properties along 5th Street in sight of the asphalt plant burner and along 4th Street in sight of the asphalt plant. If any violations are noted, the noise measurements shall include identification, to the extent possible, of sources of aurally identifiable sounds such as impacts, impulse noise, pure tones and rattling, etc., operating conditions, and wind and temperature conditions. Such quarterly monitoring shall cease after three years or after two consecutive noise assessments show an absence of violations of applicable laws and ordinances, whichever is later.

30. Post-Settlement Monitoring for Odors. For a period of 3 years following the execution of this Agreement, an inspector acceptable to all parties shall conduct a semiannual odor inspection of the BAC facility when the asphalt plant is in full operation. At least one such inspection annually will take place at night. The inspection should include an assessment of odors on-site at the facility and offsite at impacted residential areas. The cost of such inspections will be shared equally by BARM and CBE; neither BARM nor CBE shall be required to pay more than \$400 annually for inspections pursuant to this paragraph. The City shall have no liability for the cost of inspections under this paragraph.

31. Post-Settlement Monitoring by Experts Representing CBE, ONA and BARM. After BARM has installed and implemented the mitigation measures identified herein, it shall allow experts representing CBE, ONA, and BARM to conduct a one time on-site visit to assess the adequacy of the mitigation measures implemented pursuant to this Agreement. BARM will pay up to \$400 toward the cost of CBE's and ONA's noise expert.

32. Semi-Annual Review Meeting. For a period of three years following the execution of this Agreement, BARM agrees to host a meeting semi-annually with CBE, ONA and the City to discuss compliance with this Agreement, problems that have arisen and problems that may arise in fulfilling the terms of this Agreement.

33. Payment of Attorney Fees and Costs to CBE. Within 60 days of the entry of judgment, BARM shall pay to CBE the sum of \$47,500 as full payment of CBE's cost of litigation (including expert costs and attorneys' fees) and as full and final satisfaction of any claims for costs or fees by any party to this Agreement except those costs set forth in paragraphs 19, 25, 30 for inspections, the action *Communities for a Better Environment v. City of Berkeley*, Case No. 807882-5.

34. By executing this Settlement Agreement, ONA withdraws its public nuisance complaint now pending before the Berkeley City Council. The Zoning Adjustments Board ("ZAB") decision of October 22, 1998 shall have no effect on any future proceedings relating to the BARM facilities; however, the parties are free to use the legal arguments raised at the October 22, 1998 ZAB hearing in any nuisance action brought to address facts occurring after the date of this Agreement.

GENERAL PROVISIONS

35. Applicable Law. The parties intend and agree that this Agreement shall be subject to, governed by, and enforced and construed pursuant to the laws of the State of California.

36. Representation by Counsel. Each of the parties represents and warrants that, in connection with the negotiation and execution of this Agreement, it has been represented by counsel of its own choosing, has executed this Agreement after receiving the advice of counsel, and its representatives have read and understand the provisions and terms of this Agreement and have had an adequate opportunity to conduct an independent investigation of all facts and circumstances with respect to all matters that are subject to this Agreement.

37. Successors. This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors, assigns, trustees, and personal representatives.

38. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

39. Joint Drafting of Agreement. The parties have jointly drafted this Agreement, and the Agreement shall not be interpreted against or in favor of any of the parties that participated in the drafting of the Agreement.

40. Authorization to Execute Agreement. Each of the parties represents and warrants that the person executing this Agreement on its behalf is a representative duly authorized to bind it and empowered to enter into this Agreement on its behalf.

41. Notices. Whenever this Settlement Agreement requires notice or submission of information, other than the regular reports sent to the City, this material shall be mailed (postage prepaid) to:

(a) For CBE:

Anne Simon, Acting Legal Director
COMMUNITIES FOR A BETTER ENVIRONMENT
500 Howard Street, Suite 506
San Francisco, California 94105

(b) For the City:

Zach Cowan
OFFICE OF THE CITY ATTORNEY
1947 Center Street, First Floor
Berkeley, CA 94704

(c) For ONA:

Nora Chorover
515 Jackson Street
Albany, CA 94706

(d) For BARM, BAC or BRM:

Rena Rickles
Attorney at Law
1970 Broadway, Suite 1200
Oakland, CA 94612

42. Modifications. The terms of this Settlement Agreement shall not be changed, revised or modified except by a written instrument signed by the parties to this Settlement Agreement.

43. Entire Agreement. This Settlement Agreement sets forth the entire agreement between the parties. All agreements or representations, express or implied, of the parties with regard to this subject matter are contained in this Settlement Agreement.

44. Enforcement. Before any party may seek judicial enforcement of this Settlement Agreement or the Judgment entered pursuant to it, it shall give the party against whom it intends to enforce the Settlement Agreement or Judgment no less than thirty (30) days written notice of the alleged violation. If the party alleged to be in violation begins in good faith to cure the violation, no judicial enforcement shall be available as long as good faith efforts to cure the alleged violation continue.

45. Reservation of Police Power. Notwithstanding anything to the contrary herein, the parties acknowledge that the City has the continuing power to amend the entitlements that it has issued that control the development and use of BARM's property at 699 Virginia Street, or to grant additional such entitlements, consistent with applicable laws or ordinances. This power extends to amendment of Use Permit #3033, which is the subject of both the pending litigation between CBE and the City and the administrative public nuisance complaint filed by ONA, and Use Permit #3681, which is the subject of the administrative nuisance complaint by ONA.

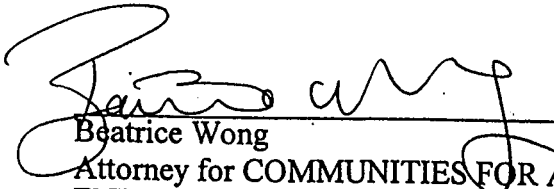
46. Except as provided in paragraph 44, *infra*, nothing in this Agreement shall affect the right of any organization, entity, or individual with respect to complaints that it may file with any appropriate administrative, governmental, or judicial forum alleging violations by BARM for problems that relate to operations at the BARM facilities which continue or occur after the signing of this Agreement.

47. Nothing in this Agreement shall affect the right of any individual to bring an action against BARM for personal injury or property damage related to operations at the BARM facilities. In accordance with Evidence Code § 1151, in any subsequent action for property damage or personal injury by a group or an individual, remedial or precautionary measures taken pursuant to this Agreement shall be deemed inadmissible to prove negligence or culpable conduct.


48. The parties agree that this Settlement Agreement shall be attached as an exhibit to the Stipulated Judgement in the action captioned *Communities for a Better Environment v. City of Berkeley*, Case No. 807882-5. Further, the City shall prepare a Writ of Mandate for the action captioned *Communities for a Better Environment v. City of Berkeley*, Case No. 807882-5, subject to approval as to form by the parties, that includes the provisions of this Settlement Agreement which the City must undertake, except for the actions set forth in paragraph 24. The Writ of Mandate shall also require the City to include in Use Permit #3033 the provisions of this Settlement Agreement which pertain to the operation of the BARM facilities.

APPROVED AS TO FORM:

Dated: Aug 4, 1999


Beatrice Wong
Attorney for COMMUNITIES FOR A BETTER ENVIRONMENT

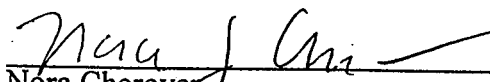
Dated: Aug 26, 1999


Zach Cowan
Attorney for CITY OF BERKELEY

Dated: Aug 20, 1999

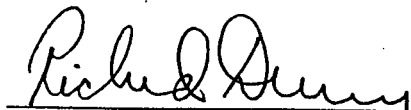

Rena Rickles
Attorney for BERKELEY ASPHALT COMPANY and BERKELEY READY MIX COMPANY

Dated: Aug 5, 1999


Nora Chorover
Attorney for OCEANVIEW NEIGHBORHOOD ASSOCIATION

APPROVED AS TO SUBSTANCE:

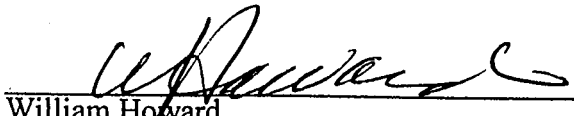
Dated: Aug 4, 1999


Richard Toshuyuki Drury
Acting Executive Director
COMMUNITIES FOR A BETTER ENVIRONMENT

Dated: Aug 20, 1999


Zach Cowan
CITY OF BERKELEY

Dated: Aug 20, 1999


William Howard
Vice President, General Manager
BERKELEY ASPHALT COMPANY
BERKELEY READY MIX COMPANY

Dated: Aug 14, 1999


Terry Terteling
President
OCEANVIEW NEIGHBORHOOD ASSOCIATION

SETTLEMENT AGREEMENT

Communities for a Better Environment, City of Berkeley, Berkeley Asphalt Company, Berkeley Ready Mix Company and the Ocean View Neighborhood Association

July 19, 1999

TO: ALL BERKELEY ASPHALT AND READY MIX
CUSTOMERS AND SUPPLIERS

FROM: BERKELEY ASPHALT AND READY MIX

SUBJECT; TRUCK ROUTES

Recently our company has entered into an agreement with our neighbors and the City of Berkeley, and we need your help in making it a success. Effective immediately the following truck routes are in force. Frontage Road from the University off ramp to Cedar Street or Virginia Street for trucks entering the plant. Frontage Rd. to Gilman interchange for trucks leaving the plant. Trucks bound for Berkeley jobs are permitted on Cedar Street to 6th Street, but not east of 6th on Cedar. Additionally until the Gilman interchange is improved, trucks may use Cedar to 6th at peak hours (Monday-Friday, 4:00pm-6:00pm)

These truck routes will be communicated as follows;

1. Written customer and supplier notification of truck routes (this document)
2. Notification on customer truck delivery tags
3. Truck route flyers given to drivers at the scale
4. Lighted sign at Virginia Street gate advising drivers of truck routes

And enforced as follows:

1. Verbal warning at first offence
2. Written warning at second offence
3. Suspension from job on third offence
4. Subsequent violations will result in the driver being permanently banned from plant site

If there are any questions please call our Berkeley office, (510) 526-1611

NOTICE

BE ADVISED:

YOU ARE TO FOLLOW THE ATTACHED HAUL ROUTES AS SPECIFIED.

VARYING FROM THOSE SPECIFIED ROUTES WILL RESULT IN
REMOVAL FROM THE JOB.

NOTICIA

SE AVISA:

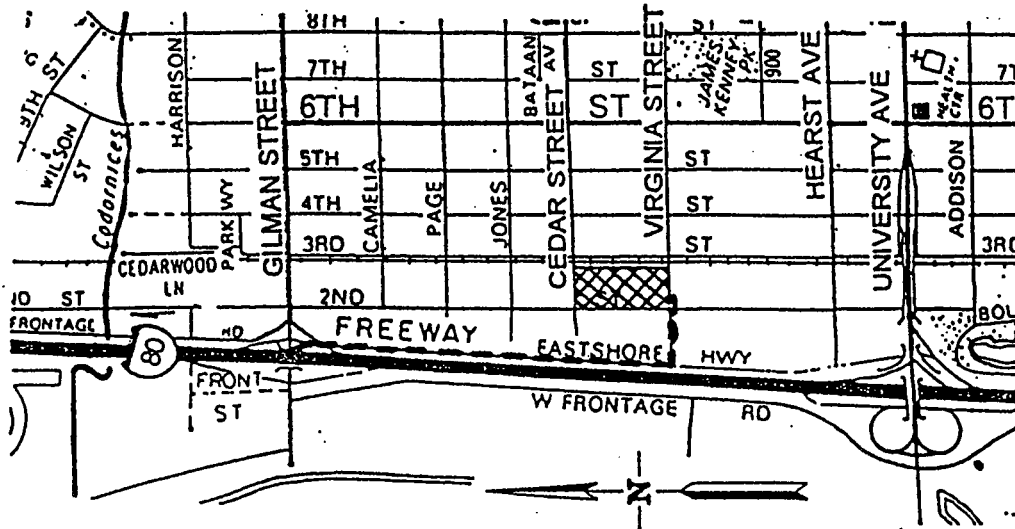
TU TIENES QUE SEGUIR LAS RUTAS QUE SE AN ESPECIFICADO.

VARIANDO DE ESAS RUTAS ESPECIFICADAS PUES ESTAS SERAN EL
RESULTADO EN EL REMODELADO DEL TRABAJO.

HAUL ROUTES

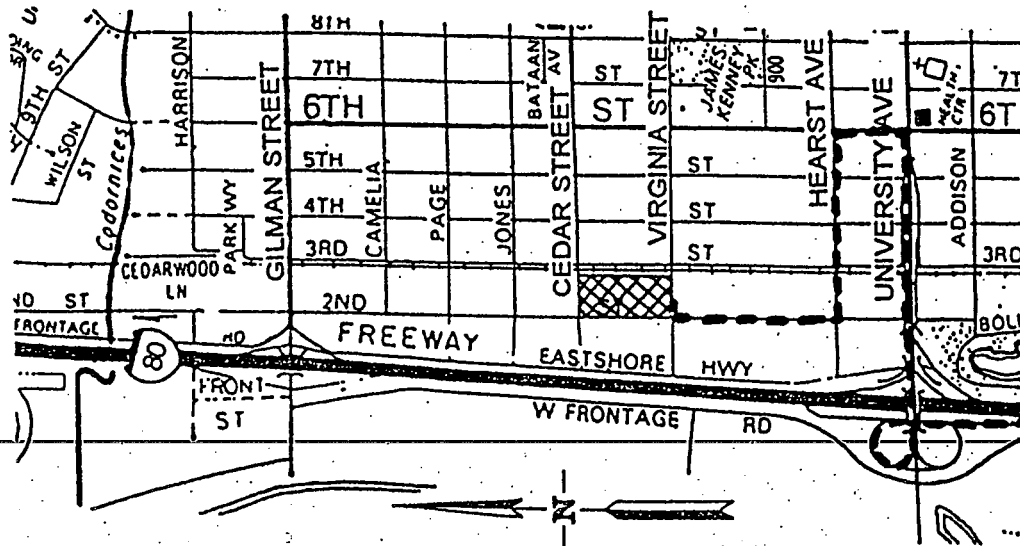
TO INTERSTATE 80 BOUND HAULERS:

Turn West (Right) on Virginia Street
Turn North (Right) on Frontage Road
Enter Hwy. 80 at Gilman Street



TO INTERSTATE 580 BOUND HAULERS:

Turn West (Right) on Virginia Street
Turn South (Left) on 2nd Street
Turn East (Left) on Hearst Avenue
Turn South (Right) on 6th Street
Turn West (Right) on University Avenue
Enter Hwy. 80 South at University Avenue



July 19, 1999

TO: ALL BERKELEY ASPHALT AND READY MIX
CUSTOMERS AND SUPPLIERS

FROM: BERKELEY ASPHALT AND READY MIX

SUBJECT; TRUCK ROUTES

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If there are any questions please call our Berkeley office, (510) 526-1611

TRAFFIC COMPLIANCE CHECKLIST

Settlement Task #1: BARM will provide regular notice to its customers, suppliers and employees of the truck routes that must be taken.

- BARM will preprint every ticket, which is issued to customers before they leave the facilities, with the established truck routes.
- All contracts will contain a notice of the agreed upon truck routes.
- Fax map of established route to people contracted to do work for BARM before the start of jobs.

Settlement Task #2: Berkeley Asphalt and Ready Mix Company will post a clearly visible, lighted sign at the exit gate with the established truck routes.

- Sign with established truck routes is posted at the exit gate.
- Sign is clean and clearly displays truck routes.
 - Sign is cleaned as needed, but at a minimum of one time per week.
 - Light that illuminates the sign is operational.
 - An employee checks to make sure the light is working properly each time the sign is cleaned.
 - The light is replaced as soon as an employee becomes aware that it is out.
 - Replacement light bulbs for the sign are stocked and available in the plant's supply storage area.
- Employee(s) responsible for cleaning the sign has signed and dated the log verifying that the task was completed. *See attached Truck Route Sign Maintenance Log.*

___ Employee(s) responsible for checking the log has signed and dated the log verifying that the task was completed. *See attached Truck Route Sign Maintenance Log.*

Settlement Task #3: Berkeley Asphalt and Ready Mix Company will inform customers that there will be sanctions for violations of the established truck routes.

___ Notice and warning of sanctions for non-complying trucks will be inserted in the invoices to customers.

___ Owner or contractor of non-complying truck will be contacted within 3 days after a complaint is received from a neighbor.

Settlement Task #4: BARM will have either an employee or a Pacific Bell Voicemail system answer its main business number during all hours to receive complaints regarding violations of established truck routes.

___ Either a BAC employee or a Pacific Bell Voicemail system will answer BARM's normal business line during operating hours to receive complaints about odors.

___ The Pacific Bell Voicemail System shall automatically record the time and date of every incoming call or complaint.

___ A BAC or BRM employee will enter the date, time and nature of the complaint on the Complaint Log. *See Settlement Agreement, Exhibit E.*

___ Employee who responds to complaint shall investigate the complaint and complete a Complaint Report Form summarizing the nature of the complaint and the follow-up response and action. *See Settlement Agreement, Exhibit F.*

_____ A Berkeley Asphalt or Berkeley Ready Mix employee will respond to complainant by the end of the next business day by telephone or in writing.

_____ The Complaint Logs and Complaint Report Forms are sent to the City's Zoning Compliance Officer on a monthly basis.

Dear West Berkeley Resident:

As part of an agreement with the City of Berkeley and community environmental groups, Berkeley Asphalt and Ready mix ("BARM") will limit the number of trucks using residential streets during nighttime (6:00 p.m. to 6:00 a.m.) and non-peak daytime hours (6 a.m. to 4 p.m.) ("Restricted Hours"). During Restricted Hours, trucks entering and exiting BARM's facilities will use the Frontage Road to access I-80 and I-580 eastbound and westbound. The only trucks that may use residential streets during Restricted Hours will be coming from or heading towards locations in Berkeley.

If you are concerned that trucks entering and exiting the BARM facilities during Restricted Hours are not complying with the required truck routes, or if you have other complaints regarding truck traffic related to the BARM facilities, please call 526-1611 at BARM at any time. A BARM employee or a voice mail system will answer your call.

To facilitate appropriate follow-up of your complaint, please include the following information:

- (1) the time of the complained of event
- (2) the location of the event
- (3) the number of the truck involved (an identification number is located on the side of the truck on the door and back)
- (4) any other descriptive information.

Please remember that the person answering the complaint line may not be personally responsible for the problem. The person may, however, be in a position to help prevent problems from arising in the future.

Your complaint will be responded to by the end of the business day after the complaint is received by phone and/or in writing. The circumstances of the complaint will be described in a Complaint Report Form and the complaint will be recorded in BARM's Complaint Log. BARM will send, on a monthly basis, a copy of the Complaint Log and Complaint Report Forms to the Berkeley Zoning Compliance Officer. The Complaint Log and Complaint Report Forms on file with the Zoning Compliance Officer will be available for your inspection upon request.

COMPLAINT REPORT

TODAY'S DATE: _____

PREPARED BY: _____

DATE COMPLAINT RECEIVED: _____

TYPE OF COMPLAINT: TRUCKS NOISE ODOR

DESCRIBE THE NATURE OF COMPLAINT:

DESCRIBE INVESTIGATION PERFORMED AND ITS FINDINGS:

RESPONSE TO COMPLAINANT:

Telephone Call on _____ at _____ a.m./p.m.

By Mail (attach a copy of the letter sent)

ACTION TAKEN AGAINST VIOLATOR OF TRUCK ROUTE:

Written Notification of Violation and Warning of Sactions Notice of Termination

ACTION TAKEN TO REMEDY NOISE OR ODOR PROBLEM:

HOUSEKEEPING AND MAINTENANCE CHECKLIST

Settlement Task #1: Berkeley Asphalt and Ready Mix Company ("BARM") will instruct operators and maintenance staff on their responsibilities to perform the housekeeping and maintenance measures agreed upon in the Settlement Agreement, which are intended to mitigate the amount of dust that leaves the BAC and BRM facilities.

___ Within 30 days of Court entry of the Stipulated Judgment including the Settlement Agreement, BARM will draft and distribute a memorandum informing operators and maintenance staff of their responsibilities for performing the measures agreed upon in this action.

___ Within 10 days of distributing the memo regarding housekeeping and maintenance measures, BARM will conduct a training to operators and maintenance staff about these agreed upon measures.

___ Within 30 working days of Court approval of a settlement agreement, BARM will develop a manual of procedures related to implementation of the Settlement Agreement, which will be distributed to each employee.

___ Trainings on the housekeeping and maintenance measures set out in the Settlement Agreement will be conducted annually either in conjunction with the required OSHA training or as a separate training.

___ Upon completion of the training on the housekeeping and maintenance measures, each employee who received the training shall sign and date a log verifying his or her attendance at the training. *See attached Attendance Log.*

___ If a representative from the City elects to attend the training sessions, that representative will also sign the log.

Settlement Task #2. BARM shall conduct a visual inspection, assess the overall cleanliness and level of dust onsite and off-site in the plants' vicinity and take steps to fix any dust problems at least once a day when either BAC or BRM is operating.

___ Assess whether there is substantial visible dust present on the general grounds that is likely to be tracked or blown off site

___ Assess whether there is substantial visible dust present on the driveways exiting the facility that is likely to be tracked or blown off site

___ Assess whether there is substantial visible dust present on tires of trucks on the property

___ Assess whether there is substantial visible dust present on tires of trucks leaving the property

___ Assess whether the facilities seem to be clear of significant dust build-up

___ Assess whether there is substantial visible dust present on the Cedar and Virginia between 2nd and 3rd Streets near the facility

___ Assess whether it appears that the Berkeley Asphalt and Ready Mix Company site is the likely source of substantial visible dust on roadways and properties surrounding the facility

___ Assess whether there is equipment not listed on this checklist which appears to be generating significant dust into the air and onto the BARM property? (Specify)

___ If the answer to any of the previous questions is yes, identify the source of the dust; determine whether the problem is mechanical or operational; if it is an operational problem, take appropriate action (such as discipline or additional training); if it is mechanical, repair or determine if equipment needs to be re-engineered.

Settlement Task #3: Each day the asphalt plant is operating, BAC will use the vacuum sweeper to sweep the asphalt plant (dry area) from fenceline to fenceline as needed to eliminate visible dust, but at least once a day.

- Sweeping accomplished every day plant is in operation.
- The employee who sweeps the plant from fenceline to fenceline should complete a log, which includes time, date and signature, indicating when the task was completed. *See attached Vacuum Sweeper Log.*
- Vacuum Sweeper properly maintained.
 - Maintenance of the sweeper is up to date per manufacturer's recommendation or per a stricter BARM policy.
 - Vacuum filter checked weekly.
 - Vacuum filter changed as needed, but at least in accordance with manufacturer's recommended maintenance schedule.
 - Employee who is responsible for each vacuum sweeper upkeep activity will sign and complete a log indicating the task performed and the date it was performed. *See attached Vacuum Sweeper Maintenance Log.*
- Vacuum Sweeper will be replaced when it does not adequately function to accomplish clean sweep-up of dust or when it cannot be repaired.

Settlement Task #4: Each day the asphalt plant is operating, BAC will use the vacuum sweeper to sweep the road outside of its the facility, specifically Virginia and Cedar Streets between 2nd and 3rd Streets, as needed, but not less than once a day.

- Sweeping is accomplished every day plant is in operation.

___ So that sweeping will not disturb sleeping residential neighbors, sweeping will be conducted during daylight hours only.

___ The employee who sweeps the outside of the plant will complete a log, which includes time, date and signature, indicating when the task was completed.

___ Vacuum Sweeper properly maintained (see Task #3 above)

Settlement Task #5: Each day the ready mix cement plant is operating, the tires of the concrete trucks, all of which are owned or operated by BRM, will be washed before leaving the plant.

___ BRM will provide a designated area near the plant's exit for the tire wash.

___ Each BRM truck driver will be assigned to wash his or her truck tires before leaving the facility.

___ The tire washing area will include a drainage system to capture and dispose of the wash water in accordance with any regulatory requirements.

