BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE
REGULAR MEETING

Monday, June 3, 2024
10:00 AM

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Susan Wengraf, Cecilia Lunaparra, and Mark Humbert
Alternate: Vacant

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://cityofberkeley-info.zoomgov.com/j/1608156546. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 815 6546**. 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 meeting will be recorded.

To submit a written communication for the Committee's consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development 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.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

AGENDA

Roll Call

Election of Chairperson

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - December 4, 2023

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: June 30, 2024
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Committee Action Items

3. Just Transition Framework for West Berkeley Plan Amendments *(Item contains revised material)*
From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)
Referred Date: October 23, 2023
Due Date: July 4, 2024
Recommendation:
Refer to the Land Use, Housing, and Economic Development (LUHED) Policy Committee; City Manager; Planning Commission; and Environment and Climate Commission to study and recommend amendments to the West Berkeley Plan pursuant to California Government Code Section 65302(h) to advance the city's environmental justice goals under a Just Transition Framework.
At a minimum, consider the following concepts: -Just Transition principles adopted by City Council in Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal"; -EcoDistricts Protocol and possible EcoDistricts certification incorporated into a Community Engagement Plan; -Climate Resilience Hubs; -Indigenous Land Rematriation; -Transportation Demand Management (TDM) planning to reduce Vehicle Miles Traveled (VMT) per capita by at least 25% by 2030; -Promotion and protection of arts and cultural uses. Consider robust incentives, development standards and/or mitigations in Protected Uses (Berkeley Municipal Code 23.206.050) for Media Production, Theater, Live Entertainment, Art/Craft Studio, and/or other arts and cultural uses. -Continued modernization and preservation protected manufacturing space and incentivised use of the West Berkeley Buidlings Acquistion Fund; -Estabslishment of comprehenisve plan for resource management and long-range recreational use at Aquatic Park. -Establishment of new mixed-use / hybrid zones and emerging industrial uses.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

4. Adopt Berkeley Municipal Code Chapter 13.89: Community/Tenant Opportunity to Purchase Act *(Item contains revised material)*
From: Councilmember Harrison (Author)
Referred: November 13, 2023
Due: September 9, 2024
Recommendation: Adopt Berkeley Municipal Code Chapter 13.89: The Community/Tenant Opportunity to Purchase Act (COPA/TOPA).
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Committee Action Items

5. Referral to the City Manager: Eminent Domain Feasibility Analysis for 2902 and 2908 Adeline Street Properties and Abandoned House on 1946 Russell Street
From: Councilmember Bartlett (Author)
Referred: November 27, 2023
Due: September 18, 2024
Recommendation: Refer the City Manager to conduct an analysis and report to the Council on the feasibility of using eminent domain to enable the City to purchase the blighted commercial properties on 2902 and 2908 Adeline Street, as well as the adjacent abandoned house on 1946 Russell Street for the purposes of developing mixed-use affordable housing.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

6. Incentives for Equitable and Affordable Middle Housing
From: Councilmember Taplin (Author), Councilmember Bartlett (Author), Councilmember Hahn (Co-Sponsor)
Referred Date: January 29, 2024
Due Date: October 9, 2024
Recommendation:
1. Refer to the City Manager and the Planning Commission to study and return to Council potential amendments to the Berkeley Municipal Code and General Plan to further the City of Berkeley's goals for affirmatively furthering fair housing with additional incentives for affordability and ownership opportunities, including first-time homebuyers and households inheriting properties from relatives, in "Middle Housing" zoning categories. At a minimum, consider: a. A local density bonus for on-site affordable housing for Middle Housing, including additional dwelling units, Floor Area Ratio, lot coverage, reduced or waived fees, and ministerial approval for projects with on-site deed-restricted units affordable to Low- and Moderate-Income households, and incentives for first-time homebuyer opportunities. Consider regulating maximum buildable width and/or depth to disincentivize higher-cost dwelling units. b. A density bonus for additional Accessory Dwelling Units in exchange for the inclusion of deed-restricted ADUs on-site affordable to Low- and Moderate-Income households. To the extent feasible, incorporate scope of study with Council's referral to develop an Efficiency Unit Ordinance. c. A density bonus for Middle Housing residential projects in which an owner-occupier receives a minimum of in-kind compensation for the parcel with on-site ownership unit(s) in the project. Consider standard form agreements and other technical assistance. d. Pre-approved designs for bonus-compliant projects. e. Seek to leverage consistency and compatibility with state and regional resources including the Bay Area Housing Finance Authority (BAHFA), MTC/ABAG, AC Boost, and the CA Dream For All program.
2. Refer to the Fiscal Year 25/26 biennial budget process $250,000 for technical assistance.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Committee Action Items

7. Proposed Amendments to the Building Emissions Saving Ordinance (BESO)
From: City Manager
Referred: February 13, 2024
Deadline: October 9, 2024
Recommendation: Adopt first reading of an Ordinance amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

8. Affordable Housing for Artists: AB-812 Implementation and Cultural District Statutory Standardization
From: Councilmember Taplin (Author)
Referred: May 21, 2024
Due: October 26, 2024
Recommendation: Pursuant to California Government Code Section 65914.8, refer to the City Manager, City Attorney, and Planning Commission:
1. To study and develop an Ordinance and implementation plan for Assembly Bill 812 (2023) to reserve for artists up to 10 percent of Below Market Rate units under Berkeley Municipal Code 23.328 (Inclusionary Housing) within a half-mile of a state-designated cultural district or within any similar locally designated cultural district, with consideration for consistency with existing Affordable Housing Preference Policy;
2. Consider common standards for locally designated cultural districts, including but not limited to Overlay Zones, and implementation of cultural district designation within the boundaries of Area Specific Plans, including but not limited to the Adeline Corridor and San Pablo Corridor Specific Plans;
3. Pursuant to California Government Code Section 8758, consider solicitation of state designation for cultural districts in the City of Berkeley.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Unscheduled Items

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

- **None**

Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**

Adjournment

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Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

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



COMMUNICATION ACCESS INFORMATION:
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 30, 2024.



Mark Numainville, City Clerk

Communications

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BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE

REGULAR MEETING MINTUES

Monday, December 4, 2023
10:00 AM

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Mark Humbert
Alternate: Councilmember Kate Harrison

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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MINUTES

Roll Call: 10:03 a.m.

Present: Councilmembers Humbert, Robinson, and Harrison (for Bartlett)

Public Comment on Non-Agenda Matters: 5 speakers

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes – November 6, 2023
Action: M/S/C (Harrison/Humbert) to approve the November 6, 2023 minutes.
Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair 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.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Referral: Neighborhood-Scale Commercial
From: Councilmember Robinson (Author), Councilmember Bartlett (Author), Councilmember Taplin (Author)
Referred Date: October 23, 2023
Due Date: April 22, 2024
Recommendation: Refer to the City Manager and Planning Commission to consider and develop policies to permit neighborhood-scale retail uses in residential zones to increase economic opportunity, vitality, and walkability in Berkeley neighborhoods. Changes may include zoning alterations or modifications to use permit requirements. Staff and the Planning Commission should consider conditions to avoid detrimental impacts on surrounding residential uses and neighborhoods, including but not limited to limitations on operating hours, signage, loading/unloading activity, limitations on selling alcohol, restricting applicants to businesses with fewer than three locations, and establishing different permitting requirements depending on square footage, proposed use, or other factors.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action: 3 speakers. Discussion held. M/S/C (Robinson/Harrison) to send the item as revised to the City Council with a positive recommendation.
Vote: All Ayes.

Unscheduled Items

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

3. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: December 31, 2023
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

4. Just Transition Framework for West Berkeley Plan Amendments *(Item contains revised material)*
From: Councilmember Taplin (Author)
Referred Date: October 23, 2023
Due Date: April 22, 2024
Recommendation: Refer to the City Manager and Planning Commission to study and recommend Amendments to the West Berkeley Plan pursuant to California Government Code Section 65302(h) to advance the city's environmental justice goals under a Just Transition Framework.
At a minimum, consider the following concepts: -Just Transition principles adopted by City Council in Resolution No. 70,171–N.S. “Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal”; -EcoDistricts Protocol and possible EcoDistricts certification incorporated into a Community Engagement Plan; -Climate Resilience Hubs; -Indigenous Land Rematriation; -Transportation Demand Management (TDM) planning to reduce Vehicle Miles Traveled (VMT) per capita by at least 25% by 2030; -Promoting and protecting arts and cultural uses. Consider robust incentives, development standards and/or mitigations in Protected Uses (Berkeley Municipal Code 23.206.050) for Media Production, Theater, Live Entertainment, Art/Craft Studio, and/or other cultural uses.
In addition, apply the above concepts for the consideration of a Master Plan, Natural Resources Management Plan, or other comprehensive plan for the protection and maintenance of Aquatic Park.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Unscheduled Items

5. **Adopt Berkeley Municipal Code Chapter 13.89: Community/Tenant Opportunity to Purchase Act** *(Item contains revised material)*
From: Councilmember Harrison (Author)
Referred: November 13, 2023
Due: May 13, 2024
Recommendation: Adopt Berkeley Municipal Code Chapter 13.89: The Community/Tenant Opportunity to Purchase Act (COPA/TOPA).
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

6. **Referral to the City Manager: Eminent Domain Feasibility Analysis for 2902 and 2908 Adeline Street Properties and Abandoned House on 1946 Russell Street**
From: Councilmember Bartlett (Author)
Referred: November 27, 2023
Due: May 27, 2024
Recommendation: Refer the City Manager to conduct an analysis and report to the Council on the feasibility of using eminent domain to enable the City to purchase the blighted commercial properties on 2902 and 2908 Adeline Street, as well as the adjacent abandoned house on 1946 Russell Street for the purposes of developing mixed-use affordable housing.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Items for Future Agendas

- **None**

Adjournment

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

Vote: All Ayes.

Adjourned at 10:55 a.m.

I hereby certify that the foregoing is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on December 4, 2023.

_____
Wendy Sorensen, Assistant City Clerk

Communications

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02

Kate Harrison
Councilmember District 4

ACTION CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison

Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.[1] The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

1) Regulatory burden shifted to the Host Platform

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

[1] *Homeaway.com v Santa Monica.* United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

2) Hosts can have only one residence

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

4) Closing 14/30 day loophole

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

5) Remedies

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney’s fees, thus making private right of action more financially feasible. The new

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

CONTACT PERSON
Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS
Ordinance

100Chapter 23C.22
Short-Term Rentals

23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.

B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.

C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.

D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.

B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.

C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.

D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F.. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

I. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City, and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, for 14 or fewer consecutive days.

P. "Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.

23C.22.040 Permit And License Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate and a Business License for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. A Host must provide the Uniform Resource Locator (URL) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.

No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.

23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, and the Host complies with all Host Responsibilities set forth in this Ordinance.

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined above.

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section 23C.22.030. In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter 19.40).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by Zoning Certificate and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host or Local Contact information.

(ii) In any advertisement for the STR, a Host must include the Zoning Certificate number.

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least $1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. ("TOT"). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (Ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter 19.40).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. 100

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter 9.04, and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

23C.22.060 Remedies

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter 13.48). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters 1.20 and 1.28.

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters 1.24, 1.26 and 23B.64.

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section 23C.22.060. (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.

03

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
Nov. 14, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Vice Mayor Bartlett (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: Just Transition Framework for West Berkeley Plan Amendments

RECOMMENDATION
Refer to the Land Use, Housing, and Economic Development (LUHED) Policy Committee; City Manager; Planning Commission; and Environment and Climate Commission to study and recommend a mendments to the West Berkeley Plan pursuant to California Government Code Section 65302(h) to advance the city's environmental justice goals under a Just Transition Framework.

At a minimum, consider the following concepts:

- Just Transition principles adopted by City Council in Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal";
- EcoDistricts Protocol and possible EcoDistricts certification incorporated into a Community Engagement Plan;
- Climate Resilience Hubs;
- Indigenous Land Rematriation;
- Transportation Demand Management (TDM) planning to reduce Vehicle Miles Traveled (VMT) per capita by at least 25% by 2030;
- Promotion and protection of arts and cultural uses. Consider robust incentives, development standards and/or mitigations in Protected Uses (Berkeley Municipal Code 23.206.050) for Media Production, Theater, Live Entertainment, Art/Craft Studio, and/or other arts and cultural uses.
- Continued modernization and preservation protected manufacturing space and incentivised use of the West Berkeley Buidlings Acquistion Fund
- Estabslishment of comprehenisve plan for resource management and long-range recreational use at Aquatic Park.
- Establishment of new mixed-use / hybrid zones and emerging industrial uses.

FINANCIAL IMPLICATIONS
Staff time TBD, est. $125,000 for 1 FTE Senior Planner. Planning staff estimates that capacity for additional Specific Area Plan work to be available in Fiscal Year 2025 at the earliest. Currently, San Pablo Avenue Specific Area Plan work is supported by grant funding from the Metropolitan Transportation Commission's Priority Development Area (PDA) program. Other grant funding opportunities, such as the Priority Conservation

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Area (PCA) and Priority Production Area (PPA) programs[1], or the California Strategic Growth Council's Transformative Climate Communities[2] program, may also be available in future grant cycles.

CURRENT SITUATION AND ITS EFFECTS

Since the passage of SB 1000 (2016), California Government Code Section 65302(h) requires an Environmental Justice Element and/or related Elements in municipal General Plans to:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

(B) Identify objectives and policies to promote civic engagement in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities. (See Attachment 6)

The City of Berkeley has incorporated Environmental Justice policies in its plans, most recently in its 2023 Housing Element Update. However, the most recent update to the West Berkeley Plan[3], adopted in 2011 (see Attachment 7), predates SB1000 requirements.

This and other factors will contribute to a growing need to update the West Berkeley Plan, including: a renewed Development Agreement with Bayer[4] (formerly Miles Corp) in 2021, which funded a West Berkeley Fund for community infrastructure and resilience; removal of minimum parking requirements, expansion of Research and Development (R&D)[5] uses to Manufacturing zones, including development of a

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[1] Metropolitan Transportation Commission: Land Use Programs. https://mtc.ca.gov/planning/land-use

[2] California Strategic Growth Council: Transformative Climate Communities. https://sgc.ca.gov/programs/tcc/

[3] City of Berkeley. (1993, Dec. 14.) Resolution 57,301-N.S. Adopting the Certification of Environmental Impact Report for the West Berkeley Plan…The West Berkeley Plan as an Area Plan and as an Amendment to the City of Berkeley Master Plan. https://berkeleyca.gov/sites/default/files/2022-03/12_14_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf

[4] City of Berkeley. (2021). Bayer Healthcare LLC – Amended and Restated Development Agreement. https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2021/12/2021-11-30-Item-24-Bayer-Healthcare-LLC-%E2%80%93-Amended-and-Restated-Development-Agreement-1.pdf

[5] Robinson, R. & Chen, A. (2022). Referral: Keep Innovation in Berkeley. https://berkeleyca.gov/sites/default/files/documents/2022-09-13%20Item%2030%20Referral%20Keep%20Innovation%20in%20Berkeley.pdf

Manufacturing - Research & Development (M-RD)[6] zone; development of a San Pablo Avenue Specific Area Plan[7], rising groundwater[8]; and the overall increasing risk of flooding, fires, and other natural disasters due to anthropogenic climate change.[9]

Since 2011, the City of Berkeley has also made major investments in West Berkeley's parks and open spaces, including the Aquatic Park Central Tide Tubes Repair Sediment Removal ($438,000 from Measure T1, $375,000 from Parks Tax)[10] and $385,000 for Aquatic Park maintenance and improvements from the Bayer Development Agreement. The next budget cycle includes major projects under the Fiscal Year 2023-2027 Capital Improvement Program: *Development of a new park at the Santa Fe Right of Way, funded by a $5M Prop 68 grant*; and *Construction management and inspection of $3M Aquatic Park improvements negotiated as part of the 600 Addison development (Parks Tax)*.[11]

However, as of September 2023, the Aquatic Park lagoon has been issued a state water quality Yellow advisory for *Enterococcus* bacteria, an indicator for possible presence of human health risks, for 11 non-consecutive weeks in 2023 so far.[12]

Moreover, zoning protections in Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MULI) under Berkeley Municipal Code 23.206.050 have not been revised since 1993. While the 2011 amendments revised permitted and disallowed uses in M-zones, the Protected Uses and Mitigations have not changed. The BMC includes the following tables illustrating the applicability of Protected Land Uses in Manufacturing Zones, and Permits required for changing uses therein.

Table 23.206-5. PROTECTED INDUSTRIAL USES

Zoning District	***Protected Industrial Uses***	***Applicability of Requirements***

[6] City of Berkeley Planning Commission Presentation (2023, Feb. 1). https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023_02_01_Item%2012_Gilman%20Gateway%20Rezone_Presentation.pdf

[7] City of Berkeley: San Pablo Avenue Specific Plan. https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/san-pablo-avenue-specific

[8] kristina hill, Daniella Hirschfeld, Caroline Stanhope Lindquist, et al. Rising coastal groundwater as a result of sea-level rise will influence contaminated coastal sites and underground infrastructure. ESS Open Archive. May 25, 2023. DOI: 10.22541/essoar.168500245.55690018/v1

[9] City of Berkeley: January 2023 Disaster Preparedness Notice. https://berkeleyca.gov/community-recreation/news/rains-and-winds-continue-stay-alert-and-safe-while-still-reporting

[10] City of Berkeley: Measure T1 Update. (2022). https://berkeleyca.gov/sites/default/files/2022-03/T1-Brochure.pdf; see also Footnote 5.

[11] City of Berkeley: Adopted FY23-27 Capital Improvement Program. https://berkeleyca.gov/sites/default/files/documents/FY-23-27-Capital-Improvement-Program_0.pdf

[12] City of Berkeley: Aquatic Park Enterococcus Sampling Results. (2023). https://berkeleyca.gov/sites/default/files/documents/AP_Water-Quality-Results_32.pdf

MM	*Manufacturing, warehousing, wholesale trade*	*Ground-level protected uses on or after January 1, 1988 [1]*
MU-LI	*Material recovery enterprise, manufacturing, warehousing, wholesale trade*	*Buildings with 33% protected use on or after January 1, 1996 [1]*

Note:

[1]*Includes protected uses that were previously used on or after this date but now vacant.*

Table 23.206-6. PERMITS REQUIRED FOR CHANGES TO PROTECTED LAND USES

Zoning District	***Change to Protected Use***	***Permit Required***
MM	*Change any amount of ground-floor protected use to a non-protected use*	*UP(PH)*
MU-LI	*Change less than or equal to 20,000 sq. ft. or less than or equal to 25% of protected use to a non-protected use*	*AUP*
	Change over 20,000 sq. ft. or 25% of protected use to a non-protected use	*UP(PH)*

Since the 1993 Plan adoption, the West Berkeley community has grown increasingly concerned with the protection of performing arts and media production spaces.[13] With increasing investment into and possible expansion of Research & Development firms, the resilience of local cultural institutions in the wake of COVID-19 disruptions remains a major vulnerability.

Evidence for the need to update Protected Uses and Mitigations in Manufacturing zones can be further inferred from the relative obscurity of specific subsections. In order to

[13] Dinkelspiel, F. (2018). Fantasy Studios, internationally renowned film and music studio, to close its doors. *Berkeleyside.* https://www.berkeleyside.org/2018/07/29/berkeleys-fantasy-studios-an-internationally-renowned-film-and-music-studio-to-close-its-doors
Noted in the article: building owners, operators, and the City of Berkeley “all jointly fund the Berkeley Film Foundation, which supports local filmmakers.”

qualify for a Use Permit (UP) to change 25% or more of a protected use in a MU-LI zone in the above table, BMC 23.206.050(A)(3)(b)(ii) requires, in addition to replacement space, the following findings:

(1) As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.

(2) Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through ***providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund****, or by other appropriate means.* **[emphasis added]**

However, City staff have identified only one payment to the Fund in 1993, the full balance of which was issued in a loan to assist Urban Ore in 2012 (see Attachments 10 and 11). It is thus unclear if the mitigations are intended only to discourage changes to protected uses (in which case these provisions may be effective, albeit indirectly) or to actively mitigate them through a specific, active fund. After three decades, City staff and Commissioners should study more robust protected uses and mitigations with respect to the community's intended outcomes.

Updating the West Berkeley Plan pursuant to California Government Code Section 65302(h) is a Strategic Plan Priority Project, advancing our goal to: be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

Just Transition Principles

On December 14, 2021, the Berkeley City Council adopted Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal" as revised (see Attachments 1 and 2). A Just Transition framework for West Berkeley Plan Amendments should be developed such that civil engagement and centering the needs of disadvantaged communities comprise an interrelated process.

The District 2 Council Office has convened several meetings of a West Berkeley Green New Deal Ad Hoc Working Group, whose work is still ongoing. The Ad Hoc Working Group expressed consensus that heavily impacted and disadvantaged communities that

should be centered in a Just Transition include, at a minimum: **seniors; unhoused residents; low-income households; disabled or mobility-impaired residents; Black, Indigenous, and People of Color (BIPOC); and LGBTQIA+ residents.**

The transition away from fossil fuels must ensure that the most vulnerable in our society are protected from both the turbulence of restructuring our entire economy and the effects of global warming that the community is already facing. The core premise is: "Transition is inevitable. Justice is not."[14] The environmental justice movement calls this approach to the climate crisis a "Just Transition."

Transition is inevitable. In macroeconomic terms, any government actively working to change the composition of household consumer demand (e.g. rapid industrialization amid World Wars, a green transition, etc) will face significant distributional problems from shocks to energy and raw material costs, which manifest in price levels and/or rationing. We are already confronting such shocks locally and globally. As recent inflationary episodes and supply shocks following the COVID-19 pandemic and the 2022 Russian invasion of Ukraine have demonstrated, reliance on the fossil fuel economy increasingly undermines price stability.[15] Just Transition principles are partially intended to proactively mitigate both the threat of wage deflation for households depending on labor income from fossil fuel industries, and the inflationary pressures of unprecedented supply shocks. In a complementary framework, the Green New Deal[16] proposed by Democratic lawmakers[17], some aspects of which have been passed in the Inflation Reduction Act of 2022, was designed to increase domestic high-road employment[18] and capacity in green energy industries to manage this transition equitably.

A Just Transition is possible. While fossil fuel supply chains must end, other resilient supply chains must replace our community's changing needs. Renewable energy and electricity transmission will have to grow to meet increasing demands for vehicle and

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[14] Climate Justice Alliance. (2018). Just Transition Principles. *Climate Justice Alliance.* https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf

[15] Weber, Isabella M.; Jauregui, Jesus Lara; Teixeira, Lucas; and Nassif Pires, Luiza, "Inflation in Times of Overlapping Emergencies: Systemically Significant Prices from an Input-output Perspective" (2022). *Economics Department Working Paper Series.* 340. https://doi.org/10.7275/0c5b-6a92

[16] Carlock, G. & Mangan, E. (2018). A Green New Deal. *Data for Progress.* https://www.filesforprogress.org/pdfs/Green_New_Deal.pdf

[17] House Resolution 109. (2019). https://www.congress.gov/116/bills/hres109/BILLS-116hres109ih.pdf

[18] Williams, M., et al. (2022). The Inflation Reduction Act Provides Pathways to High-Quality Jobs. *Center for American Progress. https://www.americanprogress.org/article/the-inflation-reduction-act-provides-pathways-to-high-quality-jobs/*

building electrification to replace petroleum and natural gas; batteries, solar panels, and wind farms must replace oil rigs and coal mines. Californians will have to shift at least 25% of their automobile trips to other modes of transportation while converting the rest to electric vehicles[19], aided by more energy-efficient housing, public transit, and e-bike access. All of this will be made possible in part by Berkeley's growing innovation ecosystem of high-wage STEM employment in green energy technology and life sciences. To illustrate, over one third of employees in Alameda County's growing life sciences sector had no college degree[20] The federal government is also increasing public sector fiscal capacity for clean energy development through direct pay provisions for municipal and nonprofit entities in the Inflation Reduction Act of 2022.[21]

Just Transition policies are already being enacted globally. For example, in Poland, a 75% decline in coal mining jobs was coupled by a mining social package and special privileges for mining communities. Canada's efforts to phase out coal-powered electricity have been accompanied by a national stakeholder task force that has traveled the country to hear from Canadians on how to justly shepherd the transition. Egypt's fuel price increases were paired with minimum wage boosts, food stipends, and progressive taxation.[22]

The Climate Justice Alliance, a climate organization at the forefront of the fight for a Just Transition, lays out the following Just Transition principles:

> **A Just Transition moves us toward Buen Vivir**
> Buen Vivir means that we can live well without living better at the expense of others. Workers, community residents, women and Indigenous Peoples around the world have a fundamental human right to clean, healthy and adequate air, water, land, food, education and shelter. We must have just relationships with each other and with the natural world, of which we are a part. The rights of peoples, communities and nature must supersede the rights of the individual.
>
> **A Just Transition creates Meaningful Work**

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[19] https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

[20] City of Berkeley Staff Report: Business Support Zoning Amendment Referrals – Research and Development. (2021, June 20). pp. 13-56.https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2021-10-06%20PC%20Agenda%20Packet.pdf

[21] Lala, C. (2023). Direct pay: an uncapped promise of the Inflation Reduction Act. *Center for Public Enterprise.* Retrieved from https://static1.squarespace.com/static/622cca56a2f5926affd807c6/t/64257e7047150f31bf02e7cf/1680178800773/Direct+Pay+101+-+Center+for+Public+Enterprise.pdf

[22] Gass, P. (2019). In Search of Just Transition: Examples From Around the World. *International Institute for Sustainable Development.* https://www.iisd.org/articles/just-transition-examples

A Just Transition centers on the development of human potential, creating opportunities for people to learn, grow, and develop to their full capacities and interests. We are all born leaders, and a regenerative economy supports and nurtures that leadership. In the process, we are transforming ourselves, each other, our communities, and our society as a whole. Meaningful work is life-affirming.

A Just Transition upholds Self Determination
All peoples have the right to participate in decisions that impact their lives. This requires democratic governance in our communities, including our workplaces. Communities must have the power to shape their economies, as producers, as consumers, and in our relationships with each other. Not only do we have the right to self determination, but self determination is one of our greatest tools to realize the world we need. The people who are most affected by the extractive economy — the frontline workers and the fenceline communities — have the resilience and expertise to be in the leadership of crafting solutions.

A Just Transition equitably redistributes Resources and Power
We must work to build new systems that are good for all people, and not just a few. Just Transition must actively work against and transform current and historic social inequities based on race, class, gender, immigrant status and other forms of oppression. Just Transition fights to reclaim capital and resources for the regeneration of geographies and sectors of the economy where these inequities are most pervasive.

A Just Transition requires Regenerative Ecological Economics
Just Transition must advance ecological resilience, reduce resource consumption, restore biodiversity and traditional ways of life, and undermine extractive economies, including capitalism, that erode the ecological basis of our collective well-being. This requires a re-localization and democratization of primary production and consumption by building up local food systems, local clean energy, and smallscale production that are sustainable economically and ecologically. This also means producing to live well without living better at the expense of others.

A Just Transition retains Culture and Tradition
Capitalism has forced many communities to sacrifice culture and tradition for economic survival. It has also defaced and destroyed land held as sacred. Just Transition must create inclusionary spaces for all traditions and cultures, recognizing them as integral to a healthy and vibrant economy. It should also

make reparations for land that has been stolen and/or destroyed by capitalism, colonialism, patriarchy, genocide and slavery.

A Just Transition embodies Local, Regional, National and International Solidarity
A Just Transition must be liberatory and transformative. The impacts of the extractive economy knows no borders. We recognize the interconnectedness of our communities as well as our issues. Therefore, our solutions call for local, regional, national and global solidarity that confronts imperialism and militarism.

A Just Transition builds What We Need Now
We must build the world we need now. This may begin at a local small scale, and must expand to begin to displace extractive practices. We must build and flex the muscles needed to meet our communities' needs.[23]

EcoDistrict Protocol
The EcoDistrict Protocol, certified by the nonprofit Partnership for Southern Equity, offers several best practices for stakeholder engagement and community partnership for staff and the Commission to consider as part of a Just Transition framework for West Berkeley Plan amendments.

Accordingly, a core premise of EcoDistrict Protocol is that "there is a growing appetite for innovation as cities seek a competitive advantage to attract talent and investment, embrace aging and historically disenfranchised populations, restore cultural integrity, enhance prosperity, and respond intelligently to a rapidly changing climate." The Protocols emphasize three imperatives that Berkeley can and should follow: *Equity, Resilience*, and *Climate Protection.* These are subsequently divided into seven priorities: *place, prosperity, health and wellbeing, connectivity, living infrastructure,* and *resource regeneration.* These principles guide the three implementation phases that can correspond with specific area planning: *formation*, *road map*, and *performance [evaluation]*.

[23] Climate Justice Alliance. (2018). Just Transition Principles. *Climate Justice Alliance.* https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf



EcoDistricts Protocol Core Elements[24]

The framework provides a model of "collaborative governance" for planning and performance evaluation, i.e. "a district team of key stakeholders representing the district's major public, private, and civic sector assets." This process emphasizes organizational capacity-building between sectors for robust goal-setting, evaluation, and improvement.

There have been several EcoDistrict implementations in US cities of varying sizes, balancing urban economic development, natural resource preservation, and environmental remediation of historic manufacturing areas, including Cleveland, Seattle, and Portland.[25] For decades, Portland has also pioneered Natural Resources Management Plans for protecting groundwater, wetlands, and other natural habitats.[26][27]

Urban Decarbonization and Indigenous Land Rematriation

[24] Partnership for Southern Equity: EcoDistricts Protocol. https://ecodistricts.org/protocol/
[25] Partnership for Southern Equity: EcoDistrict Registry. https://ecodistricts.org/district-registry/
[26] City of Portland: Columbia South Shore Natural Resources Protection Plan. https://www.portland.gov/bps/environ-planning/documents/columbia-southshore-nrpp-1993-2000/download
[27] City of Portland: Columbia East Neighborhood Natural Resources Management Plan. https://www.portland.gov/bps/environ-planning/documents/east-columbia-neighborhood-nrmp-1990/download

In a 2018 report, the United Nations International Resource Panel (IRP) laid out 5 policy recommendations for urban decarbonization.[28] The first two recommendations are:

1. Urban metabolisms must shift from 'linear' to 'circular': *This implies new ways of managing the movement of resources through the city. Businesses and cities will have to focus on offering high value services rather than selling artefacts; providing heat instead of heaters, mobility instead of highways and cars, light instead of light bulbs. Concepts such as 'urban mining', 'resource cascading' and 'industrial symbiosis' and the various manifestations of the 're-economy' (reduce, reuse, recycle) will define the new urbanism.*

2. *Urban metabolisms must be monitored to assist strategic planning at local government level:* Local governments must understand cities' inputs (e.g. biomaterials) and outputs (e.g. waste and emissions), using these to develop resource efficiency strategies…The negative externalities of various resource uses must be priced in to provide economic incentives for behavioural change.

Both the UN IRP report and EcoDistricts Protocol call for local economies and ecologies that raise local living standards while shifting consumption from zero-sum extraction of resources to renewable and regenerative systems. The United Nations IRP report urges "active and goal-setting" public governance to meet the scale and severity of these challenges. The City of Berkeley has begun to explore regenerative and resilient local supply chains through the City Council's 2023 referral "Berkeley Food Utility and Access Resilience Measure (FARM)" and "Health Equity Innovation District" referral from 2018 (see Attachments 8 and 9). With the expansion of Research & Development uses, Berkeley's manufacturing sector is on the cutting edge of a more sustainable "focus on offering high value[-added] services rather than selling artefacts" or "heat instead of heaters" as the UN IRP describes.

Another regenerative principle that the City of Berkeley recognizes is rematriation of Indigenous land. As attested in the City Council's Land Acknowledgement, Berkeley is sited on xučyun, the ancestral and unceded land of the Chochenyo-speaking Ohlone people, the ancestors and descendants of the sovereign Verona Band of Alameda County. The City of Oakland, the City of Richmond, and the Northern California Land Trust have returned acres of land for parks, gardens, and a traditional village site to the Indigenous community through the Sogorea Te' Land Trust, which has focused on rematriation via "Indigenous women-led work to restore sacred relationships between Indigenous people and our ancestral land, honoring our matrilineal societies, and in opposition of patriarchal violence and dynamics." Private entities can also support the Land Trust through the voluntary Shuumi Land Tax. Berkeley's Indigenous community must be central to our collective ecological stewardship, and would be necessarily integral to "collaborative governance" of future area planning following an EcoDistrict model.

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[28] Swilling, M., et al (2018). The Weight of Cities. *United Nations International Resource Panel (IRP).* https://www.resourcepanel.org/reports/weight-cities (see Attachment 5)

Reparations and Climate Resilience

Berkeley's African American community has also endured centuries of systemic land dispossession and displacement, compounding structural inequities that persist to this day.[29] West Berkeley's legacy of redlining, segregation, historic disinvestment, and disproportionate exposure to environmental hazards presents a material imperative for reparative justice that also decarbonizes our economy.

The Berkeley community has endeavored to govern its innovative technology and manufacturing sectors with conscious racial and environmental justice goals. The West Berkeley Plan, first adopted in 1993 and last amended in 2011, codified the City's conscious efforts to protect high-road job opportunities while fostering new and groundbreaking industries, aligning economic development with the community's culture and values. For example, the 1993 Background Findings assert that "Manufacturing can provide the best-paying jobs for people without advanced educations," "West Berkeley has special environmental issues as the result of being adjacent to the Freeway and containing a large number of hazardous materials uses," and that "West Berkeley is the most ethnically/racially diverse residential community in Berkeley." The Plan thus proscribed development standards for Manufacturing uses and mitigations for non-conforming uses to carefully balance a diverse local ecosystem of industrial, commercial, and residential zones.

However, the inequitable distribution of environmental hazards persists. According to the California Reparations Task Force Report published in 2022, Black Californians are five times more likely to live within a half mile of sites at risk of toxic groundwater flooding by 2050, 40% more likely to be exposed to particulate matter pollution from cars and trucks, and more likely to be exposed to heat waves.[30] With the acceleration of climate hazards, the City should also consider climate resilience in addition to pollution remediation as an additional goal for the West Berkeley Area.

The California Reparations Report recommends increasing tree coverage in formerly redlined communities, and creating Climate Resilience Hubs ("community-driven facilities that support residents, facilitate communication, distribute aid, and provide an opportunity for communities to become more self-sustaining during climate emergencies"). Specifically, the Task Force recommends the Legislature utilize the

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[29] Verma, P. et al. (2021). Rising Housing Costs and Re-Segregation in the San Francisco Bay Area. *Urban Displacement Project, UC Berkeley.* https://www.urbandisplacement.org/wp-content/uploads/2021/08/bay_area_re-segregation_rising_housing_costs_report_2019.pdf

[30] AB 3121 Reparations Task Force (2022). The California Reparations Report. *Office of the Attorney General of California.* https://oag.ca.gov/ab3121/report (see Ch. 7, Ch. 24)

Transformative Climate Communities (TCC) Program to fund climate resilience hubs." Commissioners and staff may be able to study climate resilience policies along with grant eligibility for state grants to establish such hubs.

As described above, several land use reforms that would impact the area under the West Berkeley Plan are already underway. With these frameworks, staff and commissioners can study robust and flexible development standards in Specific Area Planning to better align local neighborhood needs with citywide economic and environmental goals.

Transportation Demand Management

The West Berkeley Plan as originally adopted in 1993 was prescient in calling for a "reduction of single occupant automobile trips." The Plan envisioned several mitigations for increased traffic congestion, including implementation of Transportation Demand Management (TDM) plans "to encourage carpooling and vanpooling, walking and bicycle use, the use of transit, flexible scheduling of work hours, and other methods to reduce travel demand[.]"

However, the Transportation impact mitigations in the Plan are still codified under Level Of Service (LOS) standards, i.e. delay in vehicle throughput. As of 2020, state law requires transportation impacts to be assessed under a Vehicle Miles Traveled (VMT) standard for environmental review, measuring the total volume of traffic. Reducing VMT is of critical importance for Berkeley and the state of California's climate goals, as the California Air Resources Board has illustrated in a 2018 report: "Even if the share of new car sales that are ZEVs [zero-emission vehicles] grows nearly 10-fold from today, California would still need to reduce VMT per capita 25 percent to achieve the necessary reductions for 2030."[31] Any amendments to the West Berkeley Plan's Transportation mitigations would have to incorporate the goal of absolute VMT reduction to be consistent with state environmental standards.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In 2006, Berkeley voters approved Measure G, committing to reduce the entire community's greenhouse gas emissions by 80% below 2000 levels by 2050. The City Council approved Berkeley's first Climate Action Plan in 2009.[32]

[31] California Air Resources Board: 2018 Progress Report. https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

[32] City of Berkeley: Climate Action Plan. https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Climate-Action-Plan.pdf

The California Air Resources Board released an updated Scoping Plan[33] in 2022. Following this plan, the state of California's goals by 2045 are:

- *Cut greenhouse gas emissions by 85% below 1990 levels*
- *71% reduction in smog-forming air pollution*
- *Reduce fossil fuel consumption (liquid petroleum) to less than one-tenth of what we use today – a 94% reduction in demand.*
- *Create 4 million new jobs.*
- *Save Californians $200 billion in health costs due to pollution in 2045.*

All planning efforts must achieve and exceed these thresholds in order to advance Environmental Justice.

CONTACT PERSON
Councilmember Taplin Council District 2 510-981-7120

Attachments:
1: 2021-12-14 Annotated Agenda - Berkeley City Council Meeting
2: 2021-12-14 Item 35 Commit the City of Berkeley to a Just Transition (Supp. 2)
3: EcoDistrict Protocol Guide
4: Rematriation Resource Guide - Sogorea Te' Land Trust
5: Fact Sheet: The Weight of Cities - United Nations International Resources Panel
6: Senate Bill 1000 (2016)
7: Resolution 65,201-N.S. Amending the West Berkeley Plan and, By Reference, the General Plan. (2011)
8: Berkeley Food Utility and Access Resilience Measure (FARM) referral - Councilmember Bartlett (2023)
9: Health Equity & Innovation District - Councilmember Bartlett (2018)
10: Loan Amendment: Urban Ore (2012)
11: City Council Resolution 56,829 (1993)

[33] California Air Resources Board: 2022 Scoping Plan. https://ww2.arb.ca.gov/news/california-releases-final-2022-climate-scoping-plan-proposal

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
Nov. 14, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Vice Mayor Bartlett (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: Just Transition Framework for West Berkeley Plan Amendments

RECOMMENDATION

Refer to the Land Use, Housing, and Economic Development (LUHED) Policy Committee; City Manager; Planning Commission; and Environment and Climate Commission to study and recommend aAmendments to the West Berkeley Plan pursuant to California Government Code Section 65302(h) to advance the city's environmental justice goals under a Just Transition Framework.

At a minimum, consider the following concepts:

- Just Transition principles adopted by City Council in Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal";
- EcoDistricts Protocol and possible EcoDistricts certification incorporated into a Community Engagement Plan;
- Climate Resilience Hubs;
- Indigenous Land Rematriation;
- Transportation Demand Management (TDM) planning to reduce Vehicle Miles Traveled (VMT) per capita by at least 25% by 2030;
- Promotionng and protectionng of arts and cultural uses. Consider robust incentives, development standards and/or mitigations in Protected Uses (Berkeley Municipal Code 23.206.050) for Media Production, Theater, Live Entertainment, Art/Craft Studio, and/or other arts and cultural uses.
- Continued modernization and preservation protected manufacturing space and incentivised use of the West Berkeley Buidlings Acquistion Fund
- Estabslishment of comprehenisve plan for resource management and long-range recreational use at Aquatic Park.

~~In addition, apply the above concepts for the consideration of a Master Plan, Natural Resources Management Plan, or other comprehensive plan for the protection and maintenance of Aquatic Park.~~

FINANCIAL IMPLICATIONS

Staff time TBD, est. $125,000 for 1 FTE Senior Planner. Planning staff estimates that capacity for additional Specific Area Plan work to be available in Fiscal Year 2025 at the earliest. Currently, San Pablo Avenue Specific Area Plan work is supported by grant funding from the Metropolitan Transportation Commission's Priority Development Area (PDA) program. Other grant funding opportunities, such as the Priority Conservation Area (PCA) and Priority Production Area (PPA) programs[1], or the California Strategic Growth Council's Transformative Climate Communities[2] program, may also be available in future grant cycles.

CURRENT SITUATION AND ITS EFFECTS

Since the passage of SB 1000 (2016), California Government Code Section 65302(h) requires an Environmental Justice Element and/or related Elements in municipal General Plans to:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

(B) Identify objectives and policies to promote civic engagement in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities. (See Attachment 6)

The City of Berkeley has incorporated Environmental Justice policies in its plans, most recently in its 2023 Housing Element Update. However, the most recent update to the West Berkeley Plan[3], adopted in 2011 (see Attachment 7), predates SB1000 requirements.

This and other factors will contribute to a growing need to update the West Berkeley Plan, including: a renewed Development Agreement with Bayer[4] (formerly Miles Corp) in 2021, which funded a West Berkeley Fund for community infrastructure and resilience; removal of minimum parking requirements, expansion of Research and

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[1] Metropolitan Transportation Commission: Land Use Programs. https://mtc.ca.gov/planning/land-use

[2] California Strategic Growth Council: Transformative Climate Communities. https://sgc.ca.gov/programs/tcc/

[3] City of Berkeley. (1993, Dec. 14.) Resolution 57,301-N.S. Adopting the Certification of Environmental Impact Report for the West Berkeley Plan…The West Berkeley Plan as an Area Plan and as an Amendment to the City of Berkeley Master Plan. https://berkeleyca.gov/sites/default/files/2022-03/12_14_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf

[4] City of Berkeley. (2021). Bayer Healthcare LLC – Amended and Restated Development Agreement. https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2021/12/2021-11-30-Item-24-Bayer-Healthcare-LLC-%E2%80%93-Amended-and-Restated-Development-Agreement-1.pdf

Development (R&D)[5] uses to Manufacturing zones, including development of a Manufacturing - Research & Development (M-RD)[6] zone; development of a San Pablo Avenue Specific Area Plan[7], rising groundwater[8]; and the overall increasing risk of flooding, fires, and other natural disasters due to anthropogenic climate change.[9]

Since 2011, the City of Berkeley has also made major investments in West Berkeley's parks and open spaces, including the Aquatic Park Central Tide Tubes Repair Sediment Removal ($438,000 from Measure T1, $375,000 from Parks Tax)[10] and $385,000 for Aquatic Park maintenance and improvements from the Bayer Development Agreement. The next budget cycle includes major projects under the Fiscal Year 2023-2027 Capital Improvement Program: *Development of a new park at the Santa Fe Right of Way, funded by a $5M Prop 68 grant*; and *Construction management and inspection of $3M Aquatic Park improvements negotiated as part of the 600 Addison development (Parks Tax)*.[11]

However, as of September 2023, the Aquatic Park lagoon has been issued a state water quality Yellow advisory for *Enterococcus* bacteria, an indicator for possible presence of human health risks, for 11 non-consecutive weeks in 2023 so far.[12]

Moreover, zoning protections in Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MULI) under Berkeley Municipal Code 23.206.050 have not been revised since 1993. While the 2011 amendments revised permitted and disallowed uses in M-zones, the Protected Uses and Mitigations have not changed. The BMC includes the following tables illustrating the applicability of Protected Land Uses in Manufacturing Zones, and Permits required for changing uses therein.

Table 23.206-5. PROTECTED INDUSTRIAL USES

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[5] Robinson, R. & Chen, A. (2022). Referral: Keep Innovation in Berkeley. https://berkeleyca.gov/sites/default/files/documents/2022-09-13%20Item%2030%20Referral%20Keep%20Innovation%20in%20Berkeley.pdf

[6] City of Berkeley Planning Commission Presentation (2023, Feb. 1). https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023_02_01_Item%2012_Gilman%20Gateway%20Rezone_Presentation.pdf

[7] City of Berkeley: San Pablo Avenue Specific Plan. https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/san-pablo-avenue-specific

[8] kristina hill, Daniella Hirschfeld, Caroline Stanhope Lindquist, et al. Rising coastal groundwater as a result of sea-level rise will influence contaminated coastal sites and underground infrastructure. ESS Open Archive. May 25, 2023. DOI: 10.22541/essoar.168500245.55690018/v1

[9] City of Berkeley: January 2023 Disaster Preparedness Notice. https://berkeleyca.gov/community-recreation/news/rains-and-winds-continue-stay-alert-and-safe-while-still-reporting

[10] City of Berkeley: Measure T1 Update. (2022). https://berkeleyca.gov/sites/default/files/2022-03/T1-Brochure.pdf; see also Footnote 5.

[11] City of Berkeley: Adopted FY23-27 Capital Improvement Program. https://berkeleyca.gov/sites/default/files/documents/FY-23-27-Capital-Improvement-Program_0.pdf

[12] City of Berkeley: Aquatic Park Enterococcus Sampling Results. (2023). https://berkeleyca.gov/sites/default/files/documents/AP_Water-Quality-Results_32.pdf

Zoning District	*Protected Industrial Uses*	*Applicability of Requirements*
MM	*Manufacturing, warehousing, wholesale trade*	*Ground-level protected uses on or after January 1, 1988 [1]*
MU-LI	*Material recovery enterprise, manufacturing, warehousing, wholesale trade*	*Buildings with 33% protected use on or after January 1, 1996 [1]*

Note:

[1]*Includes protected uses that were previously used on or after this date but now vacant.*

Table 23.206-6. PERMITS REQUIRED FOR CHANGES TO PROTECTED LAND USES

Zoning District	*Change to Protected Use*	*Permit Required*
MM	*Change any amount of ground-floor protected use to a non-protected use*	*UP(PH)*
MU-LI	*Change less than or equal to 20,000 sq. ft. or less than or equal to 25% of protected use to a non-protected use*	*AUP*
	Change over 20,000 sq. ft. or 25% of protected use to a non-protected use	*UP(PH)*

Since the 1993 Plan adoption, the West Berkeley community has grown increasingly concerned with the protection of performing arts and media production spaces.[13] With increasing investment into and possible expansion of Research & Development firms,

[13] Dinkelspiel, F. (2018). Fantasy Studios, internationally renowned film and music studio, to close its doors. *Berkeleyside.* https://www.berkeleyside.org/2018/07/29/berkeleys-fantasy-studios-an-internationally-renowned-film-and-music-studio-to-close-its-doors
Noted in the article: building owners, operators, and the City of Berkeley “all jointly fund the Berkeley Film Foundation, which supports local filmmakers.”

the resilience of local cultural institutions in the wake of COVID-19 disruptions remains a major vulnerability.

Evidence for the need to update Protected Uses and Mitigations in Manufacturing zones can be further inferred from the relative obscurity of specific subsections. In order to qualify for a Use Permit (UP) to change 25% or more of a protected use in a MU-LI zone in the above table, BMC 23.206.050(A)(3)(b)(ii) requires, in addition to replacement space, the following findings:

(1) As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.

(2) Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through ***providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund****, or by other appropriate means.* **[emphasis added]**

However, City staff have identified only one payment to the Fund in 1993, the full balance of which was issued in a loan to assist Urban Ore in 2012 (see Attachments 10 and 11). It is thus unclear if the mitigations are intended only to discourage changes to protected uses (in which case these provisions may be effective, albeit indirectly) or to actively mitigate them through a specific, active fund. After three decades, City staff and Commissioners should study more robust protected uses and mitigations with respect to the community's intended outcomes.

Updating the West Berkeley Plan pursuant to California Government Code Section 65302(h) is a Strategic Plan Priority Project, advancing our goal to: be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

Just Transition Principles

On December 14, 2021, the Berkeley City Council adopted Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal" as revised (see Attachments 1 and 2). A Just Transition framework for West Berkeley Plan Amendments should be developed such that civil engagement and centering the needs of disadvantaged communities comprise an interrelated process.

The District 2 Council Office has convened several meetings of a West Berkeley Green New Deal Ad Hoc Working Group, whose work is still ongoing. The Ad Hoc Working Group expressed consensus that heavily impacted and disadvantaged communities that should be centered in a Just Transition include, at a minimum: **seniors; unhoused residents; low-income households; disabled or mobility-impaired residents; Black, Indigenous, and People of Color (BIPOC); and LGBTQIA+ residents.**

The transition away from fossil fuels must ensure that the most vulnerable in our society are protected from both the turbulence of restructuring our entire economy and the effects of global warming that the community is already facing. The core premise is: "Transition is inevitable. Justice is not."[14] The environmental justice movement calls this approach to the climate crisis a "Just Transition."

Transition is inevitable. In macroeconomic terms, any government actively working to change the composition of household consumer demand (e.g. rapid industrialization amid World Wars, a green transition, etc) will face significant distributional problems from shocks to energy and raw material costs, which manifest in price levels and/or rationing. We are already confronting such shocks locally and globally. As recent inflationary episodes and supply shocks following the COVID-19 pandemic and the 2022 Russian invasion of Ukraine have demonstrated, reliance on the fossil fuel economy increasingly undermines price stability.[15] Just Transition principles are partially intended to proactively mitigate both the threat of wage deflation for households depending on labor income from fossil fuel industries, and the inflationary pressures of unprecedented supply shocks. In a complementary framework, the Green New Deal[16] proposed by Democratic lawmakers[17], some aspects of which have been passed in the Inflation Reduction Act of 2022, was designed to increase domestic high-road employment[18] and capacity in green energy industries to manage this transition equitably.

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[14] Climate Justice Alliance. (2018). Just Transition Principles. *Climate Justice Alliance.* https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf

[15] Weber, Isabella M.; Jauregui, Jesus Lara; Teixeira, Lucas; and Nassif Pires, Luiza, "Inflation in Times of Overlapping Emergencies: Systemically Significant Prices from an Input-output Perspective" (2022). *Economics Department Working Paper Series.* 340. https://doi.org/10.7275/0c5b-6a92

[16] Carlock, G. & Mangan, E. (2018). A Green New Deal. *Data for Progress.* https://www.filesforprogress.org/pdfs/Green_New_Deal.pdf

[17] House Resolution 109. (2019). https://www.congress.gov/116/bills/hres109/BILLS-116hres109ih.pdf

[18] Williams, M., et al. (2022). The Inflation Reduction Act Provides Pathways to High-Quality Jobs. *Center for American Progress. https://www.americanprogress.org/article/the-inflation-reduction-act-provides-pathways-to-high-quality-jobs/*

A Just Transition is possible. While fossil fuel supply chains must end, other resilient supply chains must replace our community's changing needs. Renewable energy and electricity transmission will have to grow to meet increasing demands for vehicle and building electrification to replace petroleum and natural gas; batteries, solar panels, and wind farms must replace oil rigs and coal mines. Californians will have to shift at least 25% of their automobile trips to other modes of transportation while converting the rest to electric vehicles[19], aided by more energy-efficient housing, public transit, and e-bike access. All of this will be made possible in part by Berkeley's growing innovation ecosystem of high-wage STEM employment in green energy technology and life sciences. To illustrate, over one third of employees in Alameda County's growing life sciences sector had no college degree[20] The federal government is also increasing public sector fiscal capacity for clean energy development through direct pay provisions for municipal and nonprofit entities in the Inflation Reduction Act of 2022.[21]

Just Transition policies are already being enacted globally. For example, in Poland, a 75% decline in coal mining jobs was coupled by a mining social package and special privileges for mining communities. Canada's efforts to phase out coal-powered electricity have been accompanied by a national stakeholder task force that has traveled the country to hear from Canadians on how to justly shepherd the transition. Egypt's fuel price increases were paired with minimum wage boosts, food stipends, and progressive taxation.[22]

The Climate Justice Alliance, a climate organization at the forefront of the fight for a Just Transition, lays out the following Just Transition principles:

> **A Just Transition moves us toward Buen Vivir**
> Buen Vivir means that we can live well without living better at the expense of others. Workers, community residents, women and Indigenous Peoples around the world have a fundamental human right to clean, healthy and adequate air, water, land, food, education and shelter. We must have just relationships with

[19] https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf
[20] City of Berkeley Staff Report: Business Support Zoning Amendment Referrals – Research and Development. (2021, June 20). pp. 13-56.https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2021-10-06%20PC%20Agenda%20Packet.pdf
[21] Lala, C. (2023). Direct pay: an uncapped promise of the Inflation Reduction Act. *Center for Public Enterprise.* Retrieved from https://static1.squarespace.com/static/622cca56a2f5926affd807c6/t/64257e7047150f31bf02e7cf/1680178800773/Direct+Pay+101+-+Center+for+Public+Enterprise.pdf
[22] Gass, P. (2019). In Search of Just Transition: Examples From Around the World. *International Institute for Sustainable Development.* https://www.iisd.org/articles/just-transition-examples

each other and with the natural world, of which we are a part. The rights of peoples, communities and nature must supersede the rights of the individual.

A Just Transition creates Meaningful Work
A Just Transition centers on the development of human potential, creating opportunities for people to learn, grow, and develop to their full capacities and interests. We are all born leaders, and a regenerative economy supports and nurtures that leadership. In the process, we are transforming ourselves, each other, our communities, and our society as a whole. Meaningful work is life-affirming.

A Just Transition upholds Self Determination
All peoples have the right to participate in decisions that impact their lives. This requires democratic governance in our communities, including our workplaces. Communities must have the power to shape their economies, as producers, as consumers, and in our relationships with each other. Not only do we have the right to self determination, but self determination is one of our greatest tools to realize the world we need. The people who are most affected by the extractive economy — the frontline workers and the fenceline communities — have the resilience and expertise to be in the leadership of crafting solutions.

A Just Transition equitably redistributes Resources and Power
We must work to build new systems that are good for all people, and not just a few. Just Transition must actively work against and transform current and historic social inequities based on race, class, gender, immigrant status and other forms of oppression. Just Transition fights to reclaim capital and resources for the regeneration of geographies and sectors of the economy where these inequities are most pervasive.

A Just Transition requires Regenerative Ecological Economics
Just Transition must advance ecological resilience, reduce resource consumption, restore biodiversity and traditional ways of life, and undermine extractive economies, including capitalism, that erode the ecological basis of our collective well-being. This requires a re-localization and democratization of primary production and consumption by building up local food systems, local clean energy, and smallscale production that are sustainable economically and ecologically. This also means producing to live well without living better at the expense of others.

A Just Transition retains Culture and Tradition

Capitalism has forced many communities to sacrifice culture and tradition for economic survival. It has also defaced and destroyed land held as sacred. Just Transition must create inclusionary spaces for all traditions and cultures, recognizing them as integral to a healthy and vibrant economy. It should also make reparations for land that has been stolen and/or destroyed by capitalism, colonialism, patriarchy, genocide and slavery.

A Just Transition embodies Local, Regional, National and International Solidarity

A Just Transition must be liberatory and transformative. The impacts of the extractive economy knows no borders. We recognize the interconnectedness of our communities as well as our issues. Therefore, our solutions call for local, regional, national and global solidarity that confronts imperialism and militarism.