___ A clear and visible sign instructing trucks to wash all debris from tires will be posted at the wash area.

___ The drainage system will be checked daily to ensure that it is not clogged.

Settlement Task #6: If and when BRM has concrete customers, it will require that they use trucks that are loaded according to State Statutory requirements, and will encourage the truck drivers of its customers' trucks to wash the tires of their trucks before leaving the plant.

Settlement Task #7: Berkeley Asphalt Company will tarp all trucks that it owns or operates.

_____ Berkeley Asphalt Company will purchase and provide each of the trucks it owns with a tarp to cover the truck.

_____ Trucks are to be tarped whenever they are loaded with materials.

_____ Berkeley Ready Mix Company will ensure that its suppliers conform with applicable California Statutes (including a 6" clearance of materials from top of trucks and wetting materials) regarding transportation of materials to and from the facility.

Settlement Task #8: Berkeley Asphalt Company will encourage its customers to tarp their trucks before leaving the plant.

_____ A Berkeley Asphalt Company employee will provide a tag to each customer requesting that they tarp their loads.

Settlement Task #9: Berkeley Asphalt and Ready Mix Company shall conduct all maintenance procedures on their equipment e.g. baghouse, exhaust fan, rotary mixer, pug mill, asphalt scale and trucks in accordance with manufacturer's recommendations or as required to eliminate problems identified by neighbors and their consultants or as required to eliminate maintenance problems.

NOISE CHECKLIST

Settlement Task #1. BARM shall maintain all plant equipment in good working order.

- ___ Employee(s) will check, on weekly basis, all bolts, panels, drive systems, and bearings to ensure that they are properly tightened, maintained and repaired.
- ___ Employee who completes the maintenance check shall complete a log, which includes the date and a signature, indicating what task, if any, was performed (eg. checked and tightened bolt).

Settlement Task #2. BARM shall mark major noise mitigation measures (such as the sound barriers) with permanent sign indicating that the item is to remain in place at all times for the purpose of noise control.

- ___ Signs are clear and visible.
- ___ Signs kept clean.
- ___ Employee who completes the maintenance check on the signs shall complete a log, which includes the date and a signature, indicating that the task was performed.

Settlement Task #3. BARM shall properly maintain all noise control measures.

- ___ Noise mitigation measures will be maintained in accordance with manufacturers' specifications.
- ___ Concurrent with the installation of all noise control measures, BARM will develop a manual of procedures which shall include instructions on the maintenance of the noise control measures and the necessity of maintaining noise control provisions.
- ___ Trainings on the proper maintenance of noise control measures shall be conducted annually either in conjunction with the required OSHA training or as a separate training.

Settlement Task #4. Noise mitigation measures that are removed during the maintenance of equipment shall be replaced as soon as possible.

CITY OF BERKELEY NOISE COMPLAINT RESPONSE PROTOCOL

I. Complaint Routing And Intake Procedures.

- A. Noise related citizen complaints will be taken and processed by a designated Noise Control Officer (or suitably trained authorized agent of the NCO) who, upon receiving a complaint, shall:
1. interview the complaining person(s) to determine the nature of the complaint; and
 2. fill out Part 1 of the Noise Investigation Report, a sample of which is attached.
- B. Based upon the information provided the NCO will determine whether an on-site investigation will be conducted.
- C. If the NCO determines that an on-site investigation is not warranted, the NCO will so note on the Investigation Form and inform the complainant(s) of that determination and the reasons(s) for such decision.

II. Preparation For Onsite Investigation. In cases where on-site investigation is required, the NCO may do the following:

- A. Determine whether measurements of acoustic data may be required. Generally, the need to conduct acoustic measurements shall be presumed, except where the objectionable noise is identified as the result of a Prohibited Act, and the NCO has reason to believe that investigation and intervention without benefit of measured acoustic data will lead to successful resolution of the complaint.
- B. Dispatch or schedule appropriate personnel and equipment to conduct the on-site investigation of the objectionable noise, if possible, while said noise is occurring.

III. On-Site Complaint Investigation Procedures. The NCO or designated agent shall, upon arriving at the location of a noise-related complaint, do the following:

- A. Based upon information in the Noise Inspection Report, attempt to independently verify the presence of the objectionable noise described.
- B. If the described noise is not apparent, the NCO or agent will contact the complainant(s) to obtain any additional information which might be useful in determining when the noise will reoccur.
- C. If the described noise is apparent, the NCO or agent shall survey the area to determine additional information relating to the source of the noise and impact(s)

on the surrounding community. The NCO may also determine if the objectionable noise is the result of a Prohibited Act under the BCNO.

- D. Upon making the determination that the noise results from a Prohibited Act, the NCO may take any steps reasonably necessary to abate the noise, including but not limited to remedies specified under Section 13.40.030.C of the Noise Ordinance and Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code.
- E. The NCO or agent may also make a determination as to whether the objectionable noise is a violation of the General Noise Regulations Section 13.40.30.A in that the perceived noise in his/her judgment either "disturbs the peace and quiet of any neighborhood" or "causes any discomfort or annoyance to any reasonable person of normal sensitiveness residing in the Area".
- F. If the NCO or agent determines that the offensive sound contains any of the characteristics listed in Section 13.40.050.B, this determination shall be noted and a 5dB reduction to the applicable exterior noise limit as defined in Table 13.40-1 shall be applied.
- G. If the NCO, upon arrival at the scene, determines that
 1. the objectionable noise, when measured, may approach (within 5dB) the noise limits specified in Sections 13.40.050 or 13.40.060 adjusted per any requirement of Section 13.40.050 for character of sound; or
 2. the objectionable noise, when measured, may approach (within 5dB) any other performance standards promulgated pursuant to the Zoning Ordinance applicable to the location; or
 3. there is evidence that the noise is considered objectionable or offensive to persons in 3 or more separate residential units and/or business establishments, whether from current complaint(s) or prior known incidents relating to a particular noise source; or
 4. noise measurement could facilitate resolution of the noise complaint,

then the NCO shall proceed to take sufficient acoustic measurements as to document sound levels resulting from the objectionable noise(s) as well as ambient sound levels utilizing procedures described in Section 13.40.040 and 13.40.050 of the BCNO.

IV. Enforcement Procedures.

- A. If, based upon the facts, data and measurements gathered in the investigation, the

NCO or agent determines that the occurrence of the objectionable noise has (1) disturbed the peace of any neighborhood; or (2) caused discomfort or annoyance to any reasonable person of normal sensitivcness; or (3) exceeded applicable noise limits, performance standards or other known standards, the NCO or agent may, take all steps necessary to abate the noise, including but not limited to remedies specified under Section 13.40.030.C of the Noise Ordinance and Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code. Within seven (7) working days of the complaint the NCO shall send the complainant a copy of the completed Noise Complaint Form showing his/her determination, the reasons therefor and any actions taken.

- B. If, based upon the facts, data and measurements gathered in the investigation, the NCO or agent determines that the objectionable noise is not a violation of the Noise Ordinance or other applicable law, he/she shall so inform the complainant(s), and provide to them within 10 working days a copy of the completed Noise Complaint Form showing his/her determination and reasons therefor.

FAUSERSVZACI\BACNOISEPRO.rev.doc



CITY COUNCIL

INFORMATION CALENDAR

May 26, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Councilmembers Linda Maio and Lori Droste

SUBJECT: Status Report: Berkeley Asphalt; Pacific Steel Casting: Air Quality Inquiries

INTRODUCTION

On January 20, 2015, the Berkeley City Council passed the following actions:

1. Councilmembers Linda Maio and Lori Droste to work with residents, businesses, and City Staff to review complaints and make good faith efforts to mitigate impacts in the areas where the City has authority such as noise and odors and to bring their findings back to City Council.
2. Direct the City Manager to enforce the terms of the Use Permit and the 1999 Settlement Agreement with the Oceanview Neighborhood Association.
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the Use Permit or the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement Use Permit immediately.

CURRENT SITUATION AND ITS EFFECT

On January 20, 2015, the City Council tasked Councilmembers Maio and Droste to review complaints made regarding air quality in West Berkeley. Subsequently, Councilmembers Maio and Droste discussed concerns with residents.

The City of Berkeley's Economic Development Department aided in scheduling site visits to both businesses. During these site visits, we discussed resident concerns, the 1999 Settlement Agreement with Berkeley Asphalt, and reviewed various operational standards of both industrial companies.

FINDINGS**Neighborhood Concerns**

Councilmember Droste met with several groups of residents to review their concerns regarding industry in West Berkeley. Concerns largely fell into the following five categories:

1. Public health
2. Regulatory bodies
3. Reporting protocol
4. Business practices
5. Information access

Public health

All of the residents interviewed shared the concern of odorous and non-odorous emissions on the community at large, particularly children in nearby homes and schools. In addition to these environmental and physical health concerns, some residents expressed increased anxiety when smelling odorous emissions. Another resident also stated that she was interested in the City's disaster preparedness plan in the industrial areas where hazardous materials (i.e. liquid oxygen) are common.

Regulatory bodies

Many residents are concerned that industry in West Berkeley is violating local, state, and federal regulations, specifically the EPA Clean Air and Water Act and OSHA standards. Some residents also expressed interest in operations oversight and whether there are appropriate resources to inspect and mitigate concerns. In particular, there is a general concern over enforcement procedures and penalties if a violation occurs. The residents feel that the odors and occasional noise disturbances constitute a nuisance as defined by Code 23B.64.020. Furthermore, a few residents stated their concern over whether the Council-adopted Community Environmental Advisory Commission recommendation from March 13, 2007, was examined and acted upon.

Reporting protocol

Residents expressed displeasure over the air quality complaint process through Bay Area Air Quality Management District (BAAQMD). Complaints focused on the following issues:

- The three notices of violation in 30 days for a public nuisance declaration is too lenient.
- The five confirmed complaint threshold per day is insufficient.
- Complaint lines with investigators are not available at all hours.
- Complaint forms should be more detailed.
- Residents are limited to one complaint a day.
- Residents must be home and interact with an inspector if a complaint is logged. Often a smell has dissipated once an inspector has arrived.
- The perception that public official complaints have more weight than residential complaints.
- Individuals under 18 can't file a complaint.
- Reliance on an inspector's sense of smell is not scientific.

Businesses practices

Several residents claim that some industries in West Berkeley may not be following protocols for good business. Namely, they seem to be concerned that weekend and after-hour operations disturb residents.

Information Access

Residents feel that they were not notified of the impacts of existing industry when purchasing or renting their homes. Overall, these residents are unclear about what substances are contained in the emissions.

Site Visits and Current Practices

Pacific Steel & Casting Company, LLC (PSC)

On March 3, 2015, Councilmembers Maio and Droste visited PSC, took a tour and met with management to discuss business practices and general resident concerns. Attached is PSC's most recent Emissions Minimization Plan (Attachment 1).

Lehigh Hanson Berkeley Asphalt

On March 27, 2015, Councilmembers Maio and Droste visited Berkeley Asphalt, took a tour and met with management, and went over the 1999 Settlement Agreement in detail. The City Manager's Office is still in the process of reviewing that agreement. The following is a summary of what was discussed:

- *How are the factories prepared to handle a hazardous explosion in the area?*
Berkeley Asphalt trains their employees annually to handle hazardous materials onsite, which includes Hazardous Communications. As part of site specific training, they notify all persons on site of designated emergency evacuation meeting point.
- *When do the factories operate?*
Berkeley Asphalt's permit allows them to operate 24 hours/day. The most common operating hours are 7:00AM to 3:00PM M-F. If they have production on the weekend or at night, Councilmember Maio and the Deputy City Manager are notified. These off-shift operations usually occur during the summer and fall, which is historically the busiest production period.
- *Has the asphalt company updated any technology to accommodate the warm mix?*
See the attached information on the MAXAM AquaBlack system (Attachment 2). This technology is fully implemented.
- *How is equipment modernized or kept up to date?*
In order to be sure equipment is operating properly, oil samples are taken monthly, and vibration testing occurs twice a year. Equipment is replaced as it wears with like-for-like replacement equipment or with improved technology.

- *Is Berkeley Asphalt compliant with the 1999 Settlement Agreement?*
Here is a review of current practices:
 - Distinguishing appropriate truck routes (haul routes):
 - Bilingual notices including a map to customers and suppliers about appropriate truck routes and a process to ensure the routes are followed.
 - Signs at the facility direct drivers where to go and of correct routes.
 - Noise mitigation:
 - All employees receive a notice about the use of each of the following pieces of noise mitigation equipment:
 - Sound barrier along eastern side
 - Sound attenuators
 - Sound absorbing barriers
 - Bucket elevator head
 - Screen deck tower
 - Slat conveyor head
 - Barriers covering aggregate bin wall and pugmill
 - Air exhaust valve mufflers (20 throughout the plant)
 - Exhaust stack tubular power flow silencer
 - Installed “white noise” back-up alarm on the loader (much quieter than conventional back-up alarms)
 - Tarping:
 - A notice to customers and suppliers includes a recommendation that they tarp their loads. Tarping does not mitigate odors but prevents material from spilling out.
 - Current emissions monitoring:
 - Berkeley Asphalt conducts tests (Attachment 3) at least every two years as required by the BAAQMD permit.
 - Berkeley Asphalt contracts with a dust mitigation company whose equipment is on site

Additionally, in 2013, Berkeley Asphalt made process improvements. A list of those recommendations and accompanying changes is attached (Attachment 4).

FUTURE ACTIONS

Councilmembers Maio and Droste have requested a meeting with BAAQMD to answer the following questions:

- What are the odorous and non-odorous emissions from the industries in West Berkeley, what is their cumulative toxicity level, and what can be done to curb them?
- What studies have been done/could be done to examine the cumulative impact of emissions in West Berkeley?
- How can the air quality complaint process be altered to be more user-friendly and efficient?

- Why are inspectors not available 24-7?
- What training do inspectors receive?
- How do inspectors trace the source of an odor and what is then done to mitigate the odor?
- What sampling tools do inspectors use?
- Why can residents only make one complaint a day?
- Why must residents remain home and interact with an inspector if a complaint is logged?
- Why can't minors file a complaint?
- What alternatives to a subjective smell test are available?

RECOMMENDED ACTION

Councilmembers Maio and Droste will submit a complete report on their findings and recommendations to Council before the summer break.

CONTACT

Councilmember Linda Maio, District 1, 510-981-7110

Councilmember Lori Droste, District 8, 510-981-7180

Emissions Minimization Plan

Regulation 12, Miscellaneous Standards of Performance, Rule 13
Foundry and Forging Operations

Pacific Steel Casting Company LLC

District Site #187, 703, 1603
1333 Second Street
Berkeley, CA 94710

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Appendix A	403.1 3.A - Organization Chart
Appendix B	403.1 A - Process Flow diagrams
Appendix C	403.1.B - Facility Layout / Floor Plans

Company Description

Pacific Steel Casting Company LLC purchased Pacific Steel Casting Company. The transfer of assets was completed on August 29, 2014

Pacific Steel Casting Company LLC (PSC LLC) has three (3) separate steel foundries, which are located within a two-block area in Berkeley, California. They are generally referred to as Plant 187, Plant 703 and Plant 1603. The facilities are located in the Berkeley manufacturing and industrial area. Other industrial facilities such as a forging manufacturer, pattern shop, machine shop, railroad lines, and brewery are also located near PSC LLC. Further, PSC LLC is located adjacent and close to a major East Bay freeway.

PSC LLC produces high quality steel casting using different sand molding processes. Thousands of custom-made parts are produced at PSC LLC that are used in everyday lives by individuals and businesses. PSC LLC cast steel parts can be found in bridges, wheelchair lifts, truck parts, agricultural equipment, valves for sanitary sewers, public water systems, the oil and gas industry, landfill compactors and, in the structural aspects of buildings.

PSC LLC employs over 400 employees. Most of them are union members of the Glass Molders and Plastics Union, Local 164. Many of PSC LLC employees are second or third generation foundry employees. More than 85% of PSC LLC employees live near PSC LLC commuting within 15 miles or less. Employees from PSC LLC participate in health and welfare and pension benefits. PSC LLC maintains an excellent safety and health record. PSC LLC regularly works with material manufacturers to develop better and lower emitting products.

PSC LLC purchases scrap metal from qualified vendors. The scrap is melted into metal that are alloys of steel. The molten steel is poured into sand molds. This is the basic sand mold method of producing castings. The metal inside these molds cools and hardens to form the castings. Once the castings have cooled and adopted their forms, they are sent to the shakeout station in which the sand is separated from the casting both internally and externally. Sand from the shakeout station is transferred to a reclamation unit where it is cleaned of material and processed for reuse. This sand reuse conserves tons of new sand that would otherwise be needed and eliminates tons of sand from landfill disposal. The sand reclamation unit at PSC LLC is, and always has been, state of the art equipment. The cooled castings are next sent to the finishing department before going to the shipping department.

In general, each Company plant produces steel castings using sand molding processes that are best suited for the design and size of the casting made at that plant. The binders are mixed with the sand and are used to harden the sand chemically with or without external heat.

Plant 187 began operations in the 1930's making medium sized castings using primarily the Green Sand molding process. The binder for green sand molds is a combination of clay, water, and cornstarch compacted to form the necessary molds.

Plant 703 began operations in 1975. This plant uses a Shell process for the molding system. This sand molding process uses a binder mixed with the sand and baked to form the necessary molds and cores for the castings.

Plant 1603 began operations in 1981. This plant primarily uses a phenolic urethane binder, which is a chemical binder mixed with the sand.

Company Organizational Chart and Schedule of Management Operators

12-13-403.1.3

- A. *Company Organizational Chart*- Attach a copy of the organizational chart of the company, which describes the business structure and includes the name of the facility's Responsible Official.
- B. *Schedule of Management Operators* - Provide the names and contact information of the Onsite Responsible Manager(s) and Onsite Alternate Contact(s) and their duty schedule.

A. Company Organizational Chart

In Appendix A - Confidential

B. Schedule of Management Operators

Onsite Responsible Manager(s)

Name: Confidential
Title: Environmental, Health & Safety Director
Phone: Confidential
Email: Confidential
Schedule/Shift: Confidential

Name: Confidential
Title: Chief Operating Officer
Phone: Confidential
Email: Confidential
Schedule/Shift: Confidential

Onsite Alternate Contact(s)

Name: Confidential
Title: Environmental Technician
Phone: Confidential
Email: Confidential
Schedule/Shift: Confidential

Name: Confidential
Title: Supervisor
Phone: Confidential
Email: Confidential
Schedule/Shift: Confidential

Name: Confidential
Title: Supervisor
Phone: Confidential
Email: Confidential
Schedule/Shift: Confidential

Contents of the EMP

12-13-403

The owner or operator of the foundry or forge subject to Section 12-13-401 shall prepare a complete and accurate EMP that details the management practices, measures, equipment and procedures that are employed or scheduled to be implemented to minimize fugitive emissions of particulate matter and odorous substances for the operations subject to the EMP.

A. Operations Subject to EMP and Schedule of Operations

B. Description of Operations - Facilities with operations under 12-13-402 must list and provide description of all process equipment, material usages, abatement and control equipment and monitoring parameters to reduce fugitive emissions of particulates and odors. Please provide information for all the following operations that apply.

C. Management Practices to Reduce Fugitive Emissions- Facilities with operations under 12-13-402 must list and provide descriptions of all preventative maintenance activities, pollution prevention and source reduction measures to reduce fugitive emissions of particulates and odors. Provide schedules of activities conducted.

D. Description of Abatement and Control Equipment- Facilities must provide a comprehensive list of all abatement and control equipment for operations subject to 12-13-402 and name the source(s) of operation in which it abates.

A. Operations Subject to EMP and Schedule of Operations

The EMP shall address all of the following operations that are conducted at a foundry or forge per 12-13-402.

Please check all facility operations that apply and provide the schedule of operation.

Operation		Schedule of Operations
<input checked="" type="checkbox"/>	402.1 Mold and Core Making Operations	Confidential
<input checked="" type="checkbox"/>	402.2 Metal Management	Confidential
<input checked="" type="checkbox"/>	402.3 Furnace Operations, including tapping and pouring	Confidential
<input type="checkbox"/>	402.4 Forging Operations	N/A
<input checked="" type="checkbox"/>	402.5 Casting and Cooling Operation	Confidential
<input checked="" type="checkbox"/>	402.6 Shake Out Operations	Confidential
<input checked="" type="checkbox"/>	402.7 Finishing Operations	Confidential
<input checked="" type="checkbox"/>	402.8 Sand Reclamation	Confidential
<input checked="" type="checkbox"/>	402.9 Dross and Slag Management	Confidential

402.1 Mold and Core Making Operations

B. Description of Operations - MOLD AND CORE MAKING OPERATIONS

Section #	Equipment Name and Manufacturer /Model #	District S# and Applicable NESHAPS Section	NAME OF MATERIALS USED IN MOLDING OPERATIONS				ABATEMENT							
			Binders	Coatings	Adhesives	Mold Release Agents	Other	Source abated	Abatement Required by Permit	A#	Type of Abatement and Purpose of Abatement	Abatement Monitored	Monitoring Parameters	
1	187- 4 Mold machine British Molding Machines BMM	Exempt 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	
2	187 - 2 Squeezer machines SPO	Exempt 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	
3	187 - 2 Molding machines BMM	Exempt 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	
4	187 - 2 Core machine Dependable 400 FA, 200SA	Exempt 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	
5	187 - 2 Core machines Redford HS 22 RA	Exempt 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	
6	187 - 6 Core blower systems B & P	Exempt 40 CFR 63.10886	Confidential	Confidential	Confidential	Confidential	NA	Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	
7	703 - 2 Shell Molding Machines DSM 3	703 S20, S24 40 CFR 63.10886	Confidential	NA	Confidential	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No	

A. Description of Operations - MOLD AND CORE MAKING OPERATIONS														
Section #	Equipment Name and Manufacturer /Model #	District S# and Applicable NESHAPs Section	NAME OF MATERIALS USED IN MOLDING OPERATIONS					ABATEMENT						
			Binders	Coatings	Adhesives	Mold Release Agents	Other	Source abated	Abatement Required by Permit	A#	Type of Abatement and Purpose of Abatement	Abatement Monitored	Monitoring Parameters	
8	703 --Shalco Molding Machine DSM 3	703 S21 40 CFR 63.10886	Confidential	NA	Confidential	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
9	703 - 2 Shalco Molding Machines DSM 3	703 S22, S23 40 CFR 63.10886	Confidential	NA	Confidential	Confidential	NA	Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A7	Carbon Absorption Unit Odor Control	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across Carbon units 1<P<9, Temp <110 F Odor level < 60 odor units
10	703 - 2 Beardsley & Piper core mach. SF 6 CA	703 S13, S14 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
11	703 - 4 Redford core machines HS 16 RA	703 S15, S16, S17, S18 40 CFR 63.10886	Confidential	NA	NA	Confidential	NA	Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
12	187 - Simpson Sand Muller 1.5	187 S-10 40 CFR 63.10886	Confidential	NA	NA	NA	NA	Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A10	Baghouse, Pulse Jet Particulate Matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Weekly visual inspections of A10 are performed on the interior and exterior of the unit for mechanical integrity. The filter bags are visually inspected for rips/tears. Verification of pulse jet activity is verified weekly by the inspector.
13	187 - Omco Sand Mixer MS 1	Exempt 40 CFR 63.10886	Confidential	NA	NA	NA	NA	Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	A-10	Baghouse, Pulse Jet Particulate Matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Weekly visual inspections of A10 are performed on the interior and exterior of the unit for mechanical integrity. The filter bags are visually inspected for rips/tears. Verification of pulse jet

Regulation 12, Rule 13: Foundry and Forging Operations
Emissions Minimization Plan