A Just Transition builds What We Need Now

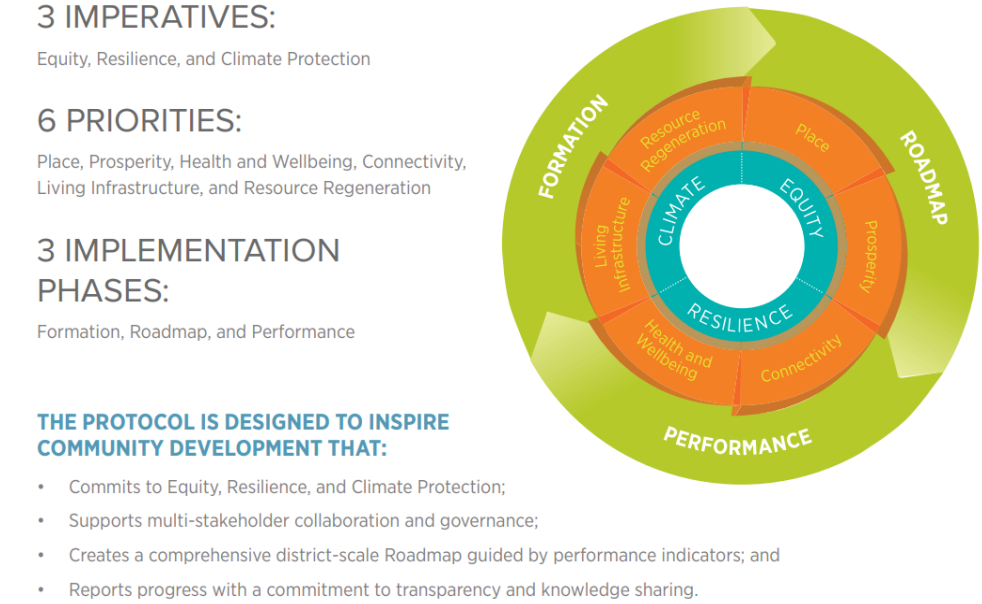
We must build the world we need now. This may begin at a local small scale, and must expand to begin to displace extractive practices. We must build and flex the muscles needed to meet our communities' needs.[23]

EcoDistrict Protocol

The EcoDistrict Protocol, certified by the nonprofit Partnership for Southern Equity, offers several best practices for stakeholder engagement and community partnership for staff and the Commission to consider as part of a Just Transition framework for West Berkeley Plan amendments.

Accordingly, a core premise of EcoDistrict Protocol is that "there is a growing appetite for innovation as cities seek a competitive advantage to attract talent and investment, embrace aging and historically disenfranchised populations, restore cultural integrity, enhance prosperity, and respond intelligently to a rapidly changing climate." The Protocols emphasize three imperatives that Berkeley can and should follow: *Equity, Resilience*, and *Climate Protection.* These are subsequently divided into seven priorities: *place, prosperity, health and wellbeing, connectivity, living infrastructure,* and *resource regeneration.* These principles guide the three implementation phases that can correspond with specific area planning: *formation*, *road map*, and *performance [evaluation]*.

[23] Climate Justice Alliance. (2018). Just Transition Principles. *Climate Justice Alliance.* https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf



EcoDistricts Protocol Core Elements[24]

The framework provides a model of "collaborative governance" for planning and performance evaluation, i.e. "a district team of key stakeholders representing the district's major public, private, and civic sector assets." This process emphasizes organizational capacity-building between sectors for robust goal-setting, evaluation, and improvement.

There have been several EcoDistrict implementations in US cities of varying sizes, balancing urban economic development, natural resource preservation, and environmental remediation of historic manufacturing areas, including Cleveland, Seattle, and Portland.[25] For decades, Portland has also pioneered Natural Resources Management Plans for protecting groundwater, wetlands, and other natural habitats.[26][27]

Urban Decarbonization and Indigenous Land Rematriation

[24] Partnership for Southern Equity: EcoDistricts Protocol. https://ecodistricts.org/protocol/
[25] Partnership for Southern Equity: EcoDistrict Registry. https://ecodistricts.org/district-registry/
[26] City of Portland: Columbia South Shore Natural Resources Protection Plan. https://www.portland.gov/bps/environ-planning/documents/columbia-southshore-nrpp-1993-2000/download
[27] City of Portland: Columbia East Neighborhood Natural Resources Management Plan. https://www.portland.gov/bps/environ-planning/documents/east-columbia-neighborhood-nrmp-1990/download

In a 2018 report, the United Nations International Resource Panel (IRP) laid out 5 policy recommendations for urban decarbonization.[28] The first two recommendations are:

1. Urban metabolisms must shift from 'linear' to 'circular': *This implies new ways of managing the movement of resources through the city. Businesses and cities will have to focus on offering high value services rather than selling artefacts; providing heat instead of heaters, mobility instead of highways and cars, light instead of light bulbs. Concepts such as 'urban mining', 'resource cascading' and 'industrial symbiosis' and the various manifestations of the 're-economy' (reduce, reuse, recycle) will define the new urbanism.*

2. *Urban metabolisms must be monitored to assist strategic planning at local government level:* Local governments must understand cities' inputs (e.g. biomaterials) and outputs (e.g. waste and emissions), using these to develop resource efficiency strategies…The negative externalities of various resource uses must be priced in to provide economic incentives for behavioural change.

Both the UN IRP report and EcoDistricts Protocol call for local economies and ecologies that raise local living standards while shifting consumption from zero-sum extraction of resources to renewable and regenerative systems. The United Nations IRP report urges "active and goal-setting" public governance to meet the scale and severity of these challenges. The City of Berkeley has begun to explore regenerative and resilient local supply chains through the City Council's 2023 referral "Berkeley Food Utility and Access Resilience Measure (FARM)" and "Health Equity Innovation District" referral from 2018 (see Attachments 8 and 9). With the expansion of Research & Development uses, Berkeley's manufacturing sector is on the cutting edge of a more sustainable "focus on offering high value[-added] services rather than selling artefacts" or "heat instead of heaters" as the UN IRP describes.

Another regenerative principle that the City of Berkeley recognizes is rematriation of Indigenous land. As attested in the City Council's Land Acknowledgement, Berkeley is sited on xučyun, the ancestral and unceded land of the Chochenyo-speaking Ohlone people, the ancestors and descendants of the sovereign Verona Band of Alameda County. The City of Oakland, the City of Richmond, and the Northern California Land Trust have returned acres of land for parks, gardens, and a traditional village site to the Indigenous community through the Sogorea Te' Land Trust, which has focused on rematriation via "Indigenous women-led work to restore sacred relationships between Indigenous people and our ancestral land, honoring our matrilineal societies, and in opposition of patriarchal violence and dynamics." Private entities can also support the Land Trust through the voluntary Shuumi Land Tax. Berkeley's Indigenous community must be central to our collective ecological stewardship, and would be necessarily integral to "collaborative governance" of future area planning following an EcoDistrict model.

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[28] Swilling, M., et al (2018). The Weight of Cities. *United Nations International Resource Panel (IRP).* https://www.resourcepanel.org/reports/weight-cities (see Attachment 5)

Reparations and Climate Resilience

Berkeley's African American community has also endured centuries of systemic land dispossession and displacement, compounding structural inequities that persist to this day.[29] West Berkeley's legacy of redlining, segregation, historic disinvestment, and disproportionate exposure to environmental hazards presents a material imperative for reparative justice that also decarbonizes our economy.

The Berkeley community has endeavored to govern its innovative technology and manufacturing sectors with conscious racial and environmental justice goals. The West Berkeley Plan, first adopted in 1993 and last amended in 2011, codified the City's conscious efforts to protect high-road job opportunities while fostering new and groundbreaking industries, aligning economic development with the community's culture and values. For example, the 1993 Background Findings assert that "Manufacturing can provide the best-paying jobs for people without advanced educations," "West Berkeley has special environmental issues as the result of being adjacent to the Freeway and containing a large number of hazardous materials uses," and that "West Berkeley is the most ethnically/racially diverse residential community in Berkeley." The Plan thus proscribed development standards for Manufacturing uses and mitigations for non-conforming uses to carefully balance a diverse local ecosystem of industrial, commercial, and residential zones.

However, the inequitable distribution of environmental hazards persists. According to the California Reparations Task Force Report published in 2022, Black Californians are five times more likely to live within a half mile of sites at risk of toxic groundwater flooding by 2050, 40% more likely to be exposed to particulate matter pollution from cars and trucks, and more likely to be exposed to heat waves.[30] With the acceleration of climate hazards, the City should also consider climate resilience in addition to pollution remediation as an additional goal for the West Berkeley Area.

The California Reparations Report recommends increasing tree coverage in formerly redlined communities, and creating Climate Resilience Hubs ("community-driven facilities that support residents, facilitate communication, distribute aid, and provide an opportunity for communities to become more self-sustaining during climate emergencies"). Specifically, the Task Force recommends the Legislature utilize the

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[29] Verma, P. et al. (2021). Rising Housing Costs and Re-Segregation in the San Francisco Bay Area. *Urban Displacement Project, UC Berkeley.* https://www.urbandisplacement.org/wp-content/uploads/2021/08/bay_area_re-segregation_rising_housing_costs_report_2019.pdf

[30] AB 3121 Reparations Task Force (2022). The California Reparations Report. *Office of the Attorney General of California.* https://oag.ca.gov/ab3121/report (see Ch. 7, Ch. 24)

Transformative Climate Communities (TCC) Program to fund climate resilience hubs." Commissioners and staff may be able to study climate resilience policies along with grant eligibility for state grants to establish such hubs.

As described above, several land use reforms that would impact the area under the West Berkeley Plan are already underway. With these frameworks, staff and commissioners can study robust and flexible development standards in Specific Area Planning to better align local neighborhood needs with citywide economic and environmental goals.

Transportation Demand Management

The West Berkeley Plan as originally adopted in 1993 was prescient in calling for a "reduction of single occupant automobile trips." The Plan envisioned several mitigations for increased traffic congestion, including implementation of Transportation Demand Management (TDM) plans "to encourage carpooling and vanpooling, walking and bicycle use, the use of transit, flexible scheduling of work hours, and other methods to reduce travel demand[.]"

However, the Transportation impact mitigations in the Plan are still codified under Level Of Service (LOS) standards, i.e. delay in vehicle throughput. As of 2020, state law requires transportation impacts to be assessed under a Vehicle Miles Traveled (VMT) standard for environmental review, measuring the total volume of traffic. Reducing VMT is of critical importance for Berkeley and the state of California's climate goals, as the California Air Resources Board has illustrated in a 2018 report: "Even if the share of new car sales that are ZEVs [zero-emission vehicles] grows nearly 10-fold from today, California would still need to reduce VMT per capita 25 percent to achieve the necessary reductions for 2030."[31] Any amendments to the West Berkeley Plan's Transportation mitigations would have to incorporate the goal of absolute VMT reduction to be consistent with state environmental standards.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In 2006, Berkeley voters approved Measure G, committing to reduce the entire community's greenhouse gas emissions by 80% below 2000 levels by 2050. The City Council approved Berkeley's first Climate Action Plan in 2009.[32]

[31] California Air Resources Board: 2018 Progress Report. https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

[32] City of Berkeley: Climate Action Plan. https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Climate-Action-Plan.pdf

The California Air Resources Board released an updated Scoping Plan[33] in 2022. Following this plan, the state of California's goals by 2045 are:

- *Cut greenhouse gas emissions by 85% below 1990 levels*
- *71% reduction in smog-forming air pollution*
- *Reduce fossil fuel consumption (liquid petroleum) to less than one-tenth of what we use today – a 94% reduction in demand.*
- *Create 4 million new jobs.*
- *Save Californians $200 billion in health costs due to pollution in 2045.*

All planning efforts must achieve and exceed these thresholds in order to advance Environmental Justice.

CONTACT PERSON
Councilmember Taplin Council District 2 510-981-7120

Attachments:
1: 2021-12-14 Annotated Agenda - Berkeley City Council Meeting
2: 2021-12-14 Item 35 Commit the City of Berkeley to a Just Transition (Supp. 2)
3: EcoDistrict Protocol Guide
4: Rematriation Resource Guide - Sogorea Te' Land Trust
5: Fact Sheet: The Weight of Cities - United Nations International Resources Panel
6: Senate Bill 1000 (2016)
7: Resolution 65,201-N.S. Amending the West Berkeley Plan and, By Reference, the General Plan. (2011)
8: Berkeley Food Utility and Access Resilience Measure (FARM) referral - Councilmember Bartlett (2023)
9: Health Equity & Innovation District - Councilmember Bartlett (2018)
10: Loan Amendment: Urban Ore (2012)
11: City Council Resolution 56,829 (1993)

[33] California Air Resources Board: 2022 Scoping Plan. https://ww2.arb.ca.gov/news/california-releases-final-2022-climate-scoping-plan-proposal

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
November 7, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-sponsor), Councilmember Kesarwani (co-sponsor)

Subject: Just Transition Framework for West Berkeley Plan Amendments

RECOMMENDATION

Refer to the City Manager and Planning Commission to study and recommend Amendments to the West Berkeley Plan pursuant to California Government Code Section 65302(h) to advance the city's environmental justice goals under a Just Transition Framework.

At a minimum, consider the following concepts:

- Just Transition principles adopted by City Council in Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal";
- EcoDistricts Protocol and possible EcoDistricts certification incorporated into a Community Engagement Plan;
- Climate Resilience Hubs;
- Indigenous Land Rematriation;
- Transportation Demand Management (TDM) planning to reduce Vehicle Miles Traveled (VMT) per capita by at least 25% by 2030;
- Promoting and protecting arts and cultural uses. Consider robust incentives, development standards and/or mitigations in Protected Uses (Berkeley Municipal Code 23.206.050) for Media Production, Theater, Live Entertainment, Art/Craft Studio, and/or other cultural uses.

In addition, apply the above concepts for the consideration of a Master Plan, Natural Resources Management Plan, or other comprehensive plan for the protection and maintenance of Aquatic Park.

FINANCIAL IMPLICATIONS

Staff time TBD, est. $125,000 for 1 FTE Senior Planner. Planning staff estimates that capacity for additional Specific Area Plan work to be available in Fiscal Year 2025 at the earliest. Currently, San Pablo Avenue Specific Area Plan work is supported by grant funding from the Metropolitan Transportation Commission's Priority Development Area (PDA) program. Other grant funding opportunities, such as the Priority Conservation Area (PCA) and Priority Production Area (PPA) programs[1], or the California Strategic

[1] Metropolitan Transportation Commission: Land Use Programs. https://mtc.ca.gov/planning/land-use

Growth Council's Transformative Climate Communities[2] program, may also be available in future grant cycles.

CURRENT SITUATION AND ITS EFFECTS

Since the passage of SB 1000 (2016), California Government Code Section 65302(h) requires an Environmental Justice Element and/or related Elements in municipal General Plans to:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

(B) Identify objectives and policies to promote civic engagement in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities. (See Attachment 6)

The City of Berkeley has incorporated Environmental Justice policies in its plans, most recently in its 2023 Housing Element Update. However, the most recent update to the West Berkeley Plan[3], adopted in 2011 (see Attachment 7), predates SB1000 requirements.

This and other factors will contribute to a growing need to update the West Berkeley Plan, including: a renewed Development Agreement with Bayer[4] (formerly Miles Corp) in 2021, which funded a West Berkeley Fund for community infrastructure and resilience; removal of minimum parking requirements, expansion of Research and Development (R&D)[5] uses to Manufacturing zones, including development of a Manufacturing - Research & Development (M-RD)[6] zone; development of a San Pablo

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[2] California Strategic Growth Council: Transformative Climate Communities. https://sgc.ca.gov/programs/tcc/

[3] City of Berkeley. (1993, Dec. 14.) Resolution 57,301-N.S. Adopting the Certification of Environmental Impact Report for the West Berkeley Plan…The West Berkeley Plan as an Area Plan and as an Amendment to the City of Berkeley Master Plan. https://berkeleyca.gov/sites/default/files/2022-03/12_14_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf

[4] City of Berkeley. (2021). Bayer Healthcare LLC – Amended and Restated Development Agreement. https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2021/12/2021-11-30-Item-24-Bayer-Healthcare-LLC-%E2%80%93-Amended-and-Restated-Development-Agreement-1.pdf

[5] Robinson, R. & Chen, A. (2022). Referral: Keep Innovation in Berkeley. https://berkeleyca.gov/sites/default/files/documents/2022-09-13%20Item%2030%20Referral%20Keep%20Innovation%20in%20Berkeley.pdf

[6] City of Berkeley Planning Commission Presentation (2023, Feb. 1). https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023_02_01_Item%2012_Gilman%20Gateway%20Rezone_Presentation.pdf

Avenue Specific Area Plan[7], rising groundwater[8]; and the overall increasing risk of flooding, fires, and other natural disasters due to anthropogenic climate change.[9]

Since 2011, the City of Berkeley has also made major investments in West Berkeley's parks and open spaces, including the Aquatic Park Central Tide Tubes Repair Sediment Removal ($438,000 from Measure T1, $375,000 from Parks Tax)[10] and $385,000 for Aquatic Park maintenance and improvements from the Bayer Development Agreement. The next budget cycle includes major projects under the Fiscal Year 2023-2027 Capital Improvement Program: *Development of a new park at the Santa Fe Right of Way, funded by a $5M Prop 68 grant*; and *Construction management and inspection of $3M Aquatic Park improvements negotiated as part of the 600 Addison development (Parks Tax)*.[11]

However, as of September 2023, the Aquatic Park lagoon has been issued a state water quality Yellow advisory for *Enterococcus* bacteria, an indicator for possible presence of human health risks, for 11 non-consecutive weeks in 2023 so far.[12]

Moreover, zoning protections in Mixed Manufacturing (MM) and Mixed-Use Light Industrial (MULI) under Berkeley Municipal Code 23.206.050 have not been revised since 1993. While the 2011 amendments revised permitted and disallowed uses in M-zones, the Protected Uses and Mitigations have not changed. The BMC includes the following tables illustrating the applicability of Protected Land Uses in Manufacturing Zones, and Permits required for changing uses therein.

Table 23.206-5. PROTECTED INDUSTRIAL USES

Zoning District	***Protected Industrial Uses***	***Applicability of Requirements***

[7] City of Berkeley: San Pablo Avenue Specific Plan. https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/san-pablo-avenue-specific

[8] kristina hill, Daniella Hirschfeld, Caroline Stanhope Lindquist, et al. Rising coastal groundwater as a result of sea-level rise will influence contaminated coastal sites and underground infrastructure. ESS Open Archive. May 25, 2023. DOI: 10.22541/essoar.168500245.55690018/v1

[9] City of Berkeley: January 2023 Disaster Preparedness Notice. https://berkeleyca.gov/community-recreation/news/rains-and-winds-continue-stay-alert-and-safe-while-still-reporting

[10] City of Berkeley: Measure T1 Update. (2022). https://berkeleyca.gov/sites/default/files/2022-03/T1-Brochure.pdf; see also Footnote 5.

[11] City of Berkeley: Adopted FY23-27 Capital Improvement Program. https://berkeleyca.gov/sites/default/files/documents/FY-23-27-Capital-Improvement-Program_0.pdf

[12] City of Berkeley: Aquatic Park Enterococcus Sampling Results. (2023). https://berkeleyca.gov/sites/default/files/documents/AP_Water-Quality-Results_32.pdf

MM	*Manufacturing, warehousing, wholesale trade*	*Ground-level protected uses on or after January 1, 1988 [1]*
MU-LI	*Material recovery enterprise, manufacturing, warehousing, wholesale trade*	*Buildings with 33% protected use on or after January 1, 1996 [1]*

Note:

[1]*Includes protected uses that were previously used on or after this date but now vacant.*

Table 23.206-6. PERMITS REQUIRED FOR CHANGES TO PROTECTED LAND USES

Zoning District	***Change to Protected Use***	***Permit Required***
MM	*Change any amount of ground-floor protected use to a non-protected use*	*UP(PH)*
MU-LI	*Change less than or equal to 20,000 sq. ft. or less than or equal to 25% of protected use to a non-protected use*	*AUP*
	Change over 20,000 sq. ft. or 25% of protected use to a non-protected use	*UP(PH)*

Since the 1993 Plan adoption, the West Berkeley community has grown increasingly concerned with the protection of performing arts and media production spaces.[13] With increasing investment into and possible expansion of Research & Development firms, the resilience of local cultural institutions in the wake of COVID-19 disruptions remains a major vulnerability.

Evidence for the need to update Protected Uses and Mitigations in Manufacturing zones can be further inferred from the relative obscurity of specific subsections. In order to qualify for a Use Permit (UP) to change 25% or more of a protected use in a MU-LI

[13] Dinkelspiel, F. (2018). Fantasy Studios, internationally renowned film and music studio, to close its doors. *Berkeleyside.* https://www.berkeleyside.org/2018/07/29/berkeleys-fantasy-studios-an-internationally-renowned-film-and-music-studio-to-close-its-doors
Noted in the article: building owners, operators, and the City of Berkeley “all jointly fund the Berkeley Film Foundation, which supports local filmmakers.”

zone in the above table, BMC 23.206.050(A)(3)(b)(ii) requires, in addition to replacement space, the following findings:

(1) As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.

(2) Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through ***providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund****, or by other appropriate means.* **[emphasis added]**

However, City of Berkeley Planning staff have no record of mitigations made either in kind or in cash to a West Berkeley Building Acquisition Fund. It is thus unclear if the mitigations are intended only to discourage changes to protected uses (in which case these provisions may be effective, albeit indirectly) or to actively mitigate them through a specific fund. After three decades, City staff and Commissioners should study robust protected uses and mitigations with respect to the community's intended outcomes.

Updating the West Berkeley Plan pursuant to California Government Code Section 65302(h) is a Strategic Plan Priority Project, advancing our goal to: be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

Just Transition Principles

On December 14, 2021, the Berkeley City Council adopted Resolution No. 70,171–N.S. "Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley and South Berkeley Green New Deal" as revised (see Attachments 1 and 2). A Just Transition framework for West Berkeley Plan Amendments should be developed such that civil engagement and centering the needs of disadvantaged communities comprise an interrelated process.

The District 2 Council Office has convened several meetings of a West Berkeley Green New Deal Ad Hoc Working Group, whose work is still ongoing. The Ad Hoc Working Group expressed consensus that heavily impacted and disadvantaged communities that should be centered in a Just Transition include, at a minimum: **seniors; unhoused**

residents; low-income households; disabled or mobility-impaired residents; Black, Indigenous, and People of Color (BIPOC); and LGBTQIA+ residents.

The transition away from fossil fuels must ensure that the most vulnerable in our society are protected from both the turbulence of restructuring our entire economy and the effects of global warming that the community is already facing. The core premise is: "Transition is inevitable. Justice is not."[14] The environmental justice movement calls this approach to the climate crisis a "Just Transition."

Transition is inevitable. In macroeconomic terms, any government actively working to change the composition of household consumer demand (e.g. rapid industrialization amid World Wars, a green transition, etc) will face significant distributional problems from shocks to energy and raw material costs, which manifest in price levels and/or rationing. We are already confronting such shocks locally and globally. As recent inflationary episodes and supply shocks following the COVID-19 pandemic and the 2022 Russian invasion of Ukraine have demonstrated, reliance on the fossil fuel economy increasingly undermines price stability.[15] Just Transition principles are partially intended to proactively mitigate both the threat of wage deflation for households depending on labor income from fossil fuel industries, and the inflationary pressures of unprecedented supply shocks. In a complementary framework, the Green New Deal[16] proposed by Democratic lawmakers[17], some aspects of which have been passed in the Inflation Reduction Act of 2022, was designed to increase domestic high-road employment[18] and capacity in green energy industries to manage this transition equitably.

A Just Transition is possible. While fossil fuel supply chains must end, other resilient supply chains must replace our community's changing needs. Renewable energy and electricity transmission will have to grow to meet increasing demands for vehicle and building electrification to replace petroleum and natural gas; batteries, solar panels, and

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[14] Climate Justice Alliance. (2018). Just Transition Principles. *Climate Justice Alliance.* https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf

[15] Weber, Isabella M.; Jauregui, Jesus Lara; Teixeira, Lucas; and Nassif Pires, Luiza, "Inflation in Times of Overlapping Emergencies: Systemically Significant Prices from an Input-output Perspective" (2022). *Economics Department Working Paper Series.* 340. https://doi.org/10.7275/0c5b-6a92

[16] Carlock, G. & Mangan, E. (2018). A Green New Deal. *Data for Progress.* https://www.filesforprogress.org/pdfs/Green_New_Deal.pdf

[17] House Resolution 109. (2019). https://www.congress.gov/116/bills/hres109/BILLS-116hres109ih.pdf

[18] Williams, M., et al. (2022). The Inflation Reduction Act Provides Pathways to High-Quality Jobs. *Center for American Progress. https://www.americanprogress.org/article/the-inflation-reduction-act-provides-pathways-to-high-quality-jobs/*

wind farms must replace oil rigs and coal mines. Californians will have to shift at least 25% of their automobile trips to other modes of transportation while converting the rest to electric vehicles[19], aided by more energy-efficient housing, public transit, and e-bike access. All of this will be made possible in part by Berkeley's growing innovation ecosystem of high-wage STEM employment in green energy technology and life sciences. To illustrate, over one third of employees in Alameda County's growing life sciences sector had no college degree[20] The federal government is also increasing public sector fiscal capacity for clean energy development through direct pay provisions for municipal and nonprofit entities in the Inflation Reduction Act of 2022.[21]

Just Transition policies are already being enacted globally. For example, in Poland, a 75% decline in coal mining jobs was coupled by a mining social package and special privileges for mining communities. Canada's efforts to phase out coal-powered electricity have been accompanied by a national stakeholder task force that has traveled the country to hear from Canadians on how to justly shepherd the transition. Egypt's fuel price increases were paired with minimum wage boosts, food stipends, and progressive taxation.[22]

The Climate Justice Alliance, a climate organization at the forefront of the fight for a Just Transition, lays out the following Just Transition principles:

> **A Just Transition moves us toward Buen Vivir**
> Buen Vivir means that we can live well without living better at the expense of others. Workers, community residents, women and Indigenous Peoples around the world have a fundamental human right to clean, healthy and adequate air, water, land, food, education and shelter. We must have just relationships with each other and with the natural world, of which we are a part. The rights of peoples, communities and nature must supersede the rights of the individual.
>
> **A Just Transition creates Meaningful Work**
> A Just Transition centers on the development of human potential, creating opportunities for people to learn, grow, and develop to their full capacities and

[19] https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

[20] City of Berkeley Staff Report: Business Support Zoning Amendment Referrals – Research and Development. (2021, June 20). pp. 13-56.https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2021-10-06%20PC%20Agenda%20Packet.pdf

[21] Lala, C. (2023). Direct pay: an uncapped promise of the Inflation Reduction Act. *Center for Public Enterprise.* Retrieved from https://static1.squarespace.com/static/622cca56a2f5926affd807c6/t/64257e7047150f31bf02e7cf/1680178800773/Direct+Pay+101+-+Center+for+Public+Enterprise.pdf

[22] Gass, P. (2019). In Search of Just Transition: Examples From Around the World. *International Institute for Sustainable Development.* https://www.iisd.org/articles/just-transition-examples

interests. We are all born leaders, and a regenerative economy supports and nurtures that leadership. In the process, we are transforming ourselves, each other, our communities, and our society as a whole. Meaningful work is life-affirming.

A Just Transition upholds Self Determination

All peoples have the right to participate in decisions that impact their lives. This requires democratic governance in our communities, including our workplaces. Communities must have the power to shape their economies, as producers, as consumers, and in our relationships with each other. Not only do we have the right to self determination, but self determination is one of our greatest tools to realize the world we need. The people who are most affected by the extractive economy — the frontline workers and the fenceline communities — have the resilience and expertise to be in the leadership of crafting solutions.

A Just Transition equitably redistributes Resources and Power

We must work to build new systems that are good for all people, and not just a few. Just Transition must actively work against and transform current and historic social inequities based on race, class, gender, immigrant status and other forms of oppression. Just Transition fights to reclaim capital and resources for the regeneration of geographies and sectors of the economy where these inequities are most pervasive.

A Just Transition requires Regenerative Ecological Economics

Just Transition must advance ecological resilience, reduce resource consumption, restore biodiversity and traditional ways of life, and undermine extractive economies, including capitalism, that erode the ecological basis of our collective well-being. This requires a re-localization and democratization of primary production and consumption by building up local food systems, local clean energy, and smallscale production that are sustainable economically and ecologically. This also means producing to live well without living better at the expense of others.

A Just Transition retains Culture and Tradition

Capitalism has forced many communities to sacrifice culture and tradition for economic survival. It has also defaced and destroyed land held as sacred. Just Transition must create inclusionary spaces for all traditions and cultures, recognizing them as integral to a healthy and vibrant economy. It should also make reparations for land that has been stolen and/or destroyed by capitalism, colonialism, patriarchy, genocide and slavery.

A Just Transition embodies Local, Regional, National and International Solidarity

A Just Transition must be liberatory and transformative. The impacts of the extractive economy knows no borders. We recognize the interconnectedness of our communities as well as our issues. Therefore, our solutions call for local, regional, national and global solidarity that confronts imperialism and militarism.

A Just Transition builds What We Need Now

We must build the world we need now. This may begin at a local small scale, and must expand to begin to displace extractive practices. We must build and flex the muscles needed to meet our communities' needs.[23]

EcoDistrict Protocol

The EcoDistrict Protocol, certified by the nonprofit Partnership for Southern Equity, offers several best practices for stakeholder engagement and community partnership for staff and the Commission to consider as part of a Just Transition framework for West Berkeley Plan amendments.

Accordingly, a core premise of EcoDistrict Protocol is that "there is a growing appetite for innovation as cities seek a competitive advantage to attract talent and investment, embrace aging and historically disenfranchised populations, restore cultural integrity, enhance prosperity, and respond intelligently to a rapidly changing climate." The Protocols emphasize three imperatives that Berkeley can and should follow: *Equity, Resilience*, and *Climate Protection.* These are subsequently divided into seven priorities: *place, prosperity, health and wellbeing, connectivity, living infrastructure,* and *resource regeneration.* These principles guide the three implementation phases that can correspond with specific area planning: *formation*, *road map*, and *performance [evaluation]*.

[23] Climate Justice Alliance. (2018). Just Transition Principles. *Climate Justice Alliance.* https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf



EcoDistricts Protocol Core Elements[24]

The framework provides a model of "collaborative governance" for planning and performance evaluation, i.e. "a district team of key stakeholders representing the district's major public, private, and civic sector assets." This process emphasizes organizational capacity-building between sectors for robust goal-setting, evaluation, and improvement.

There have been several EcoDistrict implementations in US cities of varying sizes, balancing urban economic development, natural resource preservation, and environmental remediation of historic manufacturing areas, including Cleveland, Seattle, and Portland.[25] For decades, Portland has also pioneered Natural Resources Management Plans for protecting groundwater, wetlands, and other natural habitats.[26][27]

Urban Decarbonization and Indigenous Land Rematriation

[24] Partnership for Southern Equity: EcoDistricts Protocol. https://ecodistricts.org/protocol/
[25] Partnership for Southern Equity: EcoDistrict Registry. https://ecodistricts.org/district-registry/
[26] City of Portland: Columbia South Shore Natural Resources Protection Plan. https://www.portland.gov/bps/environ-planning/documents/columbia-southshore-nrpp-1993-2000/download
[27] City of Portland: Columbia East Neighborhood Natural Resources Management Plan. https://www.portland.gov/bps/environ-planning/documents/east-columbia-neighborhood-nrmp-1990/download

In a 2018 report, the United Nations International Resource Panel (IRP) laid out 5 policy recommendations for urban decarbonization.[28] The first two recommendations are:

1. Urban metabolisms must shift from 'linear' to 'circular': *This implies new ways of managing the movement of resources through the city. Businesses and cities will have to focus on offering high value services rather than selling artefacts; providing heat instead of heaters, mobility instead of highways and cars, light instead of light bulbs. Concepts such as 'urban mining', 'resource cascading' and 'industrial symbiosis' and the various manifestations of the 're-economy' (reduce, reuse, recycle) will define the new urbanism.*

2. *Urban metabolisms must be monitored to assist strategic planning at local government level:* Local governments must understand cities' inputs (e.g. biomaterials) and outputs (e.g. waste and emissions), using these to develop resource efficiency strategies…The negative externalities of various resource uses must be priced in to provide economic incentives for behavioural change.

Both the UN IRP report and EcoDistricts Protocol call for local economies and ecologies that raise local living standards while shifting consumption from zero-sum extraction of resources to renewable and regenerative systems. The United Nations IRP report urges "active and goal-setting" public governance to meet the scale and severity of these challenges. The City of Berkeley has begun to explore regenerative and resilient local supply chains through the City Council's 2023 referral "Berkeley Food Utility and Access Resilience Measure (FARM)" and "Health Equity Innovation District" referral from 2018 (see Attachments 8 and 9). With the expansion of Research & Development uses, Berkeley's manufacturing sector is on the cutting edge of a more sustainable "focus on offering high value[-added] services rather than selling artefacts" or "heat instead of heaters" as the UN IRP describes.

Another regenerative principle that the City of Berkeley recognizes is rematriation of Indigenous land. As attested in the City Council's Land Acknowledgement, Berkeley is sited on xučyun, the ancestral and unceded land of the Chochenyo-speaking Ohlone people, the ancestors and descendants of the sovereign Verona Band of Alameda County. The City of Oakland, the City of Richmond, and the Northern California Land Trust have returned acres of land for parks, gardens, and a traditional village site to the Indigenous community through the Sogorea Te' Land Trust, which has focused on rematriation via "Indigenous women-led work to restore sacred relationships between Indigenous people and our ancestral land, honoring our matrilineal societies, and in opposition of patriarchal violence and dynamics." Private entities can also support the Land Trust through the voluntary Shuumi Land Tax. Berkeley's Indigenous community must be central to our collective ecological stewardship, and would be necessarily integral to "collaborative governance" of future area planning following an EcoDistrict model.

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[28] Swilling, M., et al (2018). The Weight of Cities. *United Nations International Resource Panel (IRP).* https://www.resourcepanel.org/reports/weight-cities (see Attachment 5)

Reparations and Climate Resilience

Berkeley's African American community has also endured centuries of systemic land dispossession and displacement, compounding structural inequities that persist to this day.[29] West Berkeley's legacy of redlining, segregation, historic disinvestment, and disproportionate exposure to environmental hazards presents a material imperative for reparative justice that also decarbonizes our economy.

The Berkeley community has endeavored to govern its innovative technology and manufacturing sectors with conscious racial and environmental justice goals. The West Berkeley Plan, first adopted in 1993 and last amended in 2011, codified the City's conscious efforts to protect high-road job opportunities while fostering new and groundbreaking industries, aligning economic development with the community's culture and values. For example, the 1993 Background Findings assert that "Manufacturing can provide the best-paying jobs for people without advanced educations," "West Berkeley has special environmental issues as the result of being adjacent to the Freeway and containing a large number of hazardous materials uses," and that "West Berkeley is the most ethnically/racially diverse residential community in Berkeley." The Plan thus proscribed development standards for Manufacturing uses and mitigations for non-conforming uses to carefully balance a diverse local ecosystem of industrial, commercial, and residential zones.

However, the inequitable distribution of environmental hazards persists. According to the California Reparations Task Force Report published in 2022, Black Californians are five times more likely to live within a half mile of sites at risk of toxic groundwater flooding by 2050, 40% more likely to be exposed to particulate matter pollution from cars and trucks, and more likely to be exposed to heat waves.[30] With the acceleration of climate hazards, the City should also consider climate resilience in addition to pollution remediation as an additional goal for the West Berkeley Area.

The California Reparations Report recommends increasing tree coverage in formerly redlined communities, and creating Climate Resilience Hubs ("community-driven facilities that support residents, facilitate communication, distribute aid, and provide an opportunity for communities to become more self-sustaining during climate emergencies"). Specifically, the Task Force recommends the Legislature utilize the

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[29] Verma, P. et al. (2021). Rising Housing Costs and Re-Segregation in the San Francisco Bay Area. *Urban Displacement Project, UC Berkeley.* https://www.urbandisplacement.org/wp-content/uploads/2021/08/bay_area_re-segregation_rising_housing_costs_report_2019.pdf

[30] AB 3121 Reparations Task Force (2022). The California Reparations Report. *Office of the Attorney General of California.* https://oag.ca.gov/ab3121/report (see Ch. 7, Ch. 24)

Transformative Climate Communities (TCC) Program to fund climate resilience hubs." Commissioners and staff may be able to study climate resilience policies along with grant eligibility for state grants to establish such hubs.

As described above, several land use reforms that would impact the area under the West Berkeley Plan are already underway. With these frameworks, staff and commissioners can study robust and flexible development standards in Specific Area Planning to better align local neighborhood needs with citywide economic and environmental goals.

Transportation Demand Management

The West Berkeley Plan as originally adopted in 1993 was prescient in calling for a "reduction of single occupant automobile trips." The Plan envisioned several mitigations for increased traffic congestion, including implementation of Transportation Demand Management (TDM) plans "to encourage carpooling and vanpooling, walking and bicycle use, the use of transit, flexible scheduling of work hours, and other methods to reduce travel demand[.]"

However, the Transportation impact mitigations in the Plan are still codified under Level Of Service (LOS) standards, i.e. delay in vehicle throughput. As of 2020, state law requires transportation impacts to be assessed under a Vehicle Miles Traveled (VMT) standard for environmental review, measuring the total volume of traffic. Reducing VMT is of critical importance for Berkeley and the state of California's climate goals, as the California Air Resources Board has illustrated in a 2018 report: "Even if the share of new car sales that are ZEVs [zero-emission vehicles] grows nearly 10-fold from today, California would still need to reduce VMT per capita 25 percent to achieve the necessary reductions for 2030."[31] Any amendments to the West Berkeley Plan's Transportation mitigations would have to incorporate the goal of absolute VMT reduction to be consistent with state environmental standards.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In 2006, Berkeley voters approved Measure G, committing to reduce the entire community's greenhouse gas emissions by 80% below 2000 levels by 2050. The City Council approved Berkeley's first Climate Action Plan in 2009.[32]

[31] California Air Resources Board: 2018 Progress Report. https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

[32] City of Berkeley: Climate Action Plan. https://berkeleyca.gov/sites/default/files/2022-01/Berkeley-Climate-Action-Plan.pdf

The California Air Resources Board released an updated Scoping Plan[33] in 2022. Following this plan, the state of California's goals by 2045 are:

- *Cut greenhouse gas emissions by 85% below 1990 levels*
- *71% reduction in smog-forming air pollution*
- *Reduce fossil fuel consumption (liquid petroleum) to less than one-tenth of what we use today – a 94% reduction in demand.*
- *Create 4 million new jobs.*
- *Save Californians $200 billion in health costs due to pollution in 2045.*

All planning efforts must achieve and exceed these thresholds in order to advance Environmental Justice.

CONTACT PERSON
Councilmember Taplin Council District 2 510-981-7120

Attachments:
1: 2021-12-14 Annotated Agenda - Berkeley City Council Meeting
2: 2021-12-14 Item 35 Commit the City of Berkeley to a Just Transition (Supp. 2)
3: EcoDistrict Protocol Guide
4: Rematriation Resource Guide - Sogorea Te' Land Trust
5: Fact Sheet: The Weight of Cities - United Nations International Resources Panel
6: Senate Bill 1000 (2016)
7: Resolution 65,201-N.S. Amending the West Berkeley Plan and, By Reference, the General Plan. (2011)
8: Berkeley Food Utility and Access Resilience Measure (FARM) referral - Councilmember Bartlett (2023)
9: Health Equity & Innovation District - Councilmember Bartlett (2018)

[33] California Air Resources Board: 2022 Scoping Plan. https://ww2.arb.ca.gov/news/california-releases-final-2022-climate-scoping-plan-proposal

ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, December 14, 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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

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 https://us02web.zoom.us/j/83481524655. 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: **834 8152 4655.** 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.

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: 6:21 p.m.

Present: Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Arreguin

Absent: Bartlett, Droste

Councilmember Droste present at 6:22 p.m.

Councilmember Bartlett present at 6:27 p.m.

Ceremonial Matters:

1. Adjourned in Memory of Bob Meola, Peace & Justice Commissioner

City Manager Comments:

The City Manager shared a presentation on the efforts and data reports of the Homeless Response Team.

Public Comment on Non-Agenda Matters: 10 speakers.

Action: M/S/C (Arreguin/Wengraf) to accept supplemental material from Mayor Arreguin on Item 7.
Vote: All Ayes.

Action: M/S/C (Arreguin/Wengraf) to accept supplemental material from Mayor Arreguin on Item 48.
Vote: All Ayes.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 20 speakers.

Action: M/S/C (Arreguin/Robinson) to adopt the Consent Calendar in one motion except as indicated.
Vote: All Ayes.

Consent Calendar

1. **Bayer Healthcare LLC – Amended and Restated Development Agreement**
   From: City Manager
   Recommendation: Adopt the second reading of Ordinance No. 7,792-N.S. to certify the Final Subsequent Environmental Impact Report, adopt Findings and a Mitigation Monitoring and Reporting Program, and approve the Amended and Restated Development Agreement between the City of Berkeley and Bayer Healthcare LLC.
   First Reading Vote: All Ayes
   Financial Implications: See report
   Contact: Jordan Klein, Planning and Development, (510) 981-7400
   Action: Adopted second reading of Ordinance No. 7,792–N.S.

2. **Amendments to the Berkeley Election Reform Act**
   From: Fair Campaign Practices Commission
   Recommendation: Adopt the second reading of Ordinance No. 7,793-N.S amending the Berkeley Election Reform Act (BMC Chapter 2.12) to (1) make public financing available to candidates for the offices of Auditor, School Board Director, and Rent Stabilization Board Commissioner, (2) further clarify the use of Fair Elections funds, (3) clarify the requirements for returning unspent Fair Elections funds, (4) add a new process for requesting return of previously repaid Fair Elections funds, and (5) require the FCPC to make a cost of living adjustment to the contribution limit to candidates in January of each odd-numbered year.
   First Reading Vote: All Ayes
   Financial Implications: None
   Contact: Sam Harvey, Commission Secretary, (510) 981-6950
   Action: Adopted second reading of Ordinance No. 7,793–N.S.

3. **Commission Reorganization: Creating the Parks, Recreation, and Waterfront Commission**
   From: City Manager
   Recommendation: Adopt the second reading Ordinance No. 7,794-N.S. repealing and re-enacting Berkeley Municipal Code Chapter 3.26 to create the Parks, Recreation, and Waterfront Commission, and repealing Berkeley Municipal Code Chapters 3.27 (Children, Youth, and Recreation Commission) and 3.08 (Berkeley Animal Care Commission).
   First Reading Vote: Ayes – Kesarwani, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Taplin, Bartlett, Harrison
   Financial Implications: See report
   Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
   Action: Adopted second reading of Ordinance No. 7,794–N.S.

Consent Calendar

4. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference
From: City Manager
Recommendation: Adopt a Resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021 and November 16, 2021.
Financial Implications: To be determined
Contact: Farimah Brown, City Attorney, (510) 981-6950
Action: Adopted Resolution No. 70,144–N.S.

5. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)
From: City Manager
Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, and November 9, 2021.
Financial Implications: To be determined
Contact: Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998
Action: Adopted Resolution No. 70,145–N.S.

6. Minutes for Approval
From: City Manager
Recommendation: Approve the minutes for the council meetings of November 2 (closed), November 4 (special), November 9 (closed and regular), November 16 (closed and regular), November 18 (closed) and November 30 (closed and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved minutes as submitted.

Consent Calendar

7. City of Berkeley's 2022 State and Federal Legislative Platform
From: City Manager
Recommendation: Adopt a Resolution approving the City of Berkeley's 2022 State and Federal Legislative Platform.
Financial Implications: See report
Contact: Dee Williams-Ridley, City Manager, (510) 981-7000
Action: Adopted Resolution No. 70,146–N.S. as revised in Supplemental Material from Mayor Arreguin introduced at the meeting.

8. Extension of Interim Director of Police Accountability Appointment
From: City Manager
Recommendation: Adopt a Resolution extending the appointment of Katherine J. Lee as Interim Director of Police Accountability and approving an employment contract to be effective January 1, 2022 at an annual salary of $182,260.65.
Financial Implications: See report
Contact: Dee Williams-Ridley, City Manager, (510) 981-7000
Action: Adopted Resolution No. 70,147–N.S. and to authorize the City Manager to make clarifying corrections on the term of the agreement.

9. Protiviti Government Services: Using General Services Administration (GSA) Vehicle for Professional Services Purchase Orders
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to issue purchase orders with Protiviti Government Services for the purchase of professional services using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an amount not to exceed $70,000 through November 8, 2022.
Financial Implications: General Fund - $70,000
Contact: Matthai Chakko, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,148–N.S.

10. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 14, 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: General Fund - $960,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.

Consent Calendar

11. Contract: RLH & Associates for Providing Temporary Governmental Financial Consulting Services for the Finance Department
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with RLH Associates for providing temporary governmental financial consulting as required by the Finance Department for an initial term of two years. The total not to exceed contract amount is $150,000.
Financial Implications: General Fund - $150,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted Resolution No. 70,149–N.S.

12. Contract: Valdes and Moreno for Professional Services for the Microbond Financing Pilot Program
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with Valdes and Moreno for professional services needed to establish and administer full-services consulting and other services related to a Microbond Financing Program. The total not to exceed amount is $150,000.
Financial Implications: General Fund - $150,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Adopted Resolution No. 70,150–N.S.

13. Contract: Gainey Scientific for Project Management & Consulting
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Ganey Scientific. (Contractor) to provide project management and consulting services for the Fire Department (Department) from September 13, 2021 to August 31, 2022 in an amount not to exceed $300,000 with an option to extend for an additional two years, for a total contract amount not to exceed $900,000.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473
Action: Adopted Resolution No. 70,151–N.S.

14. Revenue: FY2022 Federal COVID-19 Funding from HHS CARES Act Provider Relief Fund
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept payments from the Health and Human Services (HHS) CARES Act Provider Relief Fund and to execute any resultant revenue agreements and amendments to conduct and implement mitigation strategies in response to COVID-19 in the estimated amount of $80,000 for FY 2022.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473
Action: Adopted Resolution No. 70,152–N.S.

Consent Calendar

15. Revenue Contract: Funding from an Instructional Service Agreement with Los Positas College to support Fire Department Training
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to enter an Instructional Service Agreement (ISA) with Los Positas Community College (LPC) to provide contract instruction, assessment, and counseling services from July 20, 2021, to July 19, 2024 for an amount not to exceed $250,000 per fiscal year.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473
Action: Adopted Resolution No. 70,153–N.S.

16. Contract: Statewide Prevention and Early Iintervention Project Participation Agreement - California Mental Health Services Authority
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a Participation Agreement and any amendments with the California Mental Health Services Authority (CalMHSA) to allocate Mental Health Services Act (MHSA) funds in the amount of $65,956 to participate in the Statewide Prevention and Early Intervention (PEI) Project, for a total amount not to exceed $65,956 through June 30, 2022.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,154–N.S. as revised by the city Manager in Supplemental Communications Packet #2.

17. Contract: 2022 Community Services Block Grant
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 22F-5001 for the amount of $274,202 to provide services for low-income people for the period January 1, 2022 to May 31, 2023.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,155–N.S.

Consent Calendar

18. Resoultion Authorizing an Amendment to the Miscellaneous CalPers Contract Pursuant to California Government Code 20516
From: City Manager
Recommendation: Adopt a Resolution revising Resolution No 70,081 N.S to initiate a process to amend the contract between the Board of Administration, California Public Employees' Retirement System and the City Council for the City of Berkeley pursuant to California Government Code 20516 to effectuate changes to the cost sharing agreement between the City and Unrepresented PEPRA members in the Unrepresented Employees Group.
Financial Implications: See report
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 70,156–N.S.

19. Contract 32100185 Amendment: Digital Hands for Endpoint Detection and Response (EDR) Monitoring
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract number 32100185 with Digital Hands, for Cybersecurity Event Monitoring and Security Information and Event Management (SIEM), increasing the previously authorized contract amount by $381,137, for a total not to exceed amount of $996,117 from December 15, 2021 to June 30, 2024.
Financial Implications: IT Cost Allocation Fund - $381,137
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,157–N.S.

20. Contract: Alcor Solutions, Inc. for Managed Services and Upgrade Support of the SerivceNow Application
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Alcor Solutions, Inc. to provide managed support services and upgrade support for the ServiceNow application from July 1, 2022 to June 30, 2024 for an amount not-to-exceed $300,000.
Financial Implications: IT Cost Allocation Fund - $300,000
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,158–N.S.

21. Contract No. 31900197 Amendment: Accela, Inc. for Software Maintenance
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900197 with Accela, Inc., for software maintenance, increasing the amount by $133,420 for a total not to exceed $2,192,611 from December 12, 2011 to June 30, 2023.
Financial Implications: Various Funds - $133,420
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,159–N.S.

Consent Calendar

22. Contract No. 114159-1 Amendment: Tyler Technologies, Inc. for Professional Services and Computer Aided Dispatch (CAD) Software
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 114159-1 with Tyler Technologies, Inc. for additional professional services and an extension of the Computer Aided Dispatch (CAD) software, increasing the amount not-to-exceed by $733,720 for a total contract value not-to-exceed $2,288,950, and extending the term of the contract through June 30, 2024.
Financial Implications: Various Funds - $733,720
Contact: LaTanya Bellow, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 70,160–N.S.

23. Donation: New Fencing for a Dog Park at Aquatic Park
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of $26,566 to install fencing for a dog park at Aquatic Park.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,161–N.S.

24. Contract: Cumming Management Group, Inc. for Project Management Services for the African American Holistic Resource Center
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a not-to-exceed $900,000 contract with the Cumming Management Group, Inc. for project management services for the African American Holistic Resource Center (AAHRC) for a contract period of January 3, 2021 through June 30, 2025.
Financial Implications: Various Funds - $900,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,162–N.S. revised to correct all instances of “January 3, 2021” to “January 3, 2022” in the report and resolution.

25. Contract: Get IT Tech – New Electronic Gate System at the Waterfront
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract with Get IT Tech to provide a new electronic gate system at the Waterfront in an amount not-to-exceed of $100,000, which includes a contract amount of $91,748.67 and a 9% contingency in the amount of $8,251.33, rescinding Resolution No. 69,929-N.S.
Financial Implications: Marina Fund - $100,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,163–N.S.

Consent Calendar

26. Contract: Best Contracting Services, Inc. for Fire Station No.3 Re-Roofing Project at 2710 Russell Street. Specification No. 20-11408
From: City Manager
Recommendation: Adopt a Resolution:
1. Approving plans and specifications for the Fire Station No.3 Re-roofing Project, Specification No.20-11408;
2. Accepting the bid of Best Contracting Services, Inc. as the lowest responsive and responsible bidder; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed $326,733.
Financial Implications: Capital Improvement Fund - $326,733
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 70,164–N.S.

27. Purchase Order: Arata Equipment Company for one 18-yard Rear Loader
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the city to participate in Sourcewell (formerly NJPA) bid procedures and authorize the City Manager to execute a purchase order for one 18-yard rear loader with Arata Equipment Company in an amount not to exceed $345,000.
Financial Implications: General Fund - $345,000
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 70,165–N.S.

28. Authorization for Additional Public Works Commission Meeting in 2021
From: Public Works Commission
Recommendation: Adopt a Resolution authorizing one additional meeting of the Public Works Commission in 2021.
Financial Implications: None
Contact: Joe Enke, Commission Secretary, (510) 981-6300
Action: Adopted Resolution No. 70,166–N.S.

Council Consent Items

29. Allocating Remainder of Berkeley Relief Fund
From: Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)
Recommendation: Adopt a Resolution accepting a $28,142.38 payment from the East Bay Community Foundation of funds raised by the Berkeley Relief Fund and authorizing the City Manager to allocate these funds to the following:
$10,000 to the Starry Plough Pub and Music Venue
$18,142.38 to the Eviction Defense Center for the Housing Retention Program
Financial Implications: Berkeley Relief Fund - $28,142.38
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 70,167–N.S.

30. Eleventh Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund
From: Mayor Arreguin (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), and Councilmember Hahn (Co-Sponsor)
Recommendation: 1. Adopt a Resolution co-sponsoring the 11th Annual Martin Luther King Jr. Celebration Breakfast on January 17, 2022.
2. Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember including $500 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 11th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: 1. Adopted Resolution No. 70,168–N.S. (MLK Jr. Breakfast) 2. Adopted Resolution No. 70,169–N.S. (Expenditure) amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Harrison - $250; Councilmember Wengraf - $250; Councilmember Hahn - $300; Councilmember Kesarwani - $100; Councilmember Robinson - $100.

31. Resolution in Support of Bay Adapt: Regional Strategy for a Rising Bay
From: Mayor Arreguin (Author) and Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution in support of Bay Adapt: Regional Strategy for a Rising Bay.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Councilmembers Harrison and Taplin added as co-sponsors. Adopted Resolution No. 70,170–N.S.

Council Consent Items

32. Referral to the City Manager to Streamline Accessory Dwelling Unit (ADU) Permit Review and Approval *(Reviewed by the Land Use, Housing and Economic Development Policy Committee)*

From: Councilmember Rashi Kesarwani (Author) and Councilmembers Susan Wengraf, Lori Droste, and Ben Bartlett (Co-Sponsors)

Recommendation: Refer to the City Manager to streamline the Accessory Dwelling Unit (ADU) permitting process in order to reduce staff time spent on review and enhance customer service. Further, assess effectiveness of process improvements specified below by reviewing over time: the number of ADUs permitted, average amount of staff time spent on ADU permit review, and permit fee levels.

Recommend that the City Manager develop for Planning staff use an ADU Universal Checklist and accompanying user-friendly webpage:

ADU Universal Checklist. A clear set of universal guidelines and construction requirements should be developed among staff from Planning (both Land Use and Building and Safety Divisions), Fire, and Public Works Departments that is easy to follow in order to eliminate (or significantly reduce) the need for multiple departments to review ADU permit applications and for multiple rounds of review by the same department. The Universal Checklist should be a single document utilized by (1) all City staff to review ADU permit applications and (2) by customers to understand code requirements and development standards. The Universal Checklist should enable all City staff and customers to have the same clear understanding of all of the requirements that, if adhered to, would expedite the permitting process and lead to lower permit fees over time. *Progress To Date:* Recently, the City of Berkeley's Planning Department has added both a Single-Family ADU/JADU Checklist and a Multi-Family ADU Checklist which clearly delineate development standards as adopted by the State of California, effective January 1, 2020. An ADU Universal Checklist would take these checklists one step farther by including current amendments to Berkeley's local ADU ordinance (once adopted) as well as the full list of fire and safety code requirements.

Accompanying User-Friendly Webpage. As a companion to the ADU Universal Checklist, the City should also create a user-friendly webpage for customers (and prospective customers) with up-to-date information that provides clarity and greater certainty about the process and expected timeline for the creation of an ADU or Junior ADU, which is within a main dwelling unit.

At a minimum, the webpage should include: A list of relevant fees and expected payment amounts for permits, inspections, and other requirements;

Plan requirements, worksheets, and projected timelines for each step of the process; and Consolidated up-to-date state and local regulations that are easy to understand. *Progress To Date:* The City now has a dedicated webpage that contains: A Graphic Summary; Table of our local ADU ordinance; An ADU flow-chart detailing allowable development standards; A Single-Family ADU/JADU Checklist; A Multi-Family ADU Checklist; Deed Restrictions Forms; A list of Impact Fees.