A. Description of Operations - MOLD AND CORE MAKING OPERATIONS

Section #	Equipment Name and Manufacturer /Model #	District S# and Applicable NESHAPS Section	NAME OF MATERIALS USED IN MOLDING OPERATIONS				ABATEMENT					Monitoring Parameters	
			Binders	Coatings	Adhesives	Mold Release Agents	Other	Source abated	Abatement Required by Permit	A#	Type of Abatement and Purpose of Abatement		Abatement Monitored
15	187 - B & P Sand Muller 75 B	187 S-8 40 CFR 63.10886	Confidential	NA	NA	NA	NA	NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-1, A-7	Baghouse, Shaking into Carbon Adsorption Odors & Particulate	Pressure drop across Carbon units 1<P<9, Temp <110 F
16	703 - Shell sand coating system B&P Muller	703 S-5 thru S-12 40 CFR 63.10886	Confidential	NA	NA	NA	NA	NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-4	Baghouse, Shaking Particulate	Daily - Visual inspection for filter and mechanical integrity and particulate Pressure drop across baghouse
17	1603 - Omco Sand Muller LAM 50	1603 S-14 40 CFR 63.10886	Confidential	Confidential	Confidential	Confidential	Confidential	NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-5, A-3, A-7, A-8	Dry filter, into Baghouse, Pulse Jet into Carbon Adsorption Odors & Particulate	Page 66 of 158 A3 and A7 - Pressure drop across baghouses - 4.5<P<7; A5 - Visual inspection for filter integrity A8 - FID continuous monitoring At 50 ppm in a 90 minute average); Have full load carbon (52,000 lbs.) on standby within 3 business days. At 65 ppm in a 90 minute average change carbon no later than 7 calendar days. At 85 ppm in a 90 minute average - Cease shakeout operations immediately and pouring operations within 2 hours. Maintain Inlet Face velocity into cooling room, minimum 200 ft/min.
18	1603 - No Bake Molding System	1603 S18, S20 40 CFR 63.10886	Confidential	Confidential	Confidential	Confidential	Confidential	NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-3, A-7, A-8	Baghouse, Pulse Jet into Carbon Adsorption Odors & Particulate	A3 and A7 - Pressure drop across baghouses 4.5<P<7; Visual inspection A3 and A7 - Pressure drop across baghouses - 4.5<P<7; Visual inspection A8 - FID continuous monitoring At 50 ppm in a 90 minute average);

19	1603 - Kloster Core Sand Mixer Type 1	NA 40 CFR 63.10886	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	<p>Have full load carbon (52,000 lbs.) on standby within 3 business days. At 65 ppm in a 90 minute average change carbon no later than 7 calendar days. At 85 ppm in a 90 minute average - immediately and pouring operations within 2 hours. Maintain Inlet Face velocity into cooling room, minimum 200 ft/min.</p> <p>A3 and A7 - Pressure drop across baghouses - $4.5 < P < 7$; Visual inspection A8 - FID continuous monitoring At 50 ppm in a 90 minute average); Have full load carbon (52,000 lbs.) on standby within 3 business days. At 65 ppm in a 90 minute average change carbon no later than 7 calendar days. At 85 ppm in a 90 minute average - immediately and pouring operations within 2 hours. Maintain Inlet Face velocity into cooling room, minimum 200 ft/min. Daily - Visual Inspection - particulate</p>	<p>Baghouse, Pulse Jet into Carbon Adsorption Odor & Particulate Matter</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Have full load carbon (52,000 lbs.) on standby within 3 business days. At 65 ppm in a 90 minute average change carbon no later than 7 calendar days. At 85 ppm in a 90 minute average - immediately and pouring operations within 2 hours. Maintain Inlet Face velocity into cooling room, minimum 200 ft/min. Daily - Visual Inspection - particulate</p>
20	1603 - Omco Core Sand Mixer HMC-5	NA 40 CFR 63.10886	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	<p>Dynamic Air Pulse Cleaner Baghouse Particulate Matter</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Dynamic Air Pulse Cleaner Baghouse Particulate Matter</p>	
21	1603 - Omco Core Sand Mixer MS1	NA 40 CFR 63.10886	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	Confidential	<p>Baghouse, Pulse Jet into Carbon Adsorption Odor & Particulate Matter</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Baghouse, Pulse Jet into Carbon Adsorption Odor & Particulate Matter</p>	

B. Description of Operations – MOLD AND CORE MAKING OPERATIONS

Provide information on binders used in mold and core making operations.

Section #	Name of Binder	Binder Mix Ratio	Name of Source(s) and/or District S# Where Binder Is Used	Product Specification per MSDS
1	Confidential	Confidential	No Bake Systems Plants 187 Cores & 1603 Molding & Cores	VOC CONTENT (%): Confidential PHENOL CONTENT (%): Confidential
2	Confidential2	Confidential	No Bake Systems Plants 187 Cores & 1603 Molding & Cores	VOC CONTENT (%): Confidential PHENOL CONTENT (%): Confidential
3	Confidential	Confidential	No Bake Systems Plants 187 Cores & 1603 Molding & Cores	VOC CONTENT (%): Confidential PHENOL CONTENT (%): Confidential
4	Confidential	Confidential	Plant 703 - Core & Shell molding S13 - S24	VOC CONTENT (%): Confidential PHENOL CONTENT (%): Confidential
5	Confidential	Confidential	Plant 703 - Core & Shell molding S13 - S24	VOC CONTENT (%): Confidential PHENOL CONTENT (%): Confidential
6	Confidential	Confidential	Plant 187 - CO 2 Core Blower System	VOC CONTENT (%): Confidential PHENOL CONTENT (%): Confidential
7	Confidential	Confidential	Plant 187 Molding	VOC CONTENT (%): Confidential PHENOL CONTENT (%):

				Confidential
				VOC CONTENT (%): PHENOL CONTENT (%):
				VOC CONTENT (%): PHENOL CONTENT (%):

C. Management Practices to Reduce Fugitive Emissions – MOLD AND CORE MAKING OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for core and mold making operations.

Section #	Name of Abatement Device and Manufacturer/Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 A8 Baghouse Torit/22,000 cfm	1. Check manometer across baghouse 0<P<7. 2. Visual inspection - internal & external , check cartridge filter integrity and condition. 3. Replace cartridge filters based on inspection and/or changing manometer readings .	1. Weekly 2. SemiAnnual 3. As required, based on inspection
2	187 A7 Carbon Adsorption System Melrose/Blamer Eng. 60,000 cfm	Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the semi-weekly odor tests	As required - based on monitoring data (1<P<9), Odor test >25 odor units
3	703 A4 Shaker Baghouse Industrial Clean Air/3-700SW	1. Inspect & lube Shaker & Fan bearings, inspect & check sheaves & V belts 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse and replace bags as necessary. Wire brush fan blades.	1. Weekly 2. Quarterly
4	703 A7 Carbon Adsorption System Melrose	Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the semi-weekly odor tests	As required - based on monitoring data (1<P<9), Odor test >25 odor units
5	187 A10 Baghouse, Pulse Jet 5,600 cfm	1. Check pulse jet pressures 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3. Replace filter bags based on inspection and/or changing manometer readings .	1. Monthly 2. Quarterly 3. As required, based on inspection
6	187 A1 Baghouse, Pulse Jet Industrial Clean Air/30,000 cfm	Monitor carbon prefilters, troubleshoot if necessary. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Replace filter bags as necessary.	Daily Quarterly

7	1603 A3 Baghouse, Pulse Jet Bahnson/Hawley/HE-378-10	1. Check Manometer across baghouse. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3. Replace bags based on inspection and/or changing manometer readings .	1. Monthly 2. Quarterly 3. As required, based on inspection
8	1603 A7 Baghouse, Pulse Jet Bahnson/Hawley/HE-378-10	Same as #7	1. Monthly 2. Quarterly 3. As required, based on inspection
9	1603 A8 Carbon Adsorption Melrose	Replace carbon and prefilters based on FID, steel output, pressure drops across carbon bed & prefilters checked daily	Permit required - FID >65ppm (PSC policy when FID outlet >20 ppm and/or >700 tons of steel processed)

402.2 Metal Management

B. Description of Operations - Metal Management			
Section #	Name of Non-Exempt Metal or Metal Alloy Used for Production	Metal Type	Method of Verification for Determining Chemical Composition
1	Ferrous Feed Stock (Incoming Scrap) - 100% recycled scrap steel	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	All 3 plant scrap yards, yearly random sampling of all vendors - composition verified using Optical Emission Spectrometer and carbon analyzer testing equipment.
2	Ferrous Feed Stock (After Melting) - 100% recycled scrap steel	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	All Heats- composition verified using Optical Emission Spectrometer and carbon analyzer testing equipment. Off specification material identified by heat analysis initiates additional testing of the feed stock in the scrap yard storage.
3	Ferro Chromium	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	Product certified by vendor
4	Ferro Manganese	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	Product certified by vendor
5	Ferro Molybdenum	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	Product certified by vendor
6	Ferro Vanadium	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	Product certified by vendor
7	Nickel	<input type="checkbox"/> Ferrous <input checked="" type="checkbox"/> Non-Ferrous	Product certified by vendor
8	Molybdenum Trioxide	<input type="checkbox"/> Ferrous <input checked="" type="checkbox"/> Non-Ferrous	Product certified by vendor
9	Silicon Manganese	<input type="checkbox"/> Ferrous <input checked="" type="checkbox"/> Non-Ferrous	Product certified by vendor
10	Ferro Aluminum	<input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	Product certified by vendor
		<input type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	
		<input type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous	

B. Description of Operations - Metal Management

Describe the facility's metal inspection program, work practice standards and material acquisition plan/procedures upon receipt of scrap or unprocessed metal. Include any pollution prevention management practices and source reduction measures to ensure the metal received is clean.

All Pacific Steel scrap yards are indoors, under cover, to minimize fugitive dust. Only scrap originating from the United States which does not contain motor vehicle scrap is purchased. Each Request for Quote (RFQ) and Purchase Order (PO) provided to a scrap vendor shall include the following;

"Material types not acceptable: Automotive Body Scrap, By-products, cans, cylinders, oil, used oil filters, other lubricants, free organic liquids, chlorinated plastic parts, dirt, engine block components, galvanized, lead components, mercury switches, I-beam, Paint, pipe, plastic, skeleton, tubing, or turnings. Scrap must be lead, mercury and Radiation free."

All 3 plant scrap yards conduct yearly random sampling of all vendors - composition of scrap is verified using Optical Emission Spectrometer and carbon analyzer testing equipment. In addition, all heats are analyzed and the composition is verified. If a discrepant heat analytical result is discovered, additional verification of the scrap used for that heat is conducted. All scrap deliveries to PSC must be visually inspected to make sure that each delivery does NOT contain any of the materials listed above.

If any of the above materials are noted in the delivery, the load is rejected and returned to the suppliers. Any rejected scrap shipments not immediately returned to the supplier, shall be sequestered or visibly marked until the shipment is returned to the vendor.

All scrap yard employees are trained concerning proper metal management handling procedures. Training is conducted yearly.

C. Management Practices to Reduce Fugitive Emissions– Metal Management

Describe control measures to minimize fugitive emissions from scrap or unprocessed metal.

All scrap is stored indoors under cover. At the end of each shift the scrap rooms are first swept with a magnetic sweeper to pick up any metal fines, followed by regular sweeping to contain any dust.

402.3 Furnace Operations

B. Description of Operations - FURNACE OPERATIONS										
Section #	Furnace Name and Manufacturer/ Model #	District S# and Applicable NESHAPs Section	Type of Operation	Source abated	Type of Abatement Device	District A#	Purpose of Abatement	Abatement Monitored	Monitoring Parameters	
1	187 - Electromelt - Electric Arc Furnace ARC FURNACE QT	187 S-1 40 CFR 63.10895(b) 40 CFR 63.10686	<input checked="" type="checkbox"/> Melting <input type="checkbox"/> Heat Treating	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Baghouse, Pulse Jet	A-9	Particulate Matter abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Grain loading less than 0.0017 grains per dry cubic foot. Pressure drop across the baghouse 2<P<12. Semi annual opacity testing	
2	187 - 2 Berkley Steel Heat Treat - HEAT TREATING FURNACES Gas fired heat treat oven	187 S-18 Exempt	<input type="checkbox"/> Melting <input checked="" type="checkbox"/> Heat Treating	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NA		<input type="checkbox"/> Yes <input type="checkbox"/> No		
3	703 - Electromelt - ELECTRIC ARC FURNACE CQT 7' 1097	703 S-27 40 CFR 63.10895(b) 40 CFR 63.10686	<input checked="" type="checkbox"/> Melting <input type="checkbox"/> Heat Treating	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Baghouse, Shaking	A-3	Particulate Matter abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across the baghouse 1<P<9 Semi annual opacity testing	
4	1603 - Whiting EAF Rocker Style ELECTRIC ARC FURNACE	1603 S-1 40 CFR 63.10895(b) 40 CFR 63.10686	<input checked="" type="checkbox"/> Melting <input type="checkbox"/> Heat Treating	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Baghouse, Pulse Jet	A-1	Particulate Matter abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Grain loading less than 0.0033 grains per dry cubic foot. Pressure drop across the baghouse 2<P<12. Semi annual opacity testing	
5	8'-0 R.H. Rocker Tilt 1603 - 2 Units - Johnston Gas fired recirculating box type Tempering ovens	Exempt	<input type="checkbox"/> Melting <input checked="" type="checkbox"/> Heat Treating	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No		
6	1603 - 5 Units - Johnston Gas fired box type Quench heat treat ovens	Exempt	<input type="checkbox"/> Melting <input checked="" type="checkbox"/> Heat Treating	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No		
7	1603 - Johnston 1524 Gas fired Car bottom normalizing heat treat oven	Exempt	<input type="checkbox"/> Melting <input checked="" type="checkbox"/> Heat Treating	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA	NA		<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Melting <input type="checkbox"/> Heat Treating	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		

C. Management Practices to Reduce Fugitive Emissions- FURNACE OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for furnace operations.

Section #	Abatement Device and Manufacturer/Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 - A-9 BHA/GE 36,000 cfm	Visual inspection of duct exhaust checking for PM. Verify leak detector supply air and opacity readings, check alarms	Daily
2	A-9 Continued	Visual inspection of ductwork system for leaks. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts	Monthly
3	A-9 Continued	Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary	SemiAnnual
4	703 - A-3 Industrial Clean Air 4-3200AE	Visual inspection of duct exhaust checking for PM.	Daily
5	A-3 Continued	Visual inspection of ductwork system for leaks. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts	Monthly
6	A-3 Continued	Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary	SemiAnnual
7	1603 - A-1 Bahnsen Hawley/2-294-14-10	Visual inspection of duct exhaust checking for PM. Verify leak detector supply air and opacity readings, check alarms	Daily
8	A-1 Continued	Visual inspection of ductwork system for leaks. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts	Monthly
9	A-1 Continued	Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary	Semi-annual
10	A-9, A-3, A-1	Drain gear box oil and refill, test run	Yearly

C. Management Practices to Reduce Fugitive Emissions - FURNACE OPERATIONS

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

Section #	Description of Housekeeping Measure	Purpose of Activity	Schedule of Activity
1	Baghouse dust bags secured to baghouse outlet	Eliminate fugitive dust. Baghouse dust is transferred from baghouse to dust bag in a closed system	On going
2	Sweeping around baghouse dust collectors	Removal of potential Particulate Matter	Daily

402.4 Forging Operations

B. Description of Operations - FORGING OPERATIONS										
Section #	Equipment Name and Manufacturer/ Model #	District S# and Applicable NESHAP's Section	Description of Use	Name of Lubricants and/or Oils	Other Materials Used	Source abated	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters
	NA					<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
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						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	
						<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No	

402.5 Casting and Cooling Operations

B. Description of Operations - CASTING AND COOLING OPERATIONS										
# Section	Name of Pouring and Cooling Operations and Manufacturer/ Model #	District S# and Applicable NESHAPs Section	Cooling Time of Product or Source	Designated Locations of Cooling Operation	Source Abated	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters	
1	Casting Pour off area Plant 187	187 S2	A-line 1 hr. minimum B-line 3-24 hrs.	A-line cooling deck, B-line main floor	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Baghouse into Carbon Adsorption	Particulate matter and odors	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across Baghouse 1<P<9 Carbon units 1<P<9, Temp <110 F	
2	Cast mold cooling room Plant 703	703 S30	45 min.	Cooling room	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Baghouse into Carbon Adsorption	Particulate matter and odors	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across Baghouse 1<P<9 Carbon units 1<P<9, Temp <110 F	
3	Cooling Room Plant 1603	1603 S19	23 - 131 hrs. dependant on Sleeve Diameter	Cooling Room	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Baghouse into Carbon Adsorption	Particulate matter and odors	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A3 and A7 - Pressure drop across baghouses - 4.5<P<7; Visual inspection A8 - FID continuous monitoring At 50 ppm in a 90 minute average): Have full load carbon (52,000 lbs.) on standby within 3 business days. At 65 ppm in a 90 minute average change carbon no later than 7 calendar days. At 85 ppm in a 90 minute average - Cease shakeout operations immediately and pouring operations within 2 hours. Maintain Inlet Face velocity into cooling room, minimum 200 ft/min.	
					<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No		
					<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No		
					<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No		
					<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No		

C. Management Practices to Reduce Fugitive Emissions - CASTING AND COOLING OPERATIONS

Describe the method to verify adequate cooling times are achieved to ensure minimization of fugitive emissions of particulates and odors prior to commencing shake out operations.

During the design phase of a new part at Pacific Steel Casting, the cooling rate/minimum cooling time is determined. Minimum cooling times are unique to each part. The cooling time is dependent on the mold type, mold size and sleeve size. The cooling time is recorded on all job/part cards. Quality assurance requires all minimum cooling times are achieved. Adequate cooling time is required to avoid hardening, cracking, internal damage or an undesired microstructure in the finished part.

Plant 187 - A Line molding is a batch process. The time each heat/batch is poured is recorded. At all times, the operators verify that each mold has cooled for a minimum of one hour before transferring the mold into the shakeout. During continuous pouring, the time of each heat is recorded, however, the minimum cooling time is achieved due to process constraints. Each batch of molds is poured from a small ladle, filled from the larger furnace ladle. The pouring deck space is limited by the small ladle travel availability. Molds are lined up in the pouring deck area. As a mold is poured it is moved forward on to the cooling deck. To make space for the just poured mold, the molds already on the cooling deck are shuttled forward one position towards the shakeout. The cooling deck has space for multiple molds. As each batch is poured the molds are moved forward one position, on the cooling deck. During continuous pouring, the process of shuttling forward molds, one position for each heat, takes a minimum of one hour before the mold reaches the shakeout unit. Plant 187 - B line Molds are tagged with the pouring date and time and the time after which shakeout can proceed. Employees verify the tags in order to insure the minimum cooling time has transpired, prior to shaking out the parts.

Plant 703 - The molds are loaded on a continuous conveyor line which circulates around from 1) the mold loading station, 2) to the pouring station, 3) into the cooling room (multiple switch backs are located inside the cooling room which insure the minimum cooling times are achieved), 4) to the automatic shakout unit and 5) back to the mold loading station. If the conveyor is continuously run, the parts are in the cooling room for 45 minutes. During normal operations the conveyor is stopped and started, as each heat is poured, increasing the time molds are in the cooling room.

Plant 1603 - Floor molds are tagged on the flask with the pouring date and time and the time after which shakout can proceed. Tags are verified by employees prior to shakout. Line molds have the heat number written on the side of the molds, as they are poured. The melting reports are used to establish the pouring date and time from which the shakout time is verified.

C. Management Practices to Reduce Fugitive Emissions - CASTING AND COOLING OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for casting and cooling operations.

Section #	Abatement Device and Manufacturer/Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 A8 Baghouse, Pulse Jet Torit Cartridge	1. Check manometer across baghouse. 2. Visual inspection internal & external, check cartridge filter integrity and condition. 3. Replace cartridge filters based on inspection and/or changing manometer readings.	1. Weekly 2. Semi Annual 3. As required - based on visual inspection findings and/or manometer data
2	187 A7 Carbon Adsorption Melrose/Blamer Eng. 60,000 cfm	Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the bi-weekly odor tests	As required - based on monitoring data (1<P<9), Odor test >25 odor units
3	703 A2 Baghouse Shaking Industrial Clean Air/10-700 SN	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary. Wire brush fan blades.	1. Weekly 2. Semi-Annual
4	703 A7 Carbon Adsorption Melrose	Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the bi-weekly odor tests	As required - based on monitoring data (1<P<9), Odor test >25 odor units
5	1603 A3 Baghouse, Pulse Jet Bahnson Hwaley/HE-378-10	1. Check manometer across baghouse. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3. Replace bags based on inspection and/or changing manometer readings .	1. Quarterly 2. Semi-Annual 3. As required, based on inspection
6	1603 A7 Baghouse, Pulse Jet Bahnson Hwaley/HE-378-10	1. Check manometer across baghouse. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3. Replace bags based on inspection and/or changing manometer readings	1. Quarterly 2. Semi-Annual 3. As required, based on inspection
7	1603 A8 Carbon Adsorption	Replace carbon and prefilters based on FID, steel output, pressure drops across	Permit required - FID >65ppm (PSC policy)

	Melrose	carbon bed & prefilters checked daily	when FID outlet >20 ppm and/or >700 tons of steel processed)
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C. Management Practices to Reduce Fugitive Emissions - CASTING AND COOLING OPERATIONS

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

Section #	Description of Housekeeping Measure	Purpose of Activity	Schedule of Activity
1	Configure door openings & room enclosures to enhance odor capture Plant #187 Pouring room, all 2nd street doors 1-C, & 1-J closed at all times, south doors open on calm days. Plant #703 2-D, 2-J doors closed. Plant #1603 3-A, 3-B, 3-D, 3-E, 3-O doors closed.	Eliminate odors through enhanced capture of casting and cooling fugitive emissions.	Daily
2	Hot molds only stored in designated areas. Plant #187 A line cooling deck or B line floor, Plant #703 inside the cooling room on the conveyor line, Plant #1603 inside the cooling room	Ensure molds are located in areas where odor abatement equipment is located	Continuous

402.6 Shake Out Operations

B. Description of Operations - SHAKE OUT OPERATIONS									
Section #	Name of Shakeout Operations and Manufacturer/ Model #	District S# and Applicable NESHAPS Section	Describe Location of Shake Out Operation	Source Abated	A#	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters
1	B Shake Out Simplicity M-11	187 S-3	Floor in the middle of B-line cooling room	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-1, A-7	Baghouse into Carbon Adsorption	Particulate matter and odor abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across Baghouse 1<P<9 / Carbon units 1<P<9, Temp <110 F
2	A Shake Out Floatex MF7	187 S-4	East end of A-line deck	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-1, A-7	Baghouse into Carbon Adsorption	Particulate matter and odor abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across Baghouse 1<P<9 / Carbon units 1<P<9, Temp <110 F
3	Shakeout & Tray Sanding	703 S-31	In clean & finish room just outside the cooling room	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A-1, A-7	Baghouse into Carbon Adsorption	Particulate matter and odor abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across Baghouse 1<P<9 / Carbon units 1<P<9, Temp <110 F
4	Simplicity OA-10-N Casting Mold Shake Out Station General Kinematics TMTM-96X12-0	1603 S-4	Molding room just outside the cooling room	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A3,A7, A-8	Baghouse into Carbon Adsorption	Particulate matter and odor abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Pressure drop across baghouses 4.5<P<7; Visual inspection FID continuous monitoring - At 50 ppm in a 90 minute average); Submit evidence of full load carbon (52,000 lbs.) on standby within 3 business days. Maintain the Inlet face velocity at the openings of the pouring and cooling areas at a minimum 200 fpm .
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	

C. Management Practices to Reduce Fugitive Emissions - SHAKE OUT OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for shake out operations.