Additional information that could prove useful to prospective residents, builders and architects includes: Links to fire safety and emergency access requirements; A list of site conditions that do not warrant easy installation of an ADU; A list of Frequently Asked Questions; Additional frequently requested Planning and Development forms,

Council Consent Items

such as our Tree Protection Instructions and Creek Protection Instructions forms, and our Public Works Engineering forms pertaining to Curbs, Gutters, Sidewalks and Driveway Approaches listed elsewhere on the City of Berkeley website; Information about financing options; and Links to additional resources, such as The Casita Coalition, an organization that disseminates information on policies and programs, best practices, and resources throughout the state.
Recommend that the City Manager consider adoption of the following two best practices: Pre-Approved ADU Design Plans. Consider development of (1) free ADU designs available to download--of varying sizes and styles--that already conform to all City and state requirements and safety codes; and/or (2) a list of vendors with architectural designs, construction drawings, or pre-fabricated units that have already been approved by the City.
ADU Ally. Consider creation of a single point of contact e-mail address dedicated to serving those interested in ADU construction, along the lines of an “ADU Ally.” The ADU Ally would be a customer-facing staff person(s) who is an expert on all current state and local ADU regulations and acts as an ally to customers through the planning and building process. Currently, our Planning Department does have a team of planners with an expertise in ADU laws and requirements, although the public lacks an easy and efficient way to access this team.
Policy Committee Recommendation: On November 4, 2021 the Land Use, Housing and Economic Development policy committee took the following action: M/S/C (Droste/Robinson) Qualified positive recommendation with direction for the item to be updated to include progress already made in this area as described by the Planning Director.
Financial Implications: See report
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
Action: Approved recommendation.

33. Budget Referral: Pedestrian Crossing Improvements at Ashby and Acton
From: Councilmember Taplin (Author)
Recommendation: That the City Council refers to the FY2023 budget process the funding of Rectangular Rapid Flashing Beacons (RRFB) at Ashby Avenue and Acton Street.
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Approved recommendation.

Council Consent Items

34. Budget Referral: Russell Street Bicycle and Pedestrian Improvements
From: Councilmember Taplin (Author)
Recommendation: That the City Council refers to the FY2023 budget process the funding of the following bicycle and pedestrian improvements along Russell Street:
Traffic Circle at Russell & King Street
Cycle Track Crossing at Russell & San Pablo Avenue
Pedestrian Hybrid Beacons at Russell & Sacramento Street
Financial Implications: See report
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Approved recommendation.

35. Commit the City of Berkeley to a Just Transition from the Fossil Fuel Economy
(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee)
From: Councilmember Taplin (Author), Councilmember Bartlett, Councilmember Hahn, and Mayor Arreguin (Co-Sponsors)
Recommendation: Adopt a resolution (1) committing the City of Berkeley to a Just Transition from the fossil fuel economy, that secures a livable future for all Berkeleyans, combats environmental racism, ensures access to good paying jobs, and cultivates economic and social prosperity for Berkeley in the 21st century and beyond and (2) requiring that all Council reports related to climate include a Just Transition section.
Policy Committee Recommendation: On June 2, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee took the following action: M/S/C (Harrison/Robinson) to send the item to Council with a positive recommendation as submitted in the supplemental material and further revised to include a recommendation that all Council reports related to climate include a just transition section.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Adopted Resolution No. 70,171–N.S. as revised by Councilmember Taplin in Supplemental Communications Packet #2, and further revised at the meeting to be renamed West and South Berkeley Green New Deal.

36. Reaffirming the City Council's Endorsement of a Carbon Fee and Dividend
From: Councilmember Taplin (Author)
Recommendation: Readopt Resolution No. 67,595–N.S urging the United States Congress to enact a national revenue-neutral carbon tax and send a copy of the resolution to Representative Barbara Lee, Senator Dianne Feinstein and Senator Alex Padilla urging them to take action.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Adopted Resolution No. 70,172-N.S.

Council Consent Items

37. Health Care Facility Oversight
From: Councilmember Bartlett (Author)
Recommendation: Refer to the City Manager and the Community Health Commission an assessment of the breadth of regulatory control the City of Berkeley can exert on skilled nursing facilities, and create a process of accountability if complaints are found to be substantiated that threaten, or could potentially escalate to the point of threatening, the wellbeing of patients and/or violate federal, state, or local law; the business license of the offending facility will be suspended until the skilled nursing facility submits a report demonstrating rectification of the situation.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
Action: Councilmembers Harrison and Hahn added as co-sponsors. Approved recommendation.

38. Consideration of Expansion of Paid Parking to Support the Parking Meter Fund and Improved Pedestrian and Bicycle Facilities
From: Councilmember Hahn (Author), Councilmember Harrison (Co-Sponsor), Councilmember Taplin (Co-Sponsor), and Councilmember Robinson (Co-Sponsor)
Recommendation: 1. Refer to the City Manager and the Transportation Commission to consider the extension of paid metered parking to include all days of the week, paralleling the calendar for off-street parking garages.
2. Consider a pilot, phasing-in, and/or exempting certain areas, and conduct broad outreach to merchants, faith-based and other institutions and organizations, neighborhood groups, and others potentially supported or impacted by change.
3. Consider allocation of potential additional revenues to help offset losses to the Parking Meter Fund incurred during COVID. Once the Fund has recovered, consider allocations to support pedestrian and bicycle facilities to help achieve Berkeley's Climate Action and Vision Zero goals on an accelerated basis.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Approved recommendation.

39. Letter to UC President Michael Drake in Support of Student Researchers United-UAW
From: Councilmember Robinson (Author) and Councilmember Hahn (Co-Sponsor)
Recommendation: Send a letter to UC President Drake and Provost Michael Brown in support of the full recognition of the Student Researchers United-UAW labor union.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: Councilmembers Harrison and Taplin added as co-sponsors. Approved recommendation.

Council Consent Items

40. Support for H.R. 4194: The People's Response Act
From: Councilmember Robinson (Author) and Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution supporting H.R. 4194, the People's Response Act, which would create a Division of Community Safety and provide grants to local governments, state governments, and community-based organizations to support non-carceral approaches to public safety. Furthermore, send a letter of support to Representative Cori Bush, Representative Barbara Lee, Senator Alex Padilla, and Senator Dianne Feinstein.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: Adopted Resolution No. 70,173–N.S.

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. 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.

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.

Action Calendar – Public Hearings

41. Proposed Ordinance Rescinding Ordinance 7,788-N.S. and Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code") to Restore Language Which Existed Prior to October 26, 2021
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt the second reading of an Ordinance No. 7,791-N.S. which rescinds Ordinance 7,788-N.S. and modifies the language of Paragraph 'NN.' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code) by adopting a building standard which is more restrictive than that standard currently contained in the California Fire Code and restores language which existed prior to October 26, 2021.
First Reading Vote: All Ayes
Financial Implications: None
Contact: Abe Roman, Fire, (510) 981-3473

Public Testimony: The Mayor opened the public hearing. 8 speakers.
M/S/C (Arreguin/Robinson) to close the public hearing.
Vote: All Ayes.

Action: M/S/C (Arreguin/Wengraf) to adopt the second reading of Ordinance No. 7,791-N.S.
Vote: All Ayes.

42. Public Hearing: Implement Residential Preferential Parking (RPP) Program on the 1600 Block of Lincoln Street
From: City Manager
Recommendation: Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25E by adding a subsection to implement Residential Preferential Parking (RPP) on both sides of the 1600 block of Lincoln Street in Area E.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Public Testimony: The Mayor opened the public hearing. 1 speaker.
M/S/C (Arreguin/Robinson) to close the public hearing.
Vote: All Ayes.

Action: M/S/C (Arreguin/Bartlett) to adopt Resolution No. 70,174–N.S.
Vote: All Ayes.

Action Calendar – Public Hearings

43. Fees: Vital Records
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution establishing a new fee schedule for Vital Records effective January 1, 2022 and rescinding Resolution No. 70,116-N.S. This fee adjustment is to become effective January 1, 2022 pursuant to Assembly Bill (AB) 128 (Chapter 21, Statutes of 2021), and Health & Safety (H&S) Codes, § 103627, 100425, 100430, and 100435.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Public Testimony: The Mayor opened the public hearing. 0 speakers.
M/S/C (Arreguin/Wengraf) to close the public hearing.
Vote: All Ayes.

Action: M/S/C (Arreguin/Robinson) to adopt Resolution No. 70,175–N.S.
Vote: All Ayes.

Recess 8:10 p.m. – 8:21 p.m.

Action Calendar – New Business

44. FY 2021 Year-End and FY 2022 First Quarter Budget Update
From: City Manager
Recommendation: Discuss and determine the funding allocations for FY 2022 based on the FY 2021 Excess Equity and Excess Property Transfer Tax for the following: 1) the General Fund Reserves 2) City Manager Budget Recommendations and 3) the Council Budget Referrals approved during FY 2022 to be considered in November 2021.
Financial Implications: See report
Contact: Rama Murty, Budget Office, (510) 981-7000

Action: M/S/C (Arreguin/Robinson) to accept supplemental material from the City Manager on Item 45.
Vote: All Ayes.

Action: M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 11:15 p.m. to complete Items 44 and 45; and to continue Items 46 and 47 to January 18, 2022.
Vote: All Ayes.

Action: 23 speakers. M/S/C (Arreguin/Kesarwani) to adopt the budget recommendations for excess equity as contained in the supplemental materials submitted at the meeting with the amendment that funding of the security cameras is conditioned on development and implementation of a Use Policy prior to deployment and Siting of Cameras in District 1, District 2 and District 8 locations as proposed by the Police Department and at 62nd & King (District 3). Policy will be adopted administratively and presented to the City Council as an off-agenda memo; repayment of the Workers Comp fund will be a top priority in the June budget process.
Vote: All Ayes.

Action Calendar – New Business

45. Amendment: FY 2022 Annual Appropriations Ordinance
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending the FY 2022 Annual Appropriations Ordinance No. 7,779–N.S. for fiscal year 2022 based upon recommended re-appropriation of committed FY 2021 funding and other adjustments authorized since July 1, 2021, in the amount of $177,309,914 (gross) and $163,076,585 (net).
Financial Implications: See report
Contact: Rama Murty, Budget Office, (510) 981-7000
Action: 2 speakers. M/S/C (Arreguin/Robinson) to adopt first reading of Ordinance No. 7,795–N.S. as presented in the supplemental materials from the City Manager. Second reading scheduled for January 18, 2021.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Droste.

Councilmember Harrison absent 11:10 p.m. – 11:13 p.m.

Councilmember Droste absent 11:10 p.m. – 11:13 p.m.

Action Calendar – Public Hearings

46. Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance
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 23.306] and amendments to relevant Defined Terms [BMC Chapter 23.502.020] in the Zoning Ordinance.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action: Item 46 continued to January 18, 2022 including supplemental material from Councilmember Kesarwani.

47. Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of a local Ordinance enacting Chapter 12.99 (Accessory Dwelling Units in Wildfire Hazard Areas) Accessory, and amending (BMC) Chapter 23.306.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action: Item 47 continued to January 18, 2022 including supplemental material from the City Manager.

Action Calendar – New Business

48. Ratification of Police Accountability Board's Standing Rules
From: Police Accountability Board
Recommendation: Review and approve Standing Rules of the Police Accountability Board.
Financial Implications: None
Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950
Action: Moved to Consent Calendar. Referred the item to the Police Accountability Board with the revisions submitted at the meeting by Mayor Arreguin.

Information Reports

49. City of Berkeley, State Tobacco Prevention Program (STPP) Overview
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Received and filed.

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

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Droste.

Adjourned at 11:13 p.m.

Communications – December 14, 2021

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

Item #41: Proposed Ordinance Rescinding Ordinance 7,788-N.S. and Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code") to Restore Language Which Existed Prior to October 26, 2021
1. Patricia Hart and Hans Stahlschmidt

Support the Berkeley Plastic Bag Ordinance
2. 30 similarly-worded form letters

Solano-Peralta Park
3. Amber Turley
4. Carol Hirth

5. Alyse Jacobson
6. Holly Smith
7. Csilla Kenny
8. Finn Michaelson
9. Mary Foretich
10. Kim Thompson
11. Janice Murota
12. Cherilyn Parsons
13. Jason Gardner & Maureen Phelan

Tenant Opportunity to Purchase Act (TOPA)
14. 4 similarly-worded form letters

Free Speech
15. Nilang Gor

Alta Bates Hospital
16. Praveen Soo, Chair of the Human Welfare Community Action Commission

Crime Suppression Unit
17. Diana Bohn

Fee Parking at Marina
18. Nancy Bartell

Traffic Safety Enforcement
19. Keith Nickolaus

Hopkins Street Traffic and Placemaking Study
20. Ben, Karen, Chuck, and Liza on behalf of Walk Bike Berkeley
21. Barbara Fritz

Housing & Absentee Investors
22. V. Sommer

Happy Thanksgiving
23. Dirk Neyhart

Leonard Powell
24. Diana Bohn

No masks
25. David Lerman

Elmwood Parking
26. Dona Bretherick

Pilot for Transportation Dept.
27. Sheila Goldmacher

GoBerkeley SmartSpace Parking Pilot
28. Jean H.

Banning Gendered Language
29. Jo Foley

Rapid Rehousing Funding
30. Diana Bohn

November Newsletter
31. Eden I&R

East Bay Community Energy
32. Board of Directors Agenda

Climate Change
33. Thomas Lord

Housing Crisis
34. JE

Supplemental Communications and Reports 1

Item #44: FY 2021 Year-End and FY 2022 First Quarter Budget Update
35. Revised material, submitted by City Manager
36. Elizabeth Dillon
37. Catherine Betts
38. Joshua Miller
39. Leslie Roulias
40. Rachel Gold
41. Norman Gold
42. Mari Vlastos
43. Brick Conway
44. Liz Grubin
45. EJ Holowicki
46. Simona Nass
47. Niccole Blanchet
48. Jessica Jennings
49. Phoebe Tussey

Item #45: Amendment: FY 2022 Annual Appropriations Ordinance
50. Joe Rapoza

51. Julia Goodman
52. Tanya Stiller
53. Michael Rodriguez
54. Susan Black
55. Regina Fletcher
56. 20 similarly-worded form letters

Supplemental Communications and Reports 2

Item #16: Contract: Statewide and Early Intervention Project Participation Agreement – California Mental Health Services Authority

57. Supplemental material, submitted by Health, Housing and Community Services Department

Item #35: Commit the City of Berkeley to a Just Transition from the Fossil Fuel Economy

58. Supplemental material, submitted by Councilmember Taplin

Item #41: Proposed Ordinance Rescinding Ordinance 7,788-N.S. and Amending Paragraph 'NN' of Berkeley Municipal Code Section 19.48.020 ("Amendments to the California Fire Code") to Restore Language Which Existed Prior to October 26, 2021

59. Christina Bucey, Greenfire Law, PC

Item #44: FY 2021 Year-End and FY 2022 First Quarter Budget Update

60. Revised material, submitted by the City Manager's Office
61. Supplemental material, submitted by the Mayor
62. Angie Garling
63. Sheridan Pauker
64. Alfred Twu
65. Homeless Commission
66. Nathan Tsuizaki
67. Jason Spangenthal
68. Amy Petersen
69. Timothy Burroughs
70. Paku Khan
71. Chizu Hamada
72. Phyllis Stowell
73. Ben Werner
74. Carolyn Werner
75. Shelley Golomb
76. John Sterns
77. Jacalyn Thompson
78. Beth Rhine

Item #45: Amendment: FY 2022 Annual Appropriations Ordinance

79. 14 similarly-worded form letters
80. Brian LaFranchi
81. Frances Haselsteiner
82. Lauren Salvo
83. Sam Kang

Item #46: Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance

84. Supplemental material, submitted by Councilmember Kesarwani
85. Debra Sanderson

Item #47: Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

86. Revised material, submitted by Planning and Development Department

Supplemental Communications and Reports 3

Item #7: City of Berkeley's 2022 State and Federal Legislative Platform

87. Supplemental material, submitted by the Mayor

Item #44: FY 2021 Year-End and FY 2022 First Quarter Budget Update

88. Paul Preston
89. David Williamson
90. Laurie Nardinelli
91. Andrea Mullarkey
92. Leah Zoller
93. Kira Deutch
94. Mary Zernicke
95. Ira Serkes
96. Dennis Weikel
97. Pat Hill
98. Stephen Jahn
99. Yuri Murphy
100. Kathryn Murphy
101. Frances Haselsteiner
102. Jane Scantlebury
103. Robbin Henderson
104. William Springer
105. Allie Pape
106. Elisa Mikiten
107. Angad Bhalla
108. Akiko Minaga
109. Jen Antonuccio
110. Michael Dillingham

111. Doug Woos
112. Linda Franklin (3)
113. Tonette Vazquez
114. Igor Tregub, on behalf of the Sierra Club
115. Holly Scheider
116. Terri Saul
117. Alfred Twu
118. Mark Misoshnik
119. Zoe Stahl
120. Kasey Harboe
121. Beth Auclair
122. Izzy Meckler
123. Kathy Dervin, on behalf of 350 East Bay
124. Anita Ayers
125. Juli Dickey
126. Tome Luce

Item #45: Amendment: FY 2022 Annual Appropriations Ordinance

127. Revised material, submitted by the City Manager's Office
128. Michelle Schurig
129. Carol Cho
130. Debra and David Summers
131. Greg Martin
132. Arabelle Mailinis
133. hakiah@

Item #47: Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

134. Steven Segal
135. Lisa Goodman
136. Robert Sonderegger and Joanna Moss
137. George Porter
138. Robert Sonderegger
139. Catherine Lazio

Item #48: Ratification of Police Accountability Board's Standing Rules

140. Supplemental material, submitted by the Mayor

Miscellaneous

141. Presentation on Homeless Response Team, submitted by the City Manager

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

SUPPLEMENTAL
AGENDA MATERIAL

For Supplemental Packet 2

Meeting Date: **December 14, 2021**

Item Number: **35**

Item Description: **Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley Green New Deal**

Submitted by: **Councilmember Taplin**

Amendment would make the following additions to the referral:

- Change in title
- Addition of recommendations for future Just Transition policies
- Formatting changes



BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
December 14, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author), Councilmember Ben Bartlett, Councilmember Sophie Hahn, and Mayor Jesse Arreguín (Co-Sponsors)

Subject: Resolution Committing the City of Berkeley to a Just Transition from Fossil Fuels and the Creation of a West Berkeley Green New Deal~~Commit the City of Berkeley to a Just Transition from the Fossil Fuel Economy~~

RECOMMENDATION

Adopt a resolution committing the City of Berkeley to a Just Transition from the fossil fuel economy and establishing a West Berkeley Green New Deal~~,~~ that secures a livable future for all Berkeleyans, combats environmental racism, ensures access to good paying jobs, and cultivates economic and social prosperity for Berkeley in the 21st century and beyond.

POLICY COMMITTEE RECOMMENDATION

On June 2, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee took the following action: M/S/C (Harrison/Robinson) to send the item to Council with a positive recommendation as submitted in the supplemental material and further revised to include a recommendation that all Council reports related to climate include a just transition section.

BACKGROUND

Climate Change is Here

At this moment, our atmosphere has a higher concentration of carbon dioxide than ever before in human history. This concentration, and the fossil fuel emissions that have caused it, is rapidly making our planet into a hotter and more volatile place for all of its inhabitants. Estimates of the degree of warming that we can expect over the course of the next century vary and are contingent on how policymakers respond to the growing threat in the next decade. Still, there is enormous consensus that a certain amount of warming is inevitable and that rising sea levels, higher frequency of extreme weather events, declining public health, and economic volatility will certainly follow. With estimates ranging from increases in temperature between 1.4 and 5.8 degrees Celsius

by 2100, global warming will have severe impacts at even the most modest of estimates.[1]

Here in the Bay Area, we are already seeing a wide range of impacts including more extreme El Niño seasons some years, dramatic droughts in other years, a decline in coastal fog, 8 inches of sea-level rise, and more intense fire seasons in the rest of the state which have regularly brought smoke and ash to Berkeley.[2] Just this year, Berkeley's Echo Lake Camp near Lake Tahoe narrowly escaped the ravaging impacts of the Caldor Fire that burned 221,775 acres in the Lake Tahoe area. This year also marked the 30th anniversary of the Oakland firestorm of 1991, which took 25 lives and remains a dark memory for many who have lived in the East Bay their whole lives. Even though the Berkeley hills have avoided cataclysmic events in recent years, the Oakland firestorm reminds us of the real dangers in our backyard. These effects, which are already impossible to ignore, are just the beginning. The future will bring deeper and longer droughts, unreliable precipitation, an overall increase in temperature, and as much as 3 meters of sea-level rise by 2100.[3] On top of the weather and climate-related impacts, projections paint a grim picture for national economies under extreme warming scenarios. The reach of global warming will leave no stone unturned, with consequences for agriculture, trade, and industry internationally and at the national and local levels. At the national level, estimates currently project -0.1 to 1.7% GDP loss at 1.5 degrees Celsius of warming, 1.5 to 5.6% loss at 4 degrees, and 6.4 to 15.7% loss at 8 degrees.[4] All who call Berkeley and the Bay Area home are feeling the early impacts of climate change and will continue to be affected as warming intensifies, but not all effects are felt equally across demographic groups.

Unequal Impacts: Environmental Racism and Economic Dangers

Poor Americans and people of color have always had a relationship with their environments characterized by poor health and unique exposures to environmental hazards and extreme weather conditions, often in ways designed and perpetuated by government policies that seek to segregate and discriminate against people of color. As the effects of climate change intensify in the coming decades, this relationship will only be exacerbated as extreme weather, declining public health, and economic devastation disproportionately harm poor Americans and drag more and more into poverty. As the economy takes on damage, the unemployment rate will rise and bring the poverty rate

[1] https://www.nature.com/articles/nature04188

[2] https://www.energy.ca.gov/sites/default/files/2019-11/Reg_Report-SUM-CCCA4-2018-005_SanFranciscoBayArea_ADA.pdf

[3] https://www.energy.ca.gov/sites/default/files/2019-11/Reg_Report-SUM-CCCA4-2018-005_SanFranciscoBayArea_ADA.pdf

[4] https://science.sciencemag.org/content/356/6345/1362

up with it.[5] Economic damage at the scale of climate change will subject millions more to the poor health, extreme weather vulnerabilities, and general ruin that is all but guaranteed for those who enter the coming decades already in impoverished conditions.

Climate justice is inextricably linked to racial justice and housing justice. To illustrate just one facet of this, Hoffman et al (2020) find that "94% of 108 urban regions in the United States display consistent city-scale patterns of elevated land surface temperatures in formerly redlined areas relative to their non-redlined neighbors by as much as 7 degrees Celsius...Nationally, land surface temperatures in redlined areas are approximately 2.6 degrees Celsius warmer than in non-redlined areas."[6] As heat waves intensify, low income neighborhoods and communities of color subjected to legacies of racial segregation will bear the worst impacts due to well-documented disparities of urban heat island effects. Surveying neighborhoods in Baltimore, Dallas, and Kansas City, Wilson (2020) also finds: "Areas of these cities that were targeted for systematic disinvestment in the past have higher mean land surface temperatures than those that received more favorable ratings. Poor and minority residents are also overrepresented in formerly redlined areas in each of the three study cities."[7]

The disparate impacts of extreme weather between racial and economic groups have been repeatedly demonstrated in recent history, with dire warnings for Berkeley's approach to climate resilience. In the summer of 1995, a year when global temperatures had already increased by nearly half a degree Celsius above pre-industrial levels, Chicago, Illinois was hit by a record-breaking heat wave.[8] "Temperatures reached 106 degrees; the heat index, or experienced heat, climbed to 120 degrees; uncommonly 'high lows' (daily low temperatures that were themselves dangerously high), sparse cloud cover, and a dearth of cooling winds kept the city broiling, without relief, for a full week"[9]. After a week of intense heat, "medical examiners confirmed that over five-hundred Chicagoans had died directly from the heat, public health workers reported over seven-hundred deaths in excess of the weekly average, and hospitals registered thousands of visits for weather-related problems"[10]. The entire Chicago area felt the 1995 heat wave, but the effects of this extreme weather event were not leveled evenly across the entire area of the event. It was reported very quickly during and after the event that the victims of the heat wave were mostly elderly, poor, and Black[11]. The more

[5] https://www.aeaweb.org/articles?id=10.1257/089533006776526102
[6] Hoffman, J. S., Shandas, V., & Pendleton, N. (2020). The effects of historical housing policies on resident exposure to intra-urban heat: a study of 108 US urban areas. Climate, 8(1), 12.
[7] Wilson, B. (2020). Urban heat management and the legacy of redlining. Journal of the American Planning Association, 86(4), 443-457.
[8] https://link.springer.com/article/10.1023/A:1006995507723
[9] https://link.springer.com/article/10.1023/A:1006995507723
[10] https://link.springer.com/article/10.1023/A:1006995507723
[11] https://journals.sagepub.com/doi/abs/10.1177/000312240607100407?

fragile health of the elderly makes the raised vulnerability of older residents of Chicago less of a surprise, but the disproportionately poor and Black victimhood during this disaster further demonstrates the incredible exposure these groups have during extreme weather events.

The unequal effects of the 1995 heat wave in Chicago were neither wholly natural nor apolitical despite occurring in the early years of global climate change. The disproportionate victimhood of poor people of color in this case occurred as a result of political decisions. On top of the financial conditions that limit healthcare access and quality air-conditioning in the homes of the groups that ended up most vulnerable to the heat wave, the Chicago and Illinois government also acted in ways that led to an excess of deaths among elderly, poor, and Black residents during the heat crisis. The Chicago Police Department's own senior assistance unit was neglected to be activated at all and the Department of Human Services failed to contact isolated seniors or transport them to any of the few public cooling centers that the city erected.[12] State and local governments have demonstrated both a lack of preparedness for extreme weather events and a bias against poor people and people of color in the few preparation policies they do have. Governments can learn from their mistakes, but they must do so in a way that moves faster than escalating global warming. The impacts of environmental racism and the unique relationship between poverty and ecological hazards has continued to this day and will continue under more and more extreme climate change. Chicago's 1995 heat wave is just one example among many demonstrating the ways in which climate change has already begun to exacerbate poverty and racism in the United States.

Beyond the unique vulnerability of people of color and the poor to climate change, the deeply embedded nature of fossil fuels in our economy means that the jobs of many in Berkeley are dependent on carbon-emitting industries. While Berkeley may not be home to any coal mines, oil refineries, or other industries widely associated with climate change, Berkeley's economy is no less reliant on fossil fuel extraction and combustion. Transitioning off of fossil fuels will inevitably mean existing jobs and businesses will have to radically change or cease to exist at all. Berkeley's transition must take into account the economic consequences of all of its climate initiatives, not to stifle what the City must do to curb climate change, but to ensure that the workers most proximate to those economic consequences are supported as we rework our economy for a carbon neutral world. The transition off of fossil fuels can ignore the economic realities of the dramatic changes that are necessary to fight warming no more than it can ignore the unequal threat that climate change poses to the poor and people of color.

[12] https://link.springer.com/article/10.1023/A:1006995507723

On a broader scale, studies indicate that a national transition to a 100%-renewable energy sector would likely result in the loss of around 3.9 million jobs while creating 5.9 million jobs.[13] Exact job loss and gain forecasts in Berkeley are unknown, but it stands to reason that the job impacts will be comparable to the national figures if the transition is done proactively. The net gain in employment opportunities from the fossil fuel transition provides an optimistic vision for the transition, but does not mean that the road to net-zero will be easy. Not every lost job will be immediately accompanied by the creation of a new job, nor is it guaranteed that those who lose their job will automatically be offered employment in newly created industries or that those new jobs will offer the same wages and benefits as the jobs that are lost. Governments, including the City of Berkeley, must play an active role in ensuring that their transitions provide a net-gain in quality, good-paying jobs and that those who lose their job to the transition are prioritized for newly created jobs. Job losses are not a reason not to transition off of fossil fuels. To secure a prosperous future and save millions of lives, the transition must continue at an aggressive pace. Reckoning with future job losses, however, will help ensure that those losses are overshadowed by the benefits of the transition and that an ample supply of new jobs are available for all.

Governments have a small window that they can and should take advantage of to justly transition their economies, industries, and infrastructures to net-zero carbon emissions. This is the bare minimum, and will only stop the most extreme levels of climate change towards the end of this century. A properly planned and justly executed transition should stand to be an economic opportunity for Berkeley rather than an economic downturn. Berkeley must recognize what is coming, and the unique vulnerabilities of people of color and the poor, and enact policies to mitigate damages to these communities from warming and the transition to carbon neutrality.

The Green New Deal

Congresswoman Alexandria Ocasio-Cortez's House Resolution recognizing the duty of the federal government to create a Green New Deal calls for a fair and just transition for all communities and workers to achieve net-zero greenhouse gas emissions and the creation of millions of high-wage union jobs to ensure prosperity and economic opportunity.[14] It also calls for investments in infrastructure and 21st century industry to secure resilience for generations to come, the spurring of massive growth in clean manufacturing, and the remediation of hazardous and abandoned sites to ensure economic development and sustainability on said sites.

[13] http://web.stanford.edu/group/efmh/jacobson/Articles/I/USStatesWWS.pdf
[14] https://www.congress.gov/bill/116th-congress/house-resolution/109/text

The success of the Green New Deal hinges on the Just Transition and close partnership and consultation with front line and vulnerable communities, indigenous peoples, labor unions, worker cooperatives, business leaders, academia, civil society groups, and climate justice activists to prevent further harm to vulnerable and frontline communities, curtail the reliance of persons in our communities on the benefits of fossil fuel jobs, and mobilize the Green New Deal at the Local Level.

Here in Berkeley we are well positioned to model a Just Transition towards a regenerative green economy. The West Berkeley Plan has been the foundation for the City's industrial land use and economic development policies. West Berkeley has long been a major center for jobs and remains an economic driver in the region. However, due to the history of redlining and environmental racism, adverse health impacts of proximity to I-80 and polluting industries have disproportionately impacted the low income and families of color who have called this part of the city home. Sites such as Pacific Steel have shut down, taking their jobs with them and leaving behind acres of contaminated soil and health disparities in their wake.

When the West Berkeley Plan was created, numerous stakeholders including the faith community, environmentalists, labor leaders, neighborhood organizations, business leaders and more came together to articulate a collective vision to guide the future of growth. The time has come for us to return to this work under the guiding principles of equity, sustainability, and climate justice in the pursuit of a Green New Deal for West Berkeley.

What is a Just Transition?

At varying levels, the consumption of fossil fuels is immersed in every aspect of daily life in modern society. Shifting our entire way of life towards carbon-neutrality will require significantly more than changing our energy sources to renewables. The truly comprehensive embeddedness of fossil fuels in our lives means that achieving net-zero fossil fuel emissions within just a few decades will be difficult, but not necessarily equally difficult for everyone.

Due to historic discrimination, impoverishment, and proximity to environmental hazards, people of color and poor people are disproportionately vulnerable to the impacts of climate change. In rebuilding our economy, policymakers at every level must be intentional in ensuring that the fossil-free economy of the future does not reproduce the same inequities and societal harms of today. There are wrong ways to fight the climate crisis. Governments can achieve net-zero emissions in such a way that enriches those who profited off of fossil fuel extraction and consumption and protects the already well-

off from warming while abandoning the historically disadvantaged to the ravages of extreme weather and economic chaos. The transition away from fossil fuels must ensure that the vulnerable in our society are protected from both the turbulence of restructuring our entire economy and the effects of global warming that are already set in stone. “After centuries of global plunder, the profit-driven industrial economy rooted in patriarchy and white supremacy is severely undermining the life support systems of the planet. Transition is inevitable. Justice is not.”[15] The environmental justice movement calls this approach to the climate crisis a “Just Transition.”

The Climate Justice Alliance, a climate organization at the forefront of the fight for a Just Transition, lays out the following Just Transition principles:

A Just Transition moves us toward Buen Vivir

Buen Vivir means that we can live well without living better at the expense of others. Workers, community residents, women and Indigenous Peoples around the world have a fundamental human right to clean, healthy and adequate air, water, land, food, education and shelter. We must have just relationships with each other and with the natural world, of which we are a part. The rights of peoples, communities and nature must supersede the rights of the individual.

A Just Transition creates Meaningful Work

A Just Transition centers on the development of human potential, creating opportunities for people to learn, grow, and develop to their full capacities and interests. We are all born leaders, and a regenerative economy supports and nurtures that leadership. In the process, we are transforming ourselves, each other, our communities, and our society as a whole. Meaningful work is life-affirming.

A Just Transition upholds Self Determination

All peoples have the right to participate in decisions that impact their lives. This requires democratic governance in our communities, including our workplaces. Communities must have the power to shape their economies, as producers, as consumers, and in our relationships with each other. Not only do we have the right to self determination, but self determination is one of our greatest tools to realize the world we need. The people who are most affected by the extractive economy — the frontline workers and the fenceline communities — have the resilience and expertise to be in the leadership of crafting solutions.

A Just Transition equitably redistributes Resources and Power

We must work to build new systems that are good for all people, and not just a few. Just Transition must actively work against and transform current and historic social inequities based on race, class, gender, immigrant status and other forms of oppression. Just Transition fights to reclaim capital and resources for the regeneration of geographies and sectors of the economy where these inequities are most pervasive.

[15] https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf

A Just Transition requires Regenerative Ecological Economics

Just Transition must advance ecological resilience, reduce resource consumption, restore biodiversity and traditional ways of life, and undermine extractive economies, including capitalism, that erode the ecological basis of our collective well-being. This requires a re-localization and democratization of primary production and consumption by building up local food systems, local clean energy, and smallscale production that are sustainable economically and ecologically. This also means producing to live well without living better at the expense of others.

A Just Transition retains Culture and Tradition

Capitalism has forced many communities to sacrifice culture and tradition for economic survival. It has also defaced and destroyed land held as sacred. Just Transition must create inclusionary spaces for all traditions and cultures, recognizing them as integral to a healthy and vibrant economy. It should also make reparations for land that has been stolen and/or destroyed by capitalism, colonialism, patriarchy, genocide and slavery.

A Just Transition embodies Local, Regional, National and International Solidarity

A Just Transition must be liberatory and transformative. The impacts of the extractive economy knows no borders. We recognize the interconnectedness of our communities as well as our issues. Therefore, our solutions call for local, regional, national and global solidarity that confronts imperialism and militarism.

A Just Transition builds What We Need Now

We must build the world we need now. This may begin at a local small scale, and must expand to begin to displace extractive practices. We must build and flex the muscles needed to meet our communities' needs.[16]

Embarking on a Just Transition would make Berkeley a leader on climate action done right, but existing Just Transition examples from around the world can provide much guidance. In Poland, a 75% decline in coal mining jobs was coupled by a mining social package and special privileges for mining communes. Canada's efforts to phase out coal-powered electricity have been accompanied by a national stakeholder task force that has travelled the country to hear from Canadians on how to justly shepherd the transition. Egypt's fuel price increases were paired with minimum wage boosts, food stipends, and progressive taxation.[17]

Climate Action Plan and Policies to Date

In 2006, Berkeley voters issued a call to action on the climate change challenge by overwhelmingly endorsing ballot Measure G: Reduce our entire community's greenhouse gas emissions by 80% below 2000 levels by 2050. The Berkeley Climate Action Plan was written through a community-wide process and was adopted by City Council on June 2, 2009.

[16] https://climatejusticealliance.org/wp-content/uploads/2018/06/CJA_JustTransition_Principles_final_hi-rez.pdf
[17] https://www.iisd.org/articles/just-transition-examples

On June 12, 2018, City Council adopted a resolution[18] establishing the goal of becoming a Fossil Fuel-Free city. On June 12, 2018, City Council adopted a Climate Emergency Declaration.[19] On May 11, 2021, City Council adopted a resolution to commit to the C40 Race to Zero Campaign, including a commitment to reaching net-zero emissions in 2045 or sooner.

CALeVIP

East Bay Community Energy (EBCE) is making electric vehicle charging more accessible in Alameda County through a partnership with the California Electric Vehicle Infrastructure Project (CALeVIP). Funded by the California Energy Commission and implemented by the Center for Sustainable Energy (CSE), the project promotes access to electric vehicle (EV) charging infrastructure by providing rebates for Level 2 (L2) and DC Fast Chargers (DCFC) for businesses and property owners, with additional rebates available for disadvantaged and low-income communities.[20]

West Berkeley Plan

Adopted in 1993, the West Berkeley Plan establishes land use patterns and aspirational policy goals for Berkeley's industrial job center and surrounding residential areas. Given its concentration of manufacturing and Research & Development, updating this plan will be central to meeting Berkeley's climate action goals.

Using granular data from the 1980 census, the West Berkeley Plan reported that employees in this area were 30% more likely to drive alone to work than in other parts of the city. Reducing single-occupancy automobile trips, encouraging workforce housing closer to jobs and promoting more public transit use has been central to the Plan's goals for decades, but several policies outlined in the Plan were either not adopted or are anachronistic given current policies.

The Plan correctly notes that the larger share of workers who do not live in the community will result in increased traffic congestion. Pursuant to SB 743, the state now mandates that California jurisdictions can no longer use automobile delay – commonly measured by Level of Service (LOS) – in transportation analysis under the California Environmental Quality Act (CEQA). The State has issued guidelines calling for the use

[18] https://www.cityofberkeley.info/Clerk/City_Council/2018/06_June/Documents/06-12_Annotated_Agenda.aspx

[19] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.cityofberkeley.info%2FuploadedFiles%2FCouncil_2%2FLevel_3_-_General%2FClimate%2520Emergency%2520Declaration%2520-%2520Adopted%252012%2520June%25202018%2520-%2520BCC.pdf&clen=424348

[20] https://ebce.org/drive-electric-business/

of a broader measure called Vehicle Miles Traveled (VMT), which measures the total amount of driving over a given area. These changes became mandatory on July 1, 2020.

The West Berkeley Plan's transportation section[21] is outdated in its use of LOS, but it does caution that "LOS is a moving target" because "drivers are continually seeking uncongested routes."

Indeed, the Plan was prescient in calling for a VMT reduction in its policy goals. Policy 1.1 of the transportation section states: "Seek trip reduction--reduction of single occupant automobile trips--through a variety of education and regulatory efforts including implementation of a City of Berkeley Trip Reduction Ordinance, cooperation with the Air Quality Management District's transportation control measures, conditions on development and other mechanisms." While a Trip Reduction Ordinance does not exist, SB 743 now makes VMT reduction one of the default "conditions on development" for certification of Environmental Impact Reports.

The City Council has recently adopted policies that are consistent with the West Berkeley Plan's policy goals. Policy 5.1 states: "Adopt and implement a revised Truck Route Ordinance." On October 12, 2021, the City Council adopted an Ordinance "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."[22]

By committing to a Green New Deal framework, the City can establish climate justice and equity parameters for future revisions of the West Berkeley Plan.

Potential policy directives for a Just Transition

Policies aimed at resource redistribution and infrastructure investment to eliminate carbon emissions should be calibrated to maximize carbon reduction for funds allocated to support a Just Transition.

Reducing car use

According to the Climate Action Plan 2020 Update staff report, Berkeley has made significant progress in reducing greenhouse gas emissions since 2000, but more progress is needed: "The residential sector decreased electricity usage by 20% and natural gas usage by 26%, and the commercial and industrial sectors decreased electricity usage by 32% and natural gas usage by 2%...Transportation accounts for

[21] https://www.cityofberkeley.info/Planning_and_Development/Home/West_Berkeley_-_Transportation.aspx

[22] https://www.cityofberkeley.info/Clerk/City_Council/2021/10_Oct/Documents/2021-10-12_Item_02_Amending_BMC_Section_14_56_070.aspx

59% of Berkeley's total 2018 GHG inventory. This is the largest sector of GHG emissions and the most challenging to tackle."[23]

Electrifying the car and truck fleet is critical to reducing emissions, but even with aggressive vehicle electrification, we will not come close to meeting the 2045 net-zero goal. Changing out our entire vehicle fleet will take decades. Auto manufacturers are not even planning on having full electric lines until 2035[24] and the most aggressive state and federal plans are on similar timetables[25]. The vast majority of the vehicles on the road will be gas powered far beyond 2030.[26] Additionally, electric cars and trucks continue to produce particulate emissions, deteriorate our already vulnerable roads, lead to congestion, and critically, injure and kill Berkeley residents just as frequently as gas powered vehicles do. Only by reducing car use, regardless of fuel source, can Berkeley meet its many goals of becoming a safer and healthier city.

Berkeley can help its residents reduce their dependence on car trips through a three pronged approach of

- a) building infill housing to reduce distances that residents need to travel to meet their needs,
- b) building a network of pedestrian and micromobility infrastructure throughout the city with safe bike lanes and crossings and secure storage in neighborhoods and destinations and
- c) affordable access to e-bikes and other microbility technology options.

Infill housing: Because urban core areas such as Berkeley present major opportunities for households to meet their needs with fewer Vehicle Miles Traveled (VMT), Wheeler et al (2018) find that infill housing is the most effective policy tool our local government has to reduce emissions: "Low carbon footprint cities that make housing available at all income levels help share the burden of meeting housing demand, while lessening the impact on the climate across the population…Mixed income urban core cities (e.g., Berkeley) hold the most potential for urban infill, with statewide GHG benefits."[27]

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[23] https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx

[24] For example, General Motors Sets All-Electric Target For Vehicles By 2035, NPR, February 1, 2021 https://www.npr.org/2021/02/01/962946561/general-motors-sets-all-electric-target-for-vehicles-by-2035

[25] California to phase out sales of new gas-powered cars by 2035, Washington Post, Sept 23, 2020 https://www.washingtonpost.com/climate-environment/2020/09/23/california-electric-cars/

[26] Even if we do succeed in stopping selling all gas powered cars by 2035, our transportation sector will not reach zero emissions until at least 2050. Electric Cars Are Coming. How Long Until They Rule the Road? New York Times, March 10, 2021 https://www.nytimes.com/interactive/2021/03/10/climate/electric-vehicle-fleet-turnover.html

[27] Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. Urban Planning, 3(2), 35-51.

The California Air Resources Board (CARB) has reported: "Even if the share of new car sales that are ZEVs grows nearly 10-fold from today, California would still need to reduce VMT per capita 25 percent to achieve the necessary reductions for 2030"[28] to meet state emissions targets pursuant to Senate Bill 375.

Reducing VMT per capita even beyond the minimum that CARB recommends will require a holistic policy approach to reduce the marginal cost of modal shifts from single-occupancy vehicles to cycling, walking, and public transit.

A network of safe active transportation infrastructure: The potential benefits of Berkeley's urban core area and additional infill housing for reduced VMT can not be realized if people do not feel they can safely get to their destinations outside of a car. The vast majority of Berkeley residents (71%) are interested in using bicycles but are concerned that the infrastructure does not currently feel safe enough[29]. Secure storage is also needed in neighborhoods and at destinations for bikes, e-bikes and other micromobility devices. Creating walking, bicycling, and other micromobility infrastructure that both feels safe and easily links all residential areas with schools, retail, and workplaces, and accompanying these efforts with secure storage throughout the city, can facilitate major shifts in VMT.

Affordable micromobility: E-bikes - and to some extent other micromobility modes - overcome many of the challenges people have with traditional bicycles. E-bikes are great at climbing hills, beating headwinds, hauling kids & loads and tackling long commutes all with no sweat (unless you want it). Plus e-bike riders feel safer navigating traffic with the extra acceleration power. They do all this at significant savings over electric cars. E-bikes get 1000 to 4000 MPGe and are 20 times more efficient than electric cars - meaning they can go twenty times farther than an electric car for the same charging electricity carbon emissions.[30] The manufacture of an e-bike takes at least an order of magnitude less embodied energy and carbon. With all that they offer, e-bikes are a bargain compared to cars, with prices ranging from $1,000 to $5,000 for a good cargo e-bike. Nevertheless, this investment remains out of reach for many low and some middle income residents. Targeted subsidies can unlock this potential while helping make up for historical lack of mobility access.

Support home electrification retrofits

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[28] https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf

[29] Page 11: https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf

[30] E-Bike 1000 MPG Study-Results, https://sites.google.com/view/ebikestudy/results, E-Bike 1000 MPG Project

On November 3, 2021 the Budget & Finance Policy Committee passed a qualified positive recommendation to the full council for a Budget Referral and Resolution Establishing a Pilot Existing Building Electrification Installation Incentives and Just Transition Program with Pre-Qualified Contractors Meeting Minimum Labor Standards to Assist New Property Owners, Renters and Existing Property Owners with Transition to Zero-Carbon Buildings.[31]

In the realm of mitigating climate change, the retrofitting of residential buildings for electrification and enhanced energy efficiency is a necessary – and expensive – component of any transition towards a sustainable Berkeley. Estimates suggest that all-electric single-family homes can "reduce annual GHG emissions by 33 - 56% in 2020 and by 76 – 88% in 2050 compared to a natural gas-fueled home."[32] Residential emissions can also be reduced through the densification of our community and a long-term shift away from single-family homes as a primary form of living, but Berkeley's existing stock of single-family homes isn't just going to go away.[33] Retrofitting and electrifying our existing housing stock is important, but is too expensive a lift for the City to expect or require all homeowners to go about alone.[34] A Just Transition in building electrification would involve the City dedicating its own resources as well as engaging the state and federal governments to fund retrofits and support residential homeowners through the process of electrifying their homes, particularly low- and middle-income households.

Advance equitable mobility access

Berkeley's Electric Mobility Roadmap appropriately identifies improved infrastructure safety and connectivity and support for access to e-bikes and other micromobility as key to addressing Berkeley's transportation emissions. From recreational bike paths to electric car and truck subsidies, this country's efforts to reduce transportation emissions have too often focused on supporting wealthier communities and consumers. Berkeley can both improve cost effectiveness and address historical inequities by prioritizing safe connectivity and secure bike parking for under-resourced communities as it accelerates implementation and expansion of its pedestrian and bicycle plans and by targeting its efforts to subsidize access to e-bikes and other micromobility on low income residents.

Strengthen worker protections

While Berkeley has been at the forefront of guaranteeing a generous minimum wage, any Just Transition must ensure that all workers in Berkeley earn a living wage into the future as the global economy is shaken by the impacts of climate change. On top of the direct economic impacts of climate change, the ongoing shift in employment

[31] https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-30_Item_21_Budget_Referral_and_Resolution_Establishing_a_Pilot_Existing_Building.aspx

[32] https://www.ethree.com/wp-content/uploads/2019/04/E3_Residential_Building_Electrification_in_California_April_2019.pdf

[33] https://www.pnas.org/content/117/32/19122

[34] https://www.nahb.org/-/media/NAHB/nahb-community/docs/committees/construction-codes-and-standards-committee/home-innovation-electrification-report-2021.pdf?_ga=2.114118479.990433442.1620163394-283412800.1620163394

opportunities toward gig-based and contractor work that does not always guarantee a living wage and good benefits presents a threat to the livelihoods of workers in Berkeley and elsewhere. On a warming planet with rapidly intensifying weather conditions, access to food, shelter, and quality healthcare will be more important – and more precarious – than ever before. Local and state policies, such as ensuring that minimum wage laws apply to app-based contract work[35], will go a long way in a warming-afflicted future towards shoring up the health and economic stability of workers. Additionally, Berkeley's Living Wage Ordinance, which ensures "that businesses in a contractual relationship with the City pay their employees a wage that can support a family at, or above, the poverty level"[36], is an important labor policy that can be upheld and even strengthened as economic stresses require more support for employees on the part of employers. Beyond the active role that Berkeley's City government must play in ensuring a Just Transition, workers themselves need to be empowered to ensure that the sweeping economic changes of the transition to a sustainable economy does not leave them behind. Berkeley must, at every turn, protect the rights of workers to organize and bargain collectively and support the efforts of workers in the private-sector to assert their rights in every instance possible.

Develop just and climate sensitive smart growth policies

There is a wealth of potential policies in academic literature and real-world examples that the City Council can draw upon in enacting a Just Transition for Berkeley. "Smart growth" strategies offer effective and just climate mitigation and adaptation policies that Berkeley can draw upon to effectively manage its transition off of fossil fuels and foster economic opportunities for the City. These include planning for a denser city, preserving green spaces, discouraging new construction in areas at risk of extreme weather conditions such as wildfires, upgrading stormwater systems, and generally encouraging energy efficient land use patterns.[37]

Areas of the city that are zoned for lower densities and single-family residential contribute disproportionately to carbon emissions from automobile travel. The City's upcoming Housing Element will have to align with its Climate Action Plan and pursue decarbonization of transportation by permitting density in formerly single-family neighborhoods such that increased transit access, micromobility, and pedestrian safety infrastructure can reduce Vehicle Miles Traveled. Moreover, the City will need to reallocate subsidies for private automobile travel, such as free or underpriced parking and road space, and dedicate these resources to housing and infrastructure that enables VMT reduction.

Identifying new local revenue streams for zero-carbon transport

Most carbon pollution in Berkeley comes from cars, both those driven by city residents and by the commuters who come to the city for work or school. In many cases, the city

[35] https://cities-today.com/seattle-passes-minimum-wage-for-rideshare-drivers/

[36] https://www.cityofberkeley.info/Finance/Home/Vendors__Living_Wage_Ordinance.aspx#:~:text=Effective%20July%201%2C%202021%2C%20the,of%20not%20less%20than%20%2419.67.

[37] https://www.epa.gov/smartgrowth/smart-growth-and-climate-change#:~:text=Smart%20growth%20policies%20contribute%20to,effects%20of%20a%20changing%20climate.

incentivizes driving by subsidizing its cost. Free or below-cost parking in retail/commercial and residential zones, streets that omit higher-throughput bus and bike lanes, and mandates for parking in new developments are all a form of subsidy for driving. Both the California Department of Transportation (Caltrans)[38] and California Air Resources Board (CARB) have found that parking pricing strategies have the potential to reduce VMT and encourage a modal shift that reduces greenhouse gas emissions.[39]

According to UCLA parking scholar Donald Shoup, motorists searching for underpriced or free parking rather than paying demand-based parking prices in a parking garage can increase the average VMT of a local trip by as much as 0.5 miles per trip[40], or 5 additional miles per day per curb space.[41] Collecting parking fees based on fair market value can reduce the overcrowding of parking spaces, increase parking availability, and increase funding for public services.[42] According to the US Department of Transportation[43], over 59% of automobile trips were six miles or less, and three-fourths of trips by any mode were less than ten miles, suggesting a major potential for emissions reductions by shifting transportation modes for short trips away from private automobiles. Shoup's research has also found that market-priced curb parking can yield 5-8% of a city's total land rent.[44]

Berkeley can equitably address these subsidies by enacting fees, phased in over time, that charge the cost to the city and its residents of building and maintaining car infrastructure, including the "hidden" costs of pollution, public health impacts, and traffic-related violence. Since lower-income households will have less ability to pay these fees, the city could determine a methodology to phase-in fees by household income and car registration, and use the revenues to provide lower-cost mobility subsidies to lower-income households.

These fees must be coupled with transportation policy reforms that prioritize bus lanes, bike lanes, and "safe routes to school" on streets owned and maintained by the city. By re-allocating public rights-of-way to zero-carbon forms of mobility, and phasing out city subsidies for driving, the city can chart a path to zeroing out its emissions from transportation.~~*Identifying new local revenue streams for zero-carbon transport*~~

---

[38] https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/preliminary-investigations/final-pricing-parking-management-to-reduce-vehicles-miles-traveled-pi-a11y.pdf

[39] https://ww2.arb.ca.gov/sites/default/files/2020-06/Impacts_of_Parking_Pricing_Based_on_a_Review_of_the_Empirical_Literature_Policy_Brief.pdf

[40] Newton, D. (2008). Professor Donald Shoup: How About Congestion Parking? Streetsblog LA. Retrieved from https://la.streetsblog.org/2008/01/12/professor-donald-shoup-how-about-congestion-parking/

[41] Shoup, D. C. (2006). Cruising for parking. Transport policy, 13(6), 479-486.

[42] Shoup, D., Yuan, Q., & Jiang, X. (2017). Charging for parking to finance public services. Journal of Planning Education and Research, 37(2), 136-149.

[43] https://www.energy.gov/eere/vehicles/articles/fotw-1042-august-13-2018-2017-nearly-60-all-vehicle-trips-were-less-six-miles

[44] Shoup, D. C. (2004). The ideal source of local public revenue. Regional Science and Urban Economics, 34(6), 753-784.

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[46] https://ww2.arb.ca.gov/sites/default/files/2020-06/Impacts_of_Parking_Pricing_Based_on_a_Review_of_the_Empirical_Literature_Policy_Brief.pdf

[47] Newton, D. (2008). Professor Donald Shoup: How About Congestion Parking? Streetsblog LA. Retrieved from https://la.streetsblog.org/2008/01/12/professor-donald-shoup-how-about-congestion-parking/

[48] Shoup, D. C. (2006). Cruising for parking. Transport policy, 13(6), 479-486.

[49] Shoup, D., Yuan, Q., & Jiang, X. (2017). Charging for parking to finance public services. Journal of Planning Education and Research, 37(2), 136-149.

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[51] Shoup, D. C. (2004). The ideal source of local public revenue. Regional Science and Urban Economics, 34(6), 753-784.

~~subsidies for driving, the city can chart a path to zeroing out its emissions from transportation.~~
~~Whether branded as a Just Transition or not, Berkeley can draw plenty of inspiration from around the world in its efforts to ensure that workers, people of color, and the poor are elevated and protected in our fight against climate change, rather than left behind.~~

RATIONALE FOR RECOMMENDATION
In 2006, Berkeley residents voted in favor of Measure G, which committed the City of Berkeley to reduce its emissions by 80% below 2000 levels by 2050. The City Council, staff, and the community subsequently worked in tandem to develop the Berkeley Climate Action Plan, which lays out the City's path to achieving the stated goal on Measure G.[52] In 2018, the City Council voted to declare a Climate Emergency citing an "existential Climate Emergency that threatens our city, state, nation, civilization, humanity, and the natural world."[53] Both the establishment of the Berkeley Climate Action Plan and the declaration of a Climate Emergency put the City leagues ahead of other cities, states, and even the country on initiating climate action, but we're still nowhere near enough.

At the state level, California's environmental efforts place it well ahead of most other states. Even California's efforts, however, are insufficient at best and ineffective at reducing emissions at worst.[54] The City of Berkeley must lead the state and the country both in aggressive and ambitious climate legislation that gets us to net-zero carbon emissions as soon as possible as well as climate mitigation and adaptation efforts that overcome and reverse historic environmental racism and lessen the economic turbulence that will accompany reshaping our economy in the coming decades so that all working Berkeleyans have the right to a good job and secure future. Past and future efforts to eliminate ~~reach net-zero~~ fossil fuel emissions must be examined in an active pursuit of a Just Transition for Berkeley.

ENVIRONMENTAL IMPACTS
This proposal advances and enhances Berkeley's climate goals.

FISCAL IMPACTS
None.

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

ATTACHMENTS

[52] https://www.cityofberkeley.info/climate/
[53] https://www.cityofberkeley.info/uploadedFiles/Council_2/Level_3_-_General/Climate%20Emergency%20Declaration%20-%20Adopted%2012%20June%202018%20-%20BCC.pdf
[54] https://www.kqed.org/science/1972957/state-auditor-says-california-air-regulator-overstated-emission-reductions

1. Resolution
2. California's Fourth Climate Change Assessment: San Francisco Bay Area Region Report
3. Climate Justice Alliance: Just Transition Principles

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

COMMIT THE CITY OF BERKELEY TO A JUST TRANSITION FROM THE FOSSIL FUEL ECONOMY

WHEREAS, a national Green New Deal calls for a fair and just transition for all communities and workers to achieve net-zero greenhouse gas emissions and the creation of millions of high-wage union jobs to ensure prosperity and economic opportunity; and

WHEREAS, in Berkeley, fossil fuel-driven global warming has already caused sea level rise, droughts, extreme weather conditions, and longer and more intense fire seasons;~~,~~ and

WHEREAS, business-as-usual fossil fuel emissions will lead to major increases in temperature, more dramatic droughts, more frequent extreme weather, and up to 3 meters of sea level rise;~~,~~ and

WHEREAS, historic inequities and environmental racism leave people of color and the poor in a uniquely vulnerable position when faced with dramatic warming, economic turbulence, and extreme weather;~~,~~ and

WHEREAS, the transition off of fossil fuels will have inevitable economic consequences including the loss of jobs and industries that are reliant on fossil fuel extraction and consumption;~~,~~ and

WHEREAS, the COVID-19 pandemic has demonstrated the vulnerability of the global economy to sudden natural events and the need for proactive preparation for economic shocks; and

~~WHEREAS, the COVID-19 pandemic has demonstrated the vulnerability of the global economy to sudden natural events and the need for proactive preparation for economic shocks; and~~

~~WHEREAS, a proactively planned and equitably executed transition away from the fossil fuel economy can be an opportunity to correct historic wrongs and boost Berkeley's economy;~~, an

WHEREAS, Berkeley voters approved Measure G in 2006, calling for the City to "reduce our entire community's greenhouse gas emissions by 80% below 2000 levels by 2050," and the Berkeley Climate Action Plan was was adopted by City Council on

June 2, 2009, and the City will need to eliminate its emissions at an even more ambitious scale; and

WHEREAS, the City of Berkeley was among the founding member-jurisdictions of East Bay Community Energy (EBCE), the community choice electricity provider serving Alameda County, all of its eligible cities, and the City of Tracy in San Joaquin County; and

WHEREAS, the City of Berkeley can lead by example to equitably reduce community-wide greenhouse gas emissions by utilizing the local programs and electric service options provided by EBCE. These include, but are not limited to 1) partnering with EBCE to make its 100% renewable energy option the City-wide default for most residential and commercial electric accounts; 2) electrifying the City's buildings and municipal fleets; and 3) advancing the deployment of publicly available electric vehicle (EV) charging infrastructure; and

WHEREAS, the City of Berkeley has been a regional leader in building electrification by prohibiting natural gas lines in new residential construction and exploring building electrification subsidies for middle- and lower-income households, and

WHEREAS, transportation accounts for 59% of Berkeley's total 2018 greenhouse gas inventory and Berkeley's Electric Mobility Roadmap recognizes that active transportation - walking and bicycling, including e-bikes and other micromobility technologies - is key to reducing those emissions; and

WHEREAS, the California Air Resources Board (CARB) has reported that even with a tenfold increase in market share of new electric vehicles, "California would still need to reduce Vehicle Miles Traveled (VMT per capita) by 25 percent to achieve the necessary reductions for 2030" to meet emissions reduction targets pursuant to Senate Bill 375; and

WHEREAS, both government agencies and leading academic researchers have found that parking pricing strategies have the potential to reduce VMT per capita; and

WHEREAS, the City will need to reallocate subsidies for private automobile travel toward active transportation infrastructure and infill housing in order to achieve VMT per capita reductions needed to eliminate transportation emissions; and

WHEREAS, the City adopted the West Berkeley Plan in 1993, which calls for a "reduction of single occupant automobile trips", and

WHEREAS, a proactively planned and equitably executed transition away from the fossil fuel economy can be an opportunity to correct historic wrongs and boost Berkeley's economy; and

WHEREAS, the principles of a Just Transition offer Berkeley a path towards eliminating fossil fuel emissions that minimizes economic shock, leaves no one behind, and plants the seeds of a resilient Berkeley;

NOW THEREFORE, BE IT RESOLVED, that the City Council commits the City of Berkeley to a Just Transition to ~~net~~ zero carbon emissions that secures a livable future for all Berkeleyans, pursues a Green New Deal for West Berkeley, combats environmental racism and the unique vulnerabilities of people of color, and ensures that all Berkeleyans have access to good paying jobs and equitable living standards free from the fossil fuel economy;~~,~~

BE IT FURTHER RESOLVED, that all City Council reports with a section on Climate and Environmental Impacts include a Just Transition analysis wherein maximum potential for reducing greenhouse gas emissions while advancing equity is evaluated.

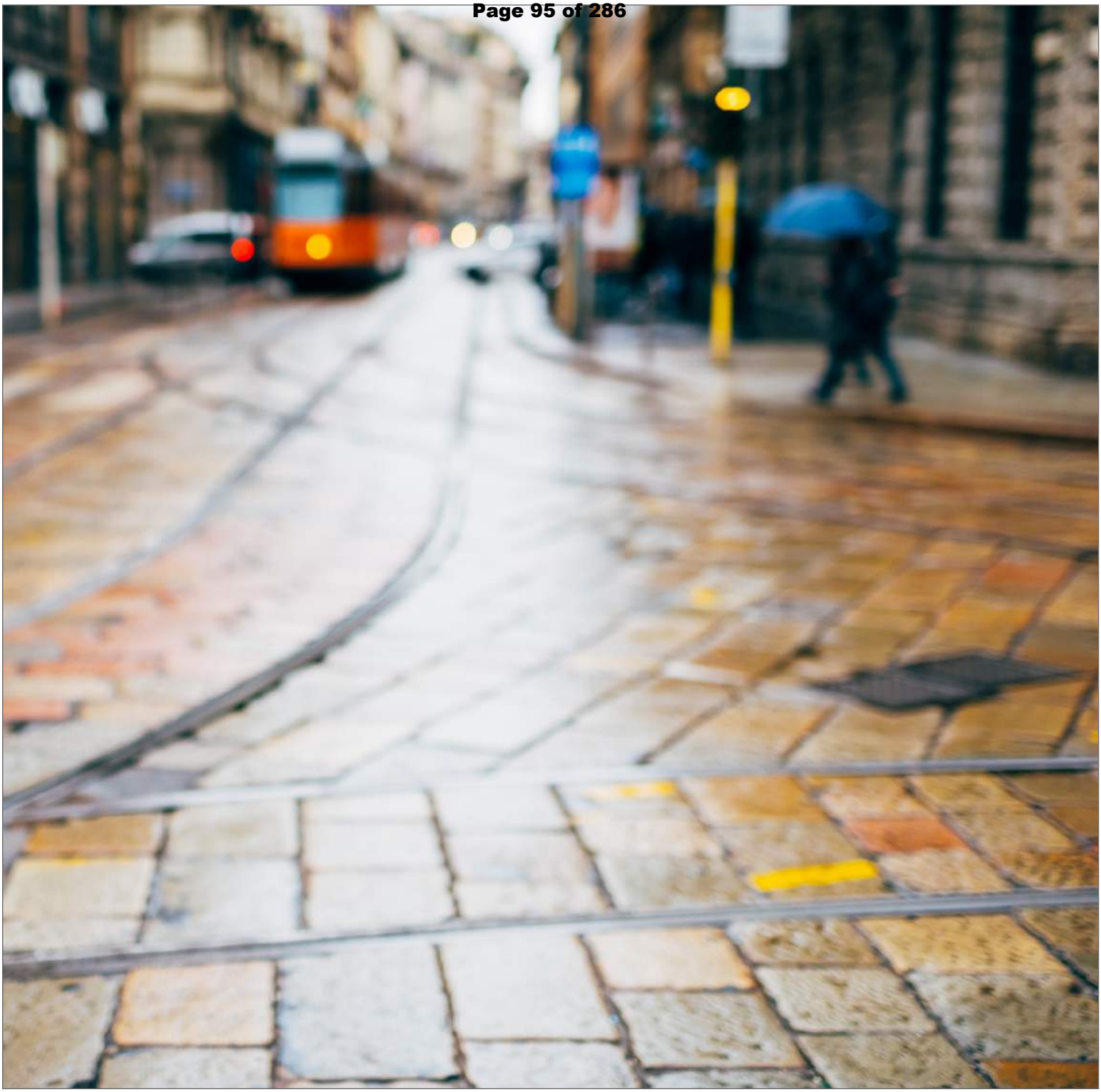
EcoDistricts

VERSION | 1.3

PROTOCOL

THE STANDARD FOR URBAN AND COMMUNITY DEVELOPMENT





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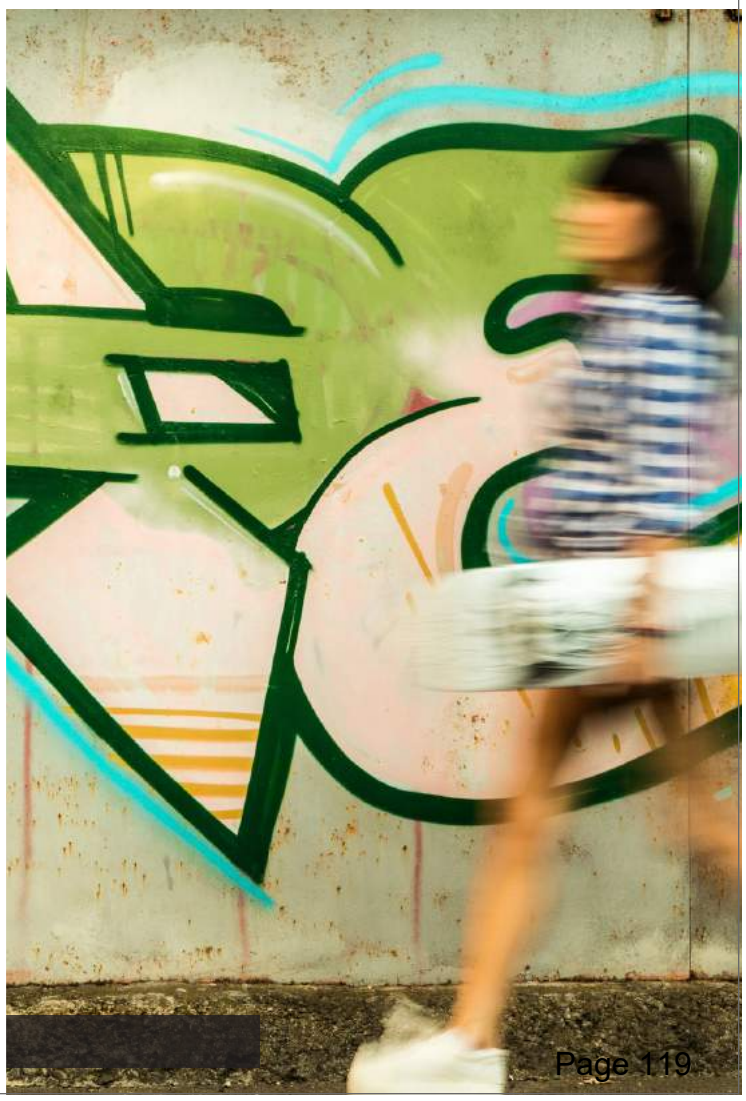
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THE CHALLENGE


EXIT
Sarabeth's

Our Cities Are Undergoing a Radical Transformation

Around the world, cities are undergoing the biggest growth of the past 100 years. More than one-half of the world's people now live in cities, a proportion expected to grow to two-thirds by 2050. To support this urbanization, trillions of dollars are flowing into communities. The number of district-scale projects is increasing at a record pace, and cities are making significant investments to build and revitalize neighborhoods, commercial districts, brownfields, as well as critical water, energy, and transportation infrastructure systems.

THE COST OF GROWTH HAS BEEN HEAVY, HITTING NEIGHBORHOODS THE HARDEST

Cities now contribute to a vast and growing equity gap — the postal code a child is born into has a bigger role in determining their future than any other single factor. Worldwide, a number of complex issues are colliding: income, education, and health disparities; blight and ecological degradation; and the growing threat of climate change.

Here is the good news — there is a growing appetite for innovation as cities seek a competitive advantage to attract talent and investment, embrace aging and historically disenfranchised populations, restore cultural integrity, enhance prosperity, and respond intelligently to a rapidly changing climate.

NEIGHBORHOODS ARE THE SOUL AND LIFEBLOOD OF THE CITY

Yes, neighborhoods sit at the heart of some of the most complex challenges facing city makers today. But they can also become the building blocks of sustainable cities. Neighborhoods provide a uniquely valuable scale to introduce and accelerate investments that can achieve profound improvements in equity, resilience, and climate protection. Neighborhoods are small enough to innovate and big enough to leverage meaningful investment and public policy.




Think
outside
the
building.


OUDEZIJDS
ACHTERBURGWAL
CENTRUM
112
STAR
SHOP

OUR RESPONSE



6 OUR RESPONSE

The EcoDistricts Protocol

For far too long, neighborhood development has been primarily about brick-and-mortar solutions to building and rehabilitating neighborhoods. The world of city building has drastically changed, and it requires a more diverse and more integrated range of solutions to empower social vibrancy and restore ecological health. Success hinges on building robust public-private-civic partnerships to align leadership, improve cross-sector collaboration, and build new models of inclusive governance to drive effective planning and project delivery.

To foster a new model of urban regeneration, EcoDistricts has created the Protocol: a rigorous, sustainable urban development framework for achieving people-centered, economically vibrant neighborhood- and district-scale sustainability.

THE ECODISTRICTS PROTOCOL IS:

- **A TOOL FOR FOSTERING NEIGHBORHOOD- AND DISTRICT-SCALE SUSTAINABILITY.** The Protocol is available for free digitally, and EcoDistricts encourages those who are interested in advancing comprehensive and meaningful sustainability strategies to use it.
- **A RIGOROUS CERTIFICATION STANDARD.** EcoDistrict Certified recognizes the achievement of Protocol requirements, marks industry leadership, and connects certified districts with a global peer-to-peer learning network pursuing continuous improvement.

The Protocol puts a comprehensive lens on every urban regeneration decision, drives the delivery of meaningful performance outcomes, and sets the conditions for sustainable, collective impact. And above all, the Protocol is designed as a flexible performance framework rather than a prescriptive standard, recognizing that every community has the ability and need to advance a place-based sustainability agenda. District teams tailor the Protocol to local circumstances, set performance targets based on local conditions and aspirations, and measure progress against the Protocol's Imperatives and Priorities.

Many terms used in the Protocol have specific meanings. Please refer to the **Glossary in Appendix A** for definitions of key terms.

INSPIRATION FROM COLLECTIVE IMPACT

The Protocol was inspired by collective impact, a collaboration framework for leaders to achieve large-scale social change. The Protocol calls for district teams to create a shared vision and common agenda, establish shared targets and indicators, foster mutually reinforcing activities and investments, and identify and support a backbone organization that orchestrates the work of the group. For further information about collective impact, visit **www.collectiveimpactforum.org.**

THE PROTOCOL IS STRUCTURED AROUND THREE CORE ELEMENTS:

3 IMPERATIVES:

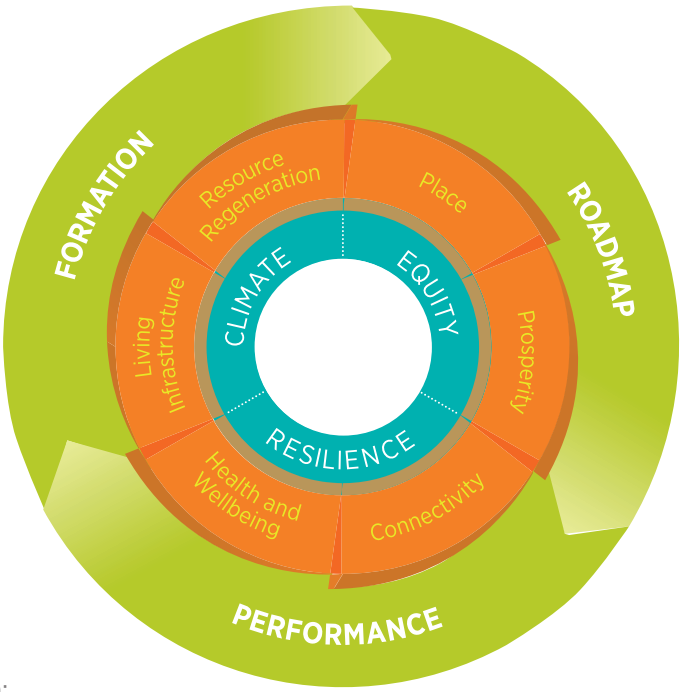
Equity, Resilience, and Climate Protection

6 PRIORITIES:

Place, Prosperity, Health and Wellbeing, Connectivity, Living Infrastructure, and Resource Regeneration

3 IMPLEMENTATION PHASES:

Formation, Roadmap, and Performance



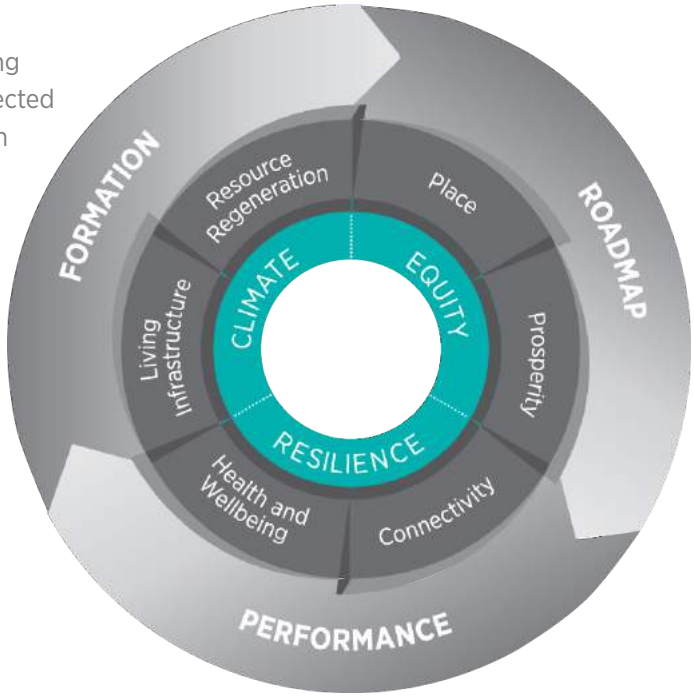
THE PROTOCOL IS DESIGNED TO INSPIRE COMMUNITY DEVELOPMENT THAT:

- Commits to Equity, Resilience, and Climate Protection;
- Supports multi-stakeholder collaboration and governance;
- Creates a comprehensive district-scale Roadmap guided by performance indicators; and
- Reports progress with a commitment to transparency and knowledge sharing.

IMPERATIVES

PUTTING PEOPLE AND THE PLANET AT THE CENTER OF CHANGE

The EcoDistricts Protocol starts with an unwavering commitment to three fundamental and interconnected issues — Equity, Resilience, and Climate Protection — and, as a result, places social, economic, and environmental sustainability at the center of urban regeneration.



EQUITY

Cities that embrace equity identify and acknowledge the communities most vulnerable to change. These cities experience stronger and longer-lasting growth. District teams must ensure their communities have the opportunity to meaningfully participate, lead, and thrive.

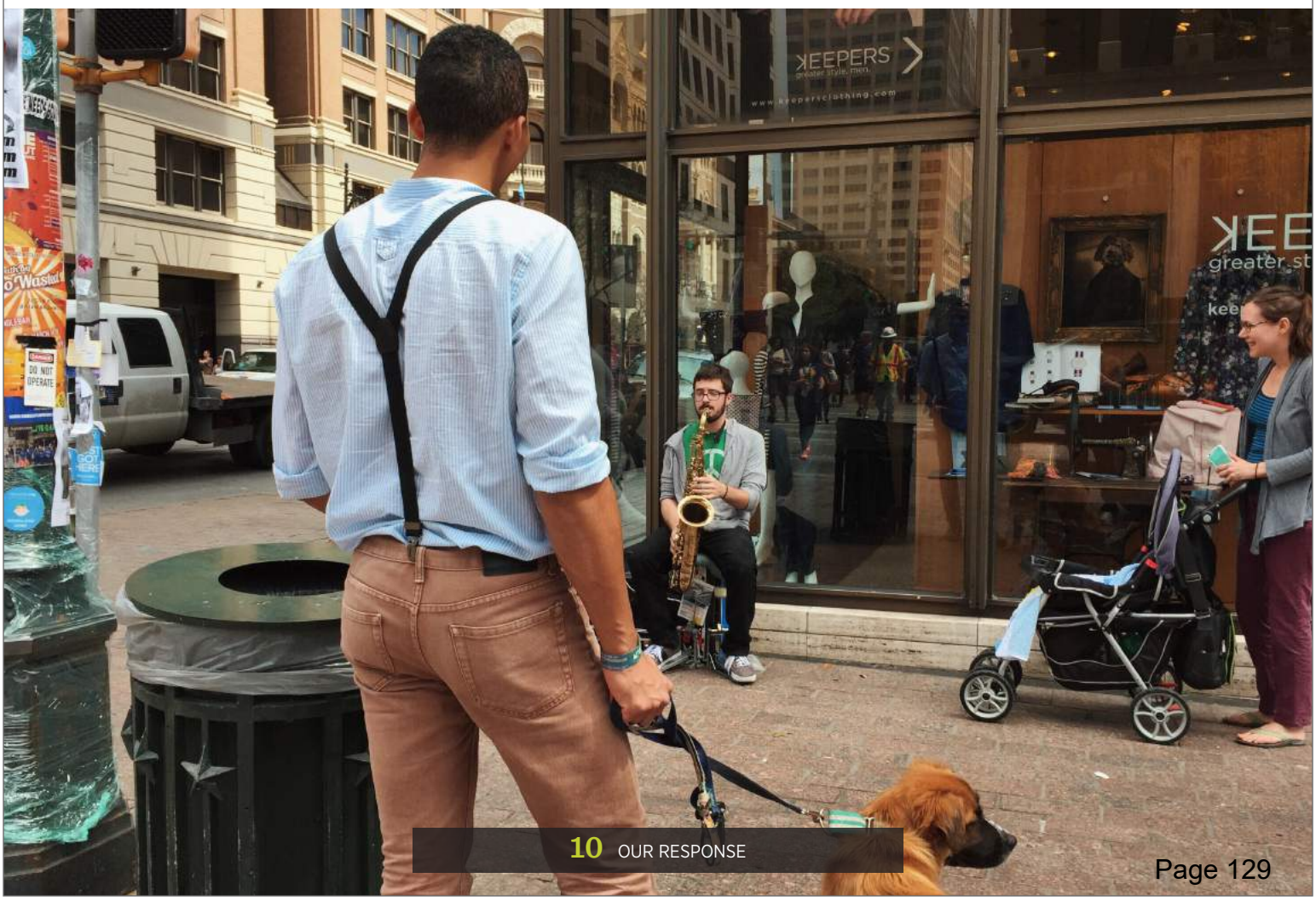
RESILIENCE

Resilience is the capacity of cities to function so that all people are able to withstand the shocks and stresses they encounter. District teams must address resilience with a broad approach that prepares for social, economic, and environmental shocks and stresses.

CLIMATE PROTECTION

Cities are responsible for a majority of global emissions of carbon dioxide (CO_2), the dominant greenhouse gas contributing to climate change. District teams must build a pathway to carbon neutrality.


synoptik
synoptik
synoptik
Silkegade
P
FÅ EN EKSTRA
BRILLE MED I KØBET
BRILLE VÆRDI MINIMUM 1.499,-


KEEPERS
greater style, men.
DO NOT OPERATE

PRIORITIES

ACHIEVING MEANINGFUL OUTCOMES

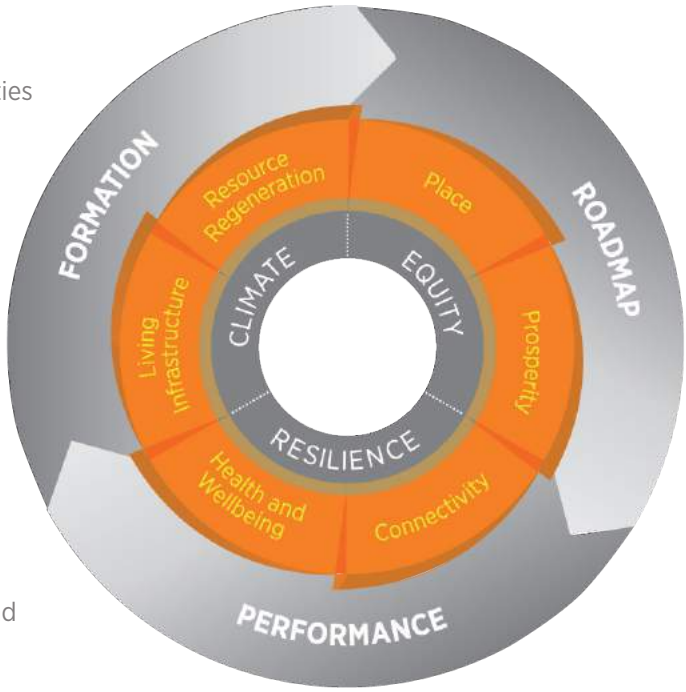
At the heart of the EcoDistricts Protocol are six Priorities — a set of rigorous goals containing 20 objective categories used to set the scope of a district's sustainability agenda.

PLACE

GOAL: Create inclusive and vibrant communities.
OBJECTIVES: Strong civic engagement, preservation and celebration of culture and history, diverse and affordable housing, and accessible public spaces and services for daily needs.

PROSPERITY

GOAL: Support education and economic opportunities that build prosperity and accelerate innovation.
OBJECTIVES: Equitable access to quality education and career pathways, a robust employment base with increasing jobs and job quality, and entrepreneurial innovation and business start-ups.



HEALTH AND WELLBEING

GOAL: Nurture people's health and happiness.
OBJECTIVES: Active living based on walkability and recreation; equitable health outcomes based on accessible, affordable health care; affordable, local, fresh food; remediated toxic environments; and strong public safety.

CONNECTIVITY

GOAL: Build effective connections between people and places.
OBJECTIVES: A street network that accommodates diverse ages and abilities by using multiple travel modes and shared mobility options, and a high-quality digital network providing equitable connectivity and leveraged community data.

LIVING INFRASTRUCTURE

GOAL: Enable and connect to flourishing ecosystems.
OBJECTIVES: Healthy soils, water, trees, and wildlife habitat; accessible nature; and natural processes integrated into the built environment.

RESOURCE REGENERATION

GOAL: Work towards net positive energy, water, and waste.
OBJECTIVES: More efficient water use; diversion of waste from landfills; reuse of remediated land; and the pursuit of energy efficiency, technology advancements, and renewable energy production that reduce greenhouse gas emissions.



IMPLEMENTATION

CATALYZING NEIGHBORHOOD- AND DISTRICT- SCALE SUSTAINABILITY

Underpinning the EcoDistricts Protocol is a three-phase implementation framework. This framework sets the conditions for sustained, scalable outcomes that address the Protocol's Imperatives and Priorities, and meet the specific needs of a district over time.

FORMATION

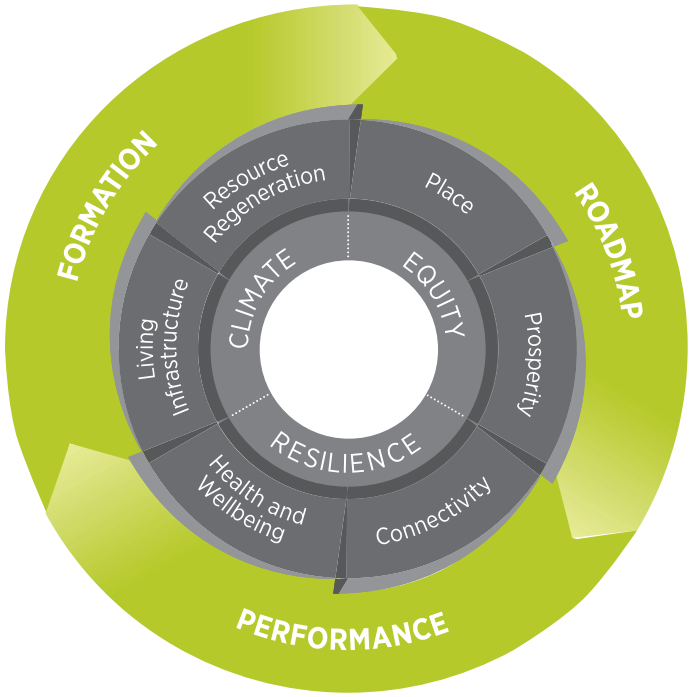
Build the necessary leadership, collaboration, and decision-making governance to support effective action through all phases of development and implementation.

ROADMAP

Assemble a comprehensive action plan of performance targets, feasible strategies for achieving the targets, and a schedule and resources for implementation.

PERFORMANCE

Implement the Roadmap, report progress towards targets, and use results to strengthen performance and transfer lessons learned.




Joseph's
Look
for
the
FARM


WELCOME


HOUSTON

WHO THE PROTOCOL IS FOR

A New Model of Collaboration

The most successful neighborhood development projects bring together city officials, community-based groups, real estate developers, financers, and all major district stakeholders to formulate a shared sustainability vision and action plan. The Protocol encourages and rewards such collaboration because it is focused on improving our cities from the neighborhood up.

The Protocol is designed to support a full spectrum of neighborhoods and districts, both new and existing, including residential neighborhoods, business districts, institutional campuses, mixed-use projects, and redevelopment areas. All neighborhoods — and the people who live, work, and play in them — deserve a sustainable future.



SUPPORTING THREE PRIMARY AUDIENCES WHO ARE DEEPLY INVOLVED IN NEIGHBORHOOD- AND DISTRICT-SCALE INITIATIVES AND INVESTMENTS

GOVERNMENT



For municipalities, redevelopment agencies, and housing authorities, the Protocol is a comprehensive framework for neighborhood- and district-scale policy development, planning, and project delivery. The Protocol provides an important process for measuring impact related to public participation, transparency in government, stewardship of public investments, and public policy objectives.

COMMUNITY ORGANIZATIONS

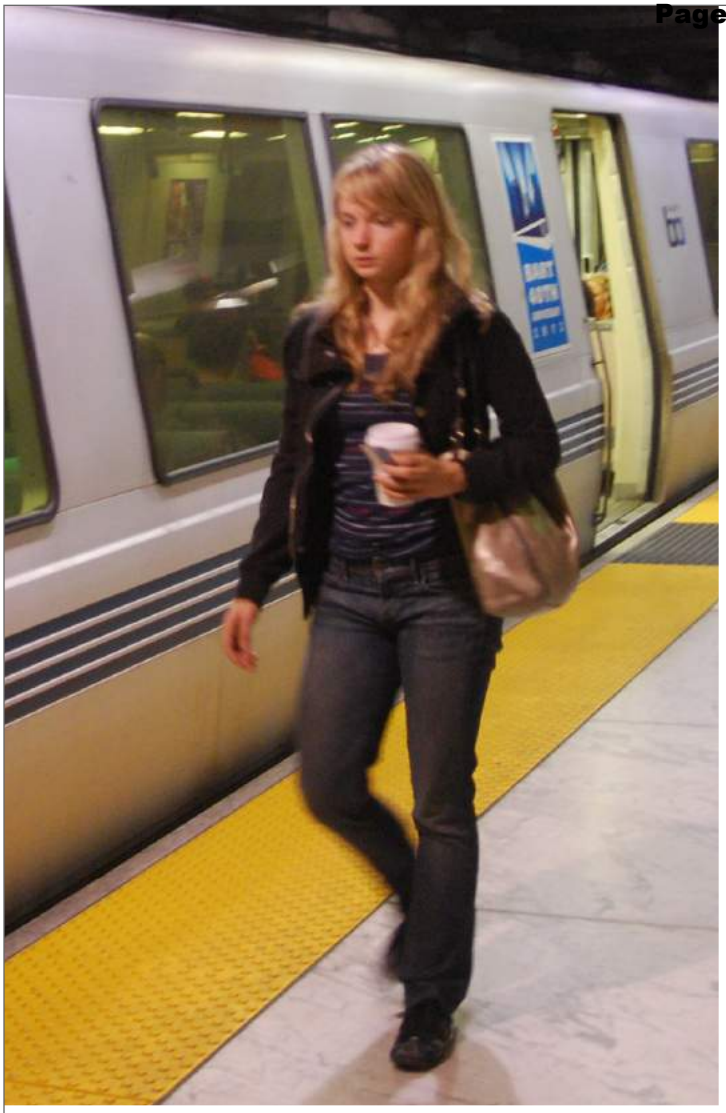


For community development corporations, community-based organizations, and nonprofit organizations, the Protocol is a comprehensive framework for identifying and moving catalytic neighborhood- and district-scale priorities forward. The Protocol provides a practical approach to collaborative governance, neighborhood planning and assessment, and reporting progress to stakeholders and funders.

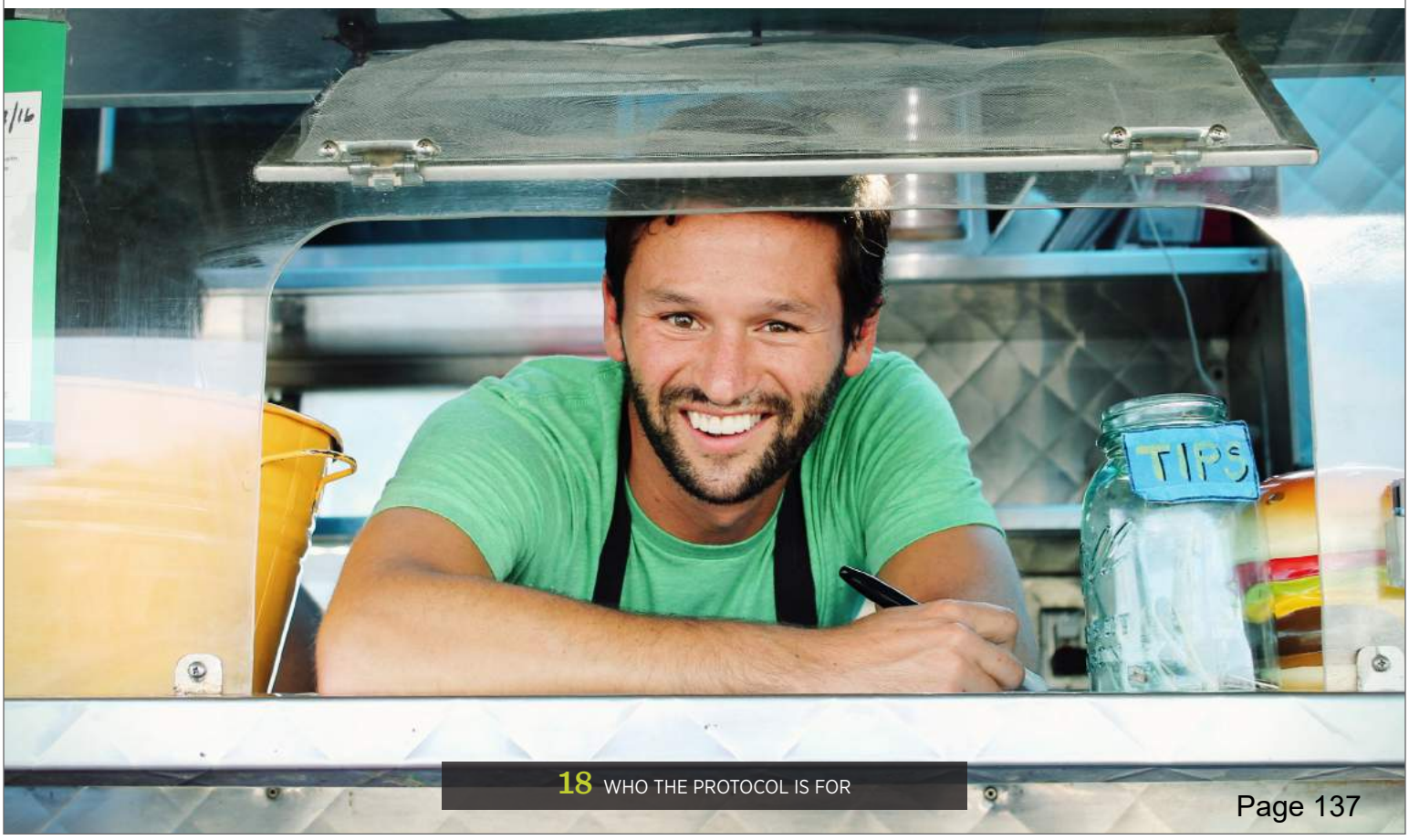
THE PRIVATE SECTOR



For real estate developers, business improvement districts, and institutional and corporate campuses, the Protocol is a comprehensive project implementation framework and global mark of leadership that complements existing corporate and environmental performance standards. The Protocol provides an overarching platform for shaping project governance, selecting catalytic investments, and reporting sustainability performance over time.




A MEDIA GENERAL
HD TV/DT


TIPS

HOW THE PROTOCOL WORKS


NOW OPEN
Superior

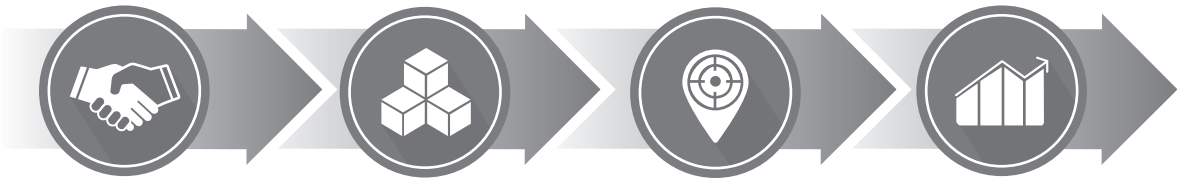

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$1.00
Box

Using the Protocol

THE ECODISTRICTS PROTOCOL IS A POWERFUL WAY TO MOVE PROJECTS FROM VISION TO REALITY AND MAKE EQUITY AND SUSTAINABILITY FUNDAMENTAL TO NEIGHBORHOODS FOR ALL.

Embracing and using the EcoDistricts Protocol is a mark of neighborhood- or district-scale leadership. It confirms a district's commitment to inclusiveness, transparency, information sharing, and peer-to-peer learning.

APPLYING THE PROTOCOL MEANS TAKING ACTION IN THE FOLLOWING FOUR AREAS:



IMPERATIVES COMMITMENT	FORMATION	ROADMAP	PERFORMANCE
An unwavering commitment to comprehensively address equity, resilience, and climate protection.	Building a collaborative governance strategy to power the district.	A comprehensive, performance-based investment action plan.	Transparent and rigorous reporting to measure impact.

For definitions of key terms, refer to the **Glossary in Appendix A**.

EcoDistricts® CERTIFIED

EcoDistricts Certification is the new standard for community development. See page 29 and **www.ecodistricts.org** for more details.



IMPERATIVES COMMITMENT

The EcoDistricts Certified process begins with a district's commitment to the Imperatives that underpin the Protocol: Equity, Resilience, and Climate Protection. These are indispensable cornerstones of long-term neighborhood sustainability and making a firm pledge to them at the outset of the process ensures their integration in the Formation, Roadmap, and Performance phases.

EQUITY

This obligation is a commitment that describes how a district will embrace procedural, structural, distributional, and cross-generational equity in district activities.

RESILIENCE

This obligation is a commitment that describes how a district will work to withstand environmental, social, and economic stresses and shocks.

CLIMATE PROTECTION

This obligation is a commitment that describes how a district will build a pathway to carbon neutrality.

REQUIRED ACTION:

- Convene stakeholders and collaboratively develop an Imperatives Commitment that details the methods for addressing Equity, Resilience, and Climate Protection in subsequent phases.

SEEKING CERTIFICATION?

Districts that are seeking certification must submit their Imperatives Commitment within one year of registration with EcoDistricts. Detailed submission requirements can be found in the EcoDistricts Certified Handbook.



FORMATION

Formation focuses on shaping the necessary leadership, collaboration, and decision-making governance to support effective action through all phases of development and implementation. Formation is a key stage in exercising a district's commitment to procedural and structural equity in engagement and decision-making.

COLLABORATIVE FORMATION IN 3 STEPS

STEP 1: CONFIRM READINESS TO FORM A DISTRICT

Conduct an evaluation to determine whether a district is ready to meet the Protocol requirements.

REQUIRED ACTIONS:

- Convene stakeholders to understand the issues, opportunities, and organizations that will come together to form the district and determine the capacity to collaborate.
- Identify an interim district boundary that will be refined in subsequent steps.
- Prepare an asset map that categorizes social, economic, physical, and organizational assets according to their location inside or outside the district, and their control by entities based inside or outside the district.

STEP 2: ESTABLISH DISTRICT ORGANIZATIONAL CAPACITY

Establish a district team that emerges from Step 1 to manage the formation and implementation process over time. The team will need capacity to evaluate backbone organization options, select the best fit, and move effectively through implementation phases.

REQUIRED ACTIONS:

- Form a district team of key stakeholders representing the district's major public, private, and civic sector assets.
- Evaluate the best options for organizing a collaborative governance framework.

STEP 3: COMMIT TO COLLABORATION

Formalize the district's governance approach in a Declaration of Collaboration document that establishes a backbone organization, a decision-making body and procedures, and ongoing stakeholder engagement in district activities.



REQUIRED ACTIONS:

- Identify or establish a backbone organization with the capability and necessary resources to support district activities.
- Create and adopt a Declaration of Collaboration that establishes or designates a backbone organization, defines roles and responsibilities, establishes or designates a decision-making body, and describes resources that stakeholders will provide to the organization over time.

SEEKING CERTIFICATION?

Districts that are seeking certification must submit a Declaration of Collaboration within two years of receiving EcoDistricts endorsement of their Imperatives Commitment. Detailed submission requirements can be found in the EcoDistricts Certified Handbook.



ROADMAP

The Roadmap is an action plan that describes baseline conditions, sets ambitious performance targets, and devises implementation strategies to achieve the targets by a horizon year.

ROADMAP ASSEMBLY IN 3 STEPS

STEP 1: ESTABLISH CONTEXT AND SELECT PRIORITIES AND OBJECTIVES

Understand the district's setting and location in the community, including who and what will influence successful district outcomes, and what goals are to be emphasized.

REQUIRED ACTIONS:

- Convene stakeholders to finalize the district boundary, identify contextual issues, and identify ongoing or imminent activities by others relevant to the Imperatives and Priorities.
- Select at least three Priorities and corresponding objectives that align with contextual findings and stakeholder input. Consider addressing remaining Priorities in future Roadmap updates.

STEP 2: SELECT INDICATORS, ASSESS BASELINE PERFORMANCE, AND SET TARGETS

Choose performance indicators for the Imperatives and selected Priorities, establish current performance baselines, and develop future performance targets.

REQUIRED ACTIONS:

- Select indicators for reporting on baseline conditions, future targets, and ongoing performance, as described in **Appendix B**.
- Using the indicators, prepare a baseline assessment of current district performance relative to the Imperatives and selected Priorities.
- Develop future performance targets using the indicators and relevant local plans.

STEP 3: IDENTIFY STRATEGIES AND ASSEMBLE ROADMAP

Identify feasible strategies, funding, and an implementation schedule for reaching targets by the horizon year and assemble into a comprehensive action plan.



REQUIRED ACTIONS:

- Identify potential strategies to meet the targets and test the strategies with stakeholders to seek feedback and evaluate feasibility.
- Assemble the context, assessment plan, baseline conditions, future performance targets, strategies, funding, and implementation schedule into a Roadmap.

SEEKING CERTIFICATION?

Districts may submit their Roadmap and Declaration of Collaboration separately or in tandem. Districts seeking Certification must submit the required Roadmap within two years of Imperatives Commitment endorsement by EcoDistricts. Detailed submission requirements can be found in the EcoDistricts Certified Handbook.



PERFORMANCE

Performance focuses on measuring impact and gauging a district's progress towards its performance targets. This is an ongoing phase during which reports are shared regularly in the community and publicly on the EcoDistricts Registry. A district's biennial progress report becomes the basis of measuring impact over time and supporting peer-to-peer learning.

PERFORMANCE REPORTING IN 3 STEPS

STEP 1: UPDATE GOVERNANCE AND ROADMAP

Maintain organization capacity and leadership that represents stakeholder interests, keeps the district moving toward its targets, and seeks opportunities for strengthening district activities. Execute the Roadmap by confirming strategy feasibility and securing implementation. Update the Roadmap to reflect implementation experience and include new or modified strategies, and address Priorities not included in an initial version.

REQUIRED ACTIONS:

- Maintain open and accessible accounts of district governance.
- Amend the Roadmap with new or modified strategies, as appropriate.

STEP 2: REPORT PROGRESS

Track the district's progress toward its targets, and report biennially to stakeholders and the community to foster transparency, share experiences, and maintain momentum.

REQUIRED ACTIONS:

- Prepare and distribute a biennial progress report that includes updated indicator results.

STEP 3: LEARN FROM PERFORMANCE

Ensure that the district continually develops its collaborative decision-making, celebrates successes, and identifies opportunities for improvements in implementation of projects, programs and indicator performance.



REQUIRED ACTION:

- Maintain a backbone organization and governance structure that provides leadership and strives for continual improvement.
- Ensure that success is celebrated, knowledge is shared, and opportunities to replicate success throughout the community are identified.

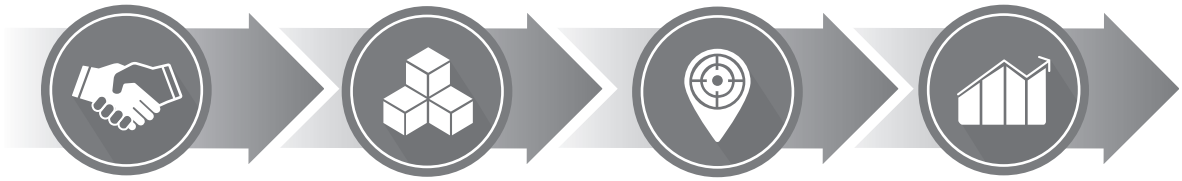
TO MAINTAIN CERTIFICATION:

To maintain certification, districts must submit biennial progress reports beginning on the second anniversary of certification, and every two years thereafter. Detailed submission requirements can be found in the EcoDistricts Certified Handbook.

EcoDistricts® CERTIFIED

THE NEW STANDARD FOR COMMUNITY DEVELOPMENT

Powered by the Protocol, EcoDistricts Certified is a mark of excellence and a proven commitment to build people-centered, economically vibrant, planet-friendly communities from the neighborhood up. Certification bridges cross-sector interests, drives the formation of collaborative district governance, sets a new bar for meaningful stakeholder inclusion, and delivers powerful outcomes across Equity, Resilience, and Climate Protection. Districts can initiate the process any time by registering their district online at **www.ecodistricts.org**.



IMPERATIVES COMMITMENT	FORMATION	ROADMAP	PERFORMANCE
An unwavering commitment to comprehensively address equity, resilience, and climate protection.	Building a collaborative governance strategy to power the district.	A comprehensive, performance-based investment action plan.	Transparent and rigorous reporting to measure impact.

As shown above, certification includes three core submission requirements, beginning with an Imperatives Commitment that must be submitted within one year of registration. After Imperatives Commitment endorsement, districts may submit their Declaration of Collaboration and Roadmap documents separately or in tandem, but no later than two years following the Imperatives Commitment endorsement. EcoDistricts will review both documents individually and will make a single certification award upon endorsement of both documents.

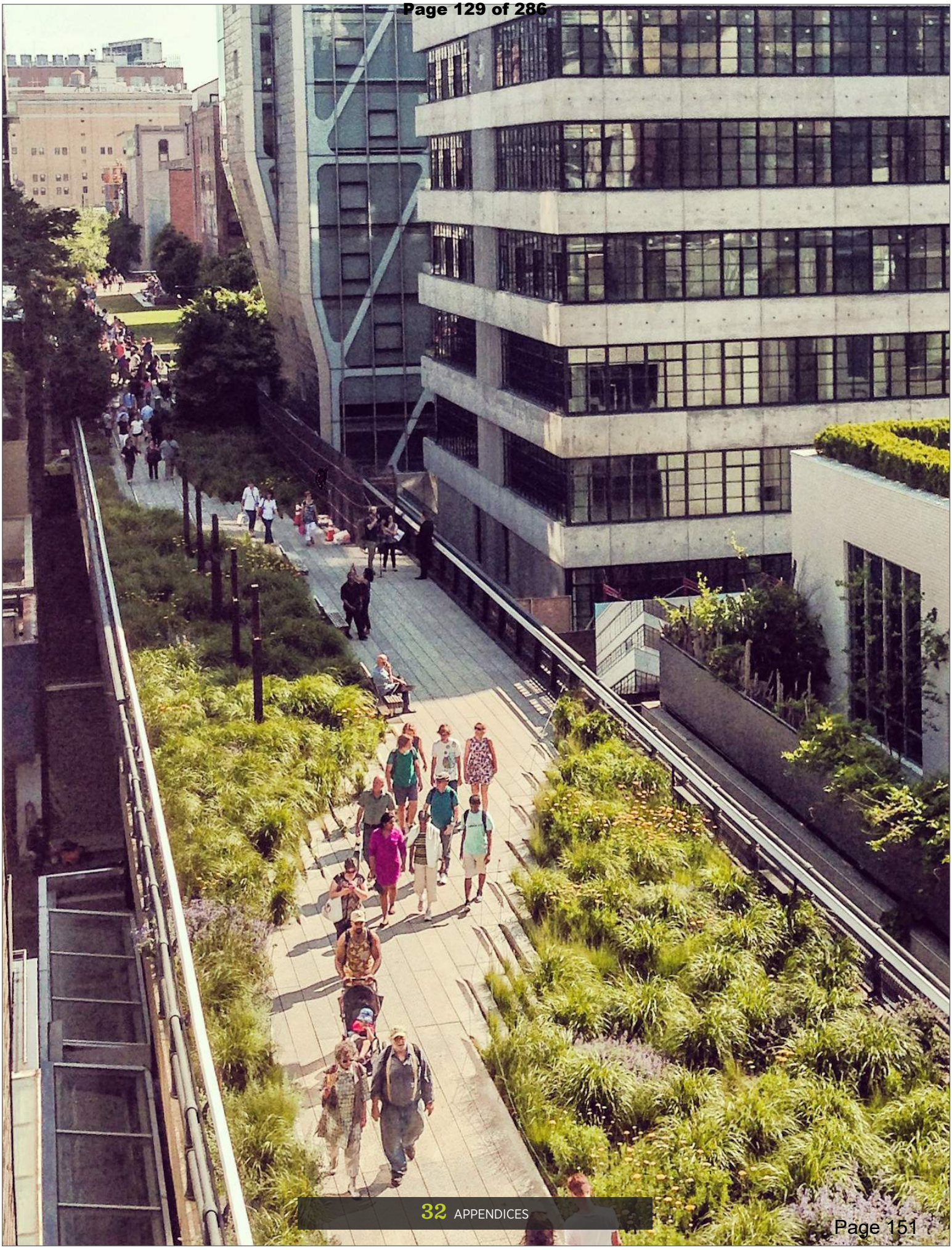
Certification is based on satisfaction of all Protocol requirements. To maintain certification, a district must submit biennial progress reports beginning on the second anniversary of certification and continuing every two years thereafter. Compliance with process timelines allows districts to maintain active status on the EcoDistricts Registry.

In the event a district fails to achieve a process deadline, it will be removed from the Registry, and any certification will be suspended until the required submission is received and approved.




Streetcar crossing

APPENDICES



Appendix A: Glossary

ASSET. Something of social, economic, environmental, and/or organizational value that is supportive of district formation, and something of value toward achieving Priority goals.

BACKBONE ORGANIZATION. An organization dedicated to coordinating and managing district activities. The backbone organization may be an entity that is separate and distinct from the district decision-making body.

BASELINE ASSESSMENT. A comprehensive, quantitative appraisal of a district's current performance characteristics as measured by Imperatives and Priority indicators.

BIENNIAL PROGRESS REPORT. A report on district progress submitted every two years to EcoDistricts to maintain certification.

CARBON DIOXIDE (CO2). A naturally occurring gas, as well as a byproduct of burning fossil fuels and biomass, or of land-use changes and other industrial processes. Carbon dioxide is the principal human-caused greenhouse gas that affects the Earth's radiative balance and is the reference gas against which other greenhouse gases are measured.

CARBON NEUTRALITY. An alternative term for net zero carbon emissions, carbon neutrality refers to balancing the total measurable carbon dioxide emissions of a district's energy production, energy consumption, and waste production with an equivalent amount of carbon sequestration and offsets, thereby equating to a net total of zero carbon dioxide emissions.

CERTIFICATION. The process of certifying a district under the EcoDistricts Protocol, and the award of certification made by the EcoDistricts organization.

CLIMATE PROTECTION. Actions to eliminate greenhouse gas emissions and reduce global warming.

COLLABORATIVE GOVERNANCE. A set of processes and structures used by communities to address problems that cannot be easily solved by one organization or sector alone.

COLLECTIVE IMPACT. A framework for facilitating and achieving change using a structured approach that brings cross-sector organizations together in a collaborative way to focus on a common agenda and produce long-lasting change.

DECISION-MAKING BODY. The governing body of the district as authorized in the Declaration of Collaboration.

DECLARATION OF COLLABORATION. A non-binding agreement that establishes or designates a backbone organization, defines organizational roles and responsibilities, establishes or designates a decision-making body with decision-making procedures, and describes resources that participating stakeholders will provide to the organization.

DISTRICT. Generically, a subarea of a community with a distinct identity, character, and/or planning area boundary; equivalent to neighborhood. For the purposes of EcoDistricts Certified, a "district" is a subarea of a community pursuing certification.

DISTRICT TEAM. Key stakeholders who register a district for certification and coordinate its Imperatives Commitment preparation and who may evolve into function as its core decision-makers, including the decision-making body created or designated in a Declaration of Collaboration. Throughout the Protocol process, the team should be broadly representative of the district.

ECODISTRICTS™. The nonprofit organization that originated the EcoDistricts Protocol, and now certifies districts globally under the EcoDistricts Certified program requirements.

ECODISTRICTS CERTIFIED. A status achieved by a district that is certified by the EcoDistricts organization to be in compliance with the Protocol.

ENDORSEMENT. EcoDistricts' individual approval of a district's Imperatives Commitment, Declaration of Collaboration, and Roadmap. Certification is awarded when all three documents have been endorsed.

EQUITY. A state that is achieved when all people have full and equal access to opportunities that enable them to attain their full potential. The determinants of Equity include the social, economic, geographic, political, and built environment conditions in which people live and work that lead to the creation of a fair and just society.