Section #	Abatement Device and Manufacturer/Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 A1 Baghouse, Pulse Jet Industrial Clean Air	Monitor carbon prefilters. Excessive prefilter pressure can indicate problem with A1 baghouse. Inspection of the interior of baghouse for structural integrity and fabric bag condition, replace bags as necessary	Weekly SemiAnnual
2	187 A7 Carbon Adsorption Melrose	Replace carbon and prefilters based on daily pressure readings across the carbon beds & prefilters and the semi-weekly odor tests	As required - based on monitoring data (1<P<9), Odor test >25 odor units
3	703 A1 Baghouse, Shaker Industrial Clean Air/7-3200AE	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary. Wire brush fan blades.	1.Weekly 2.Quarterly
4	703 A7 Carbon Adsorption Melrose	Replace carbon and prefilters based on daily pressure readings across the carbon beds & prefilters and the semi-weekly odor tests	As required - based on monitoring data (1<P<9), Odor test >25 odor units
5	1603 A3 Baghouse, Pulse Jet Bahnson Hwaley/HE-378-10	1.Check manometer across baghouse. 2.Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3.Replace bags based on inspection and/or changing manometer readings.	1. Monthly 2. Quarterly 3.As required, based on inspection
6	1603 A7 Baghouse, Pulse Jet	1.Check manometer across baghouse. 2.Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3.Replace bags based on inspection and/or changing manometer readings	1. Monthly 2. Quarterly 3.As required, based on inspection
7	1603 A8 Carbon Adsorption Bahnson Hwaley/HE-378-10	Replace carbon and prefilters based on FID, steel output, pressure drops across carbon bed & prefilters checked daily	Permit required - FID >65ppm (PSC policy when FID outlet >20 ppm and/or >700 tons of steel processed)

402.7 Finishing Operations

B. Description of Operations - FINISHING OPERATIONS										
Section #	Type of Operation	District S# and Applicable NESHAPS Section	Describe Location of Finishing Operation	Number of Machines	Abated Source	A#	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters
1	<input checked="" type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:	187 S12	North end of Plant 1, clean & finish room	GRINDERS: 7 WELDERS: OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A4	Baghouse, Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Visual inspection of stack emissions
2	<input type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	187 S13	East Arc-Air Booth in Plant 1 clean & finish room	GRINDERS: WELDERS: 1 OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A4	Baghouse, Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Visual inspection of stack emissions
3	<input type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	187 S14	West Arc-Air Booth in Plant 1 clean & finish room	GRINDERS: WELDERS: 1 OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A6	Baghouse, Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Visual inspection of stack emissions
4	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: Table Blast	187 S15	South wall in Plant 1 clean & finish room next to furnace	GRINDERS: WELDERS: OTHER: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A3	Baghouse, Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Visual inspection of stack emissions
5	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: RotoBlast	187 S16, S17	East wall and NW corner in Plant 1 clean & finish room	GRINDERS: WELDERS: OTHER: 2	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2	Baghouse, Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Visual inspection of stack emissions
6	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: RotoBlast	703 S32	North-West end of Clean & Finish room	GRINDERS: WELDERS: OTHER: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2 A7	Baghouse Shaker Carbon Adsorption	Particulate Matter Abatement Odor	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse, Pressure Carbon Unit 1<P<9), Odor test >25 odor units
7	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding	703 S33, S34, S35, S36	West end of Clean and Finish lines	GRINDERS: WELDERS: OTHER: 4	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A5	Baghouse Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse 1<P<9)

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8	<input checked="" type="checkbox"/> Other: Cut Off Saw <input checked="" type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:	703 S37, S38, S39, S40	East end of Clean & Finish lines	GRINDERS: 4 WELDERS: OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A5	Baghouse Shaker	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse 1 < P < 9
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B. Description of Operations - FINISHING OPERATIONS										
Section #	Type of Operation	District S# and Applicable NESHAPS Section	Describe Location of Finishing Operation	Number of Machines	Abated Source	A#	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters
9	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: Tumble Blast	1603 S6	Middle of West Wall	GRINDERS: WELDERS: OTHER: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2 A6	Baghouse Shaking	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse 1 < P < 9
10	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: Table Blast	1603 S5	East Center wall of Clean & Finish room	GRINDERS: WELDERS: OTHER: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2 A6	Baghouse Shaking	Particulate Matter Abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse 1 < P < 9
11	<input checked="" type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	5 Grinding stations middle of clean & finish room Plant 187	GRINDERS: 5 WELDERS: OTHER:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA			<input type="checkbox"/> Yes <input type="checkbox"/> No	
12	<input type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	8 Welding stations inside Plant 187 Clean & Finish room	GRINDERS: WELDERS: 8 OTHER:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NA			<input type="checkbox"/> Yes <input type="checkbox"/> No	

13	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: Plasma Unit	Exempt	West side of Plant 187 Clean & Finish room	GRINDERS: WELDERS: OTHER: 1	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No	
14	<input checked="" type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	Grinding stations in Plant 187 Cell	GRINDERS: 2 WELDERS: OTHER:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No	
15	<input type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	Welding stations in Plant 187 Cell	GRINDERS: WELDERS: 9 OTHER:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No	
16	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input checked="" type="checkbox"/> Other: Rotoblast.	Exempt	East end of Plant 187 Cell	GRINDERS: WELDERS: OTHER: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	N/A	Baghouse	Particulate Matter	Daily - Visual inspection of stack emissions

B. Description of Operations - FINISHING OPERATIONS										
Section #	Type of Operation	District S# and Applicable NESHAPS Section	Describe Location of Finishing Operation	Number of Machines	Abated Source	A#	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters
17	<input checked="" type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	South Wall of Tombstone	GRINDERS: 9 WELDERS: OTHER:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A			<input type="checkbox"/> Yes <input type="checkbox"/> No	
18	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding	Exempt	Middle North Wall of Tombstone	GRINDERS: WELDERS: OTHER: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	N/A	Baghouse	Particulate Matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse

19	<input checked="" type="checkbox"/> Other: Shot Blast Mach. <input type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	Arc-Air Booths NW corner of Plant 1603 Clean & Finish room	GRINDERS: 2 WELDERS: 2 OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2, A6	Baghouse, Shaking	Particulate Matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse
20	<input checked="" type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	Combination grinding/welding booths located on South and West end of Plant 1603 C&F room	GRINDERS: 8 WELDERS: 8 OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2, A6	Baghouse, Shaking	Particulate Matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse
21	<input type="checkbox"/> Grinding <input checked="" type="checkbox"/> Welding <input type="checkbox"/> Other:	Exempt	Welding booths located SE corner of Plant 1603 C&F room	GRINDERS: 4 WELDERS: 4 OTHER:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A2, A6	Baghouse, Shaking	Particulate Matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily - Pressure drop across baghouse
	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:			GRINDERS: WELDERS: OTHER:	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:			GRINDERS: WELDERS: OTHER:	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Grinding <input type="checkbox"/> Welding <input type="checkbox"/> Other:			GRINDERS: WELDERS: OTHER:	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	

C. Management Practices to Reduce Fugitive Emissions- FINISHING OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for finishing operations.

Section #	Abatement Device and Manufacturer/Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 A2 Baghouse Shaker Industrial Clean Air/6-700	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.	Quarterly Semi Annual
2	187 A3 Baghouse Shaker Industrial Clean Air/10,000 cfm	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition	Quarterly Semi Annual
3	187 A4 Baghouse Shaker Industrial Clean Air/30,000 cfm	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition	Quarterly Semi Annual
4	187 A6 Baghouse Shaker Industrial Clean Air/8,000 cfm	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition	Quarterly Semi Annual
5	703 A2 Industrial Clean Air/10-700SN	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition /dye check baghouse, replace bags as necessary. Wire brush fan blades.	Quarterly Semi Annual
6	703 A7 Melrose	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition /dye check baghouse, replace bags as necessary. Wire brush fan blades.	Quarterly Semi Annual
7	703 A5 Industrial Clean Air/M-7-800SW	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag	Quarterly Semi Annual

		condition /dye check baghouse, replace bags as necessary. Wire brush fan blades.	
8	1603 A2 Pitter Metal Pulse Jet	1. Inspect & lube fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition / dye check baghouse, replace bags as necessary.	Quarterly Semi Annual
9	1603 A6 Pitter Metal Pulse Jet	1. Inspect & lube fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition / dye check baghouse, replace bags as necessary.	Quarterly Semi Annual

C. Management Practices to Reduce Fugitive Emissions - FINISHING OPERATIONS

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

Section #	Description of Housekeeping Measure	Purpose of Activity	Schedule of Activity
1	Run magnetic sweeper followed by Auto Sweeper	Pick up and remove particulate matter from operational area	Twice per shift
2	Visually check exhaust stacks for particulates and dust.	Insure proper functioning of the baghouse, and identify presence of torn bags or bags that have fallen off.	Daily

402.7 Sand Reclamation

B. Description of Operations - SAND RECLAMATION										
# Section	Name of Sand Reclamation Equipment and Manufacturer/Model #	District S# and Applicable NESHAPS Section	Describe Type of Sand Reclamation Equipment	Abated Source	A#	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters	
1	2 Screens - Vibrating & Rotating Jeffery/Rotex	187 S6, S7	Sand Cooler, 6 screen w/mold release vibrating unit & Rotating sand screen	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A1 A7	Baghouse Pulse Jet / Carbon Adsorption	Particulate Matter Odors	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Daily visual check for particulates and dust. Carbon units Pressure 1<P<9, Temp <110 F	
2	Thermal Recovery Lump Breaker Dependable	703 S45	Lump reducer	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A10	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
3	TR Flow Bin - Rejected matl.	703 S46	Magnetic Separator, sand hopper & bucket elevator	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A10	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
4	TR Sand Cooler/Air Bed Dependable/VTO JDR	703 S47	Sand Cooler, cooling tower & bucket elevator	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A10	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
5	TR Material Handling Equip. Dependable	703 S48	3 hoppers, 3 bucket elevators	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A10	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
6	Thermal Recycling Unit Dependable 2 TPH HTCC	703 S49	2 ton per hour gas fired thermal sand reclaimers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A10	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
7	Sand Cooler Classifier Omco Fin Type	1603 S9	Fin type sand cooling system	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A4	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
8	2 Sand Conditioning Units B & P Pneu-claim	1603 S10, S11	Pneumatic sand reclaimers	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A4	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
9	2 Sand storage silos	1603 S12, S13	Return sand bin, Reclaimed sand bin	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A4	Baghouse Pulse Jet	Particulate Matter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily visual check for particulates and dust.	
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
				<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		

C. Management Practices to Reduce Fugitive Emissions - SAND RECLAMATION

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for sand reclamation making operations.

Section #	Abatement Device and Manufacturer/Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 A1 Baghouse Shaking Industrial Clean Air 30,000cf	Monitor carbon prefilters. Increased prefilter pressure indicates A1 baghouse inefficiencies, troubleshoot if necessary. Visual inspection internal (bag condition (holes), linkage wear, excessive build-up, inner shell for holes) & external (outer shell for holes, leaks and seal condition). Replace or repair items based on inspection findings.	Daily Semi Annual
2	187 A7 Carbon Adsorption Melrose	Replace carbon and prefilters as necessary based on odor test & pressure drops across carbon bed & prefilters checked daily	As required - based on monitoring data (1<P<9), Odor test >25 odor units
3	703 A10 Pulse Jet Baghouse Sly/STJ-1511-10	Check pulse jet pressure. Check baghouse and filter cartridge integrity. Replace cartridge filters as necessary.	Weekly Semi Annual
4	1603 A4 Baghouse Pulse Jet Bahnsen Hawley HE-210-10	Inspect & lube fan bearings, inspect & check sheaves & V belts. Visual inspection internal (bag condition (holes), linkage wear, excessive build-up, inner shell for holes) & external (outer shell for holes, leaks and seal condition). Replace or repair items based on inspection findings.	Quarterly Semi Annual

C. Management Practices to Reduce Fugitive Emissions - SAND RECLAMATION

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

Section #	Description of Housekeeping Measure	Purpose of Activity	Schedule of Activity
1	Plant 187 sand reclaim unit is on the roof of the building. Regular roof inspections are conducted. Roof sweeping is conducted if any sand is observed on the roof.	Remove particulate matter	Weekly

402.9 Dross and Slag Management

B. Description of Operations - DROSS AND SLAG MANAGEMENT									
Section #	Material	Location for Cooling of Material	Abated Source	A#	Type of Abatement Device	Purpose of Abatement	Abatement Monitored	Monitoring Parameters	Material Disposition
1	Dross	Do not generate dross - associated with non ferrous metals	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Offsite Recycling <input type="checkbox"/> Offsite Disposal <input type="checkbox"/> Onsite Reprocessing
2	Slag	Plant 187 Between EAF and B line pouring Plant 703 Melting room North end Plant 1603 Pouring room South end	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	A8, A7 A1, A7 A3, A7, A8	Baghouse into Carbon unit	Particulate matter and odor abatement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	187 & 703 - Carbon units Pressure 1 < P < 9, 703 - Temp < 110 F 1603 - Permit required - FID > 65 ppm (PSC policy when FID outlet > 20 ppm and/or > 700 tons of steel processed)	<input checked="" type="checkbox"/> Offsite Recycling <input checked="" type="checkbox"/> Offsite Disposal <input type="checkbox"/> Onsite Reprocessing

C. Management Practices to Reduce Fugitive Emissions - DROSS AND SLAG MANAGEMENT

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for dross and slag operations.

Section #	Abatement Device and Manufacturer/ Model #	Description of Preventative Maintenance Activity and Work Practice Standards	Schedule of PM
1	187 A8 Baghouse, Pulse Jet Torit Cartridge	1. Check manometer across baghouse. 2. Visual inspection internal (condition of filter railings and integrity/condition of cartridge filter) & external (frame integrity, diaphragm seal). 3. Replace cartridge filters, based on inspection and/or changing manometer readings .	1. Weekly 2. SemiAnnual 3. As required, based on inspection
2	187 A7 Carbon Adsorption Melrose	Replace carbon and prefilters as necessary based on odor test & pressure drops across carbon bed & prefilters checked daily	As required - based on monitoring data (1<P<9), Odor test >25 odor units
3	703 A2 Baghouse Shaking Industrial Clean Air/10-700 SN	1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition/dye check baghouse, replace bags as necessary. Wire brush fan blades.	1. Weekly 2. Quarterly
4	703 A7 Carbon Adsorption Melrose	Replace carbon and prefilters as necessary based on odor test & pressure drops across carbon bed & prefilters checked daily	As required - based on monitoring data (1<P<9), Odor test >25 odor units
5	1603 A3 Baghouse, Pulse Jet Bahnson Hwaley/HE-378-10	1. Check manometer across baghouse. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3. Replace cartridge filters based on inspection and/or changing manometer readings	1. Monthly 2. Quarterly 3. As required, based on inspection
6	1603 A7 Baghouse, Pulse Jet Bahnson Hwaley/HE-378-10	1. Check manometer across baghouse. 2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. 3. Replace cartridge filters based on inspection and/or changing manometer readings	1. Monthly 2. Quarterly 3. As required, based on inspection

7	1603 A7 Carbon Adsorption Melrose	Replace carbon and prefilters as necessary based on FID, pressure drops across carbon bed & prefilters checked daily	Permit required - FID >65ppm (PSC policy when FID outlet >20 ppm and/or >700 tons of steel processed)

C. Management Practices to Reduce Fugitive Emissions - DROSS AND SLAG MANAGEMENT

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

Section #	Description of Housekeeping Measure	Purpose of Activity	Schedule of Activity
1	Monitor bin loading to avoid overloading	Eliminate spills	On going
2	Sweep area after loading trucks for offsite disposition	Remove particulate matter	Every load pick up
3	Configure door openings & room enclosures to enhance odor capture Plant #187 Pouring room, all 2nd street doors 1-C, & 1-J closed at all times, south doors open on calm days. Plant #703 2-D, 2-J doors closed. Plant #1603 3-A, 3-B, 3-D, 3-E, 3-O doors closed.	Eliminate odors through enhanced capture of slag emissions	Daily

B. Description of Abatement and Control Equipment

Provide a comprehensive list of all abatement and control equipment for operations subject to 12-13-402 and identify the source(s) of operation in which it abates. If the abatement equipment abates multiple sources, provide a detailed description of how the abatement is designated to those sources.

Section #	Name of Abatement Equipment	District A#	Names of Source(s) Abated	District S#	Description of Abatement
1	187 A1 Baghouse	A1	A line Shakeout, B line Shakeout, Sand Muller, Sand reclaim system	S3, S4, S5, S6, S7, S8	Pulse Jet
2	187 A2 Baghouse	A2	Two Rotoblast units located in Clean & Finish room	S16, S17	Shaker
3	187 A3 Baghouse	A3	Table Blast	S15	Shaker
4	187 A4 Baghouse	A4	Cleaning & Grinding Dept., Arc-Air Booth	S12, S13	Shaker
5	187 A6 Baghouse	A6	Arc-Air Booth	NA	Shaker
6	187 A7 Adsorption, Activated carbon	A7	Pouring Area (S2) A line (S4) & B line (S3) shakeouts Sand reclaim (sand cooler,sand screen) (S6, S7) Sand Mixer (S5, S8)	S2, S3, S4, S5, S6, S7, S8	A8 Pulse Jet-S2. A1 Pulse Jet-S3,S4,S5,S6,S7,S8. CA-1, CA-2a and CA-2b Carbon bed-A1 Baghouse and A8 Baghouse.
7	187 A8 Baghouse	A8	Pour off area, main floor	S2	Pulse Jet
8	187 A9 Baghouse	A9	Electric Arc Furnace	S1	Shaker
9	187 A10 Baghouse	A10	Core Sand Muller	S10	Pulse Jet
10	187 E25 Baghouse	Exempt	Plant 1 Cell Rotoblast	NA	Shaker
11	703 A1 Baghouse	A1	EAF Ladle Station w/ canopy hood, Shell Mold Pour Station,Shakeout	S28, S29, S31	Shaker

Section #	Name of Abatement Equipment	District A#	Names of Source(s) Abated	District S#	Description of Abatement
12	703 A2 Baghouse	A2	Cast Mold Cooling Room, Rotoblast	S29, S31	Shaker
13	703 A3 Baghouse	A3	EAF Electric Arc Furnace	S27	Shaker
14	703 A4 Baghouse	A4	Sand Heater, Sand Coating, Coated sand pug mill, Coated sand vibrating screen, Bucket elevator	S6, S7, S8, S9, S10	Shaker
15	703 A5 Baghouse	A5	Sand silos #1, #2 & loading elevator, Bucket elevator, 4 abrasive cut-off saws, 4 grinders	S1, S2, S3, S4, S33-S40	Shaker
16	703 A10 Baghouse	A10	Sand silo, Lump breaker, flow bin, Sand cooler, Material handling equipment, Thermal recycling unit	S44,S45 S46,S47 S48,S49	Pulse Jet
17	703 T127 Baghouse	Exempt	Shot blast machine	NA	Pulse Jet
18	703 A7 Adsorption, Activated Carbon	A7	EAF Ladle Station w/ canopy hood (S28) Shell Mold Pour Station (S29) Shakeout (S31) Cooling Room (S30) Rotoblast (S32) 2 Shell twin molding machines (S22, S23) Electric Arc Furnace	S22,S23 S28,S29 S30,S31 S32	A1 Shaker-S28, S29,S31. A2 Shaker-S30,S32. CA-1 carbon bed-A2 Baghouse. CA-2 & CA-3 Carbon bed-S22,S23 and A1 Baghouse.
19	1603 A1 Baghouse	A1		S1	Pulse Jet
20	1603 A2 Baghouse	A2	Blast table, Rotoblast, Arc-air booths, Welding booths	S5, S6	Shaker
21	1603 A3 Baghouse	A3	Mold Shakout, Sand Mixer utilizing Techniset binders, Mold coating, Pouring/cooling	S4, S14 S18,S19	Pulse Jet
22	1604 A4 Baghouse	A4	Sand silo #1, Sand cooler, Sand conditioning units #1 & #2, Return sand bin #1 & #2, Sand elevators #1, #2, & #3.	S7, S9, S10,S11 S12,S13 S15,S16 S17	Pulse Jet

Technical Data

12-13-403.1

- A. Process Flow Diagram* – Facilities must indicate all operations in Section 12-13-402, the flow of materials used and identify all monitoring of processes, abatement and controls to minimize emissions beginning from material receipt to achievement of final product. Identify all abatement and control devices by District source numbers according to District Permit or as exempt from District Permit.
- B. Facility Layout / Floor Plan* - Facilities must indicate all relative locations of processing equipment and monitoring and controls, all permitted and exempt sources identified in the process flow diagram per Section 12-13-403.1.1 and any other source(s) that may contribute to particulates and odors. Include all building walls, partitions, doors, windows, vents and openings and indicate all areas that have abatement for particulates and odors. Identify all metal melting and processing equipment by District source numbers according to District Permit or as exempt from District Permit.

A. Process Flow Diagram

Appendix B - Confidential

B. Facility Layout / Floor Plan

Appendix C - Confidential.

Fugitive Emissions Reductions Previously Realized

12-13-403.2

Facilities must provide a description of the equipment, processes and procedures installed or implemented within the last five years to reduce fugitive emissions. Include the purpose for implementation and detail any employee training that was conducted for that equipment, process or procedure and the frequency of any ongoing training.

12-13-403.2 FUGITIVE EMISSIONS PREVIOUSLY REALIZED						
# Section	Identify Type of Operation per Section 12-13-402	Description of Equipment, Processes or Procedures Previously Realized	Implementation Date	Purpose of Implementation	Employee Training Conducted	Description of Employee Training and Frequency of Training
1	Mold & core making, metal management, Furnace operations, casting & cooling, shakeout, finishing, Sand reclaim, Slag	Odor Management Plan approved by BAAQMD	10/03/2008	Reduce odors and particulate matter.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	All employees trained after initial roll out. Yearly refresher training is conducted. Plan elements are also incorporated into PSC operating procedures. Job specific training is included during PSC operating procedure training, when conducted.
2	Mold & core making, casting & cooling, shakeout, Sand reclaim	Plant 1603 change to lower VOC binder;	2008	Reduce VOC emissions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Initial training to make employees aware of the sand recipe change.
3	Furnace operations	Plant 1603 EAF Room fume collection installed;	2008	Increase capture efficiency of odors and particulate matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Maintenance trained on equipment PM
4	Mold & core making, casting & cooling, shakeout, Sand reclaim	Plant 703 precoated sand changed to lower VOC product	2009	Reduce VOC emissions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Employees trained on new MSDS after change.
5	Casting & cooling, shakeout	Plant 187 Main Floor fume collection directed to baghouse and carbon unit	2010	Increase capture efficiency of odors and particulate matter	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Maintenance trained on equipment PM
6	Mold & core making	Plant 187 Core Room baghouse installed.	2010	Abate core room particulate matter.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Maintenance trained on equipment PM
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	

Schedule for the Implementation of the EMP Elements

12-13-403.3

- A.* Provide a list of existing or current EMP elements in place pursuant to and under a District Authority to Construct as of the initial date of EMP submittal (on or before May 1, 2014). Include a description, the purpose and schedule of the element(s).

- B.* Provide a list of new or future EMP elements to be implemented following APCO approval of the EMP. Include a description, the purpose and schedule of the element(s) to be implemented.

A. 12-13-403.3.1 SCHEDULE FOR THE IMPLEMENTATION OF THE EMP ELEMENTS (on or before May 1, 2014)						
Section #	Identify Type of Operation per Section 12-13-402	List Specific Elements to be Implemented on or before May 1, 2014	Implementation Date	Description of Elements to be Implemented	Purpose of Implementation	
	NA					

B. 12-13-403.3.2 NEW OR FUTURE EMP ELEMENTS TO BE IMPLEMENTED						
# Section	Identify Type of Operation per Section 12-13-402	List Specific Elements to be Implemented Following APCO Approval of the EMP	Implementation Date	Description of Elements to be Implemented	Purpose of Implementation	
1	Mold and Core Making - 703	Consider installation of ventilation hoods over S-19 and S-26	To Be Determined	Working with Engineering and District Staff to determine equipment capabilities and permit requirements for implementation/installation of hoods over S-19 and S-26	Further reduce fugitive emissions of PM and odors	
2	Casting and Cooling - 187	Consider installing wall to isolate pouring operations in Plant 1	To be Determined	Working with Engineering and District Staff to determine feasibility and permit requirements for implementation/installation of wall	Further reduce fugitive emissions of PM and odors	
3	Mold Shakeout/Sand Mixer utilizing Techniset binders Mold coating Pouring/cooling - 1803	Consider increasing carbon system capacity which affects: Mold Shakeout (S4) Sand Mixer (S14) Mold coating (S18) Pouring/cooling (S19)	To be Determined	Working with Engineering and District Staff to determine equipment capabilities and permit requirements for implementation	Improve abatement capacity	
4	Sand Reclamation - 703	Consider connecting Sand Reclamation Unit (S-49) to Carbon Unit	To be Determined	Working with Engineering and District Staff to determine equipment capabilities and permit requirements for implementation	Further reduce fugitive emissions of PM and odors	

Compliance Schedule for the EMP

12-13-404

- A. *APCO Recommendations to EMP and Determination of Approvability*– Acknowledge acceptance or rejection of each of the APCO’s recommendations. For each of the accepted recommendations, describe the measures to be implemented and include the date of proposed implementation. If the facility rejects a recommendation, provide a detailed basis for that rejection.