GREENHOUSE GASES. Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

HORIZON YEAR. The year a district has designated for achieving its Roadmap performance targets, except for carbon neutrality, which may occur at a neutrality year beyond a horizon year.

IMPERATIVES. Three critically important, overarching issues that must be addressed to attain neighborhood sustainability: Equity, Resilience, and Climate Protection. The Protocol requires a commitment to Imperatives action before certification may be granted.

INDICATORS. A set of quantitative measurements that characterize district performance relative to the Imperatives and Priority objectives. Indicators are used to express baseline conditions, horizon year performance targets, and biennial performance results for a given Imperative or Priority. See Appendix B for additional information.

NATURAL CAPITAL. The stock of natural resources, such as land, water, and air, that communities depend upon for basic needs.

NEIGHBORHOOD. A subarea of a community with a distinct identity, character, and/or planning area boundary; equivalent to district.

OBJECTIVE. A desired outcome that contributes to achievement of a Priority goal.

OBJECTIVE CATEGORY. A group of similar objectives tied to a specific Priority.
PRIORITY. One of the Protocol's six goals: Place, Prosperity, Health and Wellbeing, Connectivity, Living Infrastructure, and Resource Regeneration. For certification, a district Roadmap must address at least three Priorities.

PROGRAM. An ongoing service or activity that implements an Imperative commitment or Roadmap strategy. An ongoing program may execute multiple subprojects.

PROJECT. A one-time action, such as a capital improvement, that implements an Imperative commitment or a Roadmap strategy.

PROTOCOL. The EcoDistricts framework for achieving people-centered, district-scale sustainability; and a certification standard that recognizes district-scale sustainability leadership and achievements.

PUBLIC SPACES. Publicly accessible streets, plazas, parks, and comparable outdoor areas; public facilities such as schools, libraries, and indoor recreation complexes.

REGISTRY. The online portal and database maintained by EcoDistricts to record registered districts and their certification work products.

RESILIENCE. The capacity of district stakeholders to survive, adapt, and thrive when confronting the stresses and shocks they experience. Stresses weaken a district on a chronic basis; examples are high unemployment or crime. Shocks are sudden, single event disruptions that threaten a district, such as a flood or a disease epidemic.

ROADMAP. The action plan prepared by a district to characterize district context, describe baseline conditions, set future performance targets, formulate strategies to achieve the targets, identify funding for the strategies, and establish a schedule for achieving the targets by a horizon year.

STAKEHOLDERS. Organizations based in, or serving, a district, including but not limited to public agencies, private utilities, schools, community development corporations, major property owners and investors, civic groups, and faith-based organizations.

STRATEGY. A Roadmap implementation measure that may include one or more programs or projects.

TEMPLATE. The outline of required content in district certification documents, including the Imperatives Commitment template, Declaration of Collaboration template, Roadmap template, and biennial progress report template.



BELLAGIOSTAMP

EcoDistricts recommends that the selection of indicators be guided by the Bellagio Sustainability Assessment and Measurement Principles (BellagioSTAMP), including a guiding vision of sustainability, adequacy of scope, transparency, effective communications, broad participation, continuity, and ongoing capacity for measurement. Using the BellagioSTAMP framework for district assessment can strengthen governance and improve accountability in setting and meeting targets.

SOURCE: BellagioSTAMP

Appendix B: Indicators

Indicators are conditions that can be measured quantitatively and that characterize district conditions and performance relative to the Imperatives and Priorities. Indicators are developed at the outset of the Roadmap phase and used to benchmark baseline conditions and, thereafter, to gauge progress towards targets in the Performance phase. Suitable candidates for indicators meet the following criteria:

- Measure a fundamental aspect of an Imperative or Priority objective;
- Use data that is readily available and regularly updated;
- Show change over time;
- Be easily understood by the public and media; and
- Inspire action.

THE DISTRICT TEAM HAS THE FOLLOWING OPTIONS FOR DEVELOPING A LOCALLY RESPONSIVE SET OF INDICATORS:

- Use the illustrative indicators from Tables B.1 and B.2 directly or as beginning points in formulating a set of indicators that fit local circumstances.
- Adopt or adapt relevant indicators that are already used in the community. Many civic organizations and public agencies operate local indicator programs focused on social, economic, and environmental conditions. These programs may offer cooperative data and measurement advantages for a district.
- Consult exemplary neighborhood sustainability indicator projects, such as the **Seattle Sustainable Neighborhoods Assessment Project**
- Adopt or adapt relevant indicators that appear in databases at the following indicator knowledge hubs:
  - **Community Indicators Consortium Project List**
  - **International Institute for Sustainable Development Global Directory to Indicator Initiatives**
  - **National Neighborhood Indicators Partnership**
  - **World Council on City Data**
- Consider indicators used in urban sustainability assessment and rating tools from the selection in the **Transformative Tools global registry**.
- Adopt or adapt indicators from subject matter technical sources, for example the **U.S. EPA Guide to Sustainable Transportation Performance Measures** for transportation; or the **California Healthy Communities Data and Indicators Project** for health.
- Create new, custom indicators that take advantage of unique local data.

IMPERATIVE INDICATORS

A district's indicators set must include at least one indicator for each Imperative; districts are encouraged to include additional Imperative indicators, if desired. Illustrative indicators for each Imperative are identified in Table B.1.

Table B.1: Imperative Indicators

IMPERATIVE	ILLUSTRATIVE INDICATOR	
 EQUITY	Civic participation	Percentage of eligible voters voting in latest local election
	Economic opportunity	Unemployment rate
		Percentage of population living below poverty level
		Percentage of population receiving social assistance
	Health and wellbeing	Premature mortality (deaths under age 75)
		Percentage of population reporting good or excellent mental health
		Persons with diabetes per 100 population
	Physical surroundings	Walkability score
		Number of civic meeting spaces within walkable distance
		Number of healthy food stores within walkable distance
		Amount of green space within walkable distance
 RESILIENCE	Social	Average years of educational attainment
		Language competency (percentage of population who speak English as a second language)
		Percentage of voter participation in latest election
	Economic	Percentage of businesses with 100+ employees
		Percentage of households in poverty
		Sector diversity — percentage of workforce in primary, secondary, and tertiary sectors
	Environmental	Percentage of land area in 100-year floodplain
		Percentage of land area subject to sea level rise
		Percentage of land area with hydric soils (liquefaction)
 CLIMATE PROTECTION	Energy use	Average residential electricity & natural gas use (million Btu/year)
		Average household vehicle fossil fuel use (gallons/year)
		Per capita total energy use in million Btu/year
	Onsite energy production	Carbon-free thermal energy produced within the district (million Btu/year)
		Renewable power generated in megawatt hours/year
	Net CO_2 emissions	Per capita net tons CO_2 emissions/year

PRIORITY INDICATORS

A district's indicator set must also include at least one indicator for each Priority objective category; districts are encouraged to include additional indicators, if desired. Illustrative indicators for each Priority objective category are given in Table B.2.

Table B.2: Priority Indicators

PRIORITY: PLACE

CREATE INCLUSIVE AND VIBRANT COMMUNITIES

OBJECTIVE CATEGORIES	OBJECTIVES	ILLUSTRATIVE INDICATORS
ENGAGEMENT + INCLUSION	Civic engagement is strong and processes are inclusive and representative.	- Percentage of population engaged in public consultation processes (e.g., attendance rates, social media subscribers). - Demographic makeup of engagement participants. - Number of hours per capita volunteered annually by residents and business employees. - Percentage of eligible residents voting in most recent local election.
	Sharing programs are robust.	- Number of sharing programs in continuous operation. - Percentage of households and businesses participating in sharing programs annually.
CULTURE + IDENTITY	Historic and culturally significant places are preserved and celebrated.	- Number of historic/cultural preservation projects completed and programs operated annually. - Number of public art and cultural interpretive installations.
	Participation in cultural events is high.	- Percentage of population participating annually in cultural events within the district. - Number of public spaces available for cultural events.
PUBLIC SPACES	Public spaces are accessible to all.	- Percentage of dwelling units and businesses within a 0.25 mile (0.4 km) walk of a public space other than a street.
	Public spaces are high quality, engaging, and active.	- Number of activities programmed annually for public spaces, including streets. - Number of people using public spaces daily, at peak and average levels of occupancy.
HOUSING	Housing is affordable and well maintained.	- Percentage of dwelling units priced at affordable levels. - Percentage of dwelling units occupied. - Percentage of dwelling units in poor condition. - The district's Housing and Transportation Affordability Index score.
	Housing is available to meet a diversity of dwelling needs.	- Diversity index score of district dwellings. - Percentage of dwellings meeting local visitability and universal design standards.
	Housing is close to facilities that offer a complete set of daily needs.	- Percentage of daily essentials (e.g., shopping, civic, education, recreation) within a 0.5 mile (0.8 km) walk of 50 percent of dwellings.

Table B.2: Priority Indicators

PRIORITY: PROSPERITY

SUPPORT EDUCATION AND ECONOMIC OPPORTUNITIES THAT BUILD PROSPERITY AND ACCELERATE INNOVATION

OBJECTIVE CATEGORIES	OBJECTIVES	ILLUSTRATIVE INDICATORS
ACCESS TO OPPORTUNITY	Income and racial inequality are reduced.	- Household income and education levels. - Percentage of population living below the poverty line.
	Schools provide quality education.	- Graduation rates. - Absenteeism rates. - Percentage of students advancing from one grade level to the next.
	Career pathways and training are available.	- Number of training programs matched to district job opportunities. - Percentage of eligible district participants enrolled in training programs.
ECONOMIC DEVELOPMENT	Employment in the district is retained.	- Number and type of jobs retained annually (workforce survey). - Percentage of district residents employed at locations in the district.
	Job quality in the district is enhanced.	- Median wage. - Percentage of employees with full job benefits.
	New job creation occurs through economic development.	- Number of "local sourcing" agreements and programs in operation. - Number of community-owned/controlled business formations annually.
INNOVATION	Interaction between entrepreneurs is fostered.	- Number of incubators, accelerators, maker spaces, and co-working spaces in the district. - Number of programs, and enrollment levels, to cultivate business innovation.
	Job growth in emerging sectors is higher than in traditional sectors.	- Number of district-based start-ups in emerging sectors annually.

Table B.2: Priority Indicators

PRIORITY: HEALTH + WELLBEING

NURTURE PEOPLE'S HEALTH AND HAPPINESS

OBJECTIVE CATEGORIES	OBJECTIVES	ILLUSTRATIVE INDICATORS
ACTIVE LIVING	Access to recreation facilities and services is improved.	- Percentage of population within a 0.25 mile (0.4 km) walk of a public indoor or outdoor recreation space.
	Walkability is enhanced.	- Percentage of street length in the district with sidewalks on both sides. - The district's Walk Score.
HEALTH	Health outcomes and life expectancy are more equitable.	- Average life expectancy. - Percentage of population with cardiovascular disease. - Asthma rates. - Obesity rates.
	Affordable, high-quality health care is accessible.	- Percentage of population with health insurance coverage. - Walk and Transit Scores of health facility locations.
	Toxic environments are remediated and regenerated.	- Number of days annually that air quality emission standards are exceeded in and near the district. - Percentage of population living near an unremediated brownfield or contaminated site.
SAFETY	Public safety is enhanced.	- Annual composite index score of crimes against persons and property.
	The built environment is designed for public safety.	- Percentage of public space frontages visible from a street. - Number of pedestrian and bicyclist fatalities annually.
FOOD SYSTEMS	Healthy and affordable fresh food is accessible.	- Percentage of dwelling units within a 0.5 mile (0.8 km) walk of a fresh food outlet.
	Food production in the district is encouraged.	- Area per capita used for food production. - Percentage of households with a home garden or using a community garden. - Quantity of local fresh food procured annually by establishments in the district.

Table B.2: Priority Indicators



PRIORITY: CONNECTIVITY

BUILD EFFECTIVE CONNECTIONS BETWEEN PEOPLE AND PLACES

OBJECTIVE CATEGORIES	OBJECTIVES	ILLUSTRATIVE INDICATORS
STREET NETWORK	The street network supports all travel modes.	- Intersections per square mile or kilometer. - Transit stops per square mile or kilometer. - Percentage of total street length with bicycle sharing.
	The street network accommodates people with diverse ages and abilities.	- Percentage of students walking to school and residents walking to work. - Percentage of arterial intersections with traffic-controlled crosswalks.
MOBILITY	District travel, internally and externally, is safe, efficient, and multimodal.	- Vehicle miles or kilometers traveled daily per capita. - Mode split of daily person trips. - Household car ownership rate. - Number of “first and last mile” options at major transit stops.
	Shared mobility options are increased.	- Number of bike and car share stations. - Percentage of population using shared cars and bikes annually.
DIGITAL NETWORK	Quality wired and wireless connectivity is available throughout the district.	- Percentage of residential and nonresidential users with Internet download speeds of at least 1 gigabyte. - Number of free Wi-Fi hotspots per square mile or kilometer. - Percentage of public spaces with free Wi-Fi.
	Local government data is open and accessible for public consumption.	- Percentage of local government services that can be accessed by citizens via the Internet or mobile phone. - Number of technology hubs for low-income residents to access the Internet.

Table B.2: Priority Indicators

PRIORITY: LIVING INFRASTRUCTURE

ENABLE AND CONNECT TO FLOURISHING ECOSYSTEMS

OBJECTIVE CATEGORIES	OBJECTIVES	ILLUSTRATIVE INDICATORS
NATURAL FEATURES	The quality and functions of habitat are enhanced.	- Improvement in functional habitat performance. - Percentage of nonfunctional habitat restored annually.
	Natural features are protected.	- Percentage of steep slope areas designated as nonbuildable. - Average buffer distance protecting wetlands and water bodies.
ECOSYSTEM HEALTH	Rainwater is managed in the district.	- Percentage of 50-year storm event managed within the district. - Ratio of pervious to impervious surfaces.
	Soil fertility and farmland are protected.	- Annual compaction, erosion, and chemical treatment rates.
	Contaminated land is remediated for productive reuse.	- Area of contaminated land remediated for reuse annually.
CONNECTION WITH NATURE	Access to nature is improved.	- Percentage of residents within a 1 mile (1.6 km) walk to natural open space.

Table B.2: Priority Indicators

PRIORITY: RESOURCE REGENERATION

WORK TOWARDS NET POSITIVE ENERGY, WATER, AND WASTE

OBJECTIVE CATEGORIES	OBJECTIVES	ILLUSTRATIVE INDICATORS
AIR & CLIMATE	All sectors improve energy efficiency, reduce waste, and increase natural carbon sinks.	All sectors improve energy efficiency, reduce waste, and increase natural carbon sinks. - Average energy use index for new building construction. - Percent of district with tree canopy.
	Electricity generation is decarbonized.	- Percent of annual electricity demand met by district-based renewable power generation. - Carbon content of local grid-delivered electricity (CO2 pounds/megawatt-hour)
	All sectors shift to renewable power and carbon-free fuels.	- Carbon and carbon-free fuel shares for household vehicles, e.g. percent clean electric vehicles.
	Air quality is protected from criteria pollutants	- Annual air quality index score.
WATER	Potable water is used efficiently.	- Gallons of water used daily per capita, indoors and outdoors.
	Alternative water sources are used for nonpotable purposes.	- Percentage of buildings connected to nonpotable water sources.
	Water quality is protected from pollutants.	- Annual water quality index score.
WASTE	Waste is diverted from landfills through reduction, reuse, and recycling.	- Percentage of nonhazardous waste diverted from landfills annually.
	The residual value of organic waste is captured.	- Percentage of organic waste diverted for energy recovery or composting annually.

History of the Protocol: Research and Development

Protocol research and development, since its inception in 2012, has engaged more than 100 expert advisors, comprehensive roundtables, listening sessions, and peer review milestones. The Protocol has been applied to over 60 projects throughout North America.

In the interest of transparency, a complete report of the research, development, and engagement strategy employed by EcoDistricts is available at **www.ecodistricts.org/protocol**. We want to acknowledge the commitment of our Protocol Advisory Committee members and peer reviewers for their tireless effort in helping us build the Protocol and delivering it to the world.

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Christine Mondor • Principal, evolveEA/Faculty, Carnegie Mellon University

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Wayne Olson • President, ADC A Development Consultancy

Cameron Petersen • Clean Energy Manager, Metropolitan Area Planning Council

Robert Ping • Technical Assistance Program Manager, Walkable and Livable Communities Institute

Thomas J. Puttman • President, Puttman Infrastructure, Inc.

Marissa Ramirez • Program Manager, National Resources Defense Council

Dave Ramslie • Principal, Integral Group

Jeffrey Raven • Principal, Raven A + U

Geoffrey Reid • Director, CityCraft Ventures

Kelly Rodgers • Principal, Confluence Planning

Yogesh Saoji • Senior Associate/Urban Designer, WRT

Sarida Scott Montgomery • Executive Director, Community Development Advocates of Detroit

Alan Scott • Principal, The Cadmus Group, Inc.

David Taylor • President, Taylor|Future Solutions, LLC

Melonie Tharpe • Ecodistrict Coordinator, Sustainable Atlanta

Cameron Thomson • Associate Principal, Arup

Giles Thomson • Researcher, CRC for Low Carbon Living (Australia)

Poul Tvermoes • Development Director, Parsons International

Ryan Vanden Brink • Attorney/Member, Intelekia Law Group LLC

Dan Vizzini • Principal Consutant, Carollo Engineers

Andrew Waddelove • Senior Consultant, EC Harris

Bradley Weinig • TOD Senior Program Director, Enterprise Community Partners

Walker Wells • Vice President of Programs/Green Urbanism Program Director, Global Green USA


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Next Steps

DOWNLOAD THE ECODISTRICTS CERTIFIED HANDBOOK for an actionable, step by step guide to implementing the Protocol. **ecodistricts.org/handbook**

GET SUPPORT OR TECHNICAL ASSISTANCE

Through the EcoDistricts Accelerator, we provide direct support to cities, developers, institutions and communities to integrate equity, resilience and climate protection; to form collaborative governance; and to develop strategic roadmaps to advance projects. We develop a customized package of support to advance equitable, sustainable community development across a city or neighborhood.

Accelerate Adoption of EcoDistricts. EcoDistricts Accelerator activities range from services such as workshops or assessments to longer-term programmatic delivery. Activities are customized based on the unique challenges and opportunities facing a particular place.

Request a Consultation: ecodistricts.org/accelerator

Bring Your Team to the EcoDistricts Incubator. The EcoDistricts Incubator is a three-day intensive designed to empower district-scale teams to advance outcomes in equity and sustainability and to form collaborative governance.

Learn more: incubator.ecodistricts.org

TAKE YOUR PROJECT TO THE NEXT LEVEL WITH ECODISTRICTS CERTIFIED

EcoDistricts Certified is a powerful way to move projects from vision to reality and create neighborhoods for all. Through EcoDistricts Certified, neighborhoods commit to equity, resilience and climate protection, form collaborative governance, create an implementation roadmap, and track and measure impact. **Register for EcoDistricts Certified: ecodistricts.org/certified**

BROADEN YOUR SKILLSET WITH ECODISTRICTS ACCREDITED PROFESSIONAL

EcoDistricts Accredited Professional (AP) is the only credential demonstrating a commitment to creating sustainable, equitable neighborhoods. EcoDistricts AP is for anyone involved in community development, including architects, planners, landscape architects, urban designers, public policymakers, developers, and staff members at public redevelopment agencies and community-based organizations. **Become an AP: ecodistricts.org/professional**

About EcoDistricts

NEIGHBORHOODS FOR ALL

For far too long, urban development has focused on real estate and infrastructure, rather than truly comprehensive investments that embrace the needs and challenges facing neighborhoods and cities. EcoDistricts is advancing a new model of urban regeneration to empower just, sustainable, and resilient neighborhoods. Through an integrated suite of programs, convenings and project certification tools, we aim to mobilize, empower and accelerate sustainable urban development leadership throughout North America and beyond. Together, we will build the vibrant neighborhoods of tomorrow.

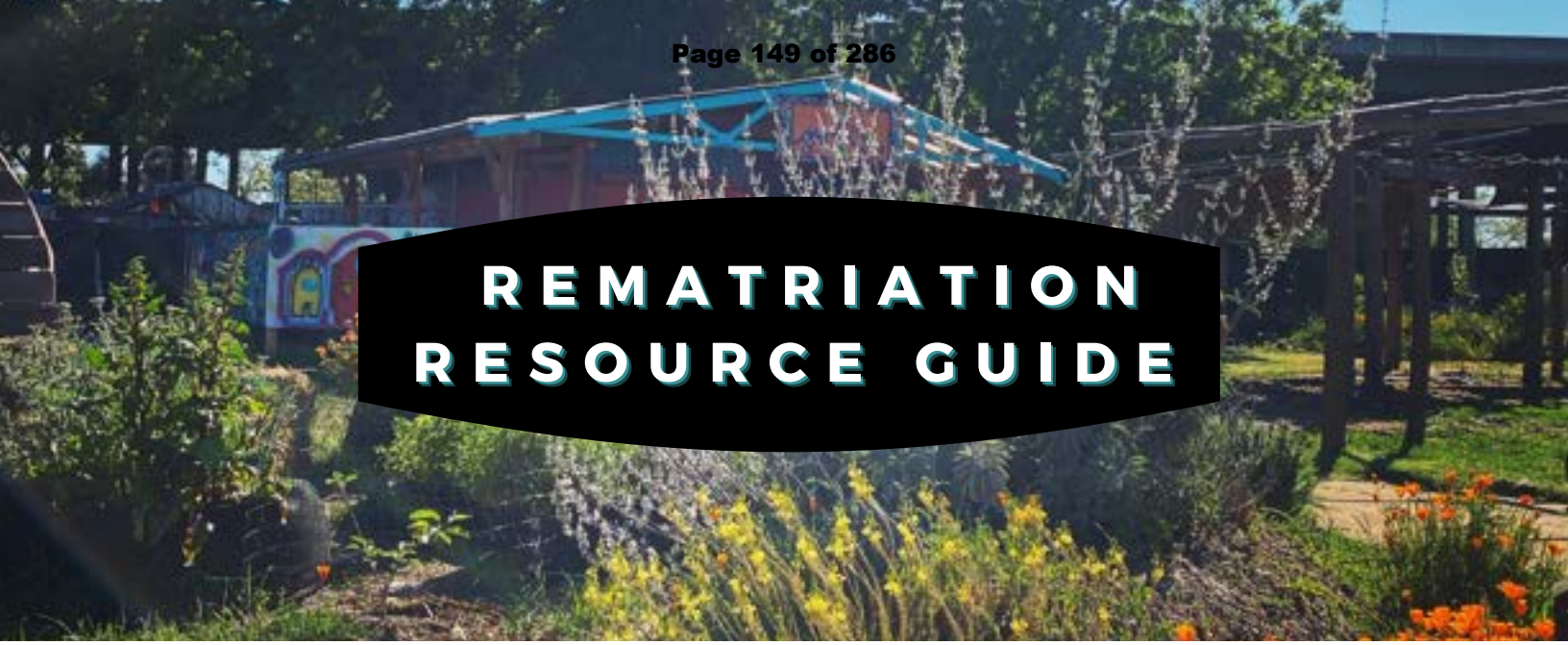
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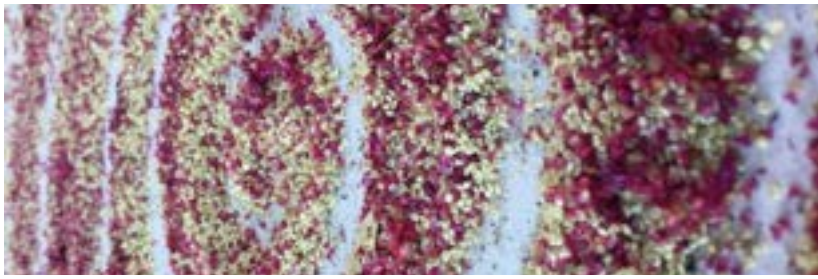


REMATRIATION RESOURCE GUIDE

SOGOREA TE' LAND TRUST

Returning Indigenous Land to Indigenous Hands









CONNECT WITH US

sogoreate-landtrust.org
info@rematriatetheland.org



ALL LAND IS INDIGENOUS LAND

Everything has a source. Trace anything you ate or used today back to its original source and you will find yourself at land. Indigenous Land.

All land carries Indigenous knowledges and stories, and is home to Indigenous peoples. What can we do to honor this? This Resource Guide from Sogorea Te' Land Trust offers a variety of questions, prompts and ideas for how to engage this history and the ideas brought up in the "Remothering the Land" Film.

STOLEN LAND STOLEN PEOPLE

Much of our world is founded on the theft of Indigenous and Black peoples labor, lives, and land. Think about your relationship to the colonial occupation of this land and answer these questions:

What is your relationship to this history? Who are the Indigenous people of the land you are on? How did you get there? Where are your ancestral lands? What are the Indigenous names of the people/territory/ plants/animals? Where are the Indigenous people of the land now? What can you do to support them? What historical harms have you benefitted from? What does it mean to heal and transform the legacy of colonization, genocide, and patriarchy our ancestors and future generations are calling us to do?



REMATRIATION REDISTRIBUTION RECIPROCITY



INDIGENOUS PEOPLE ARE STILL HERE

Learn about and act in support of Indigenous led work.

- Speak of Indigenous people in the present tense.
- Learn about the story of the land you are on.
- Read Indigenous authors, scholars, journalists, listen to Indigenous voices.
- Learn about structural inequality, white supremacy, and patriarchy.
- Find out about the issues impacting Indigenous communities today.
- Make sure your local schools are including Indigenous peoples and Indigenous histories in their curricula.
- Stop celebrating Columbus Day! Encourage your local city and state to recognize Indigenous Peoples Day instead.
- Learn about the pressing environmental issues where you are, and take action.
- Learn about your local Indigenous sacred sites, and take action to protect them.
- Shift resources to Indigenous-led projects and work.

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BE A GOOD GUEST

How can you be a good guest on Indigenous land?

Pay Shuumi Land Tax or support your local Indigenous land tax or communities.

Plant native plants and pollinators in your communities and grow food.

Protect your local creeks and watersheds.

Support Indigenous activists, artists and organizers.

Be a good neighbor and take care of each other.

Divest from white privilege and patriarchy by:

- Organizing your cities, counties, public institutions to develop land acknowledgements with your local tribes.
- Organizing to take down monuments of racism and violence.
- Organizing to change racist, colonial, or otherwise harmful names of local schools, parks, and shared spaces.
- Support the work of Rematriation and redistribute wealth.

Support your local Indigenous-led work.

Ask before you act.

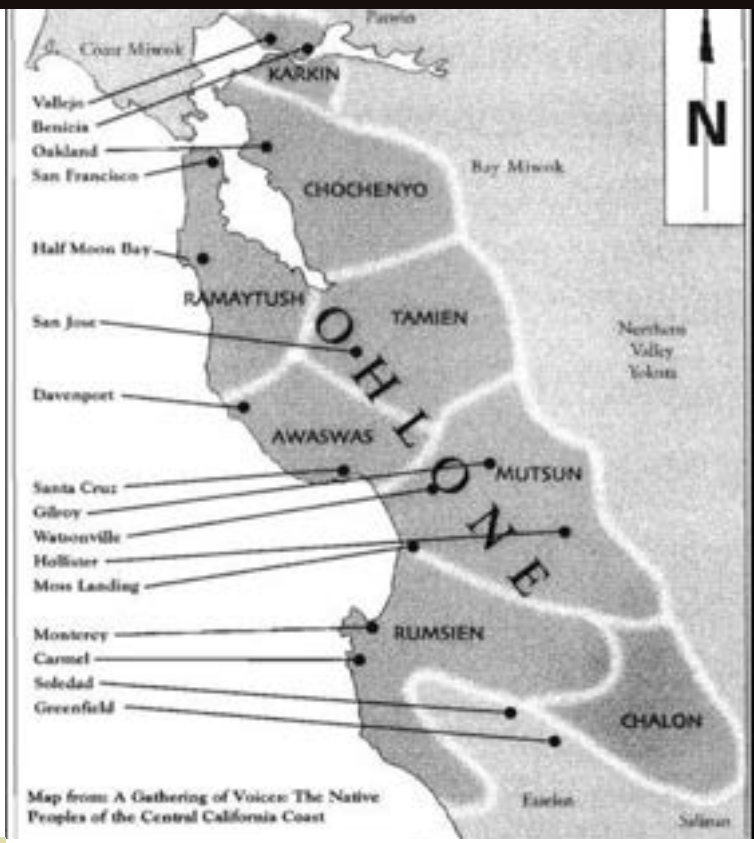
Do your part, take action today!



TERRITORY MAPS

Maps tell part of the story of people's relations to land but often are biased, narrowly focused or incomplete. Indigenous relation to land is different from ownership and there are no maps that contain all of Indigenous peoples' own names for themselves and their ancestral territories.

Wherever you are, research your local history for more information.





A GOOD PLACE TO START

Native Land Map

National Congress of American Indian Map

Local tribal websites

Local Indigenous organizations and centers



REDISTRIBUTION AND RECIPROCITY

Transforming the legacy of colonization

In our world's history, much wealth has been taken from Indigenous and Black communities with long lasting inequalities that still exist today.

As a society we are really just beginning to learn how to navigate what it means to acknowledge the history of the land we are on, to build meaningful deep relationships and collaborations that honor the past and to engage with the knowledge, time, energy and resources of Indigenous people and in respectful and reciprocal ways.

As we consider how to build justice with Black and Indigenous communities, acknowledging histories of harm and taking steps towards healing and repair is essential. What can you do to contribute? How can you shift and redistribute resources to communities who have been extracted from?



EXAMPLES OF HEALING AND REPARATIONS IN HISTORIC HARM:

Native Reparation from Nightline

Land Reparations Tool Kit from Resource Generation

Reparations Map for Black-Indigenous (BIPOC) Farmers

Truth and Reconciliation in South Africa

Canadian Reparations for boarding school survivors

US reparations to Japanese internment camp survivors

Honor taxes, land taxes, and other Black and Indigenous-led reparation efforts

RECOMMENDED READINGS

These are just a few!

Racial Justice books for kids
Honor Indigenous people with your family PBS
Indigenous Justice for Environmental Movements Toolkit by Catalyst Project
Resource Guide for Indigenous Solidarity Funding Projects: Honor Taxes & Real Rent Projects
Accomplices not Allies by Indigenous Action
Questions About Home by Catalyst Project
A People's History of the United States by Howard Zinn
An Indigenous People's History of the United States by Roxanne Dunbar Ortiz
Lies My Teacher Told Me: Everything Your American History Textbook Got Wrong
by James W. Loewen
Rethinking Columbus: The Next 500 Years edited by Bill Bigelow and Bob Peterson
An American Genocide, The US and the California Indian Catastrophe
by Benjamin Madley
Columbus and Other Cannibals by Dr. Jack Forbes
Unsettling Truths: The Ongoing, Dehumanizing Legacy of the Doctrine of Discovery
by Mark Charles



VOCABULARY

Rematriate:
To restore sacred relationships between Indigenous people and their ancestral land. Honoring our matrilineal societies and lineages ways of tending to the land, in opposition of patriarchal violence and dynamics.

Regenerate:
To restore, reform and recreate again what has been taken or lost; a spiritual rebirth.

Reparation:
To make an amends for a wrong one has done, by paying money to or otherwise mitigating harm; the act of repair.

Extraction:
The action of taking out something, especially using effort or force; origins, legacy, or of a family line.

Legacy:
The lineage of something passed by from ancestor, predecessor or the past.

Reciprocate:
To give and take in mutually beneficial ways; to return an action, item or effort in kind.



SOGOREA TE LAND TRUST
Led by Urban Indigenous Women

THANK YOU
FOR ENGAGING WITH US

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UN environment

International Resource Panel

THE WEIGHT OF CITIES: RESOURCE REQUIREMENTS OF FUTURE URBANIZATION

1. CHALLENGES OF THE FUTURE

- The proportion of the global population living in cities and towns is expected to rise from 54 percent in 2015 to 66 percent by 2050. Most of this transition will take place in the Global South, especially in Asia and Africa, and will require a **significant expansion of existing cities, as well as the construction of new cities.**

- Business as usual could result in the annual resource requirements of urban areas growing from 40 billion tonnes in 2010 to nearly 90 billion tonnes by 2050. The high demand for such raw materials will far exceed what the planet can sustainably provide. **Resources should now become a central policy concern**, in addition to concerns over CO_2, which are now well recognized.

- In addition, the long-term historic **sprawl of cities by 2 percent per year** threatens to increase global urban land use from just below 1 million km^2 to over 2.5 million km^2 by 2050, **putting agricultural land and food supplies at risk** (see IRP report on *Food Systems and Natural Resources,* 2015).

- Cities that become more resource-efficient in transport, commercial buildings, and building heating/cooling could achieve **reductions of between 36 to 54 percent** in energy use, GHG emissions, metals, land and water use.

2. RETHINKING URBANIZATION: RECOMMENDATIONS FOR POLICYMAKERS

A transition towards low-carbon, resource-efficient and socially just cities is crucial to advance towards the Sustainability Development Goals and the New Urban Agenda. The concept of '**urban metabolism**' **(the flow of resources through a city)** can be used to frame thinking about how cities can improve citizens' access to essential services (a focus on well-being for all) while managing their resources wisely and producing minimal waste. This transition could be achieved through the following approaches:

1. **Urban metabolisms must shift from 'linear' to 'circular':** This implies new ways of managing the movement of resources through the city. Businesses and cities will have to focus on offering high value services rather than selling artefacts; providing heat instead of heaters, mobility instead of highways and cars, light instead of light bulbs. Concepts such as 'urban mining', 'resource cascading' and 'industrial symbiosis' and the various manifestations of the 're-economy' (reduce, reuse, recycle) will define the new urbanism.



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2. **Urban metabolisms must be monitored to assist strategic planning at local government level:** Local governments must understand cities' inputs (e.g. biomaterials) and outputs (e.g. waste and emissions), using these to develop resource efficiency strategies.[1] In addition, the relationship between gross domestic product (GDP)[2] and material flows, global land use and GHG emissions must be measured, and targets must be set. The negative externalities of various resource uses must be priced in to provide economic incentives for behavioural change.

3. **City planning 'defaults' must be changed:** Cityscapes need to be designed for people rather than cars, and must allow the poor, in particular, to access the opportunities on offer in the city and prevent uncontrolled sprawl:

- **Create compact urban growth:** a network of high-density nodes of people, jobs and amenities (approximately 15,000 people per km^2) that are connected by efficient and affordable mass transit systems (e.g. light rail, rail, bus rapid transit) and are surrounded by medium-density areas (7,500 to 10,000 people per km^2). Transit-oriented development (TOD) and area development should be approached as integrated portfolios.
- **Human-scale sustainable design** that creates conditions for liveable functionally and socially mixed-use neighbourhoods, with options for soft mobility (e.g. walking, cycling) and 'passive' heating, cooling and lighting at the building level.
- **Resource-efficient urban components,** such as vehicle sharing, electric vehicles and charging point networks, efficient energy, waste and water systems, smart grids, cycle paths, energy-efficient buildings, new heating, cooling and lighting technology, etc.
- **Urban infrastructure planning for cross-sector efficiency,** such as using waste heat in district energy systems and waste materials in construction, such as fly-ash bricks.
- **Promotion of sustainable behaviours**, such as reducing and/or separating waste at source for recycling, using public transport, walking or cycling, enjoying public spaces, etc.

4. **A new governance model and politics of new imaginative business propositions and experimentation can provide hope for a better future:** An 'entrepreneurial urban governance' is proposed, which envisages an active and goal-setting role for the State, but in ways that allows broader coalitions of urban 'agents of change' to emerge. This would foster new imaginative business propositions to guide strategic planning for vibrant, green and socially inclusive cities and promote experimentation. It would also connect to global city networks and 'twin town' or 'sister city' initiatives to foster systemic learning between cities. Concepts such as 'living labs', city deals, innovation hubs and special zones indicate that cities are now thinking much more in terms of 'learning by doing'. Experimentation needs to result in a contextually appropriate balance between economic, social, technological and sustainable development.

5. **Higher levels of government must support city-level innovation for resource efficiency:** Collaboration with higher levels of government is essential if cities are to overcome regulatory barriers and access funding for innovation. It is crucial that existing infrastructure budgets are channelled in new directions. A low-carbon scenario would require adding only 5 percent to infrastructure spending (Global Commission on the Economy and Climate, 2014).

1 Resource efficiency strategies use fewer resources to achieve the same level of output or use the same amount of resources to achieve a greater output.
2 There is a need to move beyond GDP as the only measurement of progress, and to shift to a system that assesses well-being.

For more information please contact the Secretariat of the International Resource Panel at:
resourcepanel@unep.org
The full report and Summary for Policymakers can be downloaded at:
http://www.resourcepanel.org/reports/weight-cities

Senate Bill No. 1000

CHAPTER 587

An act to amend Section 65302 of the Government Code, relating to land use.

[Approved by Governor September 24, 2016. Filed with Secretary of State September 24, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1000, Leyva. Land use: general plans: safety and environmental justice.

(1) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and of any land outside its boundaries that bears relation to its planning. That law requires this general plan to include several elements, including, among others, a safety element for the protection of the community from unreasonable risks associated with the effects of various geologic hazards, flooding, wildland and urban fires, and climate adaptation and resilience strategies. That law requires that the safety element be reviewed and updated, in the case of flooding and fire hazards, upon the next revision of the housing element after specified dates or, in the case of climate adaptation and resilience strategies, upon either the next revision of a local hazard mitigation plan after a specified date or on or before January 1, 2022, as applicable. That law also requires, after the initial revision of the safety element to address flooding, fires, and climate adaptation and resilience strategies, that for each subsequent revision the planning agency review and, if necessary, revise the safety element to identify new information that was not available during the previous revision of the safety element.

This bill would instead require a planning agency to review and revise the safety element to identify new information, as described above, only to address flooding and fires.

This bill would, in addition, add to the required elements of the general plan an environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities, as defined, within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community. The bill would also require the environmental justice element, or related environmental justice goals, policies, and objectives integrated in other elements, to identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities, as specified, identify objectives and policies to promote civil engagement in the public decisionmaking process, and identify objectives

and policies that prioritize improvements and programs that address the needs of disadvantaged communities. The bill would require the environmental justice element, or the environmental justice goals, policies, and objectives in other elements, to be adopted or reviewed upon the adoption or next revision of 2 or more elements concurrently on or after January 1, 2018. By adding to the duties of county and city officials, this bill would impose a state-mandated local program.

(2) This bill would incorporate additional changes to Section 65302 of the Government Code, proposed by AB 2651 that would become operative only if this bill and AB 2651 are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify and annually review those areas covered by the plan that are subject to flooding identified by flood plain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5).

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas,

when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (g) of Section 2687 of Title 10 of the United States Code.

(b) (1) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(2) (A) Commencing January 1, 2011, upon any substantive revision of the circulation element, the legislative body shall modify the circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

(B) For purposes of this paragraph, "users of streets, roads, and highways" mean bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) (1) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information

described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

(2) The conservation element may also cover all of the following:

(A) The reclamation of land and waters.

(B) Prevention and control of the pollution of streams and other waters.

(C) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(D) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(E) Protection of watersheds.

(F) The location, quantity and quality of the rock, sand, and gravel resources.

(3) Upon the next revision of the housing element on or after January 1, 2009, the conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) (1) A noise element that shall identify and appraise noise problems in the community. The noise element shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(A) Highways and freeways.

(B) Primary arterials and major local streets.

(C) Passenger and freight online railroad operations and ground rapid transit systems.

(D) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(E) Local industrial plants, including, but not limited to, railroad classification yards.

(F) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

(2) Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average sound level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

(3) The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

(4) The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) (1) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wildland and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(2) The safety element, upon the next revision of the housing element on or after January 1, 2009, shall also do the following:

(A) Identify information regarding flood hazards, including, but not limited to, the following:

(i) Flood hazard zones. As used in this subdivision, "flood hazard zone" means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency (FEMA). The identification of a flood hazard zone does not imply that areas outside the flood hazard zones or uses permitted within flood hazard zones will be free from flooding or flood damage.

(ii) National Flood Insurance Program maps published by FEMA.

(iii) Information about flood hazards that is available from the United States Army Corps of Engineers.

(iv) Designated floodway maps that are available from the Central Valley Flood Protection Board.

(v) Dam failure inundation maps prepared pursuant to Section 8589.5 that are available from the Office of Emergency Services.

(vi) Awareness Floodplain Mapping Program maps and 200-year flood plain maps that are or may be available from, or accepted by, the Department of Water Resources.

(vii) Maps of levee protection zones.

(viii) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(ix) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.

(x) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(xi) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

(B) Establish a set of comprehensive goals, policies, and objectives based on the information identified pursuant to subparagraph (A), for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(i) Avoiding or minimizing the risks of flooding to new development.

(ii) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(iii) Maintaining the structural and operational integrity of essential public facilities during flooding.

(iv) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(v) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

(C) Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to subparagraph (B).

(3) Upon the next revision of the housing element on or after January 1, 2014, the safety element shall be reviewed and updated as necessary to address the risk of fire for land classified as state responsibility areas, as defined in Section 4102 of the Public Resources Code, and land classified as very high fire hazard severity zones, as defined in Section 51177. This review shall consider the advice included in the Office of Planning and Research's most recent publication of "Fire Hazard Planning, General Plan Technical Advice Series" and shall also include all of the following:

(A) Information regarding fire hazards, including, but not limited to, all of the following:

(i) Fire hazard severity zone maps available from the Department of Forestry and Fire Protection.

(ii) Any historical data on wildfires available from local agencies or a reference to where the data can be found.

(iii) Information about wildfire hazard areas that may be available from the United States Geological Survey.

(iv) General location and distribution of existing and planned uses of land in very high fire hazard severity zones and in state responsibility areas, including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open-space designations of homeowner associations.

(v) Local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services.

(B) A set of goals, policies, and objectives based on the information identified pursuant to subparagraph (A) for the protection of the community from the unreasonable risk of wildfire.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives based on the information identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Avoiding or minimizing the wildfire hazards associated with new uses of land.

(ii) Locating, when feasible, new essential public facilities outside of high fire risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in a state responsibility area or very high fire hazard severity zone.

(iii) Designing adequate infrastructure if a new development is located in a state responsibility area or in a very high fire hazard severity zone, including safe access for emergency response vehicles, visible street signs, and water supplies for structural fire suppression.

(iv) Working cooperatively with public agencies with responsibility for fire protection.

(D) If a city or county has adopted a fire safety plan or document separate from the general plan, an attachment of, or reference to, a city or county's adopted fire safety plan or document that fulfills commensurate goals and objectives and contains information required pursuant to this paragraph.

(4) Upon the next revision of a local hazard mitigation plan, adopted in accordance with the federal Disaster Mitigation Act of 2000 (Public Law 106-390), on or after January 1, 2017, or, if a local jurisdiction has not adopted a local hazard mitigation plan, beginning on or before January 1, 2022, the safety element shall be reviewed and updated as necessary to address climate adaptation and resiliency strategies applicable to the city or county. This review shall consider advice provided in the Office of Planning and Research's General Plan Guidelines and shall include all of the following:

(A) (i) A vulnerability assessment that identifies the risks that climate change poses to the local jurisdiction and the geographic areas at risk from climate change impacts, including, but not limited to, an assessment of how climate change may affect the risks addressed pursuant to paragraphs (2) and (3).

(ii) Information that may be available from federal, state, regional, and local agencies that will assist in developing the vulnerability assessment and the adaptation policies and strategies required pursuant to subparagraph (B), including, but not limited to, all of the following:

(I) Information from the Internet-based Cal-Adapt tool.

(II) Information from the most recent version of the California Adaptation Planning Guide.

(III) Information from local agencies on the types of assets, resources, and populations that will be sensitive to various climate change exposures.

(IV) Information from local agencies on their current ability to deal with the impacts of climate change.

(V) Historical data on natural events and hazards, including locally prepared maps of areas subject to previous risk, areas that are vulnerable, and sites that have been repeatedly damaged.

(VI) Existing and planned development in identified at-risk areas, including structures, roads, utilities, and essential public facilities.

(VII) Federal, state, regional, and local agencies with responsibility for the protection of public health and safety and the environment, including special districts and local offices of emergency services.

(B) A set of adaptation and resilience goals, policies, and objectives based on the information specified in subparagraph (A) for the protection of the community.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Feasible methods to avoid or minimize climate change impacts associated with new uses of land.

(ii) The location, when feasible, of new essential public facilities outside of at-risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in at-risk areas.

(iii) The designation of adequate and feasible infrastructure located in an at-risk area.

(iv) Guidelines for working cooperatively with relevant local, regional, state, and federal agencies.

(v) The identification of natural infrastructure that may be used in adaptation projects, where feasible. Where feasible, the plan shall use existing natural features and ecosystem processes, or the restoration of natural features and ecosystem processes, when developing alternatives for consideration. For the purposes of this clause, "natural infrastructure" means the preservation or restoration of ecological systems, or utilization of engineered systems that use ecological processes, to increase resiliency to climate change, manage other environmental hazards, or both. This may include, but is not limited to, floodplain and wetlands restoration or preservation, combining levees with restored natural systems to reduce flood risk, and urban tree planting to mitigate high heat days.

(D) (i) If a city or county has adopted the local hazard mitigation plan, or other climate adaptation plan or document that fulfills commensurate goals and objectives and contains the information required pursuant to this paragraph, separate from the general plan, an attachment of, or reference to, the local hazard mitigation plan or other climate adaptation plan or document.

(ii) Cities or counties that have an adopted hazard mitigation plan, or other climate adaptation plan or document that substantially complies with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by

reference into the safety element the other general plan provisions, climate adaptation plan or document, specifically showing how each requirement of this subdivision has been met.

(5) After the initial revision of the safety element pursuant to paragraphs (2) and (3) upon each revision of the housing element, the planning agency shall review and, if necessary, revise the safety element to identify new information relating to flood and fire hazards that was not available during the previous revision of the safety element.

(6) Cities and counties that have flood plain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.

(7) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation, the Central Valley Flood Protection Board, if the city or county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, and the Office of Emergency Services for the purpose of including information known by and available to the department, the agency, and the board required by this subdivision.

(8) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

(h) (1) An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community. The environmental justice element, or related environmental justice goals, policies, and objectives integrated in other elements, shall do all of the following:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

(B) Identify objectives and policies to promote civil engagement in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

(2) A city, county, or city and county subject to this subdivision shall adopt or review the environmental justice element, or the environmental

justice goals, policies, and objectives in other elements, upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018.

(3) By adding this subdivision, the Legislature does not intend to require a city, county, or city and county to take any action prohibited by the United States Constitution or the California Constitution.

(4) For purposes of this subdivision, the following terms shall apply:

(A) "Disadvantaged communities" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.

(B) "Public facilities" includes public improvements, public services, and community amenities, as defined in subdivision (d) of Section 66000.

(C) "Low-income area" means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093.

SEC. 1.5. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, greenways, as defined in Section 816.52 of the Civil Code, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify and annually review those areas covered by the plan that are subject to flooding identified by flood plain mapping prepared by the Federal Emergency Management Agency (FEMA) or the Department of Water Resources. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5).

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas,

when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (g) of Section 2687 of Title 10 of the United States Code.

(b) (1) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(2) (A) Commencing January 1, 2011, upon any substantive revision of the circulation element, the legislative body shall modify the circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

(B) For purposes of this paragraph, "users of streets, roads, and highways" mean bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) (1) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information

described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

(2) The conservation element may also cover all of the following:

(A) The reclamation of land and waters.

(B) Prevention and control of the pollution of streams and other waters.

(C) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(D) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(E) Protection of watersheds.

(F) The location, quantity, and quality of the rock, sand, and gravel resources.

(3) Upon the next revision of the housing element on or after January 1, 2009, the conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) (1) A noise element that shall identify and appraise noise problems in the community. The noise element shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(A) Highways and freeways.

(B) Primary arterials and major local streets.

(C) Passenger and freight online railroad operations and ground rapid transit systems.

(D) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(E) Local industrial plants, including, but not limited to, railroad classification yards.

(F) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

(2) Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average sound level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

(3) The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

(4) The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) (1) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wildland and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.

(2) The safety element, upon the next revision of the housing element on or after January 1, 2009, shall also do the following:

(A) Identify information regarding flood hazards, including, but not limited to, the following:

(i) Flood hazard zones. As used in this subdivision, "flood hazard zone" means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency (FEMA). The identification of a flood hazard zone does not imply that areas outside the flood hazard zones or uses permitted within flood hazard zones will be free from flooding or flood damage.

(ii) National Flood Insurance Program maps published by FEMA.

(iii) Information about flood hazards that is available from the United States Army Corps of Engineers.

(iv) Designated floodway maps that are available from the Central Valley Flood Protection Board.

(v) Dam failure inundation maps prepared pursuant to Section 8589.5 that are available from the Office of Emergency Services.

(vi) Awareness Floodplain Mapping Program maps and 200-year flood plain maps that are or may be available from, or accepted by, the Department of Water Resources.

(vii) Maps of levee protection zones.

(viii) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(ix) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.

(x) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(xi) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

(B) Establish a set of comprehensive goals, policies, and objectives based on the information identified pursuant to subparagraph (A), for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(i) Avoiding or minimizing the risks of flooding to new development.

(ii) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(iii) Maintaining the structural and operational integrity of essential public facilities during flooding.

(iv) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(v) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

(C) Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to subparagraph (B).

(3) Upon the next revision of the housing element on or after January 1, 2014, the safety element shall be reviewed and updated as necessary to address the risk of fire for land classified as state responsibility areas, as defined in Section 4102 of the Public Resources Code, and land classified as very high fire hazard severity zones, as defined in Section 51177. This review shall consider the advice included in the Office of Planning and Research's most recent publication of "Fire Hazard Planning, General Plan Technical Advice Series" and shall also include all of the following:

(A) Information regarding fire hazards, including, but not limited to, all of the following:

(i) Fire hazard severity zone maps available from the Department of Forestry and Fire Protection.

(ii) Any historical data on wildfires available from local agencies or a reference to where the data can be found.

(iii) Information about wildfire hazard areas that may be available from the United States Geological Survey.

(iv) General location and distribution of existing and planned uses of land in very high fire hazard severity zones and in state responsibility areas, including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open space designations of homeowner associations.

(v) Local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services.

(B) A set of goals, policies, and objectives based on the information identified pursuant to subparagraph (A) for the protection of the community from the unreasonable risk of wildfire.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives based on the information identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Avoiding or minimizing the wildfire hazards associated with new uses of land.

(ii) Locating, when feasible, new essential public facilities outside of high fire risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in a state responsibility area or very high fire hazard severity zone.

(iii) Designing adequate infrastructure if a new development is located in a state responsibility area or in a very high fire hazard severity zone, including safe access for emergency response vehicles, visible street signs, and water supplies for structural fire suppression.

(iv) Working cooperatively with public agencies with responsibility for fire protection.

(D) If a city or county has adopted a fire safety plan or document separate from the general plan, an attachment of, or reference to, a city or county's adopted fire safety plan or document that fulfills commensurate goals and objectives and contains information required pursuant to this paragraph.

(4) Upon the next revision of a local hazard mitigation plan, adopted in accordance with the federal Disaster Mitigation Act of 2000 (Public Law 106-390), on or after January 1, 2017, or, if a local jurisdiction has not adopted a local hazard mitigation plan, beginning on or before January 1, 2022, the safety element shall be reviewed and updated as necessary to address climate adaptation and resiliency strategies applicable to the city or county. This review shall consider advice provided in the Office of Planning and Research's General Plan Guidelines and shall include all of the following:

(A) (i) A vulnerability assessment that identifies the risks that climate change poses to the local jurisdiction and the geographic areas at risk from climate change impacts, including, but not limited to, an assessment of how climate change may affect the risks addressed pursuant to paragraphs (2) and (3).

(ii) Information that may be available from federal, state, regional, and local agencies that will assist in developing the vulnerability assessment and the adaptation policies and strategies required pursuant to subparagraph (B), including, but not limited to, all of the following:

(I) Information from the Internet-based Cal-Adapt tool.

(II) Information from the most recent version of the California Adaptation Planning Guide.

(III) Information from local agencies on the types of assets, resources, and populations that will be sensitive to various climate change exposures.

(IV) Information from local agencies on their current ability to deal with the impacts of climate change.

(V) Historical data on natural events and hazards, including locally prepared maps of areas subject to previous risk, areas that are vulnerable, and sites that have been repeatedly damaged.

(VI) Existing and planned development in identified at-risk areas, including structures, roads, utilities, and essential public facilities.

(VII) Federal, state, regional, and local agencies with responsibility for the protection of public health and safety and the environment, including special districts and local offices of emergency services.

(B) A set of adaptation and resilience goals, policies, and objectives based on the information specified in subparagraph (A) for the protection of the community.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Feasible methods to avoid or minimize climate change impacts associated with new uses of land.

(ii) The location, when feasible, of new essential public facilities outside of at-risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in at-risk areas.

(iii) The designation of adequate and feasible infrastructure located in an at-risk area.

(iv) Guidelines for working cooperatively with relevant local, regional, state, and federal agencies.

(v) The identification of natural infrastructure that may be used in adaptation projects, where feasible. Where feasible, the plan shall use existing natural features and ecosystem processes, or the restoration of natural features and ecosystem processes, when developing alternatives for consideration. For the purposes of this clause, "natural infrastructure" means the preservation or restoration of ecological systems, or utilization of engineered systems that use ecological processes, to increase resiliency to climate change, manage other environmental hazards, or both. This may include, but is not limited to, floodplain and wetlands restoration or preservation, combining levees with restored natural systems to reduce flood risk, and urban tree planting to mitigate high heat days.

(D) (i) If a city or county has adopted the local hazard mitigation plan, or other climate adaptation plan or document that fulfills commensurate goals and objectives and contains the information required pursuant to this paragraph, separate from the general plan, an attachment of, or reference to, the local hazard mitigation plan or other climate adaptation plan or document.

(ii) Cities or counties that have an adopted hazard mitigation plan, or other climate adaptation plan or document that substantially complies with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by

reference into the safety element the other general plan provisions, climate adaptation plan or document, specifically showing how each requirement of this subdivision has been met.

(5) After the initial revision of the safety element pursuant to paragraphs (2) and (3) upon each revision of the housing element, the planning agency shall review and, if necessary, revise the safety element to identify new information relating to flood and fire hazards that was not available during the previous revision of the safety element.

(6) Cities and counties that have flood plain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.

(7) Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation, the Central Valley Flood Protection Board, if the city or county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, and the Office of Emergency Services for the purpose of including information known by and available to the department, the agency, and the board required by this subdivision.

(8) To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

(h) (1) An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies disadvantaged communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a disadvantaged community. The environmental justice element, or related environmental justice goals, policies, and objectives integrated in other elements, shall do all of the following:

(A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

(B) Identify objectives and policies to promote civil engagement in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

(2) A city, county, or city and county subject to this subdivision shall adopt or review the environmental justice element, or the environmental

justice goals, policies, and objectives in other elements, upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018.

(3) By adding this subdivision, the Legislature does not intend to require a city, county, or city and county to take any action prohibited by the United States Constitution or the California Constitution.

(4) For purposes of this subdivision, the following terms shall apply:

(A) "Disadvantaged communities" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.

(B) "Public facilities" includes public improvements, public services, and community amenities, as defined in subdivision (d) of Section 66000.

(C) "Low-income area" means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 65302 of the Government Code proposed by this bill and Assembly Bill 2651. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 65302 of the Government Code, and (3) this bill is enacted after Assembly Bill 2651, in which case Section 65302 of the Government Code, as amended by Assembly Bill 2651, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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RESOLUTION NO. 65,210–N.S.

AMENDING THE WEST BERKELEY PLAN AND, BY REFERENCE, THE GENERAL PLAN

WHEREAS, the City of Berkeley ("City") adopted the West Berkeley Plan in 1993; and adopted Zoning Ordinance amendments to implement that Plan in 1999; and

WHEREAS, beginning in 2007, the City Council requested that staff revise regulations in West Berkeley to allow flexibility in zoning restrictions to facilitate development of large multi-parcel sites and to encourage building reuse and expansion; and

WHEREAS, the West Berkeley Project was developed to meet these goals while remaining consistent with the primary goals and objectives of the West Berkeley Plan; and

WHEREAS, in addition to various Zoning Ordinance revisions, the West Berkeley Project includes revisions to the Land Use Chapter of the West Berkeley Plan, Section *VII. Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* to reflect the proposed changes to zoning regulations; and

WHEREAS, the West Berkeley Plan is incorporated by reference into the General Plan, and therefore such revisions are also amendments to the General Plan; and

WHEREAS, the Planning Commission discussed the West Berkeley Project at approximately 30 meetings in 2008, 2009 and 2010, held two public hearings and, on October 13, 2010 through a series of eight motions, recommended (7-2-0) (Ayes: Clarke, Eisen, Gurley, Novosel, Pollack, Samuels, Stoloff. Noes: Dacey, Poschman) that the City Council certify the Final EIR and adopt the Zoning Ordinance and West Berkeley Plan amendments; and

WHEREAS, the City Council held duly noticed public hearings on January 25 and February 8, 2011, the public hearings were continued to February 22 and March 22, 2011, and the public hearing was closed on March 22, 2011; and

WHEREAS, the proposed amendments to the West Berkeley Plan Land Use Chapter, Section *VII. Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* are consistent with the Purposes of the West Berkeley Plan, including maintaining the full range of land uses and economic activities, maintaining the ethnic and economic diversity, and maintaining and improving the quality of life; and

WHEREAS, the proposed amendments are also consistent with West Berkeley Plan goals and policies, including, but not limited to allowing modification to zoning regulations to improve the West Berkeley industrial business climate, to attract emerging business sectors, and to retain, to the degree feasible, the economic diversity of West Berkeley businesses, and especially space for artists and crafts-people and jobs for residents of Berkeley who may be underemployed or unemployed; and

WHEREAS, the West Berkeley Plan states that the Plan is a living document and should be reconsidered and changed as appropriate, over time; and

WHEREAS, the proposed amendments to the West Berkeley Plan support the proposed zoning amendments included as part of the West Berkeley Project; and

WHEREAS, the City has prepared, in conformance with the California Environmental Quality Act (CEQA), an Environmental Impact Report, and the City Council adopted a Resolution certifying the Final EIR, adopting the Mitigation Monitoring Program and making all required findings pursuant to CEQA; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 2120 Milvia Street, Second Floor, Berkeley, California.

NOW THEREFORE, BE IT RESOLVED that West Berkeley Plan shall be amended as shown on Attachments A and B of this Resolution.

BE IT FURTHER RESOLVED that the West Berkeley Plan is part of the General Plan and that the General Plan is hereby also amended by reference.

The foregoing Resolution was adopted by the Berkeley City Council on March 22, 2011 by the following vote:

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

Noes: Arreguin and Worthington.

Absent: None.

Tom Bates, Mayor

Attest: Mark Numainville, CMC, Deputy City Clerk

PROPOSED AMENDMENTS TO THE WEST BERKELEY PLAN

REVISIONS ARE PROPOSED TO SECTION VII, "LAND USE REGULATIONS OF THE WEST BERKELEY PLAN – FOR ADOPTION IN PRINCIPLE"

The following text and proposed modifications represent pages 42 through 58 of the West Berkeley Plan (December 1993).

VII. Land Use District Regulations of the West Berkeley Plan--for Adoption in Principle

Status of the Regulations

The land use regulations below are central to the West Berkeley Plan. They spell out generally what uses are permitted and prohibited in each of the districts created by the Plan, what allowable height and bulk standards would be, and set forth a series of regulatory concepts for special situations. These include limits on changes of use of manufacturing facilities, on buffers between residential and heavy manufacturing sites, and other issues. They are much of what the framers of the West Berkeley Plan understand to be the content of the Plan.

Nevertheless, these regulations are proposed for adoption in principle only, rather than adoption as an amendment to Berkeley's General Plan (as the rest of the document is). They are proposed in this way for technical reasons. Development regulations such as these should ultimately reside in the Zoning Ordinance, and will be found there once West Berkeley's zoning is brought into conformity with the Plan. City staff anticipates that the zoning will be drafted and approved next year. The procedure for adopting the zoning changes should be relatively streamlined, as it will be relying on the West Berkeley Plan Environmental Impact Report as environmental documentation. If these regulations were adopted as part of the General Plan, any change to them, however minor, would require a General Plan amendment. Such amendments are--because of state planning law--procedurally complex, and limited in number.

For these reasons, adoption of this section in principle is recommended. Such adoption will make clear that zoning provisions should closely follow the Plan, while assuring the most appropriate and expeditious procedure for enacting and amending that zoning.

2011 Update:
On March 22, 2011, the City Council modified certain text in the Zoning Ordinance related to implementing the West Berkeley Plan, modified this "Land Use Regulation section of the West Berkeley Plan consistent with these zoning changes, and certified the West Berkeley Project EIR for these changes [give ordinance number], These changes occur in West Berkeley Plan Section VII, with each change followed with the text "*(Action 2011).*"

- *District permitted and prohibited uses*
- *B. Special Situations and Regulations*
- 2010 Update Note*: Table 1-5 Recommended Development Standards by Zone* (Plan page 53), which was prepared to assist with development of zoning regulations has not been updated and should not be considered a reliable source for zoning designations. Correct zoning designations are available in the City of Berkeley Zoning Ordinance, in the appropriate zoning district text.

DISTRICT PERMITTED AND PROHIBITED USES
(See also Special Situations section)

Generally Permitted and Prohibited Uses

Manufacturing District ("Pink")

See also Development Standards, Manufacturing/Residential Buffers for regulations affecting certain sites

Permitted Uses ~~(see Development Standards chart for sizes of projects requiring Administrative Use Permit, Use Permit with Public Hearing)~~ See Zoning Ordinance for definitions of and discretionary levels for each use (added 2011)

- ° Arts & Crafts Uses (workspaces only, not live-work)
- ◦ Alternative Fueling Stations (added 2011)
- ° Auto body & painting
- ° Automobile dismantling ("junkyards")
- ° Auto repair
- ° Bus, Cab, truck, and public utility depots
- ° Composting
- ° Construction yards and associated offices
- ° Farms and Agricultural establishments
- ° Industrial Product Sales (Gases & Chemicals)
- ° Manufacturing: Food processing, textiles, apparel, lumber & wood products, furniture, paper & allied products, printing (exclusive of publishing); asphalt products, leather products (exclusive of primary production of leather); stone, clay, and glass products; fabricated metals, industrial machinery, electrical machinery & electronics, transportation equipment, scientific instruments, miscellaneous manufacturing.
- ° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste Parking lots (for uses located in the district)
- ° ~~Self-storage ("mini-storage")~~ (removed 2011)
- ° Warehouses
- ° Wholesale trade and distribution
- ◦ Warehouse-based non-store retail (added 2011)

~~Conditionally Permitted Uses (Public Hearing required regardless of project size)~~ (removed 2011)

- °Chemicals, including pharmaceuticals (exclusive of the manufacturing of alkalies, chlorine, chemical warfare gases, DDT, chloroform, fertilizers, and explosives)
- ° Parking structures
- ° Primary metals, including smelting and refining

~~Ancillary Uses (Uses permitted only as an integral part of manufacturing or wholesale trade site)~~ (removed 2011)

- ° Factory Outlets (for products manufactured on site)
- ° Laboratories
- ° Offices
- ◦ Services to Buildings and Dwellings (Added 2011)
- ◦ Visual and Aural Arts Production (Added 2011)
- ◦ Alternative Fueling/Charging Stations (Added 2011)

Prohibited Uses--Manufacturing District

- ° Banks and financial establishments
- ° Gasoline stations
- ° Group quarters residences
- ° Hazardous waste transfer stations & disposal facilities (freestanding facilities)
- ° Hotels and motels
- ° Laboratories (freestanding)
- ° Live-work
- ° Manufacturing: Tobacco products, alkalies, chlorine, chemical warfare gases, DDT, pesticides, chloroform, fertilizers, explosives; primary production of leather; petroleum refining, products of petroleum and coal not elsewhere classified; tires, inner tubes, synthetic rubber, asbestos products, ordnance and accessories; reprocessing of nuclear cores & scrap
- ° Offices (freestanding)
- ° Publishing
- ° Residences
- ° Restaurants
- ° Retail establishments, except permitted factory outlets
- ° Schools and day care facilities
- ◦ Mini-Storage (Added 2011)

Mixed Manufacturing District ("Blue")

See also Development Standards, Large Site Development Process (Zoning Ordinance sections modified 2011); Manufacturing/Residential Buffers (regulations affecting frontage along portions of 7th St., Dwight Way)

Permitted Uses ~~(see Development Standards chart for sizes of projects requiring Administrative Use Permit, Use Permit with Public Hearing)~~ See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

- ◦ Alternative Fueling/Charging Stations (Added 2011)
- ° Arts & Crafts Uses (workspaces only, not live-work)
- ° Auto body & painting
- ° Automobile dismantling ("junkyards")
- ° Auto repair
- ° Bus, Cab, truck, and public utility depots
- ◦ Childcare (Added 2011)
- ° Composting
- ° Construction yards and associated offices
- ° Farms and Agricultural establishments
- ° Industrial Product Sales (Gases & Chemicals)
- ° Manufacturing: Food processing, textiles, apparel, lumber & wood products, furniture, paper & allied products, printing (exclusive of publishing); asphalt products, leather products (exclusive of primary production of leather); stone, clay, and glass products; fabricated metals, industrial machinery, electrical machinery & electronics, transportation equipment, scientific instruments, miscellaneous manufacturing.
- ° Parking Lots (for uses located in the district)
- ° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
- ◦ Research and Development as defined in the Zoning Ordinance (added 2011)
- ◦ Services to Buildings and Dwellings (Added 2011)

- Visual and Aural Arts Production (Added 2011)
- Warehouses
- Warehouse-based Non-store Retail (Added 2011)
- Wholesale trade and distribution

~~Uses Always Requiring Public Hearing (regardless of project size)~~ (deleted 2011)

- Chemicals, including pharmaceuticals (exclusive of the manufacturing of alkalies, chlorine, chemical warfare gases, DDT, chloroform, fertilizers, and explosives)
- Parking structures
- Primary metals, including smelting and refining

~~Ancillary Uses (Uses permitted only as an integral part of manufacturing or wholesale trade site)~~ (deleted 2011)

- Factory Outlets (for products manufactured on site)
- Laboratories on the ground floor
- Offices on the ground floor

~~Upper story Uses (Uses permitted on the second story or above)~~ (deleted 2011)

- Laboratories (other than ancillary)
- Offices (other than ancillary)
- Publishing

Prohibited Uses

- Banks and financial establishments
- Gasoline stations except Alternative Fueling/Charging Stations
- Group quarters residences
- Hazardous waste transfer stations & disposal facilities (freestanding facilities)
- Hotels and motels
- ~~Laboratories on the ground floor (not part of a manufacturing district)~~ (deleted 2011)
- Live-work
- Manufacturing: Tobacco products, alkalies, chlorine, chemical warfare gases, DDT, pesticides, chloroform, fertilizers, explosives; primary production of leather; petroleum refining, products of petroleum and coal not elsewhere classified; tires, inner tubes, synthetic rubber, asbestos products, ordnance and accessories, reprocessing of nuclear cores & scrap
- Offices on the ground floor, not part of a manufacturing facility
- Residences
- Restaurants
- Retail establishments, except permitted factory outlets
- Schools and day care facilities
- Self-storage ("mini-storage")

Mixed Use/Light Industrial District ("Green")

See also Development Standards; Conversions from Manufacturing to Other Uses; Live-Work Development

Permitted Uses (~~see Development Standards chart for sizes of projects requiring Administrative Use Permit, Use Permit with Public Hearing~~)See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

1. Industrial & Agricultural Uses

° Arts and Crafts (workspaces only, live-work limited)
◦ Alternative Fueling Stations (added 2011)
° Auto repair
° Bus, Cab, truck, and public utility depots
° Construction yards & associated offices
° Farms & agricultural establishments
°Manufacturing: Food processing (e.g. bakeries, wineries); textiles, apparel, furniture, lumber & wood products, printing and publishing; stone, clay, and glass products; industrial machinery; electrical machinery & electronics (except production of semiconductors and related devices); scientific instruments; miscellaneous manufacturing
° Manufacturing Repair and Service
° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
◦ Research and Development as defined in Zoning Ordinance(added 2011)
° Vocational Schools (providing training for uses in district)
° Warehouses
◦ Warehouse-based Non-store Retail (added 2011)
° Wholesale trade and distribution

2. Offices and Services

° Offices—General, medical, and professional (see Conversions from manufacturing to other uses)

3. Retail

° Building Materials and Garden Supplies—
° ~~Business Services (not to exceed 3,000 sq.ft.)~~—Services to Buildings and Dwellings (added 2011)

4. Other Uses

Parking lots

~~Uses Always Requiring Public Hearing (regardless of project size)~~ (deleted 2011)
◦ Alternative Fueling/Charging Stations (added 2011)
° Auto body and painting
° ~~Day Care~~Childcare (modified 2011)
° Live-Work (Manufacturing and Arts & Crafts uses only)
° Manufacturing of leather products, rubber products, plastic products, paper products, fabricated metals
° Parking structures
° Restaurants
° Schools (other than Vocational Schools described above)
° Shelters for Homeless Persons
◦ Truck and Utility Trailer Rental and Leasing (added 2011)

◦ Visual and Aural Arts Production (modified 2011)

~~Uses Permitted in Selected Locations—portions of Mixed Use/Light Industrial district north of Gilman St. and west of 3rd St. (Southern Pacific RR)~~ (deleted 2011)

° Laboratories (not part of manufacturing facilities)*
° Manufacture of pharmaceuticals

Prohibited Uses--Mixed Use/Light Industrial District

° Banks and Financial establishments (public service)
° Gasoline stations except Alternative Fueling/Charging Stations (added 2011)
° Group Quarters other than Shelters for Homeless Persons
° Hazardous waste transfer stations & disposal facilities (freestanding facilities)
° Hotels and Motels
° Manufacturing—All uses prohibited in Manufacturing zone and Chemicals (except pharmaceuticals in selected locations), petroleum products, primary metals processing (e.g. "foundries"), production of semiconductors and related devices, transportation equipment and primary production of leather, rubber, plastic, or paper
° Residences (live/work conditionally permitted, see above)
° Retail stores, except as listed above
° Self-storage ("mini-storage")

*Pending further study when Hazard Ranking System is developed for rezoning. Certain types of laboratories may be inappropriate for these locations.

Mixed Use/Residential District

See also Development Standards, Conversions from Manufacturing to Other Uses, Permitted Uses, Live-Work

Permitted Uses ~~(see Development Standards chart for sizes of projects requiring Administrative Use Permit, Use Permit with Public Hearing)~~See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

1. Residential

° Residences—Single-family, Multi-family, Group Quarters
° ~~Day Care~~Childcare (modified 2011)
° Schools

2. Industrial & Agricultural

° Arts and Crafts (workspaces only)
° Farms and Agricultural establishments
° Manufacturing Repair and Service
° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
° Warehouses
◦ Warehouse-based Non-store Retail (added 2011)
° Wholesale trade and distribution

3. Retail

° Building Materials and Garden Supplies
° ~~Business Services—~~Services to Buildings and Dwellings (added 2011)
° Food Stores (not to exceed 5,000 sq.ft.)
° Cleaners, laundries, and laundromats

4. Other Uses

Parking lots (for uses located in the district)

~~Uses Always Requiring Public Hearing (regardless of project size)~~ (deleted 2011)

° Auto body, auto painting, auto repair (with setbacks from residential use)
Bus, Cab, truck, and public utility depots
° Construction yards and associated offices
° Live-work (work activities those permitted in district)
° Manufacturing— Food processing (e.g.bakeries, wineries), clothing & textile production, furniture production, wood products, printing and publishing; stone,clay,and glass products; industrial machinery, electrical machinery & electronics (except production of semiconductors and related devices), scientific instruments, miscellaneous manufacturing,leather products, rubber products, plastic products, paper products
° Restaurants
° Visual and Aural Arts Production (modified 2011)

Prohibited Uses

° Banks and financial establishments (public service)
° Gasoline stations except Alternative Fueling/Charging stations (added 2011)
° Hazardous waste transfer stations & disposal facilities (freestanding facilities)
° Hotels and motels
~~Laboratories*~~ (deleted 2011)
° Manufacturing—All uses prohibited in Manufacturing zone and Chemicals (including pharmaceuticals), lumber milling, petroleum products, primary metals processing, production of semiconductors and related devices, primary production of leather, rubber, plastic, or paper (e.g. pulp mills)
° Retail stores, except as listed above

*Pending further study when Hazard Ranking System is developed for rezoning. Certain types of laboratories may be appropriate for this district

Commercial District ("Red") (See also Development Standards, Live-Work)

Generally Permitted Uses ~~(see Development Standards chart for sizes of projects requiring Administrative Use Permit, Use Permit with Public Hearing)~~ See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

1. Retail

° Barber shops, beauty salons, and other hair cuteries
° Gasoline stations
° Hotels and motels
° Cleaners, laundries, and laundromats
° Restaurants
° Retail stores (all types)

2. Residential

° Day Care
° Schools

3. Live-Work

° Live-work (work activities those permitted in district)

4. Offices

° Banks and financial establishments
° Business Services (above the ground floor in designated commercial nodes)
°Offices—General, Medical, and Professional (above the ground floor in designated commercial nodes)

5. Industrial and Agricultural

° Arts and Crafts (workspaces)
° Auto body, auto painting, and auto repair
° Farms and agricultural establishments
° Wholesale trade and distribution

6. Other Uses

Parking lots (for uses located in the district)

~~Uses Always Requiring Public Hearing (regardless of project size)~~ (deleted 2011)

° Construction yards and associated offices
° Manufacturing—Food processing, printing and publishing, wood products, furniture making, stone, clay, and glass products
Parking structures
° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
° Residential uses—single family, multi-family, and group quarters (above the ground floor in designated commercial nodes)

Prohibited Uses--Commercial District

Bus, Cab, truck, and public utility depots
° Hazardous waste transfer stations & disposal facilities (freestanding facilities)
° Laboratories (freestanding)
° Manufacturing (other than uses specified above)

Residential Districts

See also Development Standards

Permitted Uses in All Residential Zones—R1A, R-3, R-4

° Parks, playgrounds, playlots
° Day care for six or fewer children

Uses Requiring a Public Hearing (regardless of project size) in All Residential Zones

° Churches, Community Centers, and Libraries
° Day Care
° Food stores (less than 3,000 sq.ft.)
° Cleaners, laundries, and laundromats
° Residences—1 unit, 2 unit
° Schools

Uses Requiring a Public Hearing (regardless of project size) in R-3, R-4 zones only, not permitted in R-1A zones

° Group Quarters
° Medical buildings and hospitals
° Multiple dwellings

Uses Requiring a Public Hearing (regardless of project size) in R-4 zone only, not permitted in R-1A and R-3 zones

° Hotels and motels
° Institutions and offices
° Retail ancillary to hotels, motels, instiutions and offices

Uses Prohibited in All Residential Zones

° All other uses—agricultural, other retail, manufacturing, wholesaling

Note: Most of the "residential core" area of West Berkeley between Dwight and Camelia (excluding University Ave.) and 6th St. and the San Pablo commercial strip is zoned R-1A. However, parts of the blocks on either side of University Ave. are zoned R-3 or R-4.

B. **Special Situations and Regulations**

Change of Use from Manufacturing and Industrial Uses to Other Uses

Rationale: The West Berkeley Plan's regulation of "conversions" (technically "changes of use") from manufacturing and wholesale trade is a central element of the Plan's land use concept. In the Mixed Use/Light Industrial ("Green") zone in particular, the conversion limits seek to maintain the industrial character of the area, without completely blocking other uses there. The district description above makes clear how—in many respects—the Light Industrial district is the key manufacturing and industrial district in West Berkeley. Staff estimates that the district contains at least 2.2 million square feet of privately owned manufacturing and wholesaling space, in dozens and dozens of buildings, which range in size from a few thousand square feet to the 162,000 square feet of Utility Body. This district—in contrast with the Manufacturing and Mixed Manufacturing districts—contains a substantial percentage of manufacturers and wholesalers which rent rather than own their space, putting them at much greater risk of displacement.

If no limits on the conversion of manufacturing space were enforced here, widespread displacement of manufacturing would be possible, contrary to the Plan's economic development and land use policy. On the other hand, if the City were to seek to protect manufacturers' spaces in the absence of such a rule, the list of permitted uses in the district would have to be much more restrictive. Thus, given the existence of limits on conversion, the Plan can be much more permissive about allowing certain uses as new construction (e.g. offices) while maintaining the area as an industrial district. The conversion limitation approach allows change, but regulates its pace and scope. Indeed, if the full 25% of space allowed to convert actually were to convert (an admittedly unlikely occurence), some 550,000 square feet of space would be changed to office or other uses. If this 550,000 square feet were to convert, some 40% of the district's current space would be non-manufacturing/wholesaling, about the maximum level at which the district could still be called "industrial."

The issue is also relevant in the Mixed Use/Residential district, although this district is both smaller and designed to be less protective of manufacturing. In this district, the Plan calls for conversions of manufacturing/wholesaling buildings of 10,000 square feet or more to be reviewed for their impact on the industrial character of the area. Specific criteria will be proposed in the West Berkeley rezoning proposal.

2011 Updates:

- **Arts and Crafts, Non-store Retail and Contractors, as defined in the Zoning Ordinance are allowed uses within the Protected Spaces (including Warehouse, Wholesale Trade, Manufacturing and Material Recovery Enterprise)**
- **Research and Development, as defined and regulated in the Zoning Ordinance, if allowed in the MU-LI and MM districts, and may be allowed in Wholesale Trade and Warehouse protected space if allowed by zoning.**

Regulation: "Conversion" (Change of Use) of Manufacturing or Wholesaling Space in Mixed Use/Light Industrial District

Scope of Regulation—Changes of buildings currently or last used for manufacturing, wholesale trade, or warehouse uses to any other use, except manufacturing, wholesale trade, or warehouse use.

Limit on Change of Use—The change of use of any manufacturing, wholesale trade, or warehouse use to a use other than manufacturing, wholesale trade or warehousing would be limited to 25% of the floor area of the building now used for purposes other than offices, laboratories, properly approved live-work spaces, or properly approved retail space.

Example: Thus in a manufacturing site with 100,000 square feet of space (other than office), 25,000 could be converted (with a Use Permit) to other uses permitted in the district. No further conversion would be permitted.

Hardship Exception—Buildings which are uneconomic to maintain in at least 75% industrial use could be converted to other uses permitted in the district with a Use Permit granted by the Zoning Adjustments

Board after a Public Hearing. The Board would be required to find that there are exceptional physical circumstances pertaining to the building, which do not pertain to most other buildings in the district, which make it impossible to reuse for industrial purposes. The simple fact that other uses would be more profitable is not adequate for this Use Permit.

Heavy Manufacturing/Residential Buffers

Rationale: The intent of this regulation is to maintain a minimum distance of 150 feet between residential and "heavy" manufacturing uses in order to mitigate environmental impacts, such as noise, odor, vibration and glare, which would interfere with reasonable residential use and to provide a workable environment for these manufacturers.

Regulation:

Affected Districts--Mixed Use/Residential; Mixed Use/Light Industrial; Mixed Manufacturing; Manufacturing

Mixed Use-Residential

° No new residential use may be established within 150 feet of any property in a manufacturing district (i.e. Manufacturing, Mixed-Manufacturing); nor within 150' of existing "heavy" manufacturer in any zone. Additions to existing residential uses permitted at a "reasonable" level - standards to be set forth in the rezoning unless a Use Permit is obtained. (added 2011)

° No new or expanded manufacturing use may be established within 150 feet of an existing residential use, unless Performance Standards are met and a Use Permit is obtained.

Manufacturing; Mixed-Manufacturing; Mixed Use-Light Industrial Districts

° No new or expanded manufacturing use may be established within 150 feet of a residential property located in the Mixed Use-Residential zone, unless Performance Standards are met and a Use Permit is obtained.
° No new or expanded manufacturing use may be established within 150 feet of an existing residential use regardless of zone, unless Performance Standards are met and a Use Permit is obtained.

Note: Residential uses are prohibited in the Manufacturing, Mixed Manufacturing, and Mixed Use/Light Industrial district.

Large Site Development Process

Rationale: West Berkeley has a few large sites—sites of 5 acres or more under a single ownership—which present special challenges and opportunities for planning and development in West Berkeley. These large sites—such as the Miles or (ex)Colgate property—are of a scale where they have a major impact on the area around them, and noticeable impacts on West Berkeley as a whole. They also may require modification of the uses and development standards in a district to facilitate a feasible large scale project.

For these reasons, the West Berkeley Plan incorporates a concept of a Large Site Development Process. While the process remains to be defined, the concept is that a special approval process would be used for certain projects. Because of the importance of these projects, the Planning Commission would be involved in the process. The process would also provide a formal mechanism for early citizen input.

The rezoning will propose a Zoning Ordinance amendment to provide for a Master Plan Permit. It would be a middle ground alternative between the Use Permit and the Development Agreement. While a master permit could be issued for a multi-building project, there would be a procedure for review of individual buildings at their time of construction. This alternative could incorporate many of the master planning features of a Development Agreement, but would be acted upon under the procedures of the Zoning Ordinance, rather than as a separate contract.

It is important to note that no special process would be required of large scale projects which conform in all substantive respects to the uses and development standard of their district. Such a project, however large, would require simply the normal Use Permit(s) and environmental review (an Environmental Impact Report or other appropriate documentation).

2011 Update: The Master Use Permit (MUP) section of the Zoning Ordinance (Chapter 23B.36) is modified. The Regulations noted in the Plan are no longer accurate. Please reference the proposed revisions to Chapter 23B.36 for the updated Master Use Permit regulations.

Regulation: Projects which are eligible for the Large Site Development Process are those which:

- On sites of at least ~~5~~ 4 (modified 2011) acres; and
- Proposing to incorporate uses which would not otherwise be permitted in the district; or
- Requesting an "alternative" land use entitlement, such as a Development Agreement. Another possibility is a Master Plan Permit, whereby a single permit would be issued for the development of a number of buildings and/or uses within a given range.

Performance Standards

Rationale: The West Berkeley Plan incorporates the concept of "performance standards." Performance standards differ from traditional zoning development standards in that they regulate the impacts of land uses—noise, odor, vibration, etc. By contrast, traditional zoning standards deal with the physical form of building—building mass, height, yards (setbacks), lot coverage, parking, etc. Performance standards set maximum permissible levels for the release of the item they regulate—e.g. X decibels of noise. Such performance standards are an integral part of Portland's "Industrial Sanctuary" zoning policy, and are used in Oakland and many other communities.

Performance standards become particularly important in a context where disparate uses are close together—like West Berkeley. When differing districts abut each other, performance standards limiting noxious environmental impacts can help substitute for the absence of distance between uses. The sometimes difficult industrial/residential interface is a particularly salient site.

While manufacturing is typically the primary focus of performance standards, other types of business such as construction, transportation, laboratories, and nightclubs can have off-site impacts, and therefore are appropriate as subjects of performance standard regulation.

Regulation: To be included in rezoning

Live-Work Development

Rationale: Live-work space has become an increasingly important element of the West Berkeley built environment. More and more people, in an ever-widening variety of fields, are interested in combining their living and working sites. Originally targeted by state legislation to artists and craftspeople, live-work now serves many more occupations. Originally envisioned as occuring in converted warehouses, in recent years there have been newly constructed purpose built live-work buildings as well. There are now over a dozen legally permitted live-work sites in West Berkeley, with 4 more projects (ranging in size from 1 large unit to 17 units) under construction, as of September,1993. Given strong interest by both space users and developers, additional live-work developments--particularly new construction developments--are likely.

Live-work is generally a positive presence in Berkeley and West Berkeley, but it must be carefully regulated so that it does not cause negative impacts. Live-work generates life in neighborhoods which are otherwise moribund at night, increasing activity and safety. It can provide workspaces which do not need to be commuted to. Some live-work still houses artists, a culturally important but often economically marginal segment of the population.

Live-work originally grew up in the interstices of economically marginal industrial areas. However, in 1990s West Berkeley, both built space and land is scarce, highly prized, and competitive. This means that live-work uses have the potential of displacing or being physically incompatible with manufacturing, especially "heavier" manufacturing. These potentials for incompatibility have grown as live-work has gained new constituencies, who are not always as tolerant of the pre-existing industrial land uses as artists and craftspeople tended to be. Some developers of live-work have complained about the activities of manufacturing uses which long predated the live-work project. In those parts of West Berkeley which combine industrial and residential uses (in the Mixed Use/Residential district), existing residents are concerned about the visual, parking, and economic impacts of new live-work developments in the area.

Regulatory Concept: The West Berkeley Plan intends to regulate live-work along 2 dimensions. First is location: live-work is permitted in the Mixed Use/Residential districts (where historically most live-work has occurred) and the Commercial district; restricted to artists and craftspeople in the Mixed Use/Light Industrial district; and barred outright in the Manufacturing, Mixed Manufacturing, and Residential districts (although in the last home occupations are permitted). These provisions keep live-work out of the "heavy" manufacturing districts, where there are great physical incompatibilities. Live-work is restricted in the Light Industrial district to help maintain the industrial character of that area, but allow that live-work which is most likely to be compatible.

The second dimension of regulation is new development standards for live-work, covering such matters as height, bulk (total permitted amount of construction), parking, open space, and other issues, particularly for newly constructed live-work spaces. There are also general construction standards for live-work--one is what requirement should there be for live/work projects to provide and/or contribute to the provision of affordable live-work spaces. Another is what the approval process requirements should be live-work projects, and how these requirements should relate to residential and commercial permit thresholds. Because of the complexity of these issues, specific proposals for them will be presented as part of the rezoning of West Berkeley.

Exhibit B

PROPOSED AMENDMENTS TO THE WEST BERKELEY PLAN

REVISIONS ARE PROPOSED TO SECTION VII, "LAND USE REGULATIONS OF THE WEST BERKELEY PLAN – FOR ADOPTION IN PRINCIPLE"

The following text and proposed modifications represent pages 42 through 58 of the West Berkeley Plan (December 1993).

VII. Land Use District Regulations of the West Berkeley Plan--for Adoption in Principle

Status of the Regulations

The land use regulations below are central to the West Berkeley Plan. They spell out generally what uses are permitted and prohibited in each of the districts created by the Plan, what allowable height and bulk standards would be, and set forth a series of regulatory concepts for special situations. These include limits on changes of use of manufacturing facilities, on buffers between residential and heavy manufacturing sites, and other issues. They are much of what the framers of the West Berkeley Plan understand to be the content of the Plan.

Nevertheless, these regulations are proposed for adoption in principle only, rather than adoption as an amendment to Berkeley's General Plan (as the rest of the document is). They are proposed in this way for technical reasons. Development regulations such as these should ultimately reside in the Zoning Ordinance, and will be found there once West Berkeley's zoning is brought into conformity with the Plan. City staff anticipates that the zoning will be drafted and approved next year. The procedure for adopting the zoning changes should be relatively streamlined, as it will be relying on the West Berkeley Plan Environmental Impact Report as environmental documentation. If these regulations were adopted as part of the General Plan, any change to them, however minor, would require a General Plan amendment. Such amendments are--because of state planning law--procedurally complex, and limited in number.

For these reasons, adoption of this section in principle is recommended. Such adoption will make clear that zoning provisions should closely follow the Plan, while assuring the most appropriate and expeditious procedure for enacting and amending that zoning.

2011 Update:
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- *District permitted and prohibited uses*
- *B. Special Situations and Regulations*
- 2010 Update Note*: Table 1-5 Recommended Development Standards by Zone* (Plan page 53), which was prepared to assist with development of zoning regulations has not been updated and should not be considered a reliable source for zoning designations. Correct zoning designations are available in the City of Berkeley Zoning Ordinance, in the appropriate zoning district text.

DISTRICT PERMITTED AND PROHIBITED USES
(See also Special Situations section)

Generally Permitted and Prohibited Uses

Manufacturing District ("Pink")

See also Development Standards, Manufacturing/Residential Buffers for regulations affecting certain sites

Permitted Uses See Zoning Ordinance for definitions of and discretionary levels for each use (added 2011)

- ° Arts & Crafts Uses (workspaces only, not live-work)
- ◦ Alternative Fueling Stations (added 2011)
- ° Auto body & painting
- ° Automobile dismantling ("junkyards")
- ° Auto repair
- ° Bus, Cab, truck, and public utility depots
- ° Composting
- ° Construction yards and associated offices
- ° Farms and Agricultural establishments
- ° Industrial Product Sales (Gases & Chemicals)
- ° Manufacturing: Food processing, textiles, apparel, lumber & wood products, furniture, paper & allied products, printing (exclusive of publishing); asphalt products, leather products (exclusive of primary production of leather); stone, clay, and glass products; fabricated metals, industrial machinery, electrical machinery & electronics, transportation equipment, scientific instruments, miscellaneous manufacturing.
- ° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste Parking lots (for uses located in the district)
- ° (removed 2011)
- ° Warehouses
- ° Wholesale trade and distribution
- ◦ Warehouse-based non-store retail (added 2011)

(removed 2011)

- °Chemicals, including pharmaceuticals (exclusive of the manufacturing of alkalies, chlorine, chemical warfare gases, DDT, chloroform, fertilizers, and explosives)
- ° Parking structures
- ° Primary metals, including smelting and refining

(removed 2011)

- ° Factory Outlets (for products manufactured on site)
- ° Laboratories
- ° Offices
- ◦ Services to Buildings and Dwellings (Added 2011)
- ◦ Visual and Aural Arts Production (Added 2011)
- ◦ Alternative Fueling/Charging Stations (Added 2011)

Prohibited Uses--Manufacturing District

- Banks and financial establishments
- Gasoline stations
- Group quarters residences
- Hazardous waste transfer stations & disposal facilities (freestanding facilities)
- Hotels and motels
- Laboratories (freestanding)
- Live-work
- Manufacturing: Tobacco products, alkalies, chlorine, chemical warfare gases, DDT, pesticides, chloroform, fertilizers, explosives; primary production of leather; petroleum refining, products of petroleum and coal not elsewhere classified; tires, inner tubes, synthetic rubber, asbestos products, ordnance and accessories, reprocessing of nuclear cores & scrap
- Offices (freestanding)
- Publishing
- Residences
- Restaurants
- Retail establishments, except permitted factory outlets
- Schools and day care facilities
- Mini-Storage (Added 2011)

Mixed Manufacturing District ("Blue")

See also Development Standards, Large Site Development Process (Zoning Ordinance sections modified 2011); Manufacturing/Residential Buffers (regulations affecting frontage along portions of 7th St., Dwight Way)

Permitted Uses) See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

- Alternative Fueling/Charging Stations (Added 2011)
- Arts & Crafts Uses (workspaces only, not live-work)
- Auto body & painting
- Automobile dismantling ("junkyards")
- Auto repair
- Bus, Cab, truck, and public utility depots
- Childcare (Added 2011)
- Composting
- Construction yards and associated offices
- Farms and Agricultural establishments
- Industrial Product Sales (Gases & Chemicals)
- Manufacturing: Food processing, textiles, apparel, lumber & wood products, furniture, paper & allied products, printing (exclusive of publishing); asphalt products, leather products (exclusive of primary production of leather); stone, clay, and glass products; fabricated metals, industrial machinery, electrical machinery & electronics, transportation equipment, scientific instruments, miscellaneous manufacturing.
- Parking Lots (for uses located in the district)
- Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
- Research and Development as defined in the Zoning Ordinance (added 2011)
- Services to Buildings and Dwellings (Added 2011)

- Visual and Aural Arts Production (Added 2011)
- Warehouses
- Warehouse-based Non-store Retail (Added 2011)
- Wholesale trade and distribution

(deleted 2011)
- Chemicals, including pharmaceuticals (exclusive of the manufacturing of alkalies, chlorine, chemical warfare gases, DDT, chloroform, fertilizers, and explosives)
- Parking structures
- Primary metals, including smelting and refining

(deleted 2011)
- Factory Outlets (for products manufactured on site)
- Laboratories on the ground floor
- Offices on the ground floor

(deleted 2011)
- Laboratories (other than ancillary)
- Offices (other than ancillary)
- Publishing

Prohibited Uses

- Banks and financial establishments
- Gasoline stations except Alternative Fueling/Charging Stations
- Group quarters residences
- Hazardous waste transfer stations & disposal facilities (freestanding facilities)
- Hotels and motels
- (deleted 2011)
- Live-work
- Manufacturing: Tobacco products, alkalies, chlorine, chemical warfare gases, DDT, pesticides, chloroform, fertilizers, explosives; primary production of leather; petroleum refining, products of petroleum and coal not elsewhere classified; tires, inner tubes, synthetic rubber, asbestos products, ordnance and accessories, reprocessing of nuclear cores & scrap
- Offices on the ground floor, not part of a manufacturing facility
- Residences
- Restaurants
- Retail establishments, except permitted factory outlets
- Schools and day care facilities
- Self-storage ("mini-storage")

Mixed Use/Light Industrial District ("Green")

See also Development Standards; Conversions from Manufacturing to Other Uses; Live-Work Development

Permitted Uses (See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

1. Industrial & Agricultural Uses

° Arts and Crafts (workspaces only, live-work limited)
◦ Alternative Fueling Stations (added 2011)
° Auto repair
° Bus, Cab, truck, and public utility depots
° Construction yards & associated offices
° Farms & agricultural establishments
°Manufacturing: Food processing (e.g. bakeries, wineries); textiles, apparel, furniture, lumber & wood products, printing and publishing; stone, clay, and glass products; industrial machinery; electrical machinery & electronics (except production of semiconductors and related devices); scientific instruments; miscellaneous manufacturing
° Manufacturing Repair and Service
° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
◦ Research and Development as defined in Zoning Ordinance(added 2011)
° Vocational Schools (providing training for uses in district)
° Warehouses
◦ Warehouse-based Non-store Retail (added 2011)
° Wholesale trade and distribution

2. Offices and Services

° Offices—General, medical, and professional (see Conversions from manufacturing to other uses)

3. Retail

° Building Materials and Garden Supplies—
° Services to Buildings and Dwellings (added 2011)

4. Other Uses

Parking lots

(deleted 2011) ◦ Alternative Fueling/Charging Stations (added 2011)
° Auto body and painting
° Childcare (modified 2011)
° Live-Work (Manufacturing and Arts & Crafts uses only)
° Manufacturing of leather products, rubber products, plastic products, paper products, fabricated metals
° Parking structures
° Restaurants
° Schools (other than Vocational Schools described above)
° Shelters for Homeless Persons
◦ Truck and Utility Trailer Rental and Leasing (added 2011)
◦ Visual and Aural Arts Production (modified 2011)

(deleted 2011)

- Laboratories (not part of manufacturing facilities)*
- Manufacture of pharmaceuticals

Prohibited Uses--Mixed Use/Light Industrial District

- Banks and Financial establishments (public service)
- Gasoline stations except Alternative Fueling/Charging Stations (added 2011)
- Group Quarters other than Shelters for Homeless Persons
- Hazardous waste transfer stations & disposal facilities (freestanding facilities)
- Hotels and Motels
- Manufacturing—All uses prohibited in Manufacturing zone and Chemicals (except pharmaceuticals in selected locations), petroleum products, primary metals processing (e.g. "foundries"), production of semiconductors and related devices, transportation equipment and primary production of leather, rubber, plastic, or paper
- Residences (live/work conditionally permitted, see above)
- Retail stores, except as listed above
- Self-storage ("mini-storage")

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*Pending further study when Hazard Ranking System is developed for rezoning. Certain types of laboratories may be inappropriate for these locations.

Mixed Use/Residential District

See also Development Standards, Conversions from Manufacturing to Other Uses, Permitted Uses, Live-Work

Permitted Uses See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

1. Residential

- Residences—Single-family, Multi-family, Group Quarters
- Childcare (modified 2011)
- Schools

2. Industrial & Agricultural

- Arts and Crafts (workspaces only)
- Farms and Agricultural establishments
- Manufacturing Repair and Service
- Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
- Warehouses
- Warehouse-based Non-store Retail (added 2011)
- Wholesale trade and distribution

3. Retail

- Building Materials and Garden Supplies

° Services to Buildings and Dwellings (added 2011)
° Food Stores (not to exceed 5,000 sq.ft.)
° Cleaners, laundries, and laundromats

4. Other Uses

Parking lots (for uses located in the district)

(deleted 2011)
° Auto body, auto painting, auto repair (with setbacks from residential use)
Bus, Cab, truck, and public utility depots
° Construction yards and associated offices
° Live-work (work activities those permitted in district)
° Manufacturing— Food processing (e.g.bakeries, wineries), clothing & textile production, furniture production, wood products, printing and publishing; stone,clay,and glass products; industrial machinery, electrical machinery & electronics (except production of semiconductors and related devices), scientific instruments, miscellaneous manufacturing,leather products, rubber products, plastic products, paper products
° Restaurants
◦ Visual and Aural Arts Production (modified 2011)

Prohibited Uses

° Banks and financial establishments (public service)
° Gasoline stations except Alternative Fueling/Charging stations (added 2011)
° Hazardous waste transfer stations & disposal facilities (freestanding facilities)
° Hotels and motels
(deleted 2011)
° Manufacturing—All uses prohibited in Manufacturing zone and Chemicals (including pharmaceuticals), lumber milling, petroleum products, primary metals processing, production of semiconductors and related devices, primary production of leather, rubber, plastic, or paper (e.g. pulp mills)
° Retail stores, except as listed above

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*Pending further study when Hazard Ranking System is developed for rezoning. Certain types of laboratories may be appropriate for this district

Commercial District ("Red") (See also Development Standards, Live-Work)

Generally Permitted Uses (See Zoning Ordinance for definitions of, and discretionary levels for each use (added 2011)

1. Retail

° Barber shops, beauty salons, and other hair cuteries
° Gasoline stations
° Hotels and motels
° Cleaners, laundries, and laundromats
° Restaurants
° Retail stores (all types)

2. Residential

° Day Care
° Schools

3. Live-Work

° Live-work (work activities those permitted in district)

4. Offices

° Banks and financial establishments
° Business Services (above the ground floor in designated commercial nodes)
°Offices—General, Medical, and Professional (above the ground floor in designated commercial nodes)

5. Industrial and Agricultural

° Arts and Crafts (workspaces)
° Auto body, auto painting, and auto repair
° Farms and agricultural establishments
° Wholesale trade and distribution

6. Other Uses

Parking lots (for uses located in the district)

(deleted 2011)
° Construction yards and associated offices
° Manufacturing—Food processing, printing and publishing, wood products, furniture making, stone, clay, and glass products
Parking structures
° Recyclable materials collection points, exclusive of facilities handling primarily hazardous waste
° Residential uses—single family, multi-family, and group quarters (above the ground floor in designated commercial nodes)

Prohibited Uses--Commercial District

Bus, Cab, truck, and public utility depots
° Hazardous waste transfer stations & disposal facilities (freestanding facilities)
° Laboratories (freestanding)
° Manufacturing (other than uses specified above)

Residential Districts

See also Development Standards

Permitted Uses in All Residential Zones—R1A, R-3, R-4

° Parks, playgrounds, playlots
° Day care for six or fewer children

Uses Requiring a Public Hearing (regardless of project size) in All Residential Zones

° Churches, Community Centers, and Libraries
° Day Care
° Food stores (less than 3,000 sq.ft.)
° Cleaners, laundries, and laundromats
° Residences—1 unit, 2 unit
° Schools

Uses Requiring a Public Hearing (regardless of project size) in R-3, R-4 zones only, not permitted in R-1A zones

° Group Quarters
° Medical buildings and hospitals
° Multiple dwellings

Uses Requiring a Public Hearing (regardless of project size) in R-4 zone only, not permitted in R-1A and R-3 zones

° Hotels and motels
° Institutions and offices
° Retail ancillary to hotels, motels, instiutions and offices

Uses Prohibited in All Residential Zones

° All other uses—agricultural, other retail, manufacturing, wholesaling

Note: Most of the "residential core" area of West Berkeley between Dwight and Camelia (excluding University Ave.) and 6th St. and the San Pablo commercial strip is zoned R-1A. However, parts of the blocks on either side of University Ave. are zoned R-3 or R-4.

B. **Special Situations and Regulations**

Change of Use from Manufacturing and Industrial Uses to Other Uses

Rationale: The West Berkeley Plan's regulation of "conversions" (technically "changes of use") from manufacturing and wholesale trade is a central element of the Plan's land use concept. In the Mixed Use/Light Industrial ("Green") zone in particular, the conversion limits seek to maintain the industrial character of the area, without completely blocking other uses there. The district description above makes clear how—in many respects—the Light Industrial district is the key manufacturing and industrial district in West Berkeley. Staff estimates that the district contains at least 2.2 million square feet of privately owned manufacturing and wholesaling space, in dozens and dozens of buildings, which range in size from a few thousand square feet to the 162,000 square feet of Utility Body. This district—in contrast with the Manufacturing and Mixed Manufacturing districts—contains a substantial percentage of manufacturers and wholesalers which rent rather than own their space, putting them at much greater risk of displacement.

If no limits on the conversion of manufacturing space were enforced here, widespread displacement of manufacturing would be possible, contrary to the Plan's economic development and land use policy. On the other hand, if the City were to seek to protect manufacturers' spaces in the absence of such a rule, the list of permitted uses in the district would have to be much more restrictive. Thus, given the existence of limits on conversion, the Plan can be much more permissive about allowing certain uses as new construction (e.g. offices) while maintaining the area as an industrial district. The conversion limitation approach allows change, but regulates its pace and scope. Indeed, if the full 25% of space allowed to convert actually were to convert (an admittedly unlikely occurence), some 550,000 square feet of space would be changed to office or other uses. If this 550,000 square feet were to convert, some 40% of the district's current space would be non-manufacturing/wholesaling, about the maximum level at which the district could still be called "industrial."

The issue is also relevant in the Mixed Use/Residential district, although this district is both smaller and designed to be less protective of manufacturing. In this district, the Plan calls for conversions of manufacturing/wholesaling buildings of 10,000 square feet or more to be reviewed for their impact on the industrial character of the area. Specific criteria will be proposed in the West Berkeley rezoning proposal.

2011 Updates:

- **Arts and Crafts, Non-store Retail and Contractors, as defined in the Zoning Ordinance are allowed uses within the Protected Spaces (including Warehouse, Wholesale Trade, Manufacturing and Material Recovery Enterprise)**
- **Research and Development, as defined and regulated in the Zoning Ordinance, if allowed in the MU-LI and MM districts, and may be allowed in Wholesale Trade and Warehouse protected space if allowed by zoning.**

Regulation: "Conversion" (Change of Use) of Manufacturing or Wholesaling Space in Mixed Use/Light Industrial District

Scope of Regulation—Changes of buildings currently or last used for manufacturing, wholesale trade, or warehouse uses to any other use, except manufacturing, wholesale trade, or warehouse use.

Limit on Change of Use—The change of use of any manufacturing, wholesale trade, or warehouse use to a use other than manufacturing, wholesale trade or warehousing would be limited to 25% of the floor area of the building now used for purposes other than offices, laboratories, properly approved live-work spaces, or properly approved retail space.

Example: Thus in a manufacturing site with 100,000 square feet of space (other than office), 25,000 could be converted (with a Use Permit) to other uses permitted in the district. No further conversion would be permitted.

Hardship Exception—Buildings which are uneconomic to maintain in at least 75% industrial use could

be converted to other uses permitted in the district with a Use Permit granted by the Zoning Adjustments Board after a Public Hearing. The Board would be required to find that there are exceptional physical circumstances pertaining to the building, which do not pertain to most other buildings in the district, which make it impossible to reuse for industrial purposes. The simple fact that other uses would be more profitable is not adequate for this Use Permit.

Heavy Manufacturing/Residential Buffers

Rationale: The intent of this regulation is to maintain a minimum distance of 150 feet between residential and "heavy" manufacturing uses in order to mitigate environmental impacts, such as noise, odor, vibration and glare, which would interfere with reasonable residential use and to provide a workable environment for these manufacturers.

Regulation:

Affected Districts--Mixed Use/Residential; Mixed Use/Light Industrial; Mixed Manufacturing; Manufacturing

Mixed Use-Residential

° No new residential use may be established within 150 feet of any property in a manufacturing district (i.e. Manufacturing, Mixed-Manufacturing); nor within 150' of existing "heavy" manufacturer in any zone. Additions to existing residential uses permitted at a "reasonable" level - standards to be set forth in the rezoning unless a Use Permit is obtained. (added 2011)

° No new or expanded manufacturing use may be established within 150 feet of an existing residential use, unless Performance Standards are met and a Use Permit is obtained.

Manufacturing; Mixed-Manufacturing; Mixed Use-Light Industrial Districts

° No new or expanded manufacturing use may be established within 150 feet of a residential property located in the Mixed Use-Residential zone, unless Performance Standards are met and a Use Permit is obtained.
° No new or expanded manufacturing use may be established within 150 feet of an existing residential use regardless of zone, unless Performance Standards are met and a Use Permit is obtained.

Note: Residential uses are prohibited in the Manufacturing, Mixed Manufacturing, and Mixed Use/Light Industrial district.

Large Site Development Process

Rationale: West Berkeley has a few large sites—sites of 5 acres or more under a single ownership—which present special challenges and opportunities for planning and development in West Berkeley. These large sites—such as the Miles or (ex)Colgate property—are of a scale where they have a major impact on the area around them, and noticeable impacts on West Berkeley as a whole. They also may require modification of the uses and development standards in a district to facilitate a feasible large scale project.

For these reasons, the West Berkeley Plan incorporates a concept of a Large Site Development Process. While the process remains to be defined, the concept is that a special approval process would be used for certain projects. Because of the importance of these projects, the Planning Commission would be involved in the process. The process would also provide a formal mechanism for early citizen input.

The rezoning will propose a Zoning Ordinance amendment to provide for a Master Plan Permit. It would be a middle ground alternative between the Use Permit and the Development Agreement. While a master permit could be issued for a multi-building project, there would be a procedure for review of individual buildings at their time of construction. This alternative could incorporate many of the master planning features of a Development Agreement, but would be acted upon under the procedures of the Zoning Ordinance, rather than as a separate contract.

It is important to note that no special process would be required of large scale projects which conform in all substantive respects to the uses and development standard of their district. Such a project, however large, would require simply the normal Use Permit(s) and environmental review (an Environmental Impact Report or other appropriate documentation).

2011 Update: The Master Use Permit (MUP) section of the Zoning Ordinance (Chapter 23B.36) is modified. The Regulations noted in the Plan are no longer accurate. Please reference the proposed revisions to Chapter 23B.36 for the updated Master Use Permit regulations.

Regulation: Projects which are eligible for the Large Site Development Process are those which:

° On sites of at least 4 (modified 2011) acres; and

° Proposing to incorporate uses which would not otherwise be permitted in the district; or

° Requesting an "alternative" land use entitlement, such as a Development Agreement. Another possibility is a Master Plan Permit, whereby a single permit would be issued for the development of a number of buildings and/or uses within a given range.

Performance Standards

Rationale: The West Berkeley Plan incorporates the concept of "performance standards." Performance standards differ from traditional zoning development standards in that they regulate the impacts of land uses—noise, odor, vibration, etc. By contrast, traditional zoning standards deal with the physical form of building—building mass, height, yards (setbacks), lot coverage, parking, etc. Performance standards set maximum permissible levels for the release of the item they regulate—e.g. X decibels of noise. Such performance standards are an integral part of Portland's "Industrial Sanctuary" zoning policy, and are used in Oakland and many other communities.

Performance standards become particularly important in a context where disparate uses are close together—like West Berkeley. When differing districts abut each other, performance standards limiting noxious environmental impacts can help substitute for the absence of distance between uses. The sometimes difficult industrial/residential interface is a particularly salient site.

While manufacturing is typically the primary focus of performance standards, other types of business such as construction, transportation, laboratories, and nightclubs can have off-site impacts, and therefore are

appropriate as subjects of performance standard regulation.

Regulation: To be included in rezoning

Live-Work Development

Rationale: Live-work space has become an increasingly important element of the West Berkeley built environment. More and more people, in an ever-widening variety of fields, are interested in combining their living and working sites. Originally targeted by state legislation to artists and craftspeople, live-work now serves many more occupations. Originally envisioned as occuring in converted warehouses, in recent years there have been newly constructed purpose built live-work buildings as well. There are now over a dozen legally permitted live-work sites in West Berkeley, with 4 more projects (ranging in size from 1 large unit to 17 units) under construction, as of September,1993. Given strong interest by both space users and developers, additional live-work developments--particularly new construction developments--are likely.

Live-work is generally a positive presence in Berkeley and West Berkeley, but it must be carefully regulated so that it does not cause negative impacts. Live-work generates life in neighborhoods which are otherwise moribund at night, increasing activity and safety. It can provide workspaces which do not need to be commuted to. Some live-work still houses artists, a culturally important but often economically marginal segment of the population.

Live-work originally grew up in the interstices of economically marginal industrial areas. However, in 1990s West Berkeley, both built space and land is scarce, highly prized, and competitive. This means that live-work uses have the potential of displacing or being physically incompatible with manufacturing, especially "heavier" manufacturing. These potentials for incompatibility have grown as live-work has gained new constituencies, who are not always as tolerant of the pre-existing industrial land uses as artists and craftspeople tended to be. Some developers of live-work have complained about the activities of manufacturing uses which long predated the live-work project. In those parts of West Berkeley which combine industrial and residential uses (in the Mixed Use/Residential district), existing residents are concerned about the visual, parking, and economic impacts of new live-work developments in the area.

Regulatory Concept: The West Berkeley Plan intends to regulate live-work along 2 dimensions. First is location: live-work is permitted in the Mixed Use/Residential districts (where historically most live-work has occurred) and the Commercial district; restricted to artists and craftspeople in the Mixed Use/Light Industrial district; and barred outright in the Manufacturing, Mixed Manufacturing, and Residential districts (although in the last home occupations are permitted). These provisions keep live-work out of the "heavy" manufacturing districts, where there are great physical incompatibilities. Live-work is restricted in the Light Industrial district to help maintain the industrial character of that area, but allow that live-work which is most likely to be compatible.