A. APCO Recommendations to EMP and Determination of Approvability (12-13-405) Date of EMP:

Provide determination of acceptance to APCO recommendations. Include the determination of acceptance by the facility's Responsible Manager and the basis for rejecting any APCO recommendations. If recommendation is accepted, include measures to implement APCO recommendation and the proposed date of implementation.

Section #	Date of APCO Recommendation	(FOR APCO USE ONLY) APCO Recommendation	Acceptance of APCO Recommendation	If NO: Basis for Rejecting APCO Recommendation	If YES: Measures to Implement Recommendation	Proposed Date of Implementation	(APCO USE ONLY) Implementation Verified by APCO
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No

A. APCO Recommendations to EMP and Determination of Approvability (12-13-405) Date of EMP:

Provide determination of acceptance to APCO recommendations. Include the determination of acceptance by the facility's Responsible Manager and the basis for rejecting any APCO recommendations. If recommendation is accepted, include measures to implement APCO recommendation and the proposed date of implementation.

Section #	Date of APCO Recommendation	(FOR APCO USE ONLY) APCO Recommendation	Acceptance of APCO Recommendation	If NO: Basis for Rejecting APCO Recommendation	If YES: Measures to Implement Recommendation	Proposed Date of Implementation	(APCO USE ONLY) Implementation Verified by APCO
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No

Appendix

If additional information are to be included in the EMP, identify the associated Appendix # as “*#*” in the text box of the specific table.

In the table below, note the Appendix # and provide the Page # and Section # of the EMP where the material references.

Appendix #	Reference to Page # and Section # of EMP
A	Page #9 , Section # 403.1.3 A
B	Page #75 , Section # 403.1.A
C	Page #76 , Section # 403.1.B
	Page # , Section #
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Appendix # A

Reference to Page #9, Section # Confidential

**Retrofit any batch
or drum**



- **No Smoke**
- **No Odor**
- **No Fumes**
- **No Chemicals**
- **No Problem!**

**The Simple,
Reliable,
Cost-efficient
WMA System
from the
Asphalt
Experts**





Benefits:

- No smoke - no odor
- Quick & easy installation
- Retrofit ANY plant
- Easy to operate
- Lower fuel costs
- Reduce labor costs
- Improve worker safety
- Reduce emissions
- Run more RAP

Purchase for Less

The AQUABlack® System costs significantly less than most of the WMA systems currently available. In some cases, half the price. It is designed with simplicity and reliability in mind by the world's foremost experts in asphalt plant retrofit applications – MAXAM.

Quick and Easy Installation

The flexible system retrofits onto any plant and can be installed over a weekend. The unit comes completely assembled. Simply attach it to your A/C line, hook it up to a water source, install the control panel, and you're ready to go.

After installation, we offer a Field Technician to your site for two days of start up and training. Training takes only about an hour since operation is so simple. Once it's set up, you simply turn it on or off as needed.

Run More RAP

Lower temperatures means you can run more RAP and stay within the temperature limits of your baghouse.

Save Time

In field tests, AQUABlack® warm mix asphalt consistently reaches targeted compaction rates with fewer roller passes. It also enables paving in cooler weather, extends the paving season, and permits faster release of the pavement to traffic. As the air bubbles created in the foaming process are completely removed during the rolling and compaction process, superior in-place densities are achieved with less rolling effort. In some cases, 25% less.

Reduce Fuel Consumption

Lower temperatures means lower fuel consumption. Often as much as 15%. It also means the exhaust fan doesn't have to work as hard, saving energy spent on moving air.

Reduce Emissions

Lower fuel consumption translates directly into lower emission of greenhouse gases at the plant from drying and heating of the aggregate. The fumes and smoke at the plant load-out, and at the laydown site, are also eliminated.

Simplify Maintenance

Some WMA systems use 10 or more solenoids to control critical components. We thought simpler was better. We thought you'd rather be running your plant than running to get replacement parts.

Extend Equipment Life

Lower temperatures reduces the wear and tear on equipment; extends maintenance intervals and reduces overall maintenance costs.



Hot Mix Asphalt



Warm Mix Asphalt



Components:

PLC Based Touch Screen Control Panel

The touch-screen Control Panel is mounted in the control house and easily connected to the metering system using multi-conductor cable. When the operator sets max tons on the control panel, the system automatically calculates the correct amount of water to be injected into the WMA, and sets the water pump drive to the proper output rate. A mass flow meter monitors flow rate and sounds a warning if it goes out of the optimum range.

High-pressure Variable Speed Metering System

The high-pressure variable speed metering system comes completely pre-piped and prewired, and is enclosed in a weather tight enclosure. The enclosure is heated for cold weather operation. The system is equipped with an automatic compressed air purge that cleans water out of the delivery line upon shutdown to prevent freezing.

AQUABlack® Foaming Gun

The AQUABlack® all stainless Foaming Gun comes with all required water hose and hot oil jumpers for installation. It is inserted into the existing a/c line just prior to entering the drum. Access nozzle service ports means that no disassembly is required for inspection of your system.

AQUABlack® Solutions features:

- High volume foaming with MicroBubble™ technology. Any system can produce foam, but it's the microbubbles that stay in the mix throughout the mixing, hauling and paving process.
- Automatic PLC based touch screen control
- Enclosed and heated for all weather operation
- Stainless construction to eliminate corrosion. The stainless steel mixing diffuser provides even distribution of the water throughout the liquid asphalt.
- Built for 1,000 psi operating pressure
- No moving parts in the meter. This meter will not plug or fail from scale or particulate in the water.
- The high-pressure system enables low water-to-liquid-asphalt ratio during foaming and creates the microbubbles which stay in the mix until compaction.





Will you go back and forth between hot and warm mix asphalt?

If so, you need to take precautions to protect your baghouse. Here's why: The lower exhaust temperature from WMA can cause condensation in the baghouse, creating acid rain that will damage your equipment, and mud-cake the bags - saddling you with high replacement costs and unnecessary down-time. You need an effective way to control the stack temperature to protect your baghouse. The answer is the patented MAXAMizer® Heat Recovery System. It automatically maintains proper stack temperature +/-5°, and typically saves 5-to-10% in fuel consumption.

Being More Competitive in a Go Green Business Climate

Go Green or Go Home

More and more jobs are being specified with a WMA option. If you can't offer WMA, you may not qualify to even bid on a lot of jobs in the future. You don't have to be on the outside looking in. The AQUABlack® WMA System easily retrofits onto any manufacturer's asphalt plant, and it can be installed on yours in just two days.

Going Green is Good Business

The AQUABlack® WMA System opens doors by allowing you to bid on jobs specified as WMA only. It makes your company more neighborhood friendly by reducing fumes and pollutants. It makes you a more responsible/credible member of the business community; and it helps you attract and retain good employees. If you had your choice of working on a HMA crew or a WMA crew, which would you choose?

Protect Workers and Your Business

While the adverse affects of breathing asphalt fumes are negligible, OSHA, NIOSH and the EPA continue to conduct studies to gauge its affect on health. NIOSH says additional studies are needed to better characterize occupational exposures to asphalt fumes, vapors and aerosols. Why wait? Move to WMA now with the easy-to-implement system – AQUABlack®.



MAXAM Equipment, Inc.

1575 Universal Avenue • Kansas City, MO 64120 **800•858•6070**



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BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

June 11, 2014

Seth L. Watkins,
Plant Manager
Berkeley Asphalt Company
699 Virginia Street
Berkeley, CA 94710

Dear Mr. Watkins:

Enclosed are the results of the source tests that this District conducted on your *Rotary Dryer (S-1) abated by Cyclone & Baghouse (A-4 & A-7) on April 15 & 16, 2014.*

These data are considered to be representative of the emissions from this source for the operating parameters described during the test times and are forwarded as a courtesy for your information.

Your cooperation with our test personnel is appreciated. Please contact Charles McClure, Supervising Air Quality Engineer, if you have any questions regarding these data.

Sincerely,

A handwritten signature in black ink that reads "Robert Bartley".

Robert Bartley
Air Quality Engineering Manager

RB:CM:ge

Enclosure

Distribution: Firm Permit Services Requester	BAY AREA AIR QUALITY MANAGEMENT DISTRICT 939 Ellis Street San Francisco, California 94109 (415) 771-6000	Report No. <u>14181</u> Test Date: <u>04/15&16/14</u>
	SUMMARY OF SOURCE TEST RESULTS	Test Times: Run A : <u>1055 – 1157 60 min</u> Run B : <u>0800 – 0903 60 min</u> Run C : <u>0935 – 1038 60 min</u>

Source Information		BAAQMD Representatives
Firm Name and Address: Berkeley Asphalt Company 699 Virginia Street Berkeley, CA 94710	Firm Representative and Title: Seth L. Watkins Plant Manager Phone No. (510) 526-1611	Source Test Team: B. Kino/M. Hernandez M. Wiley/J. Aaseth
Permit Condition: ID # 16017	Source: Rotary Dryer (S-1) abated by Cyclone & Baghouse (A-4 & A-7) Site No. A0123 Permit No. 06630 Operates 7 hrs/day & 240 days/year Batch	Permit Services/Enforcement Division: D. Singh Test Requested by: B. Bartley, (CDS) S. Applin, (C&E)

Operating Parameters: Test Run A was conducted on 4/15/14, and test Runs B & C were conducted on 4/16/14. The plant was producing an average of 130 tons/hr of asphalt for both test days. The rotary dryer is natural gas fired with an average gas usage of 25.74 MMBtu/hr (4/15/14) and 40.17 MMBtu/hr (4/16/14.)

Applicable Regulations:	2-1-307	VN Recommended: NO
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Source Test Results and Comments:

METHOD	PARAMETER	RUN A	RUN B	RUN C	AVERAGE	LIMIT
ST-17	Volume Flow Rate, SDCFM	28,000	27,400	26,000	27,100	
	Stack Temperature, °F	190	193	194	192	
ST-23	Water Content, volume %	19.5	19.9	20.6	20.0	
ST-14	Oxygen, dry volume %	16.4	16.0	15.9	16.1	
ST-5	Carbon Dioxide, dry volume %	2.3	2.5	2.6	2.4	
	Carbon Dioxide, lbs/hr	4,340	4,651	4,582	4,524	
ST-6	Carbon Monoxide, dry ppmv	60	55	44	53	
	Carbon Monoxide, Corrected to 15 % O ₂ , dry ppmv	89	70	55	71	230
	Carbon Monoxide, lbs/hr	7.3	6.5	5.0	6.3	
ST-7	(TOC) Total Organic Carbon (includes methane), ppmv as C ₁	10	11	13	11	300
	TOC, lbs/hr as Carbon	0.5	0.6	0.6	0.6	
	Methane, ppmv	10	11	13	11	
	(NMOC) Non-methane Organic Carbon, ppmv as C ₁	< 3.0	< 3.0	< 3.0	< 3.0	
	NMOC, lbs/hr	< 0.2	< 0.2	< 0.1	< 0.2	
ST-13A	Nitrogen Oxides, dry ppmv	22	22	24	23	
	Nitrogen Oxides, Corrected to 15 % O ₂ , dry ppmv	30	28	28	29	30
ST-19A	Nitrogen Oxides, lbs/hr	4.4	4.4	4.4	4.4	
	Sulfur Dioxide, dry ppmv	31	< 10	15	< 16	
	Sulfur Dioxide, lbs/hr	8.8	< 2.7	3.9	< 5.1	
EPA-5	Sulfur Dioxide, lbs/ton of asphalt produced	0.068	< 0.021	0.030	< 0.040	0.094
	Front Half (FH) Particulate, gr/SDCF	< 0.002	< 0.002	< 0.002	< 0.002	0.01
EPA-5	FH Particulate, lb/hr	< 0.60	< 0.60	< 0.60	< 0.60	40.0
	Back Half (BH) Particulate, gr/SDCF*	0.013	0.005	0.012	0.010	
	BH Particulate, lbs/hr*	3.2	1.1	2.7	2.3	
	Isokinetic Ratio, act/theo	103%	104%	101%		

Note: A "<" indicates values that are less than the method detection limit.

* Back half particulate refers to particulate that condenses in the impingers, or back half of the sample train. Back half particulate quantified by use of wet impingement methodology.

NO COMMERCIAL USE OF THESE RESULTS IS AUTHORIZED

Air Quality Engineer <i>B. Kino</i> 6/10/14 B. Kino	Date 6/10/14	Supervising Air Quality Engineer <i>C. McClure II</i> 6/10/14 C. McClure II	Date 6/10/14	Approved by Air Quality Engineering Manager <i>Robert Bartley</i> 4/10/14 B. Bartley	Date 4/10/14
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Culminating months of process analysis and discussions between Berkeley City Staff, Councilmember Linda Maio, and Lehigh Hanson (Berkeley Asphalt), the company has agreed to process additional improvements that will further reduce emissions and odors at the company's Berkeley asphalt plant.

The Company has agreed to install new equipment, upgrade their process, and engage in staff training, all of which will significantly change their asphalt.

"It should provide improve the situation for nearby residents, be better environmentally, and better for the actual construction workers who are laying down the asphalt," said Councilmember Maio.

"We appreciate Councilmember Maio's diplomacy and tenacity. This solution is a win-win for all involved," said Mike Roth, Vice President for Lehigh Hanson – Region West.

The new equipment and training will result in an enhanced production process known as "Warm Mix Asphalt," an emerging technology that has been increasingly endorsed by federal and state officials. Typical asphalt is prepared at temperatures reaching 330 degrees Fahrenheit. The new process will use temperatures of 260 to 280 degrees Fahrenheit.

"We believe that the new technology (WMA) will meet or exceed 30-50% reduction in odor emissions. We think we can convert half of our customers to WMA immediately. It will take some time to educate and convert the remaining customers from conventional hot mix asphalt (HMA) to WMA. For our part, we will immediately begin educating our customers to accelerate that acceptance. We are confident that we can achieve the same success that others have with WMA," Roth said.

The new technology should reduce emissions and odors significantly and result in a more environmentally sustainable operation. The company has committed to installing all of the equipment and completing all of its employee training by the end of the year.

"With this state-of-the-art approach to production, other companies have reduced their emissions and odors by as much as 50 percent," said Roth. "We hope to experience similar success."

This agreement is the latest result of pressure from Councilmember Maio on the City and the company to address odors. Residents experiencing odors have been contacting Maio's office and documenting problems. This led to numerous conversations between City staff and neighbors and Lehigh Hanson. City Staff has been diligent in meeting met with Lehigh Hanson on several occasions to discuss ways technological and operational improvements to address complaints about noise, odor and dust. This resulted in the company implementing a series of mitigations, including the following:

Noise:

- Installed silencer on exhaust stack: May 2013
(Reduces sound emitting from exhaust fan)
- Installed Variable Frequency Drives on exhaust fan motors: September 2013
(Enables operator to turn fan down when not in production mode which reduces sound emitting from exhaust fan)
- Vulcanized conveyor belts: September 2013
(Removed metal clips on conveyor belts to eliminate clicking sound)
- Replaced sound blankets: October 2013
(Reduces sound emitting from various equipment on the plant)

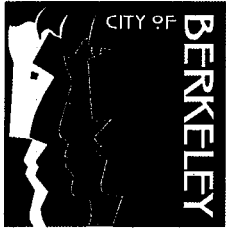
Odor:

- Added deodorant to incoming oil loads: September 2012 to current
(Reduces odor in oil loads being delivered to plant)
- Replaced four condensers on oil tanks: July 2013
(Reduces odor emitting for oil storage tanks)
- Tuned burner: September 2013
(Improves efficiency of natural gas burner used to heat aggregate)
- Installed four charcoal filters on oil tanks: September 2013
(Eliminates odor emitting from oil storage tanks)
- Hired professional odor consultant: September 2013
(Working to improve best practices at the plant)

Dust:

- Installed sprinkler on waste pile: July 2013
(Eliminates dust while loading trucks with asphalt waste)
- Installed fence fabric: August 2013
(Reduces dust being blown onto the site from unpaved Second Street)

This new, proposed enhancement to use state-of-the art equipment and manufacturing processes is a great improvement and demonstrates the City's and the Company's ability to work together to contribute to for a cleaner and more sustainable city.



RECEIVED AT
COUNCIL MEETING OF:

JUL 14 2015

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Councilmember Maio, District 1
Councilmember Droste, District 8

REVISED AGENDA MATERIAL

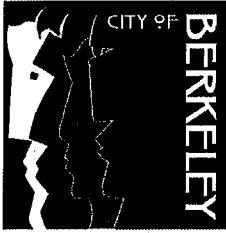
AGENDA MATERIAL

Meeting Date: July 14, 2015
Item Number: 69
Item Description: Status Report: West Berkeley Industry
Submitted by: Council Members Maio and Droste

Due to scheduling difficulties, City staff and Councilmembers met with several directors within the Bay Area Air Quality Management District (BAAQMD) on July 1st. Consequently, a final version of this status report could not be available by the regular agenda publishing deadline.

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CITY COUNCIL

INFORMATION CALENDAR

July 14, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Council Members Linda Maio and Lori Droste

SUBJECT: Status Report #2: West Berkeley Industry

INTRODUCTION

On January 20, 2015, the Berkeley City Council passed the following actions:

1. Council Members Linda Maio and Lori Droste to work with residents, businesses, and City Staff to review complaints and make good faith efforts to mitigate impacts in the areas where the City has authority such as noise and odors and to bring their findings back to City Council.
2. Direct the City Manager to enforce the terms of the Use Permit and the 1999 Settlement Agreement with the Oceanview Neighborhood Association.
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the Use Permit or the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement Use Permit immediately.

This report documents the information the Council Members found in their good faith efforts to address residents' concerns. In addition to the recommendations provided within this report, Councilmember Maio and Droste will continue to pursue action plans to improve air, noise, and odor emissions in West Berkeley.

Due to scheduling difficulties, City staff and Councilmembers met with several directors within the Bay Area Air Quality Management District (BAAQMD) on July 1st. Consequently, a final version of this status report could not be available by the regular agenda publishing deadline.

CURRENT SITUATION AND ITS EFFECT

- On January 20, 2015, the City Council tasked Council Members Maio and Droste to review complaints made regarding air quality in West Berkeley. Subsequently, Council Members Maio and Droste discussed concerns with residents.

- On May 12, 2015, City Council was provided a status update on residents' concerns, site visits and potential questions for a meeting with BAAQMD (Appendix A).
- On July 1, 2015, Council Members Maio and Droste, along with City staff, met with BAAQMD staff, including the Director of Compliance and Enforcement and Air Quality Manager.

FINDINGS

BAAQMD is a nine-county agency jurisdiction that regulates air quality according to federal standards and oversees an air quality monitoring network throughout the Bay Area, including eight air monitor sites in Alameda County.¹ As the only regulator of emissions and air quality of the Bay Area, BAAQMD determines whether industries in West Berkeley are operating in accordance with local, state, and federal regulations.

2009 West Berkeley Air Monitoring Report

In response to the City's request, in 2009 BAAQMD placed a temporary monitor (for over one year) at the intersection of 6th St. near Gilman St. to measure ambient air quality in West Berkeley. BAAQMD monitored the site at irregular times of the day which were often unannounced. BAAQMD found that "West Berkeley air quality levels were well below all applicable State and National Ambient Air Quality Standards (NAAQS) for gaseous criteria pollutants."² According BAAQMD's findings, cancer risk associated with toxic air contaminants is likely associated with proximity to the freeway:

The compounds that contribute most significantly to cancer risk in West Berkeley are diesel PM, benzene, 1,3-butadiene, and carbon tetrachloride. This is consistent with other monitoring sites. These pollutants are emitted primarily from mobile sources, with the exception of carbon tetrachloride. There are no known local sources of carbon tetrachloride due to the phase-out of this compound as a stratospheric ozone-depleting compound.³

To better identify the impacts of traffic-related air pollution, in 2014, BAAQMD opened two permanent air monitoring stations along Bay Area freeways. They are in the process of installing a third air monitoring station in West Berkeley to better analyze the health effects of traffic related air pollution along the I-80 corridor.

Technology

BAAQMD indicated that they have recently approved several technologies to address air quality concerns at Hanson Aggregates Berkeley Asphalt. In January of 2015, Hanson Aggregates Berkeley Asphalt introduced a new warm mix which lowers the temperature preparation by

¹ *Bay Area Air Quality Management District*. (n.d.) District Air Monitor Sights. Retrieved from http://hank.baaqmd.gov/tec/maps/dam_sites.htm

² *Bay Area Air Quality Management District*. (April 14, 2009). Summary and Analysis of West Berkeley Air Monitoring Results. Retrieved from http://www.ci.berkeley.ca.us/uploadedFiles/Council_1/Level_3_General/summary_analysis_west_berkeley_air_monitoring.pdf, p.1.

³ *Ibid.*, p. 3.

approximately 50-70 degrees Fahrenheit.⁴ The new warm mix is expected to significantly reduce emissions. In addition, Pacific Steel and Casting (PSC) is assessing new materials for molds that receive hot pourings that will result in a reduction in odor emissions. For more information on technology updates, refer to Councilmembers Maio and Droste's previous report.⁵

Monitoring

During our conversations with BAAQMD, they indicated that they oversaw a source test in March 2015 which led them to conclude that Hanson Aggregates Berkeley Asphalt was in compliance with its requirements and regulations. BAAQMD also performs 24 hour source tests as well as night tests throughout the region. City Councilmembers Maio and Droste have requested information regarding these findings, which will be examined at a later date.

In addition to new technologies, BAAQMD requires a specific type of air quality stack testing, which has been in place at Pacific Steel Casting. This usually consists of sampling emissions from a single location. Industry is required to provide the stack monitoring data to BAAQMD. Once BAAQMD receives the data, it is reviewed to ensure that the data is accurate and free from manipulation. Councilmembers Maio and Droste have requested information regarding specific stack monitoring.

BAAQMD also incorporates spot checks into their monitoring procedures. Spot checks consist of measuring compounds with additional instrumentation in order to ensure that the industries' instrumentation is accurate. Additionally, spot checks measure emissions to determine what compounds are emitting from facilities. City Councilmembers have requested information regarding specific spot test results.

Complaint Investigation

BAAQMD has a complaint line in operation 24/7 with translation services. During normal office hours, staff handles the complaints. If the complaint is generated during off-hours, an answering service processes the complaint. Although inspection staff is in the field during normal working hours, if a rash of complaints come in at night staff is contacted and makes a determination how to respond. BAAQMD expressed that they attempt to respond to all complaints within an hour and dispatch within 30 minutes (during normal working hours). Confirmation of an odor must consist of 1) the inspector and complainant simultaneously smelling the odor and 2) the inspector tracing the odor directly back to the source. BAAQMD emphasized that it still follows up with every complaint regardless of whether or not it is confirmed. The agency is working to improve their complaint process.

BAAQMD also has the power to issue public nuisance violations. If BAAQMD has approximately five "face-to-face" confirmations within 24 hours and can trace the odor back to a source, the

⁴ Maio, L. & Droste, L. (May 26, 2014). Status Report: Berkeley Asphalt; Pacific Steel Casting; Air Quality Inquiries. Retrieved from http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/05_May/Documents/2015-05-26_Item_38_Status_Report_Berkeley_Aspphalt.aspx, p. 94.

⁵ *Ibid.*, p. 92-93.

facility may be deemed a public nuisance. Complaints must be self-generated instead of solicited by something such as an email tree to insure validity in a court proceeding.

According to BAAQMD, these particular steps are necessary in order to have court standing and be legally defensible in a court of law. When it issues the nuisance, the agency identifies the issue and serves as a mediator in order to fix the problematic source of the violation. If information is unavailable regarding a particular violation, it is because BAAQMD is still remedying the issue with the violator.