The second dimension of regulation is new development standards for live-work, covering such matters as height, bulk (total permitted amount of construction), parking, open space, and other issues, particularly for newly constructed live-work spaces. There are also general construction standards for live-work--one is what requirement should there be for live/work projects to provide and/or contribute to the provision of affordable live-work spaces. Another is what the approval process requirements should be live-work projects, and how these requirements should relate to residential and commercial permit thresholds. Because of the complexity of these issues, specific proposals for them will be presented as part of the rezoning of West Berkeley.

BEN BARTLETT
VICE MAYOR

CONSENT CALENDAR
June 27, 2023

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Ben Bartlett (Author), Mayor Jesse Arreguin, Councilmember Kate Harrison, and Councilmember Sophie Hahn (Co-Sponsors)
Subject: Berkeley Food Utility and Access Resilience Measure (FARM)

RECOMMENDATION

1. Refer to the City Manager the task of protecting the City's food supply from natural disasters and economic disruptions by promoting the efforts of community-based organizations to design and implement an integrated local food production and distribution system for the City of Berkeley.
2. Refer to the City Manager and the Office of Economic Development resources to research and return to the Council potential economic incentives for non-profits, agricultural producers, and small businesses to partner with the City of Berkeley to support the implementation of FARM.
3. Adopt a resolution to support the goals of the FARM initiative and the development of hyperlocal urban food production with community-based organizations.

POLICY COMMITTEE RECOMMENDATION

On May 8, 2023, the Health, Life Enrichment, Equity, & Community Committee adopted the following action: M/S/C (Bartlett/Taplin) to send the item to Council with a positive recommendation. Vote: All Ayes.

BACKGROUND & CURRENT SITUATION

To support food resilience for the residents, the City of Berkeley should adopt a "hyper-local" in place of a "local" approach to food production and distribution. Food labeled as "local" receives its definition from a provision of the Farm Act from 2008. Under that law, a food item is deemed local when "the total distance that the product is transported is less than 400 miles from the origin or the product."[1] Hence, under this definition, fruits and vegetables sourced from Southern California are still considered "local" to the City of Berkeley. Given the recent floods that have destroyed many homes, lands, and crops, there is an urgent need to develop a program for stronger food resilience in California.[2]

The FARM initiative, on the other hand, supports the development of ***hyper-local*** urban

[1] Food, Conservation, and Energy Act of 2008 (June 18, 2008) https://www.govinfo.gov/content/pkg/PLAW-110publ246/pdf/PLAW-110publ246.pdf

[2] Staff, RICH RODRIGUEZ |. KMPH. "'It's Just a Mess': California Farmers Growing Concerned over Lingering Flood Waters." *KRCR*, 27 Mar. 2023, https://krcrtv.com/news/videos/its-just-a-mess-california-farmers-growing-concerned-over-lingering-flood-waters-pistachio-trees-kings-county-farm-breckenridge-corcoran-tule-river-deer-creek-cal-fire.

food production to support community resilience in Berkeley. Hyper-local produce is food grown right in a community's backyard and available for purchase and consumption at local markets and restaurants. The benefit of being a hyper-local food supplier is that produce can be harvested and delivered on the same day. This results in food being fresh longer than produce delivered from long distances and lessening the risk of supply chain disruption. For example, Gotham Greens in New York City produces hyper-local commercial food via urban rooftop gardens. Opportunities for hyper-local and building "Agri-hoods" (urban neighborhoods focused on local food production) continue to grow. This includes communities integrating food production into neighborhood design, with hyper-local methods of urban agriculture including SPIN Farming, (small plot intensive) vertical farming, and rooftop growing. According to Curtis Stone, SPIN farming expert and author of "The Urban Farmer" and, urban farmers can earn $75,000 on 15,000 Square Feet and can grow between 6,000 to 7,000 pounds of food on 1/10th of an acre. The City of Berkeley is 17 square miles or approximately 11,000 acres.[3] One scenario envisions using distributed local production and SPIN farming to cultivate 5% of Berkeley's total acreage. Assuming a yield of 7,000 pounds of produce per 1/10th of an acre, the scenario would provide 38 million pounds of fresh produce a year. While not enough to fully support the entire city, it is a significant step forward to food resilience, particularly for the 20,000 low-income individuals in the community.

By March of 2023, the emergency allotment for low-income individuals and households enrolled in the Federal Supplemental Nutrition Assistance Program (SNAP) will end.[4] This change comes at a time of historic inflation, with food prices increasing by 10%. According to Cal Policy Research, 10% of students in the UC System access SNAP Benefits, which helps students make ends meet while attending university.[5] The FARM Initiative sets the framework to not only increase the production and supply of fresh produce in Berkeley, but also to facilitate group buying power for SNAP participants in Berkeley, to help lower the cost, support local growers, and help the community eat healthier.

Berkeley is home to the local foods revolution, yet thousands of Berkeley residents are food insecure. Natural disasters and economic downturns exacerbate this insecurity, and climate change increases the likelihood and severity of food supply interruption.

Berkeley has the framework for food resiliency through its successful farmers' markets; service providers who have been providing meals to homeless individuals since the early 1970s; community groups like Consider the Homeless and Food Not Bombs, which distribute food to homeless populations; and the Berkeley Food Network (BFN). Founded in 2016 in collaboration

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[3] Maki, Olivia, How Urban Farmers Can Earn $75,000 on 15,000 Square Feet (February 29, 2016) https://civileats.com/2016/02/29/how-urban-farmers-curtis-stone-earns-75000-on-15000-square-feet/

[4] "MoCorvey, J., and Rob Wile. ""With Foods Stamp Cuts just Days Away, Millions of Americans Brace for Tougher Times Int He Grocery Aisle" Feb 26, 2023 https://www.nbcrightnow.com/national/with-food-stamp-cuts-just-days-away-millions-of-americans-brace-for-tougher-times-in/article_3e070c3e-b616-11ed-a950-0f3c90f9985b.html

[5] California Community College and University of California student participation in CalFresh food benefits (February 23, 2022) https://www.capolicylab.org/california-community-college-and-university-of-california-student-participation-in-calfresh-food-benefits/

with community organizations, BFN promotes access to nutritional food by using "innovative, community-centered solutions to build a more sustainable, resilient, and equitable food system."[6]

The City should preemptively safeguard its residents from a food supply chain interruption through a Food Utility and Access Resilience Measure (FARM). The FARM initiative achieves food resilience by (1) developing hyper-local food production sources; (2) connecting these sources to each other and local community hubs, including food banks, grocery stores, restaurants, and schools; and (3) powering hyper-local food production sources using renewable energy with battery backup storage that can operate despite disruptions to the main power grid. These efforts will be assisted by the requirements under SB 1383, which requires restaurants and grocery stores to compost leftover food. These businesses would benefit from having a lower-cost method of disposing of still-fresh but excess food.

1. *Community resilience*

   Government planners are faced with an emergent set of existential threats to populations and infrastructure. Many threats stem from the rapid advancement of climate change, with the increasing frequency of extreme weather events, such as hurricanes, tornadoes, floods, droughts, and fires. In addition to climate disasters, disaster preparedness must brace for pandemics, electrical failure, targeted violence, cyber-attacks, water and energy infrastructure failure, sea level rise, supply chain breakdown, and food insecurity. These threats arise from various sources and therefore require a systems-level approach that addresses all the possible points of failure in an urban food supply chain.

   Accordingly, policymakers are embracing new emergency preparedness and disaster mitigation models centered on equity and resilience at the community level (community resilience). Community resilience refers to the ability of a community to withstand and recover from disruptions, such as natural disasters, economic downturns, or health crises. Community resilience leverages local community networks; local knowledge; local communication channels; local resources; and local bodies of governance and leadership.

2. *Food resilience*

   One component of community resilience is food resilience, which refers to the ways in which a community can ensure its members have access to healthy and nutritious food, even during times of crisis. This can involve a variety of strategies, such as growing food locally, supporting local agriculture, building community gardens, developing food storage and preservation facilities, and forming relationships with local food producers. By building a resilient local food system, communities can reduce their

[6] Berkeley Food Network, *About BFN*, (last accessed Jan. 5, 2023), https://berkeleyfoodnetwork.org/who-we-are/about/.

reliance on remote sources of food and ensure that they are able to continue providing sustenance for residents, even during challenging times.

FARM's development of a local, resilient food system empowers the City of Berkeley to achieve one of its key Climate Action Plan goals. Adopted in 2009, the Climate Action Plan calls for the "majority of food consumed in Berkeley" to be produced locally.[7] By creating a network of local food production, FARM lays the foundation for local, higher-yield production of nutritious food that the City can scale up to meet its goal. This environmental objective is intertwined with resilience. Lowering the distance between the location of production and consumption improves the ability to supply food to the people of Berkeley despite disruptions to transportation.

The State of California and the U.S. Federal Government are increasingly incorporating food resilience in disaster planning and view food security as foundational to any resilience effort. For example, California's budget for the fiscal year 2022-23 allocates $477 million toward agricultural resilience measures, including climate-friendly agriculture, soil health, water efficiency, and wildfire prevention.[8]

Additionally, California's Strategic Growth Council (SGC) has called for local-level resilience through its Community Resilience Centers (CRC) program. The CRC program will "fund new construction and upgrades of neighborhood-level resilience centers to provide shelter and resources during climate and other emergencies . . .."[9]

At the federal level, President Joe Biden signed National Security Memorandum-16 (NSM-16) in November 2022 "to strengthen the security and resilience of United States food and agriculture." NSM-16 provides a process for identifying and assessing threats to food security, strengthens relationships with the private sector, and promotes systems that respond to disruptions in the food sector.[10]

3. *Food is a fundamental human right.*

It has been often said, "There are only nine meals between mankind and anarchy." And Vladimir Lenin said, "Every society is three meals away from chaos." Like air and water, food is essential for survival and the only commodity that cannot be postponed. When social, economic, or ecological barriers block access to nutritious

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[7] City of Berkeley, *Berkeley Climate Action Plan*, (June 2, 2009), https://berkeleyca.gov/your-government/our-work/adopted-plans/berkeley-climate-action-plan.

[8] Arohi Sharma, *FY22 California Budget Invests in Agricultural Resilience*, NRDC (Sep. 21, 2022), https://www.nrdc.org/experts/arohi-sharma/fy22-california-budget-invests-food-farm-resilience.

[9] Cal. Strategic Growth Council, *SGC Launches Development of Community Resilience Centers (CRC) Program*, (July 5, 2022), https://sgc.ca.gov/news/2022/07-05.html.

[10] *See* National Security Memorandum on Strengthening the Security and Resilience of United States Food and Agriculture, (Nov. 10, 2022), https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/10/national-security-memorandum-on-on-strengthening-the-security-and-resilience-of-united-states-food-and-agriculture/.

food, people suffer. Food-insecure individuals have higher rates of mental health issues, and hungry children attain lower academic achievement than their peers.[11]

The United Nations recognizes the fundamental right to food for all. At its core, this right is the right to "all nutritional elements" necessary to live a "healthy and active life" and to the means to access these elements.[12] The access portion of this right focuses on physical and economic access.[13]

The U.S. federal government has failed to legally recognize such a right, but some states have made progress. In 2021, the State of Maine recognized the right to food in its constitution.[14] The amendment declares that "all individuals have the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being."[15] This amendment follows Maine's 2017 Food Sovereignty Act, which built a food sovereignty foundation by permitting municipal governments to regulate local food systems with the guarantee of state recognition.[16]

4. *Food insecurity rates are rising in the Bay Area.*

Food insecurity is a growing crisis throughout the U.S.. The U.S. Department of Agriculture (USDA) defines food insecurity as "a household-level economic and social condition of limited or uncertain access to adequate food."[17] The USDA found that in 2020, almost 14 million households (10.5% of the population) did not have enough food to meet their needs. In California alone, more than 4 million people were reported to be food insecure in May 2022,[18] and in the Bay Area, food insecurity is increasing. In 2018, the San Francisco Chronicle reported that 11.5% of Bay Area residents, 870,000 people, were food insecure.[19] The economic and public health impacts of COVID-19 exacerbated food insecurity. A 2021 study by San Jose State University found that Bay Area food

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[11] Arohi Pathak, Ryan Richards & Marc Jarsulic, *The United States Can End Hunger and Food Insecurity for Millions of People*, Center for American Progress Action Fund (Aug. 11, 2022), https://www.americanprogress.org/article/the-united-states-can-end-hunger-and-food-insecurity-for-millions-of-people/.

[12] Off. of the High Comm'r for Hum. Rts., *The Right to Adequate Food*, Fact Sheet No. 34 (Apr. 2010), https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf.

[13] *Id.*

[14] Tess Brennan, *Maine Becomes the First US State to Recognize the Right to Food in a Constitutional Amendment*, Universal Rts. Grp. Geneva (Jan. 19, 2022), https://www.universal-rights.org/blog/maine-becomes-the-first-us-state-to-recognise-the-right-to-food-in-a-constitutional-amendment/.

[15] *Id.*

[16] *See id.*

[17] USDA, *Definitions of Food Security*, https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/.

[18] Toni Koraza, *California to Face a Devastating Crisis*, NewsBreak (May 5, 2022), https://original.newsbreak.com/@toni-koraza-561162/2590989189701-california-to-face-a-devastating-crisis.

[19] Tara Duggan, *How Families Slip Through*, San Francisco Chronicle (Nov. 18, 2018), https://www.sfchronicle.com/food/article/The-hidden-hungryA-Bay-Area-paradox-13379274.php.

insecurity rates spiked from 20% to 33% from the beginning of the COVID-19 pandemic to March 2021.[20]

In Berkeley and Albany pre-pandemic, an estimated 24,000 individuals were food insecure.[21] The demand for food aid in Berkeley increased sharply during the pandemic, forcing the Berkeley Food Network (BFN) to *triple* its operations in the first half of 2020.[22]

Although many households are still bearing the economic impacts of COVID-19, the USDA is cutting SNAP benefits (CalFresh) to pre-pandemic levels after the February 2023 issuance.[23] This deduction comes at a time of record-high food inflation; the U.S. Bureau of Labor Statistics reported that prices for food at home increased by 13.5% in the 12 months ending in August 2022.[24] This spike is "the largest 12-month percentage increase since the period ending in March 1979."[25]

The growing demand for food aid in Berkeley, coupled with recent reductions in government food benefits, highlights the fragility of the degree of food accessibility at any given time. If there is a disruption in the food supply chain, households that are already food insecure will face even greater barriers to food access. Further, the COVID-19 pandemic demonstrated that disruption would drastically increase the number of households that are food insecure. Without a safety net to insulate our community from these devastating supply chain shocks, a large proportion of households would find themselves in a struggle to survive.

5. *Natural disasters, climate change, and foreign conflicts further threaten food access.*

Climate change, natural disasters, and increasing global conflict jeopardize the world's food security. The market for food spans internationally, so disruptions in one region send ripple effects, in the form of food scarcity or price shocks, throughout the rest of the food supply chain. The supply chain is fragile; it only takes a disruption in one of the chain's many links for consumers to lose access to healthy food.[26] Recognizing the supply chain's vulnerability, the USDA built a Food System Transformation framework to

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[20] Giselle Pignotti et al., *Food Insecurity and Food Access during COVID-19 in the San Francisco Bay Area*, San Jose State Univ. (Mar. 2021).

[21] Berkeley Food Network, *Programs*, (last accessed Dec. 20, 2022), https://berkeleyfoodnetwork.org/what-we-do/programs/.

[22] Berkeley Food Network, *Major Hunger-Relief Investment Will Help Alleviate Growing Food Insecurity in Berkeley*, (May 19, 2020), https://berkeleyfoodnetwork.org/major-hunger-relief-investment-will-help-alleviate-growing-food-insecurity-in-berkeley/.

[23] USDA, *Changes to SNAP Benefit Amounts - 2023*, (updated on Feb. 17, 2023), https://www.fns.usda.gov/snap/changes-2023-benefit-amounts.

[24] Bureau of Labor Statistics, *Prices for Food at Home Up 13.5 Percent for Year Ended August 2022*, The Economics Daily (Sep. 15, 2022), https://www.bls.gov/opub/ted/2022/prices-for-food-at-home-up-13-5-percent-for-year-ended-august-2022.htm.

[25] *Id.*

[26] Mario Lubetkin, *2021 Revealed the Fragility of Food Systems*, ReliefWeb (Dec. 16, 2021), https://reliefweb.int/report/world/2021-revealed-fragility-food-systems.

create a more resilient food network.[27] Climate change reduces food availability and is exacerbated by transporting food long distances that could be grown locally.

The COVID-19 pandemic disrupted "all segments of food supply chains," including farming, food processing, transportation, and final demand.[28] At the farming level, labor-intensive farms – those producing crops like fruits and vegetables – suffered from production shortages when their sick workers were unable to work.[29] Labor shortages also inhibited food processing facilities, with many reporting high rates of worker absences during the pandemic.[30] Necessary pandemic measures severely impacted the transportation of fruits and vegetables. Fruits and vegetables are perishable foods with a "high value-to-weight ratio," so they are transported on passenger planes. Declines in passenger air travel thus caused bottlenecks in fruit and vegetable transportation.[31] The last step in the supply chain is getting food to consumers. When consumers lost their jobs due to the initial economic downturn in 2020, they lost economic access to food, endangering those without social safety nets.

Like the COVID-19 pandemic, other natural disasters threaten global food security by disrupting agriculture production, food availability, and food accessibility. A survey on natural disasters between 2003 and 2013 by the Food and Agriculture Organization of the United Nations "showed 25% of disaster-related losses are in agriculture sectors . . .."[32] The impact of a natural disaster depends on the type of natural disaster that occurs. For example, researchers report that droughts in China cut wheat yields by 5.8% over 30 years.[33]

These dangers hit close to home. A report by leading conservation research group NatureServe found that California, Texas, and the southeastern United States are where the highest percentages of plants, animals, and ecosystems are at risk.[34] Droughts are a growing danger in California that reduces usable farmland. In 2022, California's irrigated farmland shrank by 752,000 acres (nearly 10%) compared with

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[27] USDA, *USDA Announces Framework for Shoring Up the Food Supply Chain and Transforming the Food System to Be Fairer, More Competitive, More Resilient*, (June 1, 2022), https://www.usda.gov/media/press-releases/2022/06/01/usda-announces-framework-shoring-food-supply-chain-and-transforming.

[28] OECD, *Food Supply Chains and COVID-19: Impacts and Policy Lessons*, (June 2, 2020), https://www.oecd.org/coronavirus/policy-responses/food-supply-chains-and-covid-19-impacts-and-policy-lessons-71b57aea/.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] James Ducker, *Investigating the Impact of Disasters on Food and Agriculture*, AZO Life Sciences (last updated Nov. 26, 2021), https://www.azolifesciences.com/article/Investigating-the-Impact-of-Disasters-on-Food-and-Agriculture.aspx.

[33] Shi et al., *Crop Yield and Production Responses to Climate Disasters in China*, 750 Science of the Total Environment (2021).

[34] Brad Brooks, *Huge Chunk of Plants, Animals in U.S. at Risk of Extinction - Report*, Yahoo!News (Feb. 6, 2023), https://news.yahoo.com/exclusive-huge-chunk-plants-animals-090952175.html.

2019, the year before the drought.[35] The amount of fallowed farmland in 2022 surpassed the peak during California's last drought, which lasted from 2012 to 2016.[36]

While droughts are long-term natural disasters with creeping effects, wildfires can impact the supply chain immediately. During the 2020 California wildfires, the intense smoke made it unsafe for farm workers and livestock to be outdoors.[37] Without workers, farms had to plow under many crops, meaning these crops never reached consumers. Additionally, the wildfires destroyed vital land where farmers grew food; the fires destroyed the existing crops and contaminated the soil, jeopardizing future harvests.[38]

War can also disrupt the food supply chain. The Russian invasion of Ukraine, one of the world's biggest wheat and corn producers, caused many countries to skyrocket food prices.[39] The invasion halted Ukrainian exports and damaged Ukraine's rail infrastructure. As a result, large quantities of grain were trapped in Ukraine, preventing the entire 2022 harvest from having adequate storage space.[40] This supply shock affected countries throughout the world, including India, Egypt, and South Korea. Further, Russia was one of the top exporters of fertilizers before the invasion. Stricter controls on Russian exports caused the price of fertilizer to spike worldwide, leading farmers to reduce their planned harvests.[41]

6. *Food Citizenship*

"Food citizenship" describes the rights and responsibilities that individuals have in relation to the food they eat and produce. Food citizenship can include making informed choices about food purchases and consumption, supporting sustainable and ethical food systems, and advocating for food policies that prioritize the health and well-being of individuals and the environment. Food citizenship can also involve taking action to address issues such as food waste, hunger, and access to healthy food in underserved communities. Essentially, being a food citizen means actively engaging in the food system and working toward creating a more sustainable and equitable food system for all.

Food citizenship can play an important role in promoting community resilience by supporting local food systems and promoting food security. When communities have

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[35] Ian James, *'It's a Disaster.' Drought Dramatically Shrinking California Farmland, Costing $1.7 Billion*, Los Angeles Times (Nov. 23, 2022), https://www.latimes.com/environment/story/2022-11-23/drought-cost-california-agriculture-1-7-billion-this-year.

[36] *Id.*

[37] Phil Lempert, *California Wildfires: The Enormous Effect on Our Food Supply*, Retail Dietitians Bus. Alliance (Dec. 9, 2020), https://www.retaildietitians.com/articles/california-wildfires-the-enormous-effect-on-our-food-supply/.

[38] *Id.*

[39] Rob Garver, *Global Food Prices Rise with Ukraine-Russia Agreement in Doubt*, VOA News (Oct. 31, 2022), https://www.voanews.com/a/global-food-prices-rise-with-ukraine-russia-agreement-in-doubt-/6813606.html.

[40] Dea Bankova, Prasanta Kumar Dutta & Michael Ovaska, *The War in Ukraine is Fuelling a Global Food Crisis*, Reuters (May 30, 2022), https://graphics.reuters.com/UKRAINE-CRISIS/FOOD/zjvqkgomjvx/.

[41] *Id.*

access to healthy and sustainable food sources, they are better able to withstand and recover from disruptions, such as natural disasters or economic downturns.

If a community is able to grow or produce its own food, it is less dependent on outside sources and can continue to provide for itself in the event of a supply chain disruption. Additionally, supporting local food systems can help to boost the local economy and create jobs, which can increase the overall resilience of the community.

Further, food citizenship can promote food justice and equity within a community, ensuring that all members have access to healthy and affordable food. This can reduce food insecurity and prevent vulnerable populations from being disproportionately affected by disruptions to the food system.

7. *A food resilience system could insure Berkeley against disruptions in the food supply chain.*

Building a food resilience system *before* a supply chain disruption protects food-insecure households and prevents more households from becoming food insecure. Food resilience is the ability to withstand and recover from disruptions to food access in a way that ensures a sufficient supply of acceptable and accessible food for all.[42]

8. *FARM as a Community Food Utility: Overview*[43]

The mission of FARM is to foster a resilient food system that can withstand supply chain shocks and ensure all people in the community have access to adequate amounts of wholesome, nutritious foods produced by ecologically sound and socially responsible means. FARM would be a chartered public utility based on the concept of food citizenship, similar to the existing utilities for energy and water systems. FARM would have three major components: a) Community Layer, b) Food Production Layer, and c) Energy Resilience.

a. Community Layer

Growing food locally promotes physical access to food in times of crisis. To ensure that enough food is locally grown, it is critical to connect community gardens, backyard gardens, and other urban farms into a production network with delivery centers.

i. Community Gardens and Backyard Gardens

The FARM should create a network of community gardens and backyard gardens in order to support community resilience by providing local food sources, fostering social connections, and promoting environmental sustainability.

[42] Johns Hopkins Center for a Livable Future, *Food System Resilience*, https://clf.jhsph.edu/projects/food-system-resilience.

[43] Ikerd, J. (n.d.). *Enough Good Food For All; A Community Food Utility*. Communityfoodutility. Retrieved January 4, 2023, from https://sites.google.com/site/communityfoodutility?pli=1

Community gardens and backyard gardens can provide communities with a local source of fresh, healthy, and affordable produce. This can help to increase food security and reduce dependency on outside sources, making communities more resilient in the face of disruptions to the food supply chain. One backyard garden can provide food for up to six families.

Community gardens can also provide a space for community members to come together and engage in productive, healthy activities. This can help to build social connections and a sense of community, which are important for promoting resilience in the face of challenges.

Furthermore, community gardens and backyard gardens help to promote environmental sustainability and resilience by providing a space for growing food using sustainable and environmentally-friendly practices. This can help to reduce the community's overall ecological footprint and make it more resilient in the face of environmental challenges.

ii. Synchronizing Local Food Production with Food Banks, Restaurants, Schools, and Grocery Stores

Yields from local food production can be distributed to local food banks, restaurants, schools, and grocery stores. This omnichannel production and distribution model has two key benefits. First, it ensures that locally produced food is not wasted. Second, it provides a source of feedback for FARM because restaurants, schools, and grocery stores can provide guidance to FARM for improvements in usability, quantity, and quality.

iii. Supplemental Nutrition Assistance Program (SNAP)

The community layer should incorporate a SNAP group-buying mechanism whereby SNAP recipients can deposit assistance funds into a FARM account. In return, the FARM would ensure that each recipient received enough good food to meet their basic needs, regardless of the amount of their individual SNAP payment. Some non-profit organizations are currently operating in this manner.[44]

b. Production Layer

Additionally, FARM would partner with urban agriculture companies and nonprofits with experience and expertise in producing high crop yields with accelerated harvest velocity in urban settings. The yields from these producers could supplement yields from existing community gardens while minimizing seasonal fluctuations and other disruptions in the supply chain.

[44] *See e.g., Community Resilience Centers*, CA.gov (last accessed Nov. 30, 2022), https://sgc.ca.gov/programs/community-resilience-centers/.

To increase local food production, the City would offer certain economic incentives to urban agriculture companies to co-locate within the City of Berkeley. In exchange for these incentives, companies would agree to give the City Most Favored Nation ("MFN") status, with the right of first refusal and right of first offer on the companies' food items in the event of a local food supply chain disruption event (food shock). As discussed below, the FARM board will institute policies that define a food shock that triggers the MFN agreement. For example, the board may define a food shock to include a week-long interruption of certain food staples at two grocery stores.

Recent innovations continue to mitigate the historical limitations of urban agriculture: land, labor, and potential yield. A study on urban farms in New York City found that the crops in urban farms produced higher yields than their conventional farm counterparts, thus making up for the spatial limitations that urban farms may face.[45] Additionally, peri-urban farming, which produces substantial amounts of food on a relatively small amount of land on the fringes of a city, has emerged as a space-efficient form of urban agriculture.[46] Gotham Greens addresses the yield limit issue by growing crops inside greenhouses with hydroponic technology. Gotham Greens' greenhouses are located near cities, allowing for proximity to communities while avoiding real estate constraints.[47] Closer to home, Upside Foods has opened a production facility to produce high-quality laboratory-grown meat at scale.[48]

i. Controlled Environment Agriculture (CEA)

CEA is an indoor food production method that uses stacked shelves, modular rack systems, or tower gardens to increase crop yields using less surface area significantly.[49] Technologies such as ultra-efficient LED lighting, automated environmental control systems, and dehumidification recapture loops can dramatically reduce resource consumption, including consumption of energy, water, and nutrients. Photographs of such technologies are included in Attachment 1.

Exceptional yields and multiple harvests per year make indoor farming economically viable and sustainable over time. These two factors are

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[45] Mara Gittleman et al., *Using Citizen Science to Quantify Community Garden Crop Yields*, 5 Cities and the Environment (2012), https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1095&context=cate.

[46] Ina Optiz et al., *Contributing to Food Security in Urban Areas: Differences Between Urban Agriculture and Peri-Urban Agriculture in the Global North*, 33 Agriculture and Human Values (2016), https://link.springer.com/article/10.1007/s10460-015-9610-2.

[47] Gotham Greens, *Our Story*, https://www.gothamgreens.com/our-story/.

[48] Katie Spalding, *World's Most Advanced Lab-Grown Meat Facility Opens in California*, IFL Science (Nov. 8, 2021), https://www.iflscience.com/worlds-most-advanced-labgrown-meat-facility-opens-in-california-61548.

[49] Sarah Federman, *Vertical Farming for the Future*, USDA (Oct. 25, 2021), https://www.usda.gov/media/blog/2018/08/14/vertical-farming-future; *see e.g.,* Gardyn, *How It Works*, (last accessed Mar. 3, 2023), https://mygardyn.com/how-it-works/.

possible because indoor farming creates an environment for resource-efficient methods such as aeroponics[50] (i.e., spraying nutrient-rich mist on root zones that are suspended in the air) and aquaponics.

Aquaponics is a sustainable farming method that combines traditional aquaculture (raising fish) with hydroponics (growing plants in water without soil). In an aquaponic system, fish produce waste that is converted into plant nutrients. The plants, in turn, help to purify the water for the fish. This closed-loop system can be highly efficient, as it reduces the need for external inputs such as synthetic fertilizers and pesticides, and it allows for year-round production in a controlled environment. Aquaponics can be used to grow various vegetables, herbs, and other plants, as well as raise fish such as tilapia, trout, and bass. It can be a great option for urban farming, as it requires less space and water than traditional farming methods.

Compared to traditional farming techniques, aeroponics and aquaponics dramatically increase yields and quality while reducing water consumption by as much as 90%.[51]

ii. Repurposing Empty Commercial Space

Indoor farms can be developed in underutilized warehouses, shuttered big boxes retail locations such as the vacant CVS on Shattuck and Bancroft, and the vacant Walgreens on Ashby and San Pablo, or under freeway overpasses such as Gilman and I-80. To create dual-purpose land use throughout the city, advanced greenhouses could be elevated above existing ground-level parking lots at locations such as Whole Foods in North Berkeley.

c. Energy Resilience

The food production network should integrate renewable energy systems that can remain resilient in the event of a disruption to the energy grid. Such a system could employ local micro-grids with solar and storage to provide power to local food production facilities. Additionally, a renewable energy system could help limit environmental impact and reduce long-term costs.[52]

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[50] *See e.g.,* Rouses Markets, *Rouses Markets Creates Sustainable Aeroponic Rooftop Garden Above Downtown New Orleans Store*, Cision (May 17, 2012), https://www.prnewswire.com/news-releases/rouses-markets-creates-sustainable-aeroponic-rooftop-garden-above-downtown-new-orleans-store-151890995.html; *Rouses Roots on the Rooftop*, Tower Farms (last accessed Mar. 3, 2023), https://www.towerfarms.com/us/en/possibilities/rooftop-farming/rouses-rooftop-farm.

[51] Michelle Keller, *Aeroponics - What Is It & Why Is It Important?*, Living Greens Farm (Aug. 4, 2020), https://www.livinggreensfarm.com/blog/what-is-aeroponics.

[52] US Department of Agriculture, *Rural Energy for America Program Renewable Energy Systems & Energy Efficiency Improvement Guaranteed Loans & Grants*, https://www.rd.usda.gov/programs-services/energy-programs/rural-energy-america-program-renewable-energy-systems-energy-efficiency-improvement-guaranteed-loans.

This renewable energy system would combine various methods of production to maximize redundancies and extend grid independence of the food resilience program in the event of a major energy crisis. Existing technologies such as rooftop solar arrays and onsite battery storage systems can be combined with emerging technologies such as urban wind turbines,[53] transparent solar panels that allow crops below to absorb energy,[54] and biofuel co-generators[55] for use when other means of production are not available. These emerging technologies should be considered and planned for when developing the energy independence component of FARM, placing Berkeley at the forefront of sustainability in urban farming.

9. *FARM: Organization*

The FARM will be a self-organized, self-funded non-profit serving the City of Berkeley. FARM will have a self-appointed Board of Directors, approved by the City Council, with duties and administrative powers also approved by the Council.

As the work of the FARM supplements sustainability, disaster preparedness, and community health work currently done by City workers. No current work performed by represented City employees will be contracted out through this community-based non-profit organization or other entity.

The FARM could be organized as a "vertical cooperative."[56] A cooperative is a user-owned and controlled entity from which benefits are distributed equitably.[57] As a vertical cooperative, the FARM would operate on all levels of the vertical food system — linking producers, processors, distributors, retailers, and consumers. The system as a whole must be sustainable if the FARM continues to provide food security for the community. All recipients and participants in the vertical system would be members of the FARM cooperative.

10. *FARM: Governance*

The FARM will begin with a volunteer, skills-based governing board, named the Food Security Council, with the City acting as a facilitator. Once the FARM has achieved grant funding, the Food Security Council members will be compensated. The Food Security Council should consist of community members, grant writers, SNAP recipients, food producers, an organized labor representative, and experts in resilience, logistics,

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[53] IBIS Power, *Easily Upgrade Your Building to Renewable Energy*, (last accessed Dec. 20, 2022), https://ibispower.eu/powernest/.

[54] Anthony Cuthbertson, *Record-Breaking Transparent Solar Panels Pave Way for Electricity-Generating Windows*, Independent (Oct. 28, 2022), https://www.independent.co.uk/tech/solar-panel-world-record-window-b2211057.html.

[55] Diego Perrone et al., *Energy and Economic Investigation of a Biodiesel-Fired Engine for Micro-Scale Cogeneration*, 14 Energies (2021), https://www.researchgate.net/publication/348594263_Energy_and_Economic_Investigation_of_a_Biodiesel-Fired_Engine_for_Micro-Scale_Cogeneration.

[56] John Ikerd, *The Economic Pamphleteer: Reflections on Cooperation*, Journal of Agriculture, Food Systems, and Community Development (2013), https://doi.org/10.5304/jafscd.2013.032.001.

[57] USDA, *Understanding Cooperatives: Cooperative Business Principles*, (Revised Apr. 2011), https://www.rd.usda.gov/sites/default/files/publications/CIR_45-2.pdf.

renewable energy, agriculture technology, and public health. All members would be appointed by the nonprofit. The Food Security Council will have six core responsibilities:

1. Form the FARM as a non-profit organization;
2. Apply for grant funding;
3. Seek external partnerships;
4. Manage the FARM's efforts to develop and maintain food production and distribution processes;
5. Determine the caloric needs of residents based on empirical evidence to set food production goals for the FARM; and
6. Define food shock events (e.g., how many days without staples constitute a food shock).

11. *FARM: Potential Funding Sources*

Funding sources include fees for administering government food assistance programs and grants from California, the USDA, and the Department of Energy (DOE) are available.

a. Federal and State Food Insecurity Related Grants and Programs

Grant or Program	Amount	Source/ Sponsor	Eligible Projects
Local Foods, Local Places	-	USDA and EPA	Developing the local food economy. Examples: community gardens, kitchens, farmer's markets, and other food-related enterprises that can create new businesses and revitalize main streets, improve access to fresh, local food, and protect the environment.
Community Food Projects Competitive Grants Program (CFPCGP)	$25K-35K in planning; Up to $125K per year for up to four years	USDA	Planning toward the improvement of community food security in accordance with the goals of CFPCGP.
The GusNIP - Nutrition Incentive Program	-	USDA	Projects intended to increase the purchase of fruits and vegetables by providing incentives at the point of purchase among income-eligible consumers participating in the USDA Supplemental Nutrition Assistance Program (SNAP)

Farm to School Grant	Up to $500K	USDA	Linking local producers with schools and other organizations participating in child nutrition programs working to purchase and include locally grown fruits, vegetables, grains, meat, dairy, and seafood in program meals.
Conservation Innovation Grants	-	USDA	Projects supporting the development of farming technology to efficiently increase agricultural production through the conservation of natural resources, such as water and soil.
The Farmers Market Promotion Program (FMPP)	-		Projects that develop, coordinate, and expand direct producer-to-consumer markets to help increase access to and availability of locally and regionally produced agricultural products by developing, coordinating, expanding, and providing outreach, training, and technical assistance to domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, online sales or other direct producer-to-consumer (including direct producer-to-retail, direct producer-to-restaurant, and direct producer-to-institutional marketing) market opportunities.
Local Food Promotion Program	$25,000 to $100,000 (for Planning projects) and $100,000 to $500,000 (for Implementation and Farm to Institution projects)	USDA	Grants for Planning projects help food businesses to develop and test services. Grants for Implementation projects fund the creation of food businesses like community kitchens. Grants for Farm to Institution projects support institutional food services like schools with linkage to farms.
Food and Agriculture Service Learning	-	USDA	For private organizations or non-profits to increase the capacity for food, garden, and nutrition education within host organizations or entities, such as school cafeterias and

Program			classrooms while fostering higher levels of community engagement between farms and school systems by bringing together stakeholders from distinct parts of the food system.

b. Federal and State Resilience Grants and Programs

Grant or Program	Amount	Source/ Sponsor	Eligible Projects
CA Community Resilience Centers (anticipated release in spring 2023)	-	California Strategic Growth Council	New construction and upgrades of neighborhood-level resilience centers to provide shelter and resources during climate and other emergencies. The program will also fund year-round services and ongoing programming that build overall community resilience.
Building Resilient Infrastructure and Communities (BRIC) Grant	-	FEMA	Hazard mitigation projects, reducing the risks they face from disasters and natural hazards.
Hazard Mitigation Grant Program (HMGP)	-	FEMA/ OEM	Developing hazard mitigation plans and rebuilding in a way that reduces, or mitigates, future disaster losses in local communities.
Regional Resilience Planning and Implementation Grant Program	-	Governor's Office of Planning and Research	Advancing resilience and responding to their greatest climate risks through three major activities: capacity building, planning (including identifying climate resilience priorities), and project implementation.
CA Transformative Climate Communities	-	California Strategic Growth Council	Development and infrastructure projects that achieve major environmental, health, and economic benefits in California's most disadvantaged communities.

c. Federal and State Renewable Energy Grants and Programs

Grant or Program	Amount	Source/ Sponsor	Eligible Projects
Energy Efficiency and Conservation Block Grant (EECBG) Program	$500,000,000	Department of Energy	Development and implementation of an energy efficiency and conservation strategy; establishment of financial incentive programs for energy efficiency improvements.
CA Transformative Climate Communities	-	California Strategic Growth Council	Development and infrastructure projects that achieve major environmental, health, and economic benefits in California's most disadvantaged communities.
CA Distributed Electricity Backup Assets Program	-	California	Construction of cleaner and more efficient distributed energy assets that would serve as on-call emergency supply or load reduction for the state's electrical grid during extreme events.
CA Climate Catalyst Revolving Loan Fund	-	California Infrastructure and Economic Development Bank	Projects that promote climate-smart technologies and practices across the agricultural value chain Projects may include (but are not limited to): ● On-farm and food processing renewable energy, including electricity, fuels, and bioenergy ● Energy, water, and materials efficiency ● Methane reduction projects that use best practice approaches consistent with state policy goals ● Energy storage or microgrids ● Equipment replacements
Renewable Energy For Agricultural Program (REAP)	-	California Energy Commission	Installation of renewable energy technologies serving agricultural operations to reduce greenhouse gas emissions.

12. Berkeley is well positioned for a food resilience program.

The City of Berkeley has already taken steps that facilitate a food resilience program. In 2018, the City updated its Urban Agriculture Ordinance, lowering barriers to urban farming in Berkeley.[58] The update reduced the permit costs for larger-scale farming projects to $1,000.00 and removed requirements that restricted farming to select city-owned properties.[59]

ENVIRONMENTAL SUSTAINABILITY

A food resilience program that involves urban agriculture is expected to reduce pollution from food transportation. Urban agriculture shortens the supply chain, truncating the journey from farm to table.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Adopted in 2009, Berkeley's Climate Action Plan outlines a vision for a more sustainable city. One key goal in the Plan is for the "majority of food consumed in Berkeley" to be produced locally.[60] FARM advances this goal by bringing food production and individuals closer together.

On July 24, 2022, the City of Berkeley adopted an ordinance that updated the municipal code on urban agriculture as follows[61]:

Purpose (23.318.010)

The purpose of the Urban Agriculture related regulations contained in this chapter is to provide the following community benefits:

A. Support the local economy and increase access to fresh local produce.
B. Strengthen the health and social fabric of communities by encouraging and supporting community gardens.
C. Accomplish the Berkeley Climate Action Plan goal of supporting efforts to build more complete and sustainable local food production and distribution systems

Applicability (23.318.020)

These regulations supersede definitions of incidental or ancillary uses.

Urban Agriculture Uses and Levels of Discretion (23.318.030)

A. Zoning Certificate. When all of the thresholds in Section 23.318.040 (Thresholds) are met, the use is considered Low-Impact Urban Agriculture (LIUA) and is allowed by right with a Zoning Certificate.
B. Administrative Use Permit. When one or more of the thresholds in Section 23.318.040 (Thresholds) are not met, the use is considered High-Impact Urban Agriculture (HIUA) requires an AUP. (Ord. 7787-NS § 2 (Exh. A), 2021)

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[58] Stuart Luman, *Berkeley's New Urban Agriculture Ordinance Encourages Residents to Grow Their Own Food*, Berkeleyside (Aug. 27, 2018), https://www.berkeleyside.org/2018/08/27/berkeley-urban-agriculture-law.

[59] *Id.*

[60] City of Berkeley, *Berkeley Climate Action Plan*, (June 2, 2009), https://berkeleyca.gov/your-government/our-work/adopted-plans/berkeley-climate-action-plan.

[61] Berkeley Municipal Code 23.318.050.

Thresholds (23.318.040)
The levels of discretion for urban agriculture are based on the following thresholds:

A. Maximum parcel size of 7,500 square feet.
B. Maximum lot coverage of 20 percent for accessory structures and buildings.
C. Maximum group classes and workshops of 20 participants per class conducted no more than three times per week.
D. Hours of operation from 8:00 a.m. to 8:00 p.m., including but not limited to activities related to gardening and planting of horticultural crops, group classes, and sales.
E. Use of organic pesticides. (Ord. 7787-NS § 2 (Exh. A), 2021)

Operation Standards (23.318.050)

- Performance Standards. The growing, production, or sale of urban agricultural products may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond the lot line of the subject lot.
- Sales and Donations.
    - Sales and/or donations of urban agricultural products grown and produced on-site are permitted.
    - If selling or donating urban agricultural products to the public, the urban agriculture use shall comply with all applicable food safety laws, including the California Health and Safety Code.
- Garbage and Compost.
    - Garbage and compost receptacles must be screened from the street and adjacent properties by utilizing landscaping, fencing, or storage structures and all garbage shall be removed from the site weekly.
    - Compost piles and containers must be set back at least 10 feet from residential buildings when an urban agriculture use abuts a residential use.
- Farm Equipment. Use of mechanized farm equipment is not permitted in Residential Districts and when the urban agriculture use abuts a residential use, with the following exceptions:
    - Heavy equipment may be used initially to prepare the land for agriculture use.
    - Landscaping equipment designed for household use is permitted.
    - Equipment when not in use must be enclosed or otherwise screened from sight. (Ord. 7787-NS § 2 (Exh. A), 2021)

FISCAL IMPACTS OF RECOMMENDATION
Fiscal impacts include staff time for analysis.

RATIONALE FOR RECOMMENDATION
Food insecurity rates in the Bay Area are worrying. Food shortages, natural disasters, and global conflicts further threaten the availability and economic accessibility of healthy food. The increasingly intense impacts of climate change create heightened cause for concern. Therefore, to create a food safety net in the City of Berkeley, it is necessary to implement FARM.

While FARM is not intended to replace conventional food retailing, it should produce enough food to supplement the normal food supply during times of distress. Reaching this quantity requires a coordinated effort and collaboration with experts in the field of urban agriculture, including small businesses and nonprofit organizations. Therefore, the Office of Economic Development should research incentives for these entities to partner with the City of Berkeley to design and implement a food utility pilot.

OUTCOMES AND EVALUATION

This food resilience initiative is expected to address food insecurity for the City's population and maintain that security in the event of environmental and economic shocks.

Contributors

Leanne Gluck, Project Director, Agriculture Innovation
John Ikerd, Professor Emeritus of Agricultural Economics
Ben Cadranel, Development Officer
Ian Richards, Agricultural Technology Consultant

CONTACT PERSON

Vice Mayor Ben Bartlett bbartlett@cityofberkeley.info
James Chang jchang@cityofberkeley.info
Nina (Wenxin) Li
510-981-7131

ATTACHMENTS

1. Resolution No. XXXXX
2. The Lorin Business Association Letter of Support
3. Alameda County Democratic Central Committee Letter of Support
4. United Food & Commercial Workers 5 (UFCW 5) Letter of Support
5. Building and Construction Trades Council of Alameda County, AFL-CIO Letter of Support
6. IBEW Local Union 595 Letter of Support
7. NECA Letter of Support
8. SEIU 1021 Letter of Support
9. Vertical Crop Consultants Letter of Support
10. UC Berkeley Berkeley Food Institute Letter of Support
11. Future Table Letter of Support
12. Dig Deep Farm (DSAL) Letter of Support
13. DoorDash Letter of Support
14. Photographs of Urban Farming Installations
15. FARM PowerPoint Presentation May 2023

Attachment 1

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

A RESOLUTION OF THE BERKELEY CITY COUNCIL IN SUPPORT OF THE GOALS OF THE FOOD ACCESS AND RESILIENCE MEASURE (FARM) INITIATIVE AND THE DEVELOPMENT OF HYPERLOCAL URBAN FOOD PRODUCTION AND DISTRIBUTION WITH COMMUNITY-BASED ORGANIZATIONS

WHEREAS, the City of Berkeley and the Bay Area are experiencing increasing impacts of climate change, natural disasters, global conflicts, inflation, and food shortages; posing significant threat to the availability and economic accessibility of healthy foods; and

WHEREAS, the Berkeley Food Access and Resilience Measure (FARM) initiative calls for a self-funded community based organization, connecting producers, processors, distributors, retailers, and consumers to ensure food security in the community; and

WHEREAS, the FARM initiative will be governed by a Food Security Council; and

WHEREAS, the FARM initiative will be financed through a combination of government grants and private philanthropy; and

WHEREAS, the FARM initiative aligns with the goals of the Federal Government and State of California's food and energy resilience policies and grants; and

WHEREAS, The City of Berkeley's Climate Action Plan and Urban Agriculture Ordinance seeks to reduce pollution from the transportation of food by incentivizing urban farming and supporting local food production;

WHEREAS, the development and implementation of FARM will require collaboration with community-based organizations, SNAP recipients, organized labor, small businesses, and non-profit organizations;

NOW, THEREFORE, BE IT RESOLVED that the City of Berkeley hereby supports the goals of the Food Access and Resilience Measure (FARM) and the development of hyperlocal urban food production by providing incentives and funding opportunities for community based organizations;

BE IT FURTHER RESOLVED that the City of Berkeley will partner with community-based organizations implementing the goals of the FARM initiative.

THEREFORE, IT IS FURTHER RESOLVED that the City of Berkeley encourages the community, small businesses, labor organizations, and non-profits, to support the FARM initiative and participate in collaborative efforts to achieve food security and resilience within the City of Berkeley.

Attachment 2

3/17/2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of the **Lorin Business Association**, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

Liz Lisle, YaVette Holts, and KC Cavanagh
Board Member of the Lorin Business Association

Attachment 3

April 8, 2023

SUPPORT FOR BERKELEY FOOD UTILITY AND ACCESS RESILIENCE MEASURE

Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Dear Honorable Mayor and City Council:

On behalf of the Alameda County Democratic Party, I am writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

Igor A. Tregub
Chair, Alameda County
Democratic Party

Attachment 4

a VOICE for working America

John Nunes
President

Jack Landes
Secretary - Treasurer

Main Office:
United Food & Commercial Workers Union, Local 5
28870 Mission Boulevard
Hayward, CA 94544-5510
(510) 889-0870
Fax: (510) 889-6415
Toll Free: (877) 655-FIVE
www.ufcw5.org

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Fax: (408) 971-8355

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Martinez, CA 94553-3823
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(831) 757-3094
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323 Geary Street, Room 709
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(415) 693-0143
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85 Galli Drive, Suite H
Novato, CA 94949-5716
(415) 883-6833
Fax: (415) 883-1043

840 E Street, Suite 8
Eureka, CA 95501-6804
(707) 442-1751
Fax: (707) 442-9572

April 25, 2023
Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of UFCW Local 5, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

James Araby
Director of Strategic Campaigns

Attachment 5

Building and Construction Trades Council of Alameda County, AFL-CIO

7750 Pardee Lane, Suite 100
Oakland, CA 94621
btca@btcalameda.org | (510) 430-8664

Andreas Cluver
Secretary-Treasurer

Rob Stoker
President

Rafael Gonzalez
Vice President

Chuck Leonard
Sergeant in Arms

Auto & Marine Painters, #1176
Boilermakers, #549
Brick & Tile Layers, #3
Carpet & Linoleum, #12
Cement Masons, #300
Electrical Workers, #595
Elevator Constructors #8
Glaziers #169
Insulators & Asbestos Workers, #16
Iron Workers, #378
Laborers, #67
Laborers, #304
Operating Engineers, #3
Painters, #3
Plasterers, #66
Plumbers & Steamfitters, #342
Roofers, #81
Sheet Metal Workers, #104
Sign & Display, #510
Sprinkler Fitters, #483
Teamsters, #853
U.A., Utilities / Landscape, #355

April 11, 2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of the Alameda County Building & Construction Trades Council, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

Andreas Cluver, Secretary-Treasurer
Building & Construction Trades Council of Alameda County

Attachment 6

IBEW Local Union 595
International Brotherhood of Electrical Workers
Established in 1907 - Over 100 Years of Service

GREG BONATO
Business Manager
Financial Secretary

March 8, 2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of IBEW Local Union 595, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Respectfully,

Greg Bonato
Business Manager-Financial Secretary

GB:klp/opeiu#29/afl-cio

925.556.0595 • 925.556.0600 *fax* • www.ibew595.org • 6250 Village Parkway, Dublin, CA 94568

Attachment 7

National Electrical Contractors Association

March 9, 2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of the Northern California Chapter of the National Electrical Contractors Association (NECA), we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

Greg E. Armstrong
Executive Director
Northern California Chapter, NECA



2180 Milvia Street, Berkeley, Floor 5, CA 94704 ● Tel: (510) 981-7130 ● E-Mail: bbartlett@cityofberkeley.info

Attachment 8

May 4, 2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

Qualified Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

I write on behalf of SEIU 1021 Alameda County Committee on Political Education to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM).

The Berkeley Chapter of SEIU 1021 represents the disaster, health, nutrition, and resilience workers who keep Berkeley safe and healthy. We strongly support the concept of this item, and appreciate that it establishes a program that supplements the work done by SEIU 1021 workers without contracting out any City work currently or potentially performed by represented employees.

We understand that this Council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster. Thousands of people in Berkeley are food insecure, including workers, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Given that threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We offer strong qualified support for this item and respectfully request you favorably consider this amended Berkeley Food Utility Access and Resilience Measure.

Sincerely,
Andrea Mullarkey
SEIU 1021 CSU/PTRLA COPE Coordinator

2180 Milvia Street, Berkeley, Floor 5, CA 94704 ● Tel: (510) 981-7130 ● E-Mail: bbartlett@cityofberkeley.info
28

Attachment 9

VERTICAL CROP CONSULTANTS

102 Cedar Ln.
Clinton NC 28328

5/5/2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of Vertical Crop Consultants Inc, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

Tripp Williamson
CEO
Vertical Crop Consultants Inc.

Attachment 10

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of Berkeley Food Institute, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to safeguard Berkeley residents' access to sustenance during natural and economic disasters.

Thousands of Berkeley residents are food insecure, and numerous others are on the verge of food insecurity. Natural disasters and economic downturns threaten to place even more households in food insecurity in Berkeley, which is already in a precarious position. The COVID-19 pandemic highlighted the precarious nature of our food supply. In 2020, the pandemic caused labor shortages and layoffs across industries, resulting in an increase in staple food prices, a decrease in staple food availability, and a reduction in consumers' ability to afford these foods. The combination of these factors drastically increased the demand for food assistance in Berkeley. The Berkeley Food Network, a local organization that provides food to those in need, had to quadruple its operations in the first half of 2020 alone in order to meet demand. Similarly, Berkeley Student Farms, a network of student led UC Berkeley Campus Gardens were the main supplier of fresh produce to the UC Berkeley Food Pantry during the first two weeks of shelter-in-place in 2020. Due to the increasing frequency of threats to food access caused by climate change, it is crucial to protect our community before a disruption to our food supply occurs.

FARM is a proactive initiative that mitigates the risk of food supply chain disruptions at multiple levels. At its foundation, FARM establishes a network of local food production to supplement the current supply chain. This network creates and integrates local food sources, including urban agriculture facilities and community farms. In addition, FARM safeguards this network from natural disasters by integrating a renewable energy system that can function despite disruptions to the primary power grid. FARM aligns with the emergency preparedness vision of the State of California and the disaster preparedness initiatives of federal agencies.

2180 Milvia Street, Berkeley, Floor 5, CA 94704 ● Tel: (510) 981-7130 ● E-Mail: bbartlett@cityofberkeley.info

We strongly support this item and respectfully request the Mayor and City Council to vote in favor of the Berkeley Food Utility Access and Resilience Measure.

Sincerely,



Nathalie Muñoz

BFI Community Engagement Program Manager

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Attachment 11

Future TABLE

May 7, 2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of FutureTable, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

Lorin Fries

Lorin Fries
Founder and Lead Partner, FutureTable

Attachment 12

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May 8, 2023

Berkeley Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of the Alameda County Deputy Sheriffs' Activities League (DSAL) and Dig Deep Farms, we are writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Berkeley is already in a precarious position, and natural disasters and economic downturns threaten to thrust even more households into food insecurity. The COVID-19 pandemic brought to light the fragility of our food supply. In 2020, the pandemic caused worker shortages and layoffs across industries, increasing the prices of staple foods, reducing the availability of staple foods, and reducing consumers' budgets to afford these foods. The combination of these factors caused the demand for food aid in Berkeley to increase sharply. To meet demand, the Berkeley Food Network, a local organization that supplies food to those in need, was forced to *triple* its operations in the first half of 2020 alone. Because threats to food access are growing increasingly common due to climate change, it is vital to safeguard our community *before* a disruption to our food supply occurs.

FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM, in partnership with our county-wide circular food economy, All In Eats, creates a local food production network to supplement the existing supply chain. This network creates and connects local food sources, including community farms and urban agriculture facilities. Further, FARM protects this network from disasters by integrating a renewable energy system that can operate despite disruptions to the main power grid. FARM aligns with the State of California's emergency preparedness vision and federal agencies' disaster preparedness initiatives.

We strongly support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure.

Sincerely,

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Patrick Eiser
DSAL Director of Operations
peiser@acdsal.org

Attachment 13

DOORDASH

May 26, 2023

Mayor Arreguín and City Council Members
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

RE: Support for Berkeley Food Utility and Access Resilience Measure (FARM)

Dear Honorable Mayor and City Council:

On behalf of DoorDash, I am writing to express our support for the Berkeley Food Utility and Access Resilience Measure (FARM). This council item is intended to protect food access for the people of Berkeley in times of natural and economic disaster.

As part of our mission to empower local economies, DoorDash is proud to broaden food access for the communities we serve. Launched in 2018, our Project DASH initiative enables food banks, food pantries, and other social service organizations to connect food and other important resources to neighbors in the community using the same logistics technology used by DoorDash merchant partners. Project DASH has powered over 3.5 million deliveries of food equal to more than an estimated 60 million meals provided to people experiencing food insecurity across the U.S. and Canada, building the capacity of local food banks and community hubs to serve more people, more effectively.

Thousands of people in Berkeley are food insecure, and many more are on the threshold of food insecurity. Natural disasters and economic downturns threaten to thrust even more households into food insecurity. FARM is a preemptive initiative that mitigates the danger of food disruption at multiple levels of the supply chain. At its core, FARM creates a local food production and local distribution network to supplement the existing supply chain. This network connects local food sources to community hubs including food banks, grocery stores, restaurants, and schools.

We support this item and respectfully request the Mayor and City Council favorably consider the Berkeley Food Utility Access and Resilience Measure. We know local delivery can be a powerful tool in breaking down barriers to access, and we look forward to working with Berkeley as it seeks to further develop this initiative and other efforts to protect against food insecurity.

Sincerely,

Laura Curtis
Senior Manager, Governmental Relations – West

Attachment 14



Attachment 15

Berkeley Food Utility and Access Resilience Measure (FARM)



Ben Bartlett
Vice Mayor, City of Berkeley

"There are only nine meals between mankind and anarchy."

- Vladimir Lenin

2180 Milvia Street, Berkeley, Floor 5, CA 94704 ● Tel: (510) 981-7130 ● E-Mail: bbartlett@cityofberkeley.info

Recommendation

To the Honorable Mayor and Members of the City Council



Protecting the City's food supply from natural disasters and economic disruptions by creating a community-based non-profit organization to implement an integrated local food production and distribution system

To design and offer economic incentives for non-profits, agricultural producers, and small businesses to partner with the City

Current Situation



- California is currently facing one of the worst flooding situations in many years
- After three years of droughts, many farmers are concerned about lingering flood waters
- Proving the importance of creating a program that will support food resiliency and local farm workers

Achieving Food Resiliency

Local Production

Develop local food production sources

Connect

Connect these sources to each other and local community hubs

Power

Power local food production sources using renewable energy with battery backup storage

Community Resilience



What is community resilience?

Ability of a community to withstand and recover from disruptions

Threats to the Community:

- Governments faced with existential threats to populations and infrastructure
- Rapid advancement of climate change
- Extreme weather events
- Disaster preparedness
- Soaring Food Prices

Need a systems — level approach to address possible points of failure in urban food supply chain

Food Resilience



What is food resilience?

The ways in which a community can ensure its members have access to health and nutritious food, even during times of crisis

- Berkeley's Climate Action Plan set a target of majority of food consumed to be form local food production
- A local food system empowers Berkeley to achieve a key Climate Action Plan goal → producing local food for consumption
- California allocated $477 million toward agricultural resilience measures
- California's Strategic Growth Council called for local-level resilience through Community Resilience Centers program
- U.S. government is incorporating food resilience in disaster planning

Food is a Fundamental Human Right



Like air and water...

Food is essential for survival and the only commodity that cannot be postponed.

- Food insecure individuals have higher rates of mental health issues
  - Hungry children attain lower academic achievement
- United Nations recognizes that the right to all nutritional elements is necessary to live a healthy and active life

Food Insecurity Data

Food insecurity is a growing crisis throughout the United States



11.5%
870,000 people
Of people in the Bay Area are food insecure in 2018



10.5%
14 million households
Of the US population did not have enough food to meet their needs



20%
20-33%, specifically
Spike in food insecurity in the Bay Area from the beginning of COVID-19 Pandemic

Threats to Food Access



Climate Change
If the land lacks the nutrients that crops need to grow, the food chain will be stopped from the beginning

Natural Disasters
All segments of food supply chains can be affected by a natural disaster such as droughts, wildfires, and more

Foreign Conflict
A disruption in one region can send ripple effects to the rest of the world

FARM as a Community Food Utility

Community Layer

- Community Gardens and Backyard Gardens
- Synchronizing Local food production with food banks, restaurants, schools and grocery stores
- Supplemental Nutrition Assistance Program (SNAP

Production Layer

- Controlled Environmental Agriculture (CEA)
- Repurposing Empty Commercial Space

Energy Resilience

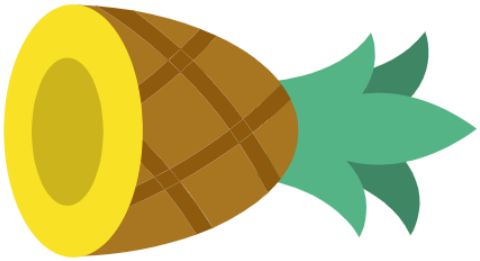
- Integrating renewable energy systems that remain resilient

FARM: Organization

The FARM will be a self-funded non-profit chartered by the City of Berkeley, with a self-appointed Board of Directors, approved by the City Council, with duties and administrative powers also approved by the City Council.

Vertical Cooperative

- User-owned and controlled entity from which benefits are distributed equitably
- FARM would operate on all levels of vertical food system – linking producers, processors, distributors, retailers and consumers
- System must be sustainable, all recipients and participants would be members of FARM



Defining Local

Synchronizing community gardens with food towers to maximize food production and reduce 100 mile radius to something closer to be determine by Food Security Council

Hyper Local

- food grown right in a communities' backyard
- available for purchase at a market or consumption at local restaurants.
- benefit: produce can be harvested and delivered on the same day and can remain fresh longer than produce delivered from long distances.

Local

- definition from Farm Act from 2008,
- definition= produced "so that the total distance that the product is transported is less than 400 miles from the origin or the product."

Equity

Group buying power for SNAP participants in Berkeley to lower cost and eat healthier

Making food more affordable

- Food prices have gone up by 10%
- FARM Initiative sets the framework to structure group buying power for SNAP participants, to help lower the cost, support local growers and help the community eat healthier



FARM Governance:
Food Security Council

- FARM will begin with a volunteer, skills-based governing board: Food Security Council
- Once the FARM has achieved grant funding, the Food Security Council members will be compensated
- The Food Security Council should consist of community members, grant writers, SNAP recipients, food producers, an organized labor representative
  - Experts in resilience, logistics, renewable energy, and public health.

Food Security Council Responsibilities:

1. Form FARM as a non-profit
2. Apply for funding
3. Seek external partnerships
4. Develop and maintain food production and distribution processes;
5. Determine the caloric needs of residents
6. Define food shock



Potential Funding Sources

Funding sources include fees for administering government food assistance programs and grants from California, the USDA, and the Department of Energy (DOE) are available.

Food Insecurity Related Grants and Programs

Federal and State Resilience Grants and Programs

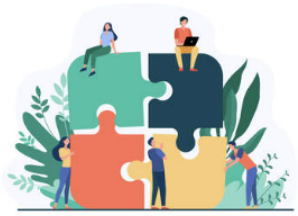
Federal and State Renewable Energy Grants and Programs

Self Directed and Self Funded

Minimal Bureaucratic Toll → FARM Security Council

Self Funded → Grant funded (DOE & USDA)

→ $0 from City Budget



FARM: Conclusion

Food shortages, natural disasters, and global conflicts further threaten the availability and economic accessibility of healthy food. The increasingly intense impacts of climate change create heightened cause for concern. Therefore, to create a food safety net in the City of Berkeley, it is necessary to implement FARM.

Food Safety Net



Supplement during distress

Supporters

- The Lorin Business Association
- Alameda County Democratic Central Committee
- United Food & Commercial Workers 5 (UFCW 5)
- Building and Construction Trades Council of Alameda County, AFL-CIO
- IBEW Local Union 595
- NECA
- SEIU 1021
- Vertical Crop Consultants
- UC Berkeley Berkeley Food Institute
- Future Table
- Dig Deep Farm (DSAL)

Thank you!

Contact:

Vice Mayor Ben Bartlett
- bbartlett@cityofberkeley.info
- 510-981-7130

Additional Contributors:
Nina Li
James Chang
Dafne Cruz Rodriguez



Councilmember Ben Bartlett
City of Berkeley, District 3

CONSENT CALENDAR
March 27, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Health Equity & Innovation District

RECOMMENDATION
Referral to the Planning Commission, the Community Health Commission, the Commission on Aging, and the City Manager to establish a Health Equity & Innovation District (HID).

The goal of the HID is to reduce chronic racial health disparities and improve the overall public health strategy of Berkeley by fostering innovations in healthcare delivery, improving resiliency, and strengthening the integration of health services and systems. The HID is intended to draw investment and grant opportunities, as well as to explore the expansion of scope of practice for medical providers.

The City should explore incentives for health service organizations and health technology organizations that:

A. Are sited within HID; AND
B. Offer free or low-cost direct health services to community members
   OR
   Partner with the City of Berkeley's Public Health Division or existing medical non-profits to deliver enhanced health programs and eliminate health disparities.

The City may seek to promote the following and other similar policies and programs:

- Remote Medicine:
  - Employing new technologies to deliver personal health and prevention solutions (such as tracking health data to identify opportunities for health improvement)
  - Platforms for active aging with the goal of maintaining and fostering the cognitive abilities of elderly patients suffering from cognitive impairments
  - Remote consultations in order to provide residents, especially senior residents with chronic health conditions, with regular check-ins and follow-ups
- Data Analysis:
  - Surveying and statistical analysis to identify the communities' greatest health-related needs

    - Gathering environmental data (e.g. sensors monitoring air quality or other monitoring of the built environment) in order to evaluate health related impacts
    - Machine learning and artificial intelligence techniques in order to mine data to identify sources of health issues, such as lead contaminated paint or food poisoning, and cluster events
- Disaster Preparedness:
    - Analyzing and identifying improvements for the City's emergency disaster preparedness protocols and infrastructure, including incorporating mental health resilience and psychiatric first-aid
- Mental Health:
    - Internet and technology based cognitive behavioral therapy
- Mobile Services:
    - Mobile dentistry services, including high-speed and eco-friendly digital impression technology and mobile based tablet intraoral scanners
- Education and Resources:
    - Interactive kiosks that would help people identify, locate, and sign up for, resources, information, and services, including information regarding prevention of colds and flus, cancer, and diabetes
- Culturally Responsive Services
    - Supporting the development of a service network rooted in practices that will appropriately serve low-income communities of color.
    - Stay in alignment with Alameda County Innovation Report for culturally responsive service allocation.
    - Train providers in order to understand needs of population for adequate service delivery.
- Trauma informed Health Services
    - Supporting systems and staff in understanding trauma to better accommodate those with lived experience.
    - Funding coalitions and services that support the development of long term trauma informed services.
- Community Based Services
    - Development of coalition of organizations within health zone to address specific needs of community as identified in needs assessment.

<u>BACKGROUND</u>

Health benefits are not experienced equally throughout the city. Health inequities in Berkeley persist in patterns based on race, ethnicity, geography, as well as income and education. For example, African American residents in South and West Berkeley have higher rates of adverse pregnancy outcomes, childhood asthma hospitalizations, heart disease, high blood pressure, stroke, and diabetes.[1]

[1] Compared to a white resident, an African American resident in Berkeley is:

- 20 times more likely to be a teen pregnant
- 2.5 times more likely to be born too small
- 4 times more likely to be diagnosed with diabetes

In an equitable region, individuals of all races, incomes, ages, genders, and other social identities have equal opportunities to live healthy lives. The investments and policies proposed by the South & West Berkeley Health Innovation Zone Pilot Program would reduce inequality and improve the lives of the city's most vulnerable and disadvantaged residents.

Berkeley is one of three California cities with its own Public Health division. This initiative seeks to expand upon the services provided by our Public Health division in order to promote health entrepreneurship and deliver next-generation health innovation to the entire Berkeley community.

As our population ages and inequality and homeless continues to grow, we are faced with an increasing prevalence of chronic and degenerative conditions along with fragmented healthcare provision. We predict that there will be a growing demand for qualified services that only new models of care will be able to support. We must leverage innovation, encourage partnerships, and promote entrepreneurship in order create infrastructure and services to increase equitable health promotion and risk prevention through education and service delivery.

The City of Berkeley's Public Health division's recognizes health inequities as a priority and the City is committed to addressing and eliminating health inequities. This initiative would take another step in the direction of accomplishing this goal. This is meant to provide a model for best practices to aid the development of universal health care in California.

FINANCIAL IMPLICATIONS
Staff time.

CONTACT PERSON
Councilmember Ben Bartlett, (510) 981-7130

- 14 times more likely to be hospitalized for diabetes
- 12 times more likely to be hospitalized due to hypertensive heart disease
- 2 times more likely to die in a given year from any condition
- 2.5 times more likely to die of cardiovascular disease
- 9 times more likely to be hospitalized for asthma (this is for a child less than five years old)

Office of the City Manager

CONSENT CALENDAR
September 11, 2012

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Michael Caplan, Director, Office of Economic Development

Subject: Loan Amendment: Urban Ore

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Urban Ore's existing loan agreement with the City of Berkeley according to the following provisions:

1) Create a new promissory note and security agreement with the City that brings the existing loan into compliance from its delinquent status. A new promissory note will be issued for the current balance of $79,457 with new terms including a 30 month amortization period and an interest rate of 3.46% for a new combined monthly payment of $2,769; and
2) Cancel the existing promissory notes and security agreement.

FISCAL IMPACTS OF RECOMMENDATION

The City will receive loan payments over a longer period of time than would be the case if all funds now due were immediately paid. However, this recommendation secures the City's interest in this loan by creating new terms that the borrower has the financial capacity to comply with. Interest and penalties for prior late payments are included in the new loan amount.

CURRENT SITUATION AND ITS EFFECTS

Urban Ore is currently delinquent in its loan agreement with the City. Because there is a large amount of principal now due, they have asked the City to amend their existing loan agreement so that can pay off their debt over time.

The current loan agreement actually contains two promissory notes. That there are two notes reflects the fact that the original source of the loan was from different accounts in the General Fund: the Citywide Loan Fund and the West Berkeley Building Acquisition Fund. Each Fund contributed $100,000 so that the total original loan package was $200,000. Each note was negotiated with separate terms and amortization periods. Both notes are currently in arrears.

Economic Development staff has negotiated new loan terms that will protect the City's interest going forward and with which Urban Ore can afford to comply. A single new promissory note ("Note") will be issued for the remaining balance of the two existing notes which total $79,457. The revised terms include an amortization period of 30 months and an interest rate of 3.46%. This interest rate is based on the average interest rate earned on City funds over the last 10 years. Urban Ore's new monthly payment will be $2,769.

BACKGROUND

On October 2, 2001, the City Council approved a $200,000 loan to Urban Ore. The loan provided funding for construction of tenant improvements at their property at 900 Murray Street, including portions of a seismic retrofit and the installation of accessible restrooms in their main building.

As stated above, this loan had two promissory notes with different terms. The $100,000 CLF Note required interest only payments for the first 5 months and regular payments of principal plus interest every month after that for the next 95 months with a fixed interest rate of 6.2%. The $100,000 WBBAF Note required interest only payments for the first 101 months with a balloon payment of $100,000 due upon maturation. Both loans were due in May 2010.

According to City records, Urban Ore made regular payments towards the CLF Note until October 2009. Starting in November 2009, Urban Ore stopped making payments and since then has made two payments of $1,324, one in February 2012, and another in March 2012. Taking into account these two payments, the current pay off amount for this Note is $14,235 which includes accrued interest and late charges.

Regarding the WBBAF Note, Urban Ore made interest only payments of $238 until April 2010 as required by the loan terms. They also had made occasional small contributions to principal that reduced their balance by several thousand dollars. Once the Note matured in May 2010, they were required to make a balloon payment of the remaining principal balance but that never was paid. However, between April 2010 and May 2011, Urban Ore made monthly payments of $2,500 and a single payment of $3,000. These large payments reduced their principal balance significantly, but there was still a large unpaid balance. Urban Ore stopped making these large payments after May 2011 although they made two small payments of $250 in February and March of 2012. The current pay off amount on this Note is $66,436 which includes accrued interest and late charges.

In May 2012, the Office of Economic Development received a notice from the Housing Department indicating that the two Urban Ore Notes were in arrears. On July 12, 2012, the Office of Economic Development met with Urban Ore to request an explanation why the two Notes were in arrears and attempt to establish a plan of action that would bring them into compliance with the loan agreement.

Urban Ore claims to have never received a notice indicating that they were in arrears in their payments. Urban Ore has told staff that they were unclear as to the loan payment requirements. The new loan agreements will clarify and simplify future payment schedules for the City and for Urban Ore and will facilitate pay off of all outstanding debt in 2 ½ years with terms favorable to both parties.

RATIONALE FOR RECOMMENDATION

The amendment protects the City's existing loan interest with Urban Ore and creates a new payment schedule that Urban Ore has the financial capacity to comply with.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Elizabeth Garcia, Community Development Project Coordinator, Office of Economic Development, 510-981-7536

Attachments:

1: Resolution

Exhibit A: Urban Ore Financials

2: 2001 Urban Ore Loan Agreement

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

LOAN AMENDMENT: URBAN ORE

WHEREAS, October 2, 2001, the City Council approved a $200,000 loan to Urban Ore to help finance the construction of tenant improvements for 900 Murray Street; and

WHEREAS, the approved $200,000 loan came from two funds, each with separate Promissory Notes ("Notes") with distinct terms: $100,000 from the Citywide Loan Fund (CLF) and $100,000 from the West Berkeley Building Acquisition Fund (WBBAF); and

WHEREAS, both Notes matured on May 2010 and are currently in arrears with a combined balance due of $79,457.45; and

WHEREAS, Urban Ore is now requesting amendment of its existing loan agreement so to come into compliance from its delinquent status; and

WHEREAS, Economic Development staff has negotiated new loan terms that will protect the City's interest in this loan going forward, provide a fair return to the City for its investment and provide a structure that Urban Ore can afford to comply with (Exhibit A); and

WHEREAS, the new loan agreement will consolidate the two existing promissory notes into a single promissory note that will simplify future payment schedules for the City and for Urban Ore and will facilitate pay off of all outstanding debt in 2 ½ years.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Urban Ore's existing loan agreement with the City of Berkeley according to the following provisions:

1) Create a new promissory note and security agreement with the City that brings the existing loan into compliance from its delinquent status. A new promissory note will be issued for the current balance of $79,457.45 with new terms including a 30 month amortization period and an interest rate of 3.46% for a new combined payment of $2,768.60; and
2) Cancel the existing promissory notes and security agreement.

Exhibits
A: Urban Ore Financials

RESOLUTION NO. 56,829-N.S.

ESTABLISHING A WEST BERKELEY BUILDING ACQUISITION FUND (WBBAF).

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

That Council hereby establishes the West Berkeley Building Acquisition Fund (WBBAF). The WBBAF will be operated based on guidelines established in Condition No. 18, Permit No. A1222, June 17, 1987 for the Durkee project in West Berkeley, attached hereto, marked Exhibit A.

Copies sent 2/10/93

To: Community Development

Finance

RESOLUTION

No. 56,829 N.S.

Dated February 2, 1993

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmembers Colligmon, Dean, Olds, Shirek, Spring, Wainwright, Woodworth, and President Hancock.

Noes: None.

Abstaining: None.

Absent: Councilmember Maio.

LONI HANCOCK
Mayor and President of the Council

Attest RENATE TUBMAN
Acting City Clerk and Clerk of the Council

EXHIBIT A

WEST BERKELEY - BUILDING ACQUISITION FUND OPERATING PLAN

January 1993

CONTENTS

OPERATING PLAN

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Program Elements.....3

Administrative Elements.....9

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I. Durkee Use Permit Condition.....14

II.Ranking System for Applicants.....15

III.Preapplication Forms.....16

IV.Checklist for Application.....19

V. City of Berkeley WBBAF Advisory Committee Procedures for Recommendation of Loan Packages.....21

wbaqufnd;revised 1/93

INTRODUCTION

The West Berkeley Building Acquisition Fund (WBBAF), under the City's Community Development Department, has been created to provide loans or grants to assist eligible businesses in the purchase of buildings, in order to encourage small business retention, job creation, and historical preservation in West Berkeley. The Fund was created with $100,000 from Wareham Properties, as a condition for the use permit issued by the Zoning Adjustment Board for the development of the Durkee project in West Berkeley. A copy of the relevant section of the use permit (Condition No. 18, Permit No. A1222, June 17, 1987) is attached as Attachment I.

The use permit condition outlines basic standards and procedures for the disbursal of Fund monies, under the guidance of an advisory loan committee; authority to approve funding is reserved for the City Council. The WBBAF Advisory Committee will be formed using the City's Loan Administration Board which oversees the South Berkeley Revolving Loan Fund, and will include representatives from the Landmarks Preservation Commission, the Civic Arts Commission, and the Planning Commission as mandated in the condition.

Loans and grants to eligible applicants will be recommended to Council according to the criteria and ranking system developed by the WBBAF Advisory Committee (Attachment II), based on the guidelines established by the use permit.

The WBBAF is not intended to be used as a substitute for private conventional loan funds. Its purpose is to attract private financial resources that otherwise would not be available to West Berkeley small businesses to purchase a site in West Berkeley. Funds dispursed from the WBBAF may be structured in a number of ways, including low-interest or deferred payment loans, and recoverable grants.

The minimum or floor interest rate on WBBAF loans is FIVE PERCENT (5%). The standard WBBAF interest rate on loans will be no less than FOUR PERCENT (4%) below the U.S. Treasury rate at the time that a specific loan application is approved by the WBBAF. The WBBAF Advisory Committee may approve a variance from the above standard interest rate given exceptional circumstances. For Real Property loans, terms will not exceed 10 years. Loans will be approved by the WBBAF only where there is a reasonable assurance of repayment.

The objective of the program is to provide affordable financing to eligible businesses to purchase and occupy buildings, thereby ensuring affordability and long term tenure of space.

The target area for the WBBAF is West Berkeley. West Berkeley is bounded by the Albany border to the North; the Emeryville border to the South; Interstate 80 to the West; and San Pablo Avenue to the East (all properties facing on San Pablo Avenue are included within the target area). Criteria will be used to determine the "bankability" of the applicant's business and the degree of positive social impact created by the project. Financial eligibility criteria will be analyzed by a WBBAF loan packager using the format outlined in the Loan Package Checklist (Attachment IV), including the applicant's demonstration of the following:

- At least 50% of the WBBAF Funds must be allocated toward site purchase; up to 50% of acquisition funds may be used for rehabilitation, but only if such rehabilitation is part of the costs of acquiring and occupying the building.

- The property to be rehabilitated is not already owned by the applicant.

- Funds may not be used to refinance a property, unless extenuating circumstances indicate that refinancing is the only option to prevent the sale and loss of ownership for the eligible business owner-occupant.

- Each loan is to be matched by private financing (equity or loans) in a minimum ratio of 1:1 ($1.00 in private financing for every $1.00 in WBBAF money).

- Each $1.00 in WBBAF grant money is to be matched by at least $2.00 in private financing.

- WBBAF recipients must occupy at least 50% of the space in the building acquired.

- Applicants must demonstrate need for "gap financing" from WBBAF to purchase property.

- All other terms and conditions of the loan have been or will be met.

Loans and grants to eligible applicants will be made using the criteria and ranking system developed by the WBBAF Advisory Committee (Attachment II). Final approval of the City's participation in a loan/grant will be determined by the Berkeley City Council.

WEST BERKELEY BUILDING ACQUISITION FUND PLAN

I. PROGRAM ELEMENTS OF THE PLAN

A. GOALS AND OBJECTIVES

The program objectives of the West Berkeley Building Acquisition Fund (WBBAF) are as follows:

1. To provide affordable financing to eligible small businesses to purchase and occupy buildings, thereby ensuring affordability and long term tenure of space.

2. To provide a financing mechanism through which public investment will stimulate concomitant private investment to encourage small business retention and expansion, to encourage local ownership, to stimulate employment opportunities and to encourage historical preservation of buildings in West Berkeley.

3. To leverage public dollars in a manner that will stimulate private investment that otherwise would not be available to West Berkeley small businesses to purchase a site in West Berkeley.

4. To provide incentives for the retention, expansion and location of firms in West Berkeley that will promote increased employment opportunities for residents, a stronger tax base, and more opportunity for residents' participation in economic activities.

5. To provide entry level jobs for Berkeley residents. To encourage retention of manufacturing, artist and artisan businesses in West Berkeley.

6. To increase retention of businesses which have operated in Berkeley for many years but have been hurt by recent enconomic trends.

7. Consistency with Area Economic Plans

   The WBBAF program is consistent with the Alameda County Overall Economic Development Program (OEDP). In Alameda County, the County Administration maintains and updates the OEDP for the twelve communities in the county.

The WBBAF is consistent with the City's West Berkeley Land Use Plan. The Plan directly addresses problems of affordability and availability of space in the West Berkeley Area.

B. TARGET AREA

The target area for the WBBAF is West Berkeley. West Berkeley is bounded by the Albany border the North; the Emeryville border to the South; Interstate 80 to the West; and San Pablo Avenue to the East. All properties fronting San Pablo Avenue are included within this target area.

C. THRESHOLD CRITERIA

In order to qualify for a loan, an applicant must meet the following minimum criteria:

1. The property to be acquired must be located in the West Berkeley target area.

2. Loan recipients must make good faith efforts (as evidenced by a First Source Employment Agreement) to create or retain job opportunities for Berkeley residents as a result of receiving a City loan. Assistance in fulfilling this requirement will be provided through the City's Community Development Department First Source Employment Program. Priority will be given to projects which create entry-level jobs for unemployed or underemployed Berkeley residents.

3. The property to be acquired must be historic, defined as a structure at least forty years old.

4. WBBAF recipients who are sole proprietors or partners must live within Alameda or Contra Costa Counties; in the case of a corporation (including non-profit) or collectively-owned business, the majority of Board members must live within the 9-County Bay Area.

5. At least 50% of WBBAF funds must be allocated toward site purchase; up to 50% of acquisition funds may be used for rehabilitation, but only if such rehabilitation is part of the costs of acquiring and occupying the building. Rehabilitation of property already owned by an applicant is not permitted. WBBAF funds may not be used for refinancing a property, unless extenuating circumstances indicate that refinancing is the only option to prevent the sale and loss of ownership for the eligible business owner-occupant.

6. Ratio of Private Sector Funds to WBBAF Funds
Each WBBAF **loan** must be matched by private financing (equity or loans) in a minimum ratio of 1:1 ($1 in private financing for every $1 in WBBAF money). Each $1 in WBBAF **grant** moneys must be matched by at least $2 in private financing. Private sector dollars may include financing from banks, and other lenders as well as the borrower's investment or a financial investment by other investors in conjunction with the WBBAF loan. The City will strive to maximize the leveraging of private funds.

7. WBBAF recipients must occupy at least 50% of the space in the building acquired.

8. Applicants must demonstrate need for "gap financing" from WBBAF to purchase property. The WBBAF funds will be used to cover the gap between purchase price and total financing available. Financial need may include additional equity or a below-market interest rate loan, to make property acquisition feasible. Standard lending criteria will be used to determine the need for and security of City funds.

D. OTHER STANDARDS

1. Cost/Jobs Ratio
The projected WBBAF Cost/Job ratio for new loans should be less than $25,000 per job created or retained, with the provision that the WBBAF will make best efforts to achieve a ratio of $20,000:1.

2. WBBAF recipients must comply with the following resale restrictions: In the event the property owner intends to transfer or sell the property, the owner shall promptly notify the City of Berkeley in writing of such intent. Resale restrictions shall be recorded on all property deeds; resale price (over purchase price) shall be tied to increases in the San Francisco-Oakland Consumer Price Index for All Urban Consumers. Loans may be assumable by new owners if buyers apply for and receive approval by the City under the Building Acquisition Fund program.

3. First Source Agreement
The applicant must agree to enter into a First Source Employment agreement with the City and to adhere to the terms of that agreement.

4. Types of Jobs to be Created

Whenever possible, the WBBAF Advisory Committee will seek to approve financial assistance to businesses offering jobs having relatively low (entry-level) skill requirements. Additionally, the WBBAF Advisory Committee will emphasize in-house training programs where lower skilled employees may be trained for better paying, higher skilled jobs.

5. Priorities

The WBBAF will have a priority interest in achieving the following economic objectives and benefits for the area:

★ Increasing retention of manufacturing and artists/artisan businesses in West Berkeley.
★ Increasing retention of owner occupants in West Berkeley.
★ Increasing retention of existing West Berkeley businesses.

E. FINANCING POLICIES

1. Types of Loans/Grants

★ Loans to Public/Private Borrower

It is expected that most of the loans made under this program will go to privately controlled for profit entities, i.e. merchants in the area who intend to utilize the borrowed funds for building acquisition. Loans may be made to eligible non-profit organizations provided that these loans meet the goals and standards of the WBBAF program.

★ Loans To New Companies/Start-ups

Due to higher risk factors, loans to start up businesses will not be given consideration.

★ Recoverable Grants

Grants will be considered only when extenuating circumstances indicate that a grant is the only option to prevent the sale and loss of ownership for the eligible business owner-occupant.

2. Terms and Conditions for WBBAF Loans

In general, WBBAF Loans will be amortized over the life of the loan with level monthly payments of principal and interest. Principal and interest are due on sale or refinancing. The WBBAF may consider approval of loans with deferred principal payments for a period not to exceed six (6) months.

3. Standard Loan Amount
To meet the 1 to 1 ratio, WBBAF proceeds will normally not exceed 50% of the total financial package up to a maximum of $100,000. Individual loan packages may vary, however.

4. Standard Owner Equity
Owner Equity will normally be required on all loans at a minimum level of no less than 10% of the total project cost. For Real Property Loans, the loan to value ratio will be less than or equal to 90% based upon an independent appraisal.

5. Interest Rate
The standard WBBAF interest rate will not exceed the U.S. Treasury Rate for loans of similar maturity, at the time of loan approval by the WBBAF Advisory Committee.

6. Maximum term of loan
Ten years.

7. Security/Collateral
Applicant must hold adequate assets (both real and/or personal) which will be used as security for the WBBAF loan. It is standard policy that the WBBAF will require that loans be secured to the maximum degree possible. Collateralized security may include, but not be limited to, interest in machinery and equipment, furniture and fixtures, building, property, inventory and receivables. Personal guarantees may also be required of principles with 20% or more interest in the borrower's business. Such security can include property outside of the business, including, but not limited to real estate of principals. The City will secure loans by recording Deeds of Trust on real property (in subordinate position as necessary and prudent) and UCC-1 filing to secure equipment, receivables and inventory. As a matter of policy, the WBBAF Advisory Committee will require the filing of a UCC-3 to identify prior security interests.

8. Variance
The WBBAF Advisory Committee may approve a variance to standard Terms & Conditions within a reasonable range provided that:

- ★ WBBAF loans are sufficiently collateralized.
- ★ Reasonable assurance of repayment is preserved.

9. The Applicant must agree to authorize a credit check and have a favorable credit history.

10. Experience
The Applicant must have experience in either the management or ownership of the proposed business or a related one.

11. Taxes
The Applicant must be current on all taxes.

12. Policies for Restructuring WBBAF Loans
Loans will be restructured only when restructuring clearly serves to improve or enhance a borrower's ability to repay the RLF loan.

13. Planned Use of Interest
Interest earned on WBBAF loans or profits earned from the sale of loans or collateral will be returned to the WBBAF for relending.

14. Loan Origination Fees or Other Charges
At this time, Berkeley does not charge loan origination fees. Any costs that are attributed directly to the preparation of appraisals, construction documents, or loan instruments may be included in the loan request.

15. Conflict of Interest

The WBBAF Advisory Committee shall comply with all state and local laws regarding conflict of interest.

F. RELATED ACTIVITIES

Technical and Management Assistance

The City's Community Development Department will contract with a technical assistance organization to provide assistance to Clients, including loan packaging and business counseling and to coordinate technical assistance resources including assistance from the WBBAF Advisory Committee, Banks, Colleges, Minority Business Development Assistance Centers, Business Development Organizations and Trade Associations.

II. ADMINISTRATIVE ELEMENTS OF THE PLAN

A. WBBAF ADVISORY COMMITTEE

The City of Berkeley's WBBAF Advisory Committee is the responsible entity which reviews, selects, and recommends loan applications. Thus the WBBAF/AC is a sub-division of the City of Berkeley to which the City delegates the responsibility of loan reviews, selections, and recommendations.

This Plan provides for the expansion of the City's existing Loan Administration Board (LAB) from nine (9) members to twelve in (12) in conformance with U.P. No. A1222, June 17, 1987. The LAB will serve as the WBBAF Advisory Committee and will include representatives of The Landmark Commission, The Planning Commission and The Civic Arts Commission for purposes of the WBBAF **only**. Because the Advisory Committee should complete its tasks within one year, it is not subject to the City of Berkeley Fair Representation Ordinance, which requires each City Council person to appoint a member to all standing City Boards and Commissions. The WBBAF Advisory Committee shall be governed by its Administrative Plan and the City of Berkeley Commission Handbook.

B. LOAN/GRANT PROCEDURES

STEPS	Procedures/Activities
#1	Outreach Outreach efforts in the form of brochures, personal contacts, press releases, and presentations to relevant organization, will be conducted. Responsibility: Project Manager (City)
#2	Screening, Feasibility Analysis, Packaging The proposal is initiated by applicant who contacts City staff and completes a preapplication; applicant is interviewed and formal loan application is prepared; a credit report is reviewed and analyzed; project feasibility analysis is performed and assembly of information is completed. Technical assistance such as the reconstruction of financial records, is also provided during this step if necessary. Responsibility: Project Manager and Technical Assistance provider

#3 Review and Recommendation
Package is reviewed by City staff for completeness and compliance with guidelines, eligibility requirements, etc.; the Project Manager prepares a recommendation and presents proposal to WBBAF Advisory Committee.
Responsibility: Project Manager (City)

#4 Review and Recommendation
WBBAF Advisory Committee reviews the loan package and takes one of four actions: (1) recommends approval, (2) rejects, (3) recommends approval subject to modification of terms and conditions, or (4) returns to staff to provide additional information before acting.
Responsibility: WBBAF Advisory Committee

#5 Approval
Recommendation is presented to City Council. Council either (1) approves (2) approves with changed terms and conditions (3) rejects or (4) returns to staff to provide additional information before acting.
Responsibility: Project Manager, WBBAF Advisory Committee Chairperson, and City Council

#6 Processing Loan Closing: Administrative
Upon City Council approval, Project Manager prepares documents for review and approval by the City Attorney.
Responsibility: Project Manager (City)

#7 Processing Loan Closing: Certification & Authorization
Appropriate documents are submitted to, reviewed and authorized by the Director of Community Development.
Responsibility: Director of Community Development

Delivery of Warrant/Opening of Escrow
Escrow instructions are prepared; escrow instruction and WBBAF funds are delivered to escrow company, schedule arranged for signing loan documents.
Responsibility: Project Manager (City)

#8 Signing of Loan Documents
Borrower and City sign all loan documents.
Responsibility: Borrower & Project Manager

#9 Loan Disbursements
Funds are disbursed to borrower in accordance with the City's Escrow Instructions.
Responsibility: Escrow Company/City

#10 Loan Closing
Once all disbursements and charges are made to escrow account, the closing statement is prepared.
Responsibility: Escrow Company

#11 Collection Accounts
Simultaneous with Step #8, the Community Development Department Program Planning, Management and Budget division (PPMB) sets up a collection account for loan repayment. Loan information and instructions provided by Project Manager are submitted to the PPMB. Information includes: Borrower's name and address, loan amount and terms, principal, interest, first payment and due dates.
Responsibility: Project Manager (City)

#12 Loan Collections
Borrowers receive coupon book and payment instructions from PPMB. Repayment of loan funds are sent directly to PPMB.
Responsibility: PPMB Staff and Borrower

#13 Loan Recordkeeping/Accounting
Payments are posted to individual borrower's and City's WBBAF accounts, including principal and interest payments, and loan balances. PPMB deposits funds to City's WBBAF fund bank account.
Responsibility: PPMB staff and Designated Bank

#14 Report/Loan Activity Status
Bank provides information to PPMB on monthly bank statement. PPMB compiles data pertaining to loan repayments including principal and interest, loan balance, and the extent of delinquency and sends it to the Project Manager.
Responsibility: Designated Bank and PPMB

#15 Reporting/Delinquent Accounts
The PPMB provides information on past due accounts (30 days late, 60 days late, etc as well as monthly and year-to-date summaries) to the Project Manager. Upon 30 days delinquency the Project

Manager sends a form collection letter to the client. The technical assistance representative will visit the business. Once the client is sixty (60) days delinquent, the client will receive a second collection letter and will be asked to appear before the WBBAF Advisory Committee to discuss possible remedies if the loan isn't made current. If the delinquency isn't cured and the loan is ninety (90) days past due, the WBBAF Project Manager calls a meeting of the WBBAF Advisory Committee to initiate legal remedies to collect on the loan.
Responsibility: Project Manager; Technical Assistance provider; WBBAF Advisory Committee

#16 Default/Foreclosure - The decision to place a loan in default or to foreclose on security will be made by the Berkeley City Council acting on recommendation of the WBBAF Advisory Committee. Once the decision is made, the Project Manager will forward the foreclosure documents to the Director of Community Development and then to the Title Company for action
Responsibility: Project Manager, WBBAF Advisory Committee and Title Company

#17 Post Loan Monitoring
The Technical Assistance Provider will visit or contact each active loan client to discuss problems and provide technical assistance as needed. The City Contract Compliance will also monitor each loan recipient for compliance with the First Source Agreement.
Responsibility: Technical Assistance Provider; Contract Compliance

C. OTHER REQUIREMENTS

1. Civil Rights Considerations
Borrower hereby agrees to comply with all requirements of City Ordinance No. 5,876-N.S. regarding non-discrimination in employment:

★ The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

★ The contractor shall permit the City of Berkeley access to records of employment, employment advertisement, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City of Berkeley, are necessary to monitor compliance with the non-discrimination provisions, and will, in addition, fill-out in a timely fashion, forms supplied by the City of Berkeley to monitor these non-discrimination provisions.

2. Flood Hazard Insurance

When applicable, borrowers will be required to obtain flood and other hazard insurance during the term of the loan. Verification of such insurance coverage must be presented prior to loan disbursement.

3. Access For the Handicapped

When construction is financed by a WBBAF loan, accessibility to the handicapped will be required in accordance with the standards of 41CFR, sub part 101-19.6.

ATTACHMENT I

DURKEE USE PERMIT CONDITION 18

BUILDING ACQUISITION FUND FOR SMALL BUSINESSES/HISTORIC PRESERVATION

The applicant shall pay to the City of Berkeley $100,000 to be placed in a special fund for assistance to small businesses that may wish to purchase buildings for their occupancy. This payment shall be made on or before the date on which a Tenant Certificate of Occupancy is issued for occupancy of Building E and shall be a condition for issuance of that Permit.

Standards for use of this fund shall include the following:

- a property to be acquired must be historic, as measured flexibly but at least to include a structure 40 or more years old.

- in judging applications for use of the fund, points shall be given for factors including occupancy by artists and artisans, small-scale light industry, live-work uses, businesses with a long history, and businesses already occupying the buildings they are acquiring; buildings in West Berkeley; the historic quality of buildings and site; and others determined by an advisory committee.

- an advisory committee shall be formed to judge applications, including representatives of the Landmarks Preservation Commission, the Civic Arts Commission, and the Planning Commission. Final action to provide assistance shall be by the City Council, reviewing the advisory committee's recommendation.

- assistance may be in the form of loans, deferred loans, or grants. Preference is for loans, in order to recapture use of the funds for further projects; but flexibility is to be retained in order to assure that acquisition efforts can be made feasible.

- assistance shall be conditioned on provision made to assure continued affordability to small businesses as the participants in ownership may change.

ATTACHMENT II

RANKING SYSTEM FOR BAF APPLICANTS

	No. of Points
A. Applicant (Possible 40 pts)	
-Manufacturing	15
-Artist/Artisans	5
-Current occupants of building	5
-Business history	
-operating > 20 years	5
-operating > 10 years	2
-Current West Berkeley-based	3
-Non-profit	2
B. Use of Funds (Possible 25+ pts)	
-Creates/retains jobs for target group*	10
-Creates jobs	10 +2 for each job
-Historic preservation	
- > 80 years	5
- > 60 years	2
C. Structure of Funding (Possible 35 pts)	
-Type	
-amortized loan	15
-deferred payment loan	10
-recoverable grant	5
-Term	
- < 5 years	10
- 5-10 years	5
-Leverage	
-greater than 1:1 private/public for loan	10
-greater than 2:1 private/public for grant	10
Total possible points	100(+ pts for jobs created)

* Target group: Berkeley residents who fit one of the following criteria: currently unemployed, on First Source referral list, underemployed (part-time); seeking entry level jobs (no requirements of prior job experience or special skills training).

ATTACHMENT III

WEST BERKELEY BUILDING ACQUISITION FUND (WBBAF) PRE-APPLICATION INFORMATION

The purpose of the WBBAF is to support business activities for which credit is not otherwise available on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project in the West Berkeley funding area.

Name of Business: _____ Date: _____

Current Address: _____ Current Phone: _____

Owner of Business: _____

Circle One: Proprietor/Partnership/Corporation

Address of Proposed Building Purchase: _____

Seller's Name/Address/Phone: _____

Building Square Feet: _____ End Use(s): _____

Year Building Constructed: _____

Sq.Ft. to be Owner Occupied: _____ % of Bldg to be Owner Occupied: _____

Current Employment: _____ Proposed New Employment: _____

Narrative description of the business: _____

_____

_____

Amount Requested from the City? _____

Amount of Private Financing: _____

Narrative description of the proposed project: _____

_____

_____

BUSINESS INFORMATION

PROFIT AND LOSS

	2 Yrs. Prior	1 Yr. Prior	Current Y-T-D	E-O-Y Proj.	1 Yr. Proj.
Gross Sales					
COGS*					
Gross Profit					
Total Oper Exp.					
Net Oper. Inc.					
Debt Service-1st					
-2nd					
Bef.Tax Cash Flow					

BALANCE SHEET

Business Information Only (Excluding Building to be Acquired):

	2 Yrs. Prior	1 Yr. Prior	Current Y-T-D	E-O-Y Proj.	1 Yr. Proj.
Assets					
Cash					
Accts Rec					
Inventory					
Equip					
Land					
Bldg					
All Other					
Total Assets					
Liabilities					
Accts Pay					
Other					
Debt-1st					
-2nd					
All Other					
Total Liabilities					
Owner's Equity					

Does this business entity or its owner have any outstanding liens, tax debts, pending legal judgements, or other issues which may effect its credit rating?

* COGS=Cost of Goods Sold
Y-T-D=Year to Date
E-O-Y=End of Year

PROPERTY INFORMATION

CAPITAL EXPENDITURE

Project Funding		
Uses:	a) Purchase	$
	b) Renovation	$
	c) Other	$
	Total	$
Sources:	a) WBBAF	$
	b)	$
	c)	$
	Total	$

PROJECTED BUILDING OPERATIONS

Add'tl Lease Income from Building	$
Bldg.Expenses	
-Insurance	$
-Property Taxes	$
-Janitorial	$
-Maintenance	$
-Utilities	$
-Water	$
-Garbage	$
-Other	$
-Reserve @ 5% (Bldg/Oper)	$
Total Bldg. Expenses	$
Building Net Operating Income Before Debt Service	$

The information in this pre-application is to my knowledge a true and accurate representation of the facts and financial condition as known by me on this day.

signature _____ date _____

Thank you for your interest in the West Berkeley Building Acquisition Fund (WBBAF). Please return this completed form to Community Development Services, 2180 Milvia St. 5th Flr., Berkeley, Ca. 94704.

Requested Due Date	Receipt Date	Revision Date

I. **BUSINESS INFORMATION (as applicable)**

A. Business Plan

B. Articles of Incorporation/By-Laws or Partnership Agreement

C. Franchise Agreement

D. Business License or Fictitious Name Statement

E. Other Applicable Permits and Licenses

II. **PROJECT INFORMATION (as applicable)**

A. Purchase Agreement

B. Preliminary Plans and Specifications

C. Cost Estimates (Construction, Machinery & Equipment)

D. Project Budget for Use of Proceeds

E. Analysis of Property Revenues and Expenses

F. Lease Agreement, Existing or Future

G. Description of new jobs being created
   1. RLF Cost/Job ratio
   2. Job Description
   3. Salary

III. **BUSINESS FINANCIAL INFORMATION**

A. Income and Expense Statement - Past three years plus current (within 90 days)

B. Income/Expense and Cash Flow Projections (Year 1 - month to month; Year 2)

C. Balance Sheet - Past three years, if available, plus current (within 90 days)

D. Pro Forma Balance Sheet

uested Due Date	Receipt Date	Revision Date

E. Aging Schedules of Accounts Receivable/Payable (same date as current Balance Sheet), if applicable

F. Schedule of existing debts (same date as current Balance Sheet)

G. Credit Report(s) on Business/Applicant

H. Business Federal Tax Returns (past three years)

I. Indication of Private Capital Participation

1. Owner Equity; Owner Equity is defined as Current Assets minus Current Liabilities prior to receipt of funds
2. Financial Institution (Bank Name, Phone #, Contact Person, Loan Amount Request)
3. Private/RLF leverage ratio

J. Evidence of Insufficient Private Financing

K. Summary of Collateral with independent appraisals or evaluations on Business, Real Estate and/or Assets

IV. PERSONAL INFORMATION

A. Resume(s) of Principal(s) (normally those with 20% ownership or more)

B. Personal Financial Statement of Principal Owner(s) (those with 20% ownership or more) to include Income & Expense Statement, Balance Sheet

C. Individual Federal Tax Returns of Principal(s) (past three years) if different from Business, and if applicable.

ATTACHMENT V

CITY OF BERKELEY WBBAF ADVISORY COMMITTEE

PROCEDURE FOR WBBAF RECOMMENDATION OF LOAN PACKAGES

1. Staff will mail loan packet to WBBAF Advisory Committee members at least 10 days prior to the meeting at which package will be presented.

AT THE MEETING OF THE WBBAF COMMITTEE:

2. Staff presents its recommendation on the loan package.

3. Comments by loan applicant and other interested parties who choose to appear before the Committee. (The Committee will not recommend a loan package unless they've had the opportunity to interview the loan applicant or his/her representative.)

4. Committee questions to staff, the loan applicant, and/or other interested parties.

5. Close of public participation. (Chair will only recognize Committee members, although applicant and other members of the public may be present for the discussion).

6. Discussion by Committee members on application, with staff available for questions.

7. Committee decision on loan application.

8. Staff actions after Committee decision: 1) Staff forwards Committee's recommendation for approval to Council; 2) Staff works with applicant to provide more complete application to Committee; 3) Staff prepares formal rejection letter per Committee rejection of loan; 4) Staff works with applicant to modify terms and conditions per committee recommendation for resubmittal to Committee.

04

Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

Meeting Date: **December 4, 2023**

Item Number: **TBD**

Item Description: **Adopt Berkeley Municipal Code Chapter 13.89: Community/Tenant Opportunity to Purchase Act**

Submitted by: **Councilmember Harrison**

The revised ordinance includes more specific criteria to define “Owner-Occupied” residences. The revised material packet also includes a chart that compares Berkeley’s TOPA legislation that was proposed in 2022 with the current iteration of the policy to provide more clarity on the proposed changes.

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7140 TDD: 510.981.6903
E-Mail: *kharrison@CityofBerkeley.info*

ORDINANCE NO. -N.S.

ADDING CHAPTER 13.89 TO THE BERKELEY MUNICIPAL CODE
COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

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

Section 1. Chapter 13.89 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.89

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

13.89.010 Title and Purpose
13.89.020 Findings
13.89.030 Definitions
13.89.040 Applicability
13.89.050 Sale Defined
13.89.060 Exemptions
13.89.070 Qualified Nonprofits
13.89.080 Supportive Partners
13.89.090 Notice of Intent to Sell; Statement of Interest
13.89.100 Right of First Offer
13.89.110 Right of First Refusal
13.89.120 Contract Negotiation
13.89.130 Incentive to Accept Offer from Qualified Organization
13.89.140 Confidential Information Protected
13.89.150 Prohibited Conduct
13.89.160 Complying Anew with the Right of First Offer
13.89.170 Financial Assistance
13.89.180 Price Stabilization; Tenant Protections
13.89.190 Anti-Speculation Penalty
13.89.200 Implementation
13.89.210 Enforcement
13.89.220 Severability
13.89.230 Effective Date

13.89.010 Title and Purpose.

A. This Chapter shall be referred to as the “Berkeley Community/Tenant Opportunity to Purchase Act.”

B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

13.89.020 Findings.

A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.

B. The current need for affordable housing units in Alameda County is 51,732 units (California Housing Partnership). Approximately 20% of residents in Berkeley are living in poverty.

C. The lack of affordable housing for Berkeley’s low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.

D. The nine-county Bay Area has been losing an annual average of 32,000 unsubsidized affordable homes occupied by low-income households since 2012. Unsubsidized affordable housing is the most common form of low-income housing, and at the same time is the most at risk of loss through rent increases, evictions, condo conversions, demolition and more. And, overall preservation is cost-effective compared to new production, at 50-70% of the cost of new affordable housing production (Enterprise Community Partners).

E. Affordable housing preservation and anti-displacement strategies will help keep low-income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.

F. The City Council finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants and qualified nonprofit organizations the opportunity to purchase the property before it may be sold on the market to a third-party purchaser.

13.89.030 Definitions.

A. “Dwelling Unit,” “Accessory Dwelling Unit,” “Single-Family Dwelling,” “Multi-Family

Dwelling," and "Group Living Accommodations" are defined in Section 23.502.020.

B. "Designated as the Owner's Primary Residence" means any unit that the Owner has validly claimed as their principal residence for purposes of either the homeowners' property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans' exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

C. "Offer for Sale" means an offer to sell a Rental Property that includes all material and commercially reasonable terms.

D. "Qualified Nonprofit" means a nonprofit, which is either exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low-income households, and is certified by the City Manager pursuant to Section 13.89.070.A.

E. "Qualified Organization" means either a Tenant Organization or a Qualified Nonprofit.

F. "Owner" means any person, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of a Rental Property. Each Owner shall be jointly and severally responsible for compliance with the requirements of this Chapter.

G. "Rental Property" means any residential property containing one or more Rental Units and located in the City of Berkeley

H. "Rental Unit" means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley, consistent with the records of the City of Berkeley Rent Stabilization Board, and subject to the exemptions set forth in Section 13.89.060

I. "Sale," "sell," or "transfer" is defined in Section 13.89.050.

J. "Supportive Partner" means any person or organization certified by the City Manager pursuant to Section 13.89.080.A to provide Tenant counseling and technical support services on first-time homeownership, obtaining financing for the purchase of Real Properties, assisting in the process of closing on property transactions, the formation and governance of legal and collective ownership structures, and supporting Tenants in the exercise of their rights pursuant to this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents.

K. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of

such Rental Unit.

L. "Tenant Organization" means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant Organization must adopt a Governing Document and Governing Principles and may appoint officers and any other authorized agents specifically designated to execute contracts on its behalf. If only one Tenant of a Rental Property seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit or Group Living Accommodations sleeping quarters are collectively considered to be one Tenant, and such lessees of a Group Living Accommodation or Dwelling Unit must consent to representation by the Tenant Organization, as furthered defined in Administrative Regulations.

M. "Third-Party Purchaser" means any prospective purchaser of a Rental Property other than a Qualified Organization as defined in Paragraph D.

N. "The City" shall mean the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.

O. "City Manager" means the City Manager or their designee.

P. "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.

Q. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.

R. "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.

13.89.040 Applicability.

This Chapter shall apply to the sale or transfer of all Rental Property in the City of Berkeley, unless otherwise exempted herein.

13.89.050 Sale Defined.

A. "Sale," "sell," or "transfer" is defined as the following:

1. The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Property, including beneficial use, where the value of the present interest is the fee interest in the Rental Property, or substantially equal to the

value of that fee interest.

2. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c).

3. Multiple transfers of minority interests in the Rental Property which, in effect, result in a transfer of the Rental Property.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following Rental Properties are not subject to the requirements of this Chapter.

1. Any Rental Property comprised entirely of owner-occupied Rental Units, including any owner-occupied Single-Family Dwelling. For a residence to qualify as owner-occupied, the property owner must have lived in the property for one year or longer.

2. Any Rental Property that has no more than one Single Family Dwelling and is vacant at the time of sale.

3. A Rental Property containing a Dwelling Unit that is Designated as the Owner's Primary Residence, if and only if the Owner has lived in the Rental Property for one year or longer and one of the following applies:

a. The Rental Property has no more than one Single-Family Dwelling, and either the Single-Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single-Family Dwelling is Designated as the Owner's Primary Residence.

b. The Rental Property has no more than one Duplex, and (1) one of the units in the Duplex is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

c. The Rental Property has no more than one Multi-Family Dwelling that contains no more than four Dwelling Units, and (1) one of the units is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

4. Rental Properties owned by the local, state, or federal government.

5. Rental Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

6. Group Living Accommodations subject to monitoring by a Monitoring Organization, as defined in Section 13.42.020.E.

7. Properties owned by housing cooperatives, if the cooperative entity is owned and controlled by a majority of residents. This definition includes non-profit mutual housing associations and limited equity housing cooperatives.

8. Properties defined as "assisted housing developments" pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.

B. Transfers Exempted. The following transfers of Rental Properties are not subject to the requirements of this Chapter.

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Rental Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Tenants or Qualified Nonprofits under the California Civil Code Sections 2924f-h, 2924m-n, or 2929.3.

4. A transfer of bare legal title into or out of a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. A transfer of a fractional interest in a Rental Property that is less than 50% of an undivided interest in the Rental Property, unless Section 13.89.050.A30 applies.

9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.

10. A transfer of a Rental Property that is the Owner's sole Rental Property and has no more than five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such health care expenses incurred by a spouse, domestic partner, or child of any Owner ("Eligible Persons"), where requiring the Owner to comply with the requirements of this Chapter

would result in medical financial hardship to an Eligible Person. For purposes of this subparagraph only, "Owner" shall be limited to a natural person having an undivided interest in the Rental Property of at least 50%. The process and requirements for determining eligibility of this exemption shall be defined in Administrative Regulations implementing this Chapter.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.

2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.

3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

13.89.070 Qualified Nonprofits.

A. Certification, Term, and Renewal. The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter. The Qualified Nonprofit shall be a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation that is committed to furthering permanent affordability, democratic residential control, and tenant ownership, as further defined in Administrative Regulations, and shall have demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property and to provide affordable housing for very low and/or low-income households. The City Manager may prescribe additional requirements necessary to effectuate the purpose of this Chapter by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

B. Conflicts of Interest; Disqualification of Qualified Nonprofits. A Qualifying Nonprofit may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. A Qualifying Nonprofit may not act as a Supportive Partner if it exercises its right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110. The City Manager shall promptly investigate any complaint alleging that a Qualified Nonprofit has a conflict of interest or has failed to comply with the

requirements of this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

C. A Qualified Nonprofit is conferred a right of first offer and right of first refusal as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights under this Chapter to the Qualified Nonprofit