Inspector Training

Residents state that the current odor process is unscientific because inspectors rely on their sense of smell to validate complaints. Council Members Maio and Droste reviewed inspector training with BAAQMD to address these concerns.

In order to qualify as an inspector, an individual must meet the criteria for employment and have an "average nose." Potential inspectors participate in a panel in order to determine whether their nose is not overly or under sensitive. Inspectors may be subjected to hazardous compounds during trainings. Although the process appears to be unscientific and antiquated, BAAQMD utilizes these steps to have court standing and legal defense.

Council Members Maio and Droste find the complaint and detection system to be in need of improvement and WILL strongly encourage BAAQMD to implement alternative devices to detect odors. While the district has purchased equipment to measure a wide variety of compounds in odor emissions, it is still trying to develop expertise in odor detection. Nevertheless, it is essential that BAAQMD develop capabilities and implement objective odor detection devices.

In order to reduce odorous and non-odorous emissions, Council Members Maio and Droste have confirmed that BAAQMD is pursuing the following to address monitoring technologies, regulations, reporting protocol, and inspector training:

1. BAAQMD is placing an additional air monitor in West Berkeley.
2. BAAQMD is reviewing and updating Regulation 7 "Odorous Substances" that specifically focuses on odors.⁶
3. BAAQMD is reevaluating its reporting protocol and will make significant efforts to outreach to stakeholders prior to this process. *Note: BAAQMD expressed willingness to workshop a new process with concerned stakeholders in 2016.*

⁶ Bay Area Air Quality Management District. (1982). "Regulation 7: Odorous Substances." Retrieved from <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Rules%20and%20Regs/reg%2007/rg0700.ashx?la=en>

4. BAAQMD wishes to acquire objective odor detection devices and to incorporate these devices as the primary determinate of odor detection.
5. BAAQMD has been asked to make regular status reports on the implementation status of PSC's odor control plan.
6. BAAQMD is incorporating new technologies that will assist in reducing emissions.
7. BAAQMD is investigating shrouding operations with Berkeley Asphalt, in particular, to reduce noise and odors.
8. BAAQMD agreed to improve its oversight and detection of Berkeley Forge's emissions.

In order to address concerns with the city's regulatory mechanisms, Council Members Maio and Droste will obtain and assess BAAQMD's response to the Tetra Tech (2008) finding regarding the PSC Health Risk Assessment and how the Community Environmental Advisory Commission's (2007) air quality recommendations re acted upon. City staff has been asked in the previous item to provide information regarding enforcement procedures and assessed penalties in West Berkeley from 2000-2015. Results will be provided in the third status report.

Businesses Practices in West Berkeley

Residents claim that the larger industries in West Berkeley may not be following protocols for good business in order to reduce emissions. Namely, they seem to be concerned with weekend and after-hour operations. Residents also voiced displeasure over the lack of truck tarping at Hanson Aggregates Berkeley Asphalt as required in the 1999 Settlement Agreement.

In order to address concerns with the city's regulatory mechanisms, Council Members Maio and Droste will further follow up on:

1. City staff providing a report in response to City Council's January 20, 2015, second and third directives regarding use permit compliance using the information gathered in interviews and in this informational report.
2. Hanson Aggregates Berkeley Asphalt requiring trucks to tarp their loads.
3. Hanson Aggregates Berkeley Asphalt installing new shrouds to mitigate emissions caused when the hot asphalt hits cold truck beds.

Information Access

Finally, some neighbors were alarmed that they were not aware of emissions when purchasing or renting their homes. Overall, these residents had a lack of understanding when the plants are most active.

In order to address challenges regarding information access, Council Members Maio and Droste will pursue the following:

1. West Berkeley Asphalt and Pacific Steel Casting Company holding a meeting with concerned citizens to begin a constructive dialogue and share information regarding evolving technologies and their operations as they relate to public health.
2. West Berkeley industries posting and providing information alerts to the City of Berkeley regarding production schedules, particularly when plants are most active. This information should be on their website and communicated, via link, to concerned residents.

A third status report will be provided that will provide additional information, as relevant, and recommendations will be proposed. Although the proposed next steps go well beyond the 1999 settlement agreement, the third report will also provide an assessment of compliance with that agreement.

CONTACT

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Community Health Commission

ACTION CALENDAR

January 20, 2015

(Continued from December 16, 2014)

To: Honorable Mayor and Members of the City Council

From: Community Health Commission

Submitted by: Linda Franklin, Chairperson, Community Health Commission

Subject: West Berkeley Industrial Plants Air Quality

RECOMMENDATION

Take the following actions regarding air quality complaints in West Berkeley:

1. The City Council hold a Public Hearing regarding air quality complaints on the West Berkeley Lehigh Hanson Asphalt Company plant, Bayline Concrete Cutting Company and Pacific Steel Casting Company; and that the City provide relevant health information.
2. Direct the City Manager to complete the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association; and
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement compliance checklist immediately.

FISCAL IMPACTS OF RECOMMENDATION

Potential Costs to the City of Berkeley include but are not limited to: the staff costs of preparing for and attending a public hearing at a City Council meeting and providing relevant health information; the cost to assess compliance of the West Berkeley Lehigh Asphalt Company plant with the 1999 Settlement Agreement with the Oceanview Neighborhood Association; City staff time for implementing and enforcing potential corrective actions.

Potential costs to the West Berkeley Lehigh Hanson Asphalt Company plant include but are not limited to purchasing of requisite equipment and/or reforming practices in order to be compliant with the 1999 Settlement Agreement.

CURRENT SITUATION AND ITS EFFECTS

According to a September 4, 2014 memo submitted to the Housing Advisory Commission, 93 residents, workers, and business owners signed and submitted a

California Public Records Act in June 2014, to get City records on whether the City of Berkeley complied with a 1999 settlement agreement between the Oceanview Neighborhood Association, Communities for a Better Environment, BAC, BARM, and the City of Berkeley. The 1999 settlement agreement was designed to create stricter regulation on the plant's day-to-day operations. Since the 1999 settlement agreement, BAC was sold to Lehigh Hanson Cement. Residents, workers, and business owners believe that strict adherence to the terms of the settlement has not yet been met. Residents, such as the two residents and members of the Oceanview Neighborhood Association who provided public comment on this matter at the CHC meeting on September 11, 2014, have indicated that the fumes have gotten worse over the last five years, the plant operates at unauthorized hours, and that compliance with several terms of the settlement has not been fully realized.

Due to the potentially significant health effects of these fumes and pollutants, which constitute health ramifications exacerbated by possible noncompliance, the citizens of West Berkeley and the Health Commission are asking the City Council and the City Manager to take meaningful actions to ensure that the air around these plants in West Berkeley where many people live or encounter is safe and does not pose a health risk.

BACKGROUND

According to a memo submitted to the Housing Advisory Commission on September 4, 2014, in a one-year period, between 2012 and 2013, West Berkeley Alliance for Clean Air and Safe Jobs, and California Environmental Justice Coalition; and homeowners and residents made 111 complaints to the Bay Area Air Quality Management District (BAAQMD).

Lehigh Hanson Cement is by owned by an international conglomerate company Heidelberg Cement. Heidelberg Cement is the global market leader in aggregates and a prominent player in the fields of cement, concrete and other downstream activities, making it one of the world's largest manufacturers of building materials. The company employs some 52,600 people at 2,500 locations in more than 40 countries. In addition to the referral to the HAC, a request was made to the CHC to consider the recommendations due to Health concerns over air quality. Therefore, this topic was framed as a health concern and discussed at the regularly scheduled Community Health Commission meeting on September 11, 2014 where the following motion was approved.

M/S/C (Nathan/Kwanele) Motion to Recommend to City Council that:

1. The City Council hold a Public Hearing regarding air quality complaints on the West Berkeley Lehigh Hanson Asphalt Company plant, Bayline Concrete Cutting Company and Pacific Steel Casting Company; and that the City provide relevant health information.
2. Direct the City Manager to complete the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association; and
3. If the City Manager and delegated staff or department finds the West Berkeley

Lehigh Asphalt Company plant is not compliant with the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement compliance checklist immediately.

Ayes: Commissioners Franklin, Kwanele, Lee, Nathan, Neuhauser, Rosales, Shaw, Stein, M. Wong
Noes: None
Abstain: None
Absent from vote: Commissioners Collins, Delgadilo, Namkung, Tempelis
Excused: Commissioners Barry, Speich, A. Wong

ENVIRONMENTAL SUSTAINABILITY

This recommendation can potentially support the cause of environmental sustainability if the possibly noncompliant Lehigh Hanson Asphalt Company plant adopts any needed reformatory practices as a result of the enforcement of the 1999 Settlement Agreement, which could lead to more efficient resource consumption and reduced environmental degradation caused by extracting less resources. Moreover, as emissions of greenhouse gases and other potentially environmentally harmful compounds could decrease if any possibly needed improved practices are employed, the environment could greatly benefit from the potential results of implementing the recommended acts.

RATIONALE FOR RECOMMENDATION

This is a health issue because many of the Oceanview residents and homeowners are unable to enjoy clean air that may have harmful or discomforting smoke and pollutants, as directly described to the CHC by two residents of the Oceanview community who provided public comment during the September 11, 2014 CHC meeting. There is a clear nexus between air quality and health as poor air quality relates to asthma incidence rates and hospitalizations. According to the 2013 City of Berkeley Health Status Report, "asthma hospitalizations of children under five years of age are most common in West Berkeley," which demonstrates the importance of evaluating environmental factors that may be contributing to a disproportionately higher rate of youth asthma hospitalizations in West Berkeley (Health Status Report found at http://www.ci.berkeley.ca.us/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/BerkeleyHealthReport_online_FINALv2.pdf).

In addition to health statistics justifying a closer look at possible causes of asthma, the City Manager's most recent report to the City Council on the Breathmobile scheduled on the September 16, 2014 Information Calendar states: "The new "Health Happens in Berkeley" initiative has identified asthma hospitalizations in children (up to 15 years of age) as one of four preliminary Public Health priorities. The Public Health Division is committed to addressing the asthma health inequities seen in Berkeley's Health Status Report 2013." Therefore, in order to cooperate with this health initiative and take potentially substantial action toward realizing the objective of "addressing the asthma health inequities seen in Berkeley's Health Status Report 2013," this recommendation

encouraging the City Manager and City Council to act on this issue was approved. Moreover, as the Occupational Health and Safety Administration states that potential health effects of exposure asphalt pollutants and fumes include: headache, skin rash, sensitization, fatigue, reduced appetite, throat and eye irritation, cough, and skin cancer, it is imperative the City act to mitigate the potential for these health effects to manifest in the citizens of West Berkeley (<https://www.osha.gov/SLTC/asphaltfumes/>). The City Council and City Manager should be responsive to the needs of their residents. Thus, the Community Health Commission calls on the City Council to hold a public hearing on air quality complaints, and requests the City Manager to complete the checklist based on the 1999 settlement agreement and take immediate corrective action.

ALTERNATIVE ACTIONS CONSIDERED

The Community Health Commission chose its recommendation as being the most efficient and effective, but recognizes that alternative or additional actions may be considered by the City Council. Toward that end, the Commission discussed the following during its deliberations:

1. Gather more information before making a recommendation to the City Council by forming a subcommittee to explore the issue.
2. Let the process take its course without support, as citizens have already filed complaints with the Bay Area Air Quality Management District.
3. Instead of having a Public Hearing, solely recommend that the City Manager and appropriate city staff evaluate the compliance of the West Berkeley Lehigh Hanson Asphalt plant with the 1999 Settlement Agreement between the owners of the plant and the Oceanview Neighborhood Association.

Alternative action #1 was not taken as waiting to gather more information before making a recommendation to the City Council would delay any meaningful action such as assessing compliance and having a public hearing for the people of West Berkeley to voice their concerns while the residents of West Berkeley continue to suffer from polluted air. This delay proved too costly, as it is believed that immediate action is required in order work toward providing answers and relief to those in West Berkeley.

Alternative action #2 was not taken since the fact that 111 complaints have been filed with Bay Area Air Quality Management District (BAAQMD) in a one-year period without any consequential significant review of the air quality situation proves that the complaint process with BAAQMD is insufficient to address this issue requiring more efficient action. Alternative action #3 was not taken because it is believed that it is vital to our political system that the people have the opportunity to voice their concerns, and because a public hearing would be productive in establishing a public record and source of evidence from the anecdotal experiences of the residents of West Berkeley.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Gail Feldman, Commission Secretary, HHCS, (510) 981-5232



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

Lehigh Hanson Berkeley Asphalt
Site #A0123
699 Virginia Street
Berkeley, CA 94710

West Berkeley Odors Fact Sheet December 9, 2020

Background

- Berkeley Asphalt is an industrial facility located in Berkeley, CA. The facility began operations in 1955 and was acquired by Lehigh Hanson in 2005.
- Berkeley Asphalt has a Permit to Operate, issued by the Air District, which limits total asphalt production to 3,000 tons per day and 250,000 tons per consecutive 12 months. Berkeley Asphalt is in compliance with these limits.
- There are thirteen (13) Air District permitted sources at the facility that include the asphalt batch plant, asphalt oil tanks, conveyers and stockpiles.
- Dust abatement devices include conveyor water sprays, particulate baghouse and cyclone, and a street sweeper.
- Starting October 29, 2020, the Air District began receiving many complaints from West Berkeley residents alleging “sulfur”, “sewage” and “burning” odors from unknown source(s). Staff have received approximately 193 similar Berkeley odor complaints through December 8, 2020. The alleged odor has been fleeting and difficult for staff to confirm even when response times often only takes minutes.

Air District investigation

- In the past, the Air District has received many ‘sulfur’ odor complaints related to naturally occurring Bay waterfront decomposition throughout the Bay Area, especially at times like this, after a long, hot and dry summer. Thus, Air District Inspectors initially conducted multiple investigations around Aquatic Park and the Berkeley waterfront, but did not observe these locations as the cause of the alleged sulfur odors. Berkeley Council Member Rashi Kesarwani’s December 6, 2020 newsletter confirmed the same observation: “City of Berkeley facilities, such as Aquatic Park and the Transfer Station, have been ruled out by City staff.”
- During the first week of November 2020, Air District staff contacted PG&E to inquire if any gas-line work was being conducted in the area of complaints. PG&E’s response was that there wasn’t any such work being done in the area.
- The Air District also received multiple complaints alleging a “sewage” odor in the same area. It appears there have been two odors occurring in the West Berkeley

area during the past month: a sewage odor and the “burning, sulfur” industrial odor. In early November 2020, Air District staff contacted the East Bay Municipal Utility District (EBMUD), which operates the main sewer intersect line from Berkeley to the EBMUD Sewage Treatment Plant (STP) at the I-580/I-80 interchange. EBMUD stated they had also received odor complaints, so its personnel conducted a patrol along the entire route between North Berkeley and the STP and did not observe any unusually strong odors or evidence of any leaks. EBMUD said the City of Berkeley (City) Public Works Department has jurisdiction over the sewage lines within the city of Berkeley. Air District staff contacted the City Public Works Department, which confirmed they weren’t conducting any projects in the vicinity of West Berkeley where the sewage odors were reported. The City Public Works Department concluded that it was King Tide season and they have observed that water table pressure can force sewer gases to the surface and cause above-ground odors, but they can’t control that natural process.

- On November 6, 2020, an Air District Inspector investigated at Berkeley Asphalt but did not observe the alleged odor on site. The Berkeley Asphalt plant manager confirmed the sulfur odor with the Inspector off-site of the facility, up the street, but could not determine where the odor could be originating from within Berkeley Asphalt. The Inspector then suspected the “burning sulfur” odor was being caused by Berkeley Asphalt, but the nature of its operation is intermittent asphalt batches based on demand and momentary truck loading made actively tracing the odor to the facility after meeting with complainants difficult. However, multiple complaints were confirmed by the Inspector on December 3, 2020 and it was the same odor observed on November 6, 2020. Air District staff now suspect the odors rise aloft and settle blocks away in the community downwind from the facility.

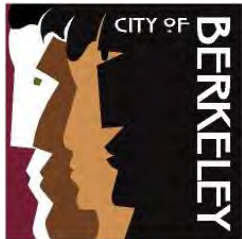
Air District response

- The Air District issued a Notice of Violation (NOV) to Berkeley Asphalt on December 8, 2020. The NOV involved a one-day violation for off-site odors which caused multiple confirmed complaints and a public nuisance on December 3, 2020. The NOV is expected to prompt Berkeley Asphalt to evaluate the root cause of the odor and take corrective action(s) necessary to remedy and alleviate the ongoing odor problem.
- To address asphalt smoke odors at Berkeley Asphalt, the facility had submitted a permit application to the Air District. On November 30, 2020, the Air District issued an Authority to Construct to install a new blue smoke abatement system that will be in place by the end of the first quarter 2021. Blue smoke abatement systems capture and abate asphalt plant loading emissions and the Air District is working with the facility to understand how these controls may reduce odors.

- Air District staff will continue to actively investigate the situation and monitor the facility for visible emissions and odors.

What to do if you smell odor

- Call the Air District complaint line 1-800-334-ODOR (6367) or file a complaint online at www.baaqmd.gov/complaints if you smell an odor. This helps to establish a record of where and when odors are detected, and to trace the cause of the odors. The Air District strives to respond to air quality complaints as soon as possible, typically within thirty minutes during business hours.
- The Air District is not an emergency response (first responder) agency. In case of emergencies, please contact 911, and, for health-related symptoms, your primary care doctor or local health department.



Planning Department

April 2, 2021

Igor Tregub, Chair
Sierra Club Northern Alameda County Group
[Delivered via e-mail to itregub@gmail.com]

Dear Mr. Tregub,

Thank you for your March 8, 2021 letter to the Berkeley City Council regarding Lehigh Hanson/Berkeley Asphalt (BA) in Berkeley. I understand that the concerns regarding emissions from the facility represent a longstanding issue for neighbors and community members. The City of Berkeley is committed to using its regulatory authority to ensure compliance with the 1999 Settlement Agreement and Use Permit conditions, to the fullest extent possible.

Here is a summary of the enforcement activities that the City has recently undertaken regarding BA:

- On December 21, 2020, January 14, 2021, and March 19, 2021, City of Berkeley staff from four divisions in three departments conducted comprehensive site inspections to evaluate BA's compliance with the conditions of approval of their 1999 Use Permit. During the December and January inspections, City staff observed that the truck loading area was only partially enclosed, and vacuum sweeping was occurring on a portion of the yard rather than all of it.
- The City issued a notice of violation (NOV) on January 11, 2021, citing an insufficient enclosure of the asphalt truck loading area in violation of the revised condition of approval 8.1 of Use Permit #98-7000018/Modification of Use Permit #3033 pursuant to BMC Chapter 23B.32. The NOV required BA to resubmit by February 1, 2021 application materials for building permit B2020-04108 for construction of an enhanced enclosure and smoke capture system for the asphalt truck loading area. BA did not meet this deadline, so the City issued a Citation warning on February 10, 2021, giving them 15 days to resubmit information for their building permit application. The City added a second violation, related to sweeping, to the citation warning based on observations from the second site visit.

- On February 16, 2021, BA resubmitted plans for their building permit B2020-04108, which was subsequently approved on March 1, 2021. The plans to enclose the asphalt truck loading area addressed the first violation.
- On March 1, 2021, BA responded to the second violation with a letter documenting how they currently vacuum the yard and proposing updates to their sweeping regimen. The City has posed follow-up questions to BA regarding their proposed sweeping regimen to determine whether it satisfies the obligations established through the facility's Use Permit conditions, and whether it appropriately mitigates any potential impacts of dust and dirt on the surrounding neighborhood.
- On March 3, 2021, the City issued BA a citation warning establishing a deadline of April 15, 2021 for BA to complete construction and inspections associated with building permit B2020-04108. If BA does not meet this deadline, they will be cited and fined daily until they are in compliance, with initial fines set at \$250 per day and escalating subsequently.
- BA has made substantial progress towards the construction of the enhanced enclosure and smoke capture system. In late March, the City of Berkeley determined that a portion of the construction activities occurred prior to formal authorization; although staff had reviewed and approved the plans for that work, the City had not yet received payment for the permit and it had not yet been issued. The City is continuing its investigation of this issue and, if appropriate, will cite and fine BA for this violation.

The Bay Area Air Quality Management District (BAAQMD) has regulatory authority over emissions and odors at the Berkeley Asphalt facility, while the City regulates the 1999 Settlement Agreement and Use Permit conditions. The City has been coordinating with BAAQMD in response to the concerns raised by community members. BAAQMD issued four NOV's to BA related to odors on 12/3/20, 12/21/20, 2/3/2021 and 2/5/2021. BAAQMD informed the City on March 24 that the last confirmed odor complaint from the Berkeley Asphalt plant occurred on February 12, 2021. In the same communication, BAAQMD staff indicated that they expect that the enclosure and smoke capture system enhancements that are currently under construction will reduce the odors impacting neighbors and decrease particulate matter.

The City of Berkeley will continue to conduct regular inspections of the Berkeley Asphalt facility; the next inspection is scheduled to occur today. The City will continue to take enforcement action as needed if the facility is found to be out of compliance with any applicable conditions and regulations.

Please feel free to contact me if you have any additional questions regarding this matter.

Igor Tregub, Chair
Sierra Club Northern Alameda County Group

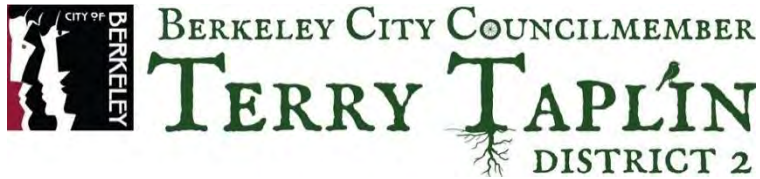
Page 3
April 2, 2021

Sincerely,

A handwritten signature in black ink, appearing to read 'JKlein', written in a cursive style.

Jordan Klein
Interim Director, Planning & Development Department

Cc: Dee Williams-Ridley, City Manager
Paul Buddenhagen, Deputy City Manager
Berkeley City Council

CONSENT CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on:

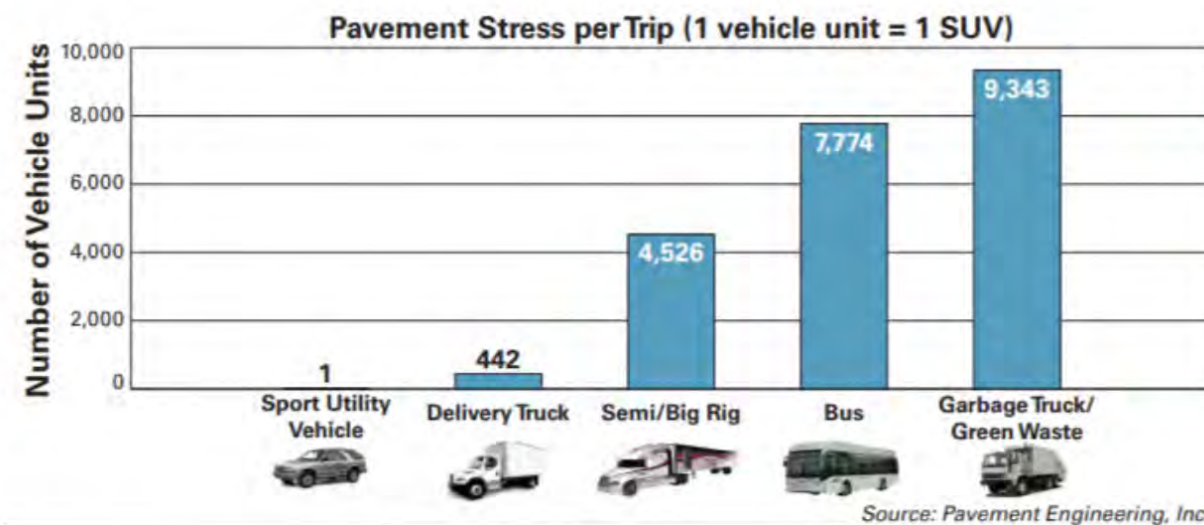
1. Ninth Street between Dwight Way and Heinz Avenue
2. Addison Street between San Pablo Avenue and Sixth Street;
3. Allston Way between San Pablo Avenue and Sixth Street;
4. Bancroft Way between San Pablo Avenue and Sixth Street;
5. Channing Way between San Pablo Avenue and Fourth Street;
6. Dwight Way between San Pablo Avenue and Sixth Street;
7. Camelia Street between Eighth Street and Ninth Street;
8. Eighth Street between Jackson Street and Camelia Street;
9. Ninth Street between Camelia Street and Cedar Street;
10. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
11. Virginia Street between Shattuck Avenue and Euclid Avenue;
12. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
13. Heinz Avenue between Ninth Street and San Pablo Avenue;
14. Russell Street between San Pablo Avenue and Shattuck Avenue;
15. Russell Street between Telegraph Avenue and Claremont Avenue;
16. California Street between Hopkins Street and University Avenue;
17. California Street between Dwight Way and Russell Street;
18. King Street between Russell Street and Stanford Avenue;
19. Milvia Street from Dwight Way to Russell Street;
20. Bowditch Street from Bancroft Way to Dwight Way;
21. Hillegass Avenue from Dwight Way to Woolsey Street

CURRENT SITUATION AND ITS EFFECTS

Berkeley's Bicycle Boulevard Network is a centerpiece of the City's mobility justice and greenhouse gas emission reduction policies. The Bicycle Boulevards were established

with the adoption of the Bicycle Plan in 1999 “with the goal of providing safe, convenient, and low stress bikeways on pleasant neighborhood streets.”¹ Despite having this goal in mind for more than twenty-two years, cyclists using a Bicycle Boulevard in Berkeley can still expect degraded road conditions, reckless drivers speeding alongside them, and large commercial trucks with low visibility threatening the safety of the children, families, and daily commuters who rely on the network. Despite their status as cyclist-priority streets, the Bicycle Boulevards still include many of the streets identified by the City’s Vision Zero Action Plan as “High-Injury” Streets where the most traffic injuries and fatalities have occurred.² The Bicycle Boulevards identified by Vision Zero include California Street, Milvia Street, and Channing Way. Eliminating large truck traffic on the Bicycle Boulevards will mark an important step towards creating a network of streets that truly prioritizes the safety and ease of travel for cyclists in Berkeley.

Beyond protecting the bodily safety of cyclists on Berkeley’s streets, restricting large truck traffic goes a long way towards reducing the degradation of the street infrastructure that is itself important for cyclist safety and for increasing bicycle mode share. As the following chart lays out, the stresses on street pavement increases with the size and weight of the vehicles travelling on it:



Minimizing the amount of unnecessary large vehicle traffic on our residential streets is an important supplement to the Street Rehabilitation and Repair Policy and the 5-Year Street Rehabilitation Plan that will work to address the underlying causes of pavement degradation.

¹https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf

²https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

As the Vision Zero Action Plan makes clear, Berkeley's traffic injuries are particularly concentrated in the neighborhoods of West Berkeley which the plan notes as "Equity Priority Areas" due to the disparity. Due to its proximity to the heavily trafficked commercial streets of University Avenue and San Pablo Avenue, the neighborhood encompassed by the non-Bicycle Boulevard streets within this proposal are regularly trafficked by large trucks cutting through the area. Truck traffic in this neighborhood, which is home to George Florence Park, the West Berkeley YMCA/Head Start facility, and Rosa Parks Elementary School, presents an ongoing danger to the pedestrians, cyclists, and especially children who use these streets on a daily basis. This neighborhood also includes University Avenue and Addison Street, which are also identified by the Vision Zero Action Plan as "High-Injury Streets".³ In July of this year, the Berkeley City Council extended the 3-ton truck ban to the North-South streets of this neighborhood, but East-West coverage is necessary as well to truly protect this at-risk community.

FISCAL IMPACTS

Staff time and an estimated \$250 per sign location.

ENVIRONMENTAL IMPACTS

The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.⁴ Restricting large truck traffic will make Berkeley's Bicycle Boulevards safer for pedestrian and cyclist transportation, thus encouraging zero-emission forms of transportation and standing to lower the emissions from our community's dominant source of carbon emissions.

CONTACT

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

ATTACHMENTS

1. Ordinance

³https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf

⁴https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx

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

AMENDING BERKELEY MUNICIPAL CODE SECTION 14.56.070 TO ADD NEW SECTIONS OF ROAD IN THE LIST OF LOCATIONS PROHIBITING THE USE OF CERTAIN STREETS BY COMMERCIAL VEHICLES EXCEEDING 3 TONS GROSS VEHICLE WEIGHT

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

Section 1. That Section 14.56.070 of the Berkeley Municipal Code is amended to read as follows:

14.56.070 Prohibiting the use of certain streets by commercial trucks exceeding three tons gross vehicle weight.

- A. It is unlawful for any person to operate any commercial vehicle exceeding three tons gross vehicle weight on the following portions of streets, hereafter referred to as "restricted streets":
1. Hearst Avenue between 6th Street and San Pablo Avenue;
 2. Hearst Avenue between San Pablo Avenue and Sacramento Street;
 3. 7th Street between University Avenue and Cedar Street;
 4. 8th Street between University Avenue and Cedar Street;
 5. 9th Street between University Avenue and Cedar Street;
 6. 10th Street between University Avenue and Cedar Street;
 7. Delaware Street between San Pablo Avenue and 6th Street;
 8. Delaware Street between San Pablo Avenue and Sacramento Street;
 9. Virginia Street between San Pablo Avenue and 6th Street;
 10. Virginia Street between San Pablo Avenue and Sacramento Street;
 11. Francisco Street between San Pablo Avenue and Sacramento Street;
 12. Hopkins Street west of Gilman Street;
 13. Blake Street between Shattuck Avenue and Telegraph Avenue;
 14. Blake Street between San Pablo Avenue and Sacramento Street;
 15. Parker Street between Shattuck Avenue and Telegraph Avenue;
 16. Carleton Street between Shattuck Avenue and Telegraph Avenue;
 17. Carleton Street between San Pablo Avenue and Sacramento Street;
 18. Channing Way between San Pablo Avenue and Sacramento Street;
 19. Derby Street between Shattuck Avenue and Telegraph Avenue;
 20. Ward Street between Shattuck Avenue and Telegraph Avenue;
 21. Stuart Street between Shattuck Avenue and Telegraph Avenue;
 22. Oregon Street between Shattuck Avenue and Telegraph Avenue;
 23. Parker Street between San Pablo Avenue and Sacramento Street;
 24. Russell Street between Shattuck Avenue and Telegraph Avenue;
 25. Howe Street between Ellsworth Street and Telegraph Avenue;
 26. Fulton Street between Ashby Avenue and Dwight Way;
 27. Ellsworth Street between Ashby Avenue and Dwight Way;
 28. Dana Street between Ward Street and Dwight Way;

29. Spaulding Avenue between Dwight Way and Addison Street;
30. California Street between Dwight Way and University Avenue;
31. Jefferson Avenue between Dwight Way and University Avenue;
32. McGee Avenue between Dwight Way and University Avenue;
33. Roosevelt Avenue between Dwight Way and Addison Street;
34. McKinley Avenue between Dwight Way and Addison Street;
35. Addison Street between Sacramento Street and Martin Luther King Jr. Way;
36. Allston Way between Sacramento Street and Martin Luther King Jr. Way;
37. Bancroft Way between Sacramento Street and Martin Luther King Jr. Way;
38. Channing Way between Sacramento Street and Martin Luther King Jr. Way;
39. Grant Street between Dwight Way and University Avenue;
40. Cedar Street east of 6th Street;
41. Dwight Way between San Pablo Avenue and Martin Luther King Jr. Way;
42. Claremont Avenue between Ashby Avenue and Belrose Avenue;
43. Belrose Avenue between Claremont Avenue and Derby Street;
44. Derby Street between Belrose Avenue and Warring Street;
45. Warring Street between Derby Street and Dwight Way;
46. Piedmont Avenue between Dwight Way and Bancroft Way;
47. Milvia Street between Dwight Way and Hopkins Street;
48. The Uplands between Claremont Avenue and Tunnel Road;
49. Panoramic Way between Canyon Road and Berkeley/Oakland city limits.;
50. Kains Avenue between Virginia Street and Harrison Street;
51. Virginia Street between Shattuck Avenue and Martin Luther King Jr. Way,
52. Francisco Street between Shattuck Avenue and Martin Luther King Jr. Way,
53. Delaware Street between Shattuck Avenue and Martin Luther King Jr. Way,
54. Hearst Avenue between Shattuck Avenue and Martin Luther King Jr. Way,
55. Berkeley Way between Shattuck Avenue and Martin Luther King Jr. Way.
56. Tenth Street between University Avenue and Dwight Way;
57. Ninth Street between University Avenue and ~~Heinz Avenue~~Dwight Way;
58. Eighth Street between University Avenue and Dwight Way;
59. Seventh Street between University Avenue and Dwight Way;
60. Addison Street between San Pablo Avenue and Sixth Street;
61. Allston Way between San Pablo Avenue and Sixth Street;
62. Bancroft Way between San Pablo Avenue and Sixth Street;
63. Channing Way between San Pablo Avenue and Fourth Street;
64. Dwight Way between San Pablo Avenue and Sixth Street;
65. Camelia Street between Eighth Street and Ninth Street;
66. Eighth Street between Jackson Street and Camelia Street;
67. Ninth Street between Camelia Street and Cedar Street;
68. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
69. Virginia Street between Shattuck Avenue and Euclid Avenue;
70. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
71. Heinz Avenue between Ninth Street and San Pablo Avenue;
72. Russell Street between San Pablo Avenue and Shattuck Avenue;

73. Russell Street between Telegraph Avenue and Claremont Avenue;

74. California Street between Hopkins Street and University Avenue;

75. California Street between Dwight Way and Russell Street;

76. King Street between Russell Street and Stanford Avenue;

77. Milvia Street from Dwight Way to Russell Street;

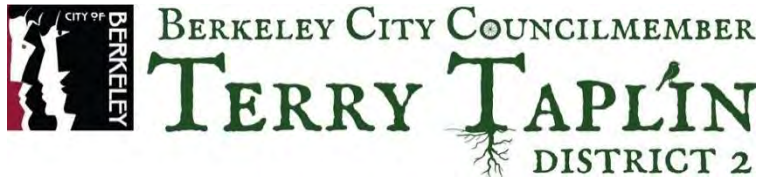
78. Bowditch Street from Bancroft Way to Dwight Way;

59.79. Hillegass Avenue from Dwight Way to Woolsey Street

B. All inter-city buses and tourist buses will be prohibited on these streets. School buses, emergency vehicles, and buses converted for use by disabled people will be allowed to use three-ton commercial truck weight limit routes.

C. The provisions of this section shall not apply to subsections 14.56.050 B and C.

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

CONSENT CALENDAR

September 29, 2021

FITES Committee

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Native and Drought Resistant Plants and Landscaping Ordinance Referral

RECOMMENDATION

Refer to the City Manager the development of an ordinance amending the Berkeley Municipal Code to require that plant materials (1) native to Berkeley and Northern California and (2) resistant to drought conditions shall be used exclusively in designing, planting, maintaining, and managing the landscape features of all City roadsides, parks, public areas, and other City properties and facilities.

BACKGROUND

As of the summer of 2021, the City of Berkeley and most of California are facing exceptional drought conditions.¹ The region's drought conditions have varied annually in the past decade, but the projects for our future under climate change are clear: California's drought will as much as triple in severity by 2050.² Drought conditions have escalated so radically that the East Bay Municipal Utility District asked residents to cut back on their water consumption.³ The City must plan for a future in which it operates successfully with significantly reduced water use and should begin using water more efficiently as soon as possible.

To plan for a long-term urban infrastructure that consumes water in a manner that reflects the drought conditions that we are certain to face in the next century, Berkeley can pursue a policy of only using native and drought-resistant plant materials in all City landscaping and public areas. While a relatively less significant consumer of water than residential and commercial buildings, the opportunity to save water by switching all City landscaping to native and drought resistant plants is immense. In addition to requiring less watering, native plant landscaping has been shown to have higher infiltration rates of water runoff, taking in water that would otherwise be discharged into sewers and

¹ <https://www.drought.gov/states/california/county/Alameda>

² <https://statesatrisk.org/california/all>

³ <https://www.berkeleyside.org/2021/04/27/east-bay-area-water-officials-declare-drought-ask-residents-to-conserve-water>

filtering toxic materials before they reach the waterfront. Native plants also provide critical food and habitat for local birds and pollinators.⁴ Furthermore, native plants that are already adapted to our local environment are more resistant to extreme weather and often do not require pesticide and fertilizer use.⁵

Various cities and counties throughout the country have pursued similar measures to implement native, drought resistant landscaping mandates that Berkeley can learn from in its own approach. These cities and counties include Westchester County, New York, Eugene, Oregon, and Chicago, Illinois.⁶ While Berkeley can learn from similar efforts elsewhere, each native plant ordinance is inherently different between each location with different local ecosystems. City staff will have to identify the native plants that are most practical and suitable for wide-scale use throughout the City and set planting policy accordingly.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Increased use of native and drought resistant plants on City property will make major strides towards increased urban biodiversity, reduced water usage in the maintenance of public lands, and increased resiliency of plantings on City property to extreme weather conditions.⁷

FINANCIAL IMPLICATIONS

Staff time and cost differences related to the exclusive use of native and drought-resistant plantings in City landscaping work. Increased use of native and drought resistant plants may lead to reduced landscaping maintenance work related to a reduced need for pesticides, fertilizers, and extra watering that non-native plants often require.⁸

CONTACT

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

ATTACHMENTS

1. Resolution
2. Westchester County Ordinance

⁴ <https://law.pace.edu/sites/default/files/Team%20%233%20Brief.pdf>

⁵ <https://perma.cc/FK54-B7L7>

⁶ <https://law.pace.edu/sites/default/files/Team%20%233%20Brief.pdf>

⁷ <https://sustainablecitycode.org/brief/require-use-of-native-plants/>

⁸ <https://sustainablecitycode.org/brief/require-use-of-native-plants/>

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

REQUIRING NATIVE & DROUGHT RESISTANT PLANTS IN ALL CITY
LANDSCAPING

WHEREAS, the City of Berkeley and the State of California are facing historic drought conditions that are projected to worsen over the course of the next half century or more, and

WHEREAS, the City of Berkeley must adapt its operations to future climate conditions characterized by excessive dryness, extreme weather, and declining populations of pollinators and other local wildlife, and

WHEREAS, the exclusive use of native plants in City landscaping offers an opportunity for less water-intensive landscaping throughout Berkeley, and

WHEREAS, native plants intake and filter toxic water runoff more easily than non-native landscaping, and

WHEREAS, native plants provide critical food and habitat for native animals and pollinators that are at risk under future climate conditions, and

WHEREAS, the costs of native plant landscaping may reduce overall landscaping costs due to a decreased need for pesticides and fertilizers,

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley refers the City Manager to draft an ordinance requiring that:

1. Plant materials native to Berkeley and Northern California and resistant to drought conditions be used exclusively in designing, planting, maintaining, and managing the landscape features of all City roadsides, parks, public areas, and other City properties and facilities.
2. Contracts with the City of Berkeley involving landscaping and/or plantings shall, when appropriate, require the use of native and drought resistant plant materials.

25-2018

EXECUTIVE ORDER NO. 10 OF 2018 (AS AMENDED)

WHEREAS, the County Executive has determined to amend the provisions of Executive Order No. 10 of 2018, dated September 27, 2018 as follows:

WHEREAS, Westchester County government has the opportunity to preserve its natural heritage as well as promote sustainable landscapes by choosing native plants, i.e., plants native to the County of Westchester and the Northeast; and

WHEREAS, native plants enhance the beauty of the landscape, maintain and restore biodiversity, support native pollinators, butterflies, and birds, and protect local ecosystems and environmental health; and

WHEREAS, native plants enrich the soil by helping rain percolate into the soil through their root systems, thereby reducing erosion and water irrigation requirements and filtering storm water runoff, which, in turn, improves water quality; and

WHEREAS, native plants minimize maintenance costs and the need for chemical applications; and

WHEREAS, native plants have historical and cultural interest that help promote Westchester County's regional identity; and

WHEREAS, landscape demonstration projects promote public awareness and education and can be a catalyst for the general public to use native plants in private and commercial landscaping;

WHEREAS invasive, non-native plants threaten the natural heritage and identity of Westchester County and New York State, disrupt the ecology of natural ecosystems, displace native plant and animal species, and degrade our unique and diverse biological resources; and

WHEREAS, New York State has passed regulations prohibiting and regulating certain invasive species;

NOW, THEREFORE, I, GEORGE LATIMER as County Executive of the County of Westchester, do hereby order and direct to each and every department, board, agency, and commission of the County of Westchester, under my jurisdiction, as follows:

RECEIVED

SEP 28 2018

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

1. Plant materials native to Westchester County and the Northeast or their cultivars shall be used exclusively in designing, planting, maintaining, and managing the landscape features of all County roadsides, parks, public areas, and other County properties and facilities.
2. Plans and specifications for any Westchester County contract involving landscaping and/or plantings shall, where practicable and appropriate, require the use of native plants.
3. All plant species listed as Prohibited and Regulated in New York State's NYCRR PART 575 Invasive Species Regulations shall be prohibited in all Westchester County parks and on all other County lands, along County roadsides, and in gardens surrounding County buildings, and where possible, these species shall be eradicated from County parks and other lands, as well as along County roadsides and in gardens surrounding County buildings.
4. Appropriate site and soil analyses shall be performed, matching plant characteristics with site and soil conditions, to ensure success of the planting of native plants.
5. Site design and construction as well as plant selection shall incorporate considerations such as biological needs, low maintenance, low water usage, character of plant communities at project sites, and minimal need for fertilizers and pesticides.
6. The public shall, through various means, be educated about the importance of native plants to the Westchester County landscape.
7. Outdoor demonstration projects exhibiting and promoting the benefits of native species and environmentally sound landscaping practices shall be created and maintained in Westchester County parks and parkway rest areas, at the County office building, and at Westchester Community College.
8. Public/private partnerships with educational institutions, arboreta, commercial nurseries, botanic gardens, and garden clubs shall be encouraged to increase the availability of native plants, and share knowledge about their use, maintenance and propagation.
9. This Executive Order shall apply in all instances unless the Department of Planning or the Department of Parks, Recreation and Conservation determines that no native plant fits the ecological niche in which case plants that are non-invasive and beneficial to wildlife may be permitted in place of native plants.

10. This Executive Order shall take effect immediately and shall remain in full force and effect until otherwise superseded or revoked.

A handwritten signature in cursive script, appearing to read "George Latimer", is written over a solid horizontal line.

GEORGE LATIMER
Westchester County Executive

Dated: September 28, 2018
White Plains, New York



CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Taplin, Mayor Arreguín (co-author)
Subject: Resolution in Support of Afghan Refugees

RECOMMENDATION

Adopt a Resolution in support of refugees from Afghanistan.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Following the conclusion of the two-decade War in Afghanistan, the United States anticipates the immediate arrival of thousands of refugees fleeing the Taliban government. U.S. Sen. Alex Padilla (D-CA) has requested that the State Department streamline and expedite the issuance of special immigrant visas (SIVs) to evacuate refugees.¹ Governor Gavin Newsom has requested \$16.7 million in the state budget to aid resettling refugees.² The City of Berkeley must voice its support for these efforts.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

Attachments:
1: Resolution

¹ <https://www.padilla.senate.gov/wp-content/uploads/Afghan-Parole-Letter-8.25.21.pdf>

² Associated Press. (Sept. 4, 2021). "California Governor seeks \$16.7 Million in Aid for Afghan Refugees." Retrieved from <https://www.nbcbayarea.com/news/california/california-governor-seeks-16-7m-in-aid-for-afghan-refugees/2648391/>

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

RESOLUTION IN SUPPORT OF AFGHAN REFUGEES

WHEREAS, the ongoing uncertainty and violence in Afghanistan and the takeover of the Afghan government by the Taliban has created a humanitarian crisis, with rapidly deteriorating human rights and reductions in safety particularly for vulnerable individuals, including, but not limited to: women and girls, members of the LGBT community, those who have direct ties to the U.S. government and military, members of ethnic minority communities, those who are Shi'a Muslim, adherents of non-Muslim faiths, including those of Sikh and Hindu faiths, and individuals who work for or have ties to aid organizations; and;

WHEREAS, refugees and their families face a multitude of challenges when arriving in the United States and transitioning to a new life, including but not limited to; resettlement, language barriers, understanding cultural nuances, financial hardship, accessing education, finding work and legal status; and

WHEREAS, federal and state leaders in California, specifically in Alameda County, home to the largest concentration of Afghans and Afghan Americans in the United States and the greater Bay Area, have the unique and moral responsibility to welcome Afghan refugees in our communities, while honoring the commitments of the United States government, assisting in the evacuation of vulnerable groups, providing support to organizations who will serve the refugee community, and showing support for the Afghan community during this difficult time;

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports and welcomes refugees from Afghanistan into our community and urges our state and federal leaders to act immediately and with determination, and rightfully bring at-risk and vulnerable Afghan peoples and their families to the United States for safety and prosperity and be afforded full benefits to transition into American life; and encourages California to accept more, and house more, Afghan refugees than any other US State;

BE IT FURTHER RESOLVED that the Council of the City of Berkeley supports access to significant opportunities and benefits to individuals and families arriving from Afghanistan, including, but not limited to: immediate eligibility for reception and placement afforded under Special Immigrant Visa (SIV) and refugee status conditions within a week of arriving on US soil.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
SEPTEMBER 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Susan Wengraf
 Subject: Adopt a Resolution Renewing and Re-Affirming Wildfire Prevention and Safety as a Top Priority in the City of Berkeley

RECOMMENDATION

Request that the Berkeley City Council adopt a resolution re-affirming that wildfire prevention and safety is a top priority in the City of Berkeley.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The Berkeley City Council adopted Resolution No. 69,147-N.S. Declaring Wildfire Prevention And Safety As A Top Priority In The City of Berkeley on October 15, 2019. Since then, extreme weather events have increased in California. Wildfires are starting earlier and ending later each year. Climate change is considered a key driver of this trend. Warmer spring and summer temperatures, reduced snowpack, and earlier spring snowmelt create longer and more intense seasons that increase moisture stress on vegetation and make forests more susceptible to severe wildfire. The length of fire season is estimated to have increased by at least 75 days across the Sierras and seems to correspond with an increase in the extent of forest fires across the state.

Wildfires in 2021 have already exceeded the [2020 season](#), which itself was the largest season in the state's recorded history. As of July 11, more than three times as many acres have burned compared to the previous year through that date, with drought, [extreme heat](#), and reduced snowpack contributing to the severity of the fires. As of August 18, 2021, the state of California was facing unprecedented fire conditions as multiple fires including the [Dixie Fire](#), [McFarland Fire](#), [Caldor Fire](#), and multiple others rage on.

Berkeley's hills are subject to extremely high fire hazards due to proximity to park land where the fuel load is high; narrow, curvy roads, hampering access by first responders and obstructing efficient evacuation routes; steep topography and changing weather conditions. CalFire, has ranked Berkeley at the same risk level of many of the cities that have already been decimated by fire throughout the stateⁱ. Berkeley's risk to wildfire is designated as the highest in the state.ⁱⁱ

In 1923, a wildfire swept through north Berkeley, ultimately destroying approximately 600 homes, including churches, schools, libraries, and student living quarters. The fire traveled down to the intersection of Shattuck and Hearst. At that time, the population of Berkeley was 52,000, Today, the population density is 122,000.

In 1980, a fire in Berkeley's Wildcat Canyon destroyed 5 homes and then, on October 17, 1991, The Tunnel Fire consumed homes in southeast Berkeley and Oakland, claiming 25 lives and reducing approximately 3,000 structures to ashes. Had the wind direction not shifted, it is possible that many more people would have died and more of Berkeley would have been destroyed.

Berkeley's acknowledgment of the serious risk we face to the threats of wildfire is an essential component to a successful program to raise public awareness, and to educate and prepare our community. Our renewed commitment, by resolution, will allow us to move forward with projects and programs to achieve our shared goals of wildfire prevention and safety.

ENVIRONMENTAL SUSTAINABILITY

Wildfires negatively impact the ozone and air quality. Wildfires release large amounts of carbon dioxide, black carbon, brown carbon, and ozone precursors into the atmosphere. These emissions affect radiation, clouds, and climate on regional and even global scales. Wildfires also emit substantial amounts of volatile and semi-volatile organic materials and nitrogen oxides that form ozone and organic particulate matter.ⁱⁱⁱ

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: [Berkeley Very High Fire Hazard Severity Zone Map](#)

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

RESOLUTION REAFFIRMING WILDFIRE PREVENTION AND SAFETY AS A TOP PRIORITY FOR THE CITY OF BERKELEY AND ENCOURAGING A VARIETY OF STRATEGIES TO PREVENT AND ABATE FIRE RISK

WHEREAS, on October 15, 2019, The City Council adopted Resolution NO. 69,147-N.S. declaring "Wildfire Prevention and Safety a Top Priority" for the City of Berkeley; and

WHEREAS, since 2019, wildfires have continued to grow larger and increase in intensity due to drought, climate change, and unmanaged and overgrown vegetation; and

WHEREAS, the East Bay Hills experienced a wildfire in 1991 which burned over 1,600 acres and 2,900 structures, causing 25 deaths and injuring 150 people; and

WHEREAS, the entire City of Berkeley is potentially at risk of wildfire, not only in the hill neighborhoods but in the lower neighborhoods between the hills and the Bay; and

WHEREAS, unhealthy and hazardous air quality is a consequence of wildfires, seriously impacting the health of all, and of particular concern, the health of our children, seniors and other vulnerable populations throughout the city; and

WHEREAS, Cal Fire has designated a large geographical area of Berkeley to be in a Very High Fire Hazard Severity Zone (VHFHSZ) within the Local Responsibility Area (LRA) where the City has the financial responsibility for wildfire protection; and

WHEREAS, when a wildfire destroys neighborhoods, the economic impact is devastating and impacts the City's quality of life, infrastructure, and ability to recover financially, and would adversely impact the City's ability to collect its current level of property and sales taxes and other revenue sources that comprise the City budget; and

WHEREAS, there is a housing shortage in Berkeley and wildfires could exacerbate this situation, in addition to concerns that when wildfires hit, financially disadvantaged people are disproportionately affected.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that it reaffirms its commitment to wildfire prevention and safety as a top priority and that discussions and efforts will continue locally and regionally on how best to prevent and abate fire hazards in the City, including but not limited to:

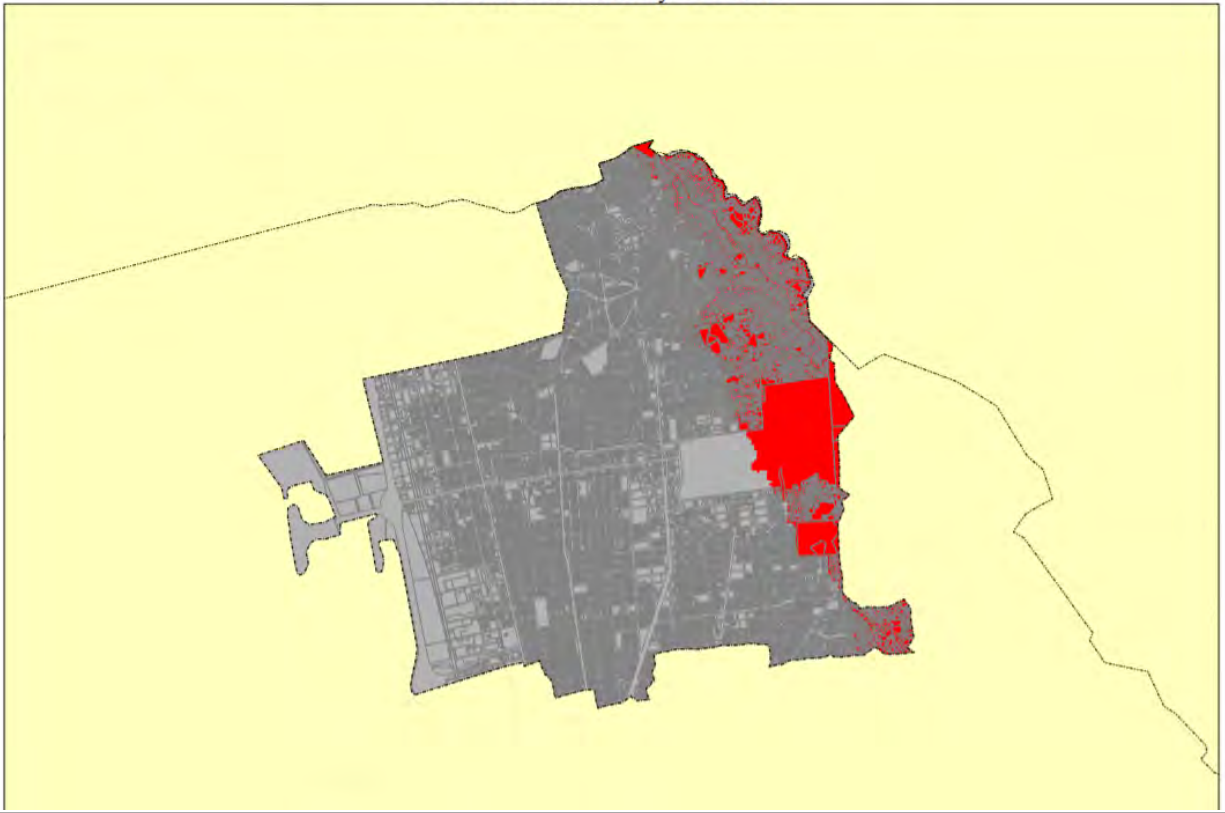
- Working collaboratively with neighboring agencies and jurisdictions on a comprehensive approach to fire prevention
- Seeking grants and other resources for wildfire education, prevention and mitigation
- Planning for and implementing policies for safe evacuation
- Implementing a Vegetation Management Plan to require the removal of flammable vegetation on private properties
- Updating building and fire codes as necessary to make structures more resistant to fire
- Reducing fuel loads in the VHFHSZ in city owned parks and other properties.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.



Berkeley

Very High Fire Hazard Severity Zones in LRA
As Recommended by CAL FIRE



ⁱ <https://www.berkeleyside.org/2019/10/17/the-berkeley-hills-are-kindling-city-takes-steps-to-tackle-wildfire-dangers-safety-issues>

ⁱⁱ <https://egis.fire.ca.gov/FHSZ/>

ⁱⁱⁱ <https://csl.noaa.gov/factsheets/csdWildfiresFIREX.pdf>



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Councilmember Wengraf (Author) Councilmember Hahn (Co-Sponsor)
 Subject: Amending BMC Section 14.56.040 to reduce the commercial weight limit on Marin Ave

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.040 to reduce the commercial vehicle weight limit from four tons gross weight to three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.

FINANCIAL IMPLICATIONS

Staff time and sign replacement. Expense covered by approved FY 2022 funding allocation for "Traffic Control Mitigations to Protect Pedestrian Access to Cragmont Elementary School".

CURRENT SITUATION AND ITS EFFECTS

Reducing the commercial vehicle weight limit on Marin Ave between Grizzly Peak Boulevard and The Marin Fountain Circle will make Marin Avenue safer to walk on, drive on and live on. Marin Avenue is the steepest street in the City of Berkeley; one of the steepest in the entire Bay Area. Accidents on Marin Ave involving failed brakes and other mechanical failures have resulted in deaths, severe injuries and property damage. The heavier a vehicle the greater potential for catastrophic results from an accident.

On May 11, 2021, at approximately 1:40 PM, a driver of a sedan and his passenger died in a collision with a telephone pole. A second vehicle was impacted in the collision with injuries to the driver. A parked car was also hit. The reason for the accident is still under investigation but speculated to be some sort of mechanical failure. Cragmont Elementary students and parents were traumatized by witnessing the out of control car and hearing the resulting crash. Had the car been a high tonnage commercial vehicle the results would likely have been even more disastrous.

Councilmember Wengraf and Transportation staff participated in a Community Town Hall on Marin Ave Safety, hosted by the Cragmont School PTA on May 26, 2021. This item is a result of discussion and consideration of steps to improve safety on Marin Ave. The recent tragic deaths along with years of concern over traffic safety on Marin Ave bring this recommendation to Council.

BACKGROUND

The commercial vehicle weight limit for the upper section of Marin Ave, between The Marin Fountain Circle and Grizzly Peak Blvd. was set at four tons in 1957 and has remained unchanged. Weight limits were not set again in Berkeley until 1992 (BMC 14.56.050) when five-ton vehicle weight limits were set for sections of collector streets Gilman, Hopkins, The Alameda and MLK Jr. Way. In 2000 the passage of Ordinance No. 6535 – N.S. created a designated truck route system for commercial vehicles exceeding seven tons (BMC 14.56.060). It wasn't until 2004 that the City Council once again addressed commercial vehicle traffic on residential streets with the passage of Ordinance No. 6799 – N.S., which added BMC 14.56.070, and limited commercial vehicle weight limits to three tons on sections of 46 different streets. Marin Ave remains the only residential street in Berkeley with a four-ton weight limit.

Currently, Marin Ave remains the only residential street in Berkeley with a four-ton weight limit.

Marin Avenue is a major thoroughfare for entry and exit from I-80 to all of North Berkeley. It is also a residential street where residents walk up, down and across for exercise and pleasure. As mentioned, Cragmont Elementary School is located on Marin where students, parents and staff walk and cross the street to get to and from school, daily.

Reducing the commercial vehicle weight limit on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle is consistent with the City's Vision Zero strategy to eliminate all traffic fatalities and severe injuries while increasing safe, healthy and equitable mobility for all. Vision Zero has designated lower Marin Ave, below Spruce street, as one of the City's "High Injury Streets" (16% of the City's streets) where 91% of severe and fatal collisions occurred between 2008 and 2018. While the latest fatal collision on Marin Avenue occurred on lower Marin, the car's speed began to get out of control in the steep, weight limited section of Marin, above Cragmont Elementary. Reducing the commercial vehicle weight limit on Marin Ave by one ton will make Marin Avenue safer for all.

ENVIRONMENTAL SUSTAINABILITY

Safer streets encourage lower emission forms of transportation such as walking, biking and use of public transportation.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Ordinance

2: [Commercial Vehicle Weight Limit Map](#)

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 14.56.040 TO REDUCE THE COMMERCIAL VEHICLE WEIGHT LIMIT FROM FOUR TONS TO THREE TONS AND UPDATE THE WORDING OF "THE CIRCLE" TO "THE MARIN FOUNTAIN CIRCLE"

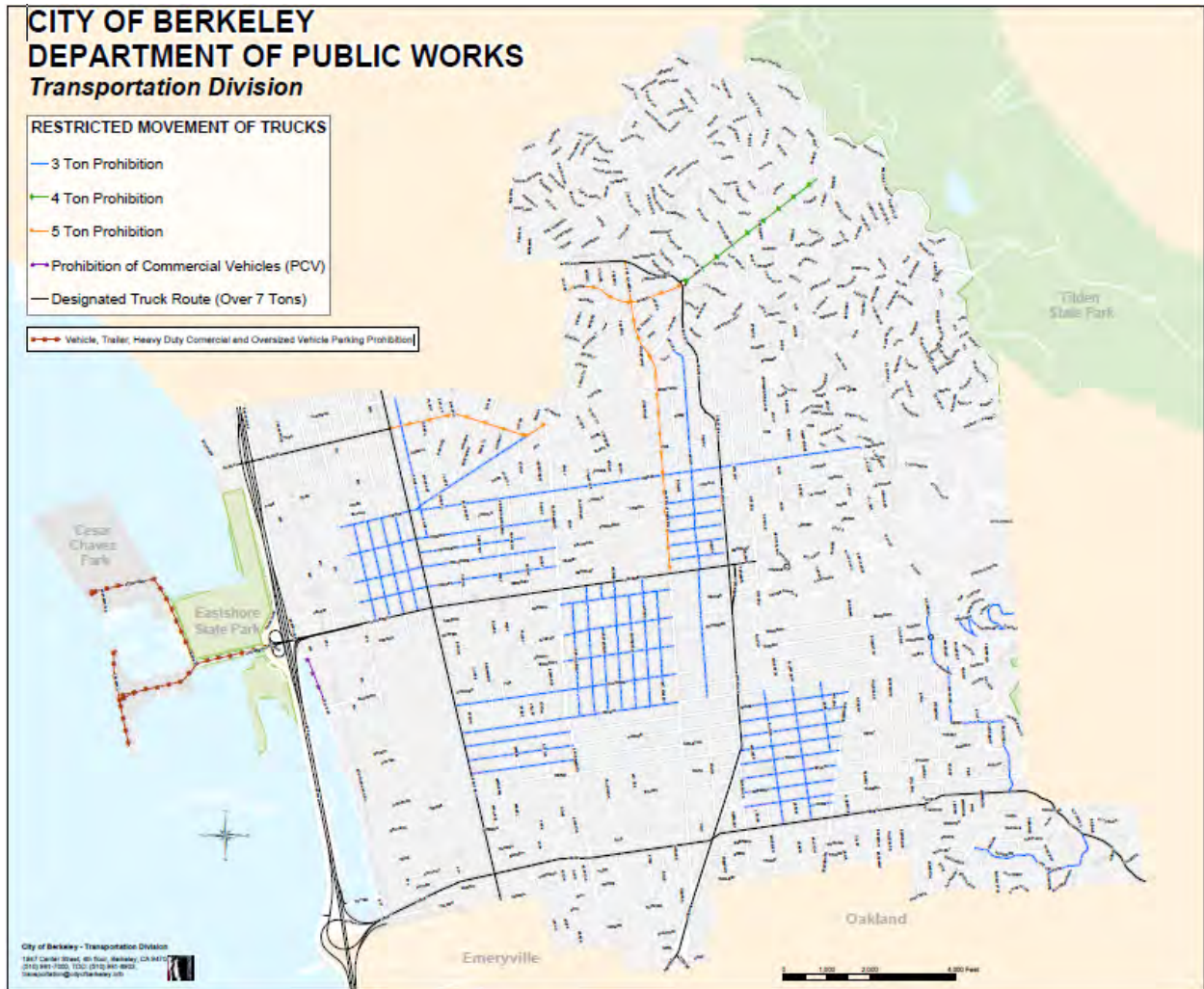
BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 14.56.040 of the Berkeley Municipal Code is amended to read as follows:

14.56.040 Prohibiting the operation of commercial vehicles on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.

A. It is unlawful for any person to operate any commercial vehicle over three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle. Provided, however, that this section shall not apply to any commercial vehicle using said street when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on said portion of Marin Avenue or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such portion of Marin Avenue for which a building permit has previously been obtained therefore, providing the operator of said commercial vehicle enters and leaves said portion of Marin Avenue by the cross street either above or below the point of pickup or delivery. Provided, further, that this section shall not apply to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility.

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



<https://www.berkeleyside.org/2021/05/13/fatal-crash-revives-traffic-safety-concerns-for-berkeley-hills-neighbors>

INFORMATION CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents

INTRODUCTION

To promote Berkeley's financial fitness, my office created a guide to assist residents in preparing a Financial First Aid Kit for their households.

FISCAL IMPACTS

A Financial First Aid Kit can reduce the financial burden on residents in recovering from disasters or emergencies.

CURRENT SITUATION AND ITS EFFECTS

As climate change increases the risk of catastrophic wildfires and Berkeley's location near the Hayward fault creates an ever-present risk of earthquakes, it is always important to be prepared for evacuation if disaster strikes. One way to prepare is to create a Financial First Aid Kit that contains the critical information needed to begin the recovery process after an emergency evacuation or other incident. My office compiled information from the Federal Emergency Management Agency (FEMA) and other sources to create a guide for Berkeley residents to prepare a Financial First Aid Kit for their household.

FEMA recommends that a Financial First Aid kit include key records and contact information that you will need to recover from disasters or emergencies, including identification documents, financial and legal documentation, medical information for all family members and pets, contact information, passwords, and cash. FEMA also recommends that Financial First Aid Kits are stored in a safe location and to save multiple electronic copies on secure devices.

BACKGROUND

Emergencies can lead to unexpected expenses and may also require residents to evacuate their homes with little notice. It is important to be able to access financial information needed to meet basic needs during an emergency situation and to recover after the initial threat of harm has passed.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

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

Attachments:

1: Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents

Financial First Aid Kit

A Guide to Emergency Financial Preparedness for Berkeley Residents

Be Prepared for Emergencies

As climate change increases the risk of catastrophic wildfires and Berkeley's location near the Hayward fault creates an ever-present risk of earthquakes, it is always important to be prepared for evacuation if disaster strikes. September is National Preparedness Month, which is a great reminder to take steps now to be ready for emergencies. One way to prepare is to create a **Financial First Aid Kit** that contains some of the critical information you will need to begin the recovery process after an emergency evacuation or other incident. This guide compiles information from the Federal Emergency Management Agency (FEMA) and other sources to help you prepare a Financial First Aid Kit for your household.

How to Create a Financial First Aid Kit

1. **Assemble** your documents and information. When using copies of original documents, make sure to scan both sides of each page.
2. **Verify** that the information is correct and up-to-date.
3. **Store** your completed Financial First Aid Kit in a safe location. It's best to save multiple electronic copies on secure devices, in addition to any physical copies.
4. **Update** this file at least once per year.

While the documents in the checklist to the right are a good starting point, keep in mind that this list is not comprehensive. You may need to customize or add to your Financial First Aid Kit based on the needs of your household. See the sources below for more details.

If you believe your Financial First Aid Kit has been stolen or illegally accessed, you should immediately contact all relevant financial and insurance institutions to report the concern.

Sources

(1) FEMA. 2019. *Emergency Financial First Aid Kit (EFFAK): Strengthen Your Financial Preparedness for Disasters and Emergencies*.

https://www.fema.gov/sites/default/files/documents/fema_effak-toolkit.pdf.

(2) LA City Controller. 2020. "How to Build a Financial First Aid Kit."

<https://lacontroller.org/data-stories-and-maps/financialfirstaidkit/>.

(3) Ready Campaign. 2021. National Preparedness Month Information.

<https://www.ready.gov/september>.

Document and Information Checklist

Identification Documents

- Driver's license(s) or other photo ID(s)
- Birth certificate(s), adoption/custody papers
- Marriage license or divorce decree
- Social Security card(s)
- Child ID card(s) with photograph, fingerprints/DNA swabs
- Passport(s)/Green Card(s)
- Naturalization papers
- Military ID or discharge papers
- Pet ID(s), proof of ownership or adoption, emotional support letter/service animal certification, microchip information,

Medical Information

- Physician, pediatrician, dentist, medical specialist contacts
- Health insurance, pharmacy card(s)
- Medicare/Medicaid cards
- Immunization, allergy, and dental records
- List of prescriptions/medications
- Disability documents
- Caregiver agency contract or service agreement, living will/power of attorney
- Medical information for pet(s), e.g., veterinarian information, immunization records, prescriptions/medications
- Models, serial numbers, and suppliers for medical equipment

Contacts, Passwords, and Cash

- List of emergency contacts
- List of usernames and passwords
- Cash for daily expenses (physical file only)

Legal and Financial Documents

- Bank/financial institution, investment, and retirement account statements
- Lease/rental agreements
- Mortgage papers/real estate deed of trust
- Home equity line of credit
- Utility bills (e.g., electric, gas, water)
- Other financial obligations (e.g., vehicle loans, credit cards, student loans, alimony/child support payments, elder care facilities, automatic payments)
- Vehicle registration/proof of ownership
- Insurance papers for medical, life, property, renters, auto, pet, flood, funeral, etc.
- Photographs/appraisals of property
- Pay stubs, alimony/child support income
- Contracts to which you are a party
- Government benefit statements (e.g., CalFresh)
- Estate planning papers, wills and trusts, power(s) of attorney
- Rewards accounts (e.g., frequent flyer programs, hotels)

Upcoming Worksessions – <i>start time is 6:00 p.m. unless otherwise noted</i>	
Scheduled Dates	
Sept. 21	1. Housing Element
Oct. 19	1. Update: Zero Waste Rates & Priorities 2. Berkeley Police Department Hiring Practices 3. Crime Report
Dec. 7	1. Review and Update on City's COVID-19 Response 2. WETA / Ferry Service at the Marina 3. Presentation by Bay Restoration Authority

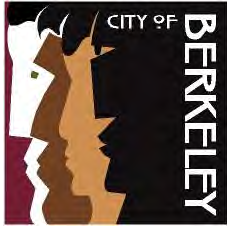
Unscheduled Workshops
1. Cannabis Health Considerations 2. Alameda County LAFCO Presentation

Unscheduled Presentations (City Manager)
1. Civic Arts Grantmaking Process & Capital Grant Program

	City Council Referrals to the Agenda & Rules Committee and Unfinished Business for Scheduling
1.	<p>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 <i>(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) (Referred from the January 21, 2020 agenda)</i> From: Councilmember Harrison Recommendation: 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. 2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods. Financial Implications: See report Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 Note: <i>Referred to Agenda & Rules for future scheduling.</i></p>
2.	<p>25. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers <i>(Continued from February 25, 2020. Item contains revised and supplemental materials) (Referred from the May 12, 2020 agenda.)</i> From: City Manager Recommendation: 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. Financial Implications: None Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000 Note: <i>Referred to Agenda & Rules for future scheduling.</i></p>
3.	<p>Adopt a Resolution Updating City of Berkeley Street Maintenance and Rehabilitation Policy <i>(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee) (Continued from the June 1, 2021 meeting) (Referred from the July 13, 2021 meeting)</i> From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Taplin (Co-Sponsor) Recommendation: 1. Adopt a Resolution updating the City's Street Maintenance and Rehabilitation Policy dated June 1, 2021. 2. Refer the exploration of potential bonding and funding opportunities for improving the Paving Condition Index (PCI) of streets and creating a Paving Master Plan back to the Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Committee for further review. <i>Policy Committee Recommendation: To move the Public Works supplemental item "City of Berkeley Street Maintenance and Rehabilitation Policy to Council" with a positive recommendation including amendments made during the meeting today, and ask Council to refer the exploration of potential bonding and funding opportunities for improving the PCI of streets and creating a Paving Master Plan back to the FITES Committee for further review.</i> Financial Implications: Staff time Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 Note: <i>Item referred to the Agenda & Rules Committee for future scheduling with the Five-Year Paving Plan.</i></p>

CITY CLERK DEPARTMENT			
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS BEFORE THE CITY COUNCIL			
Address	Board/ Commission	Appeal Period Ends	Public Hearing
NOD – Notices of Decision			
840 Page Street (modifications to second story and ground floor on home)	ZAB	9/21/2021	
2808 Ninth Street (demolish 876 sq ft single family dwelling; construct 1,651 sq ft single family dwelling)	ZAB	9/21/2021	
Public Hearings Scheduled			
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
Remanded to ZAB or LPC			
Notes			

9/9/2021



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)

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**

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
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

<u>Boards and Commissions</u>	<u>Meetings Held Under COVID March - Oct</u>	<u>Regular Mtg. Date</u>	<u>Secretary</u>	<u>Dept.</u>	<u>Resume Regular Schedule in January 2021?</u>	<u>Note</u>
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

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 GOVERNOR

June 2, 2021

VIA EMAIL

Graham Knaus, Executive Director
CA State Assoc. of Counties
gknaus@counties.org

Jean Kinney Hurst, Legislative Advocate
Urban Counties of CA
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Kristopher M. Anderson, Esq., Legislative
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RE: Transition Period Prior to Repeal of COVID-related Executive Orders

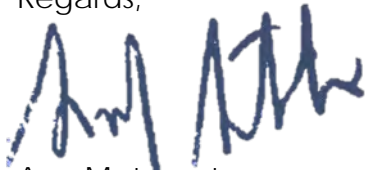
Dear Mr. Knaus, Ms. Miller, Ms. Hurst, Ms. Preston, Ms. Heaton, Ms. King, Ms. Coleman, Ms. Blacet-Hyden, Mr. McCormick, Mr. Anderson, and colleagues,

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, (510) 286-1161.

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

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, at 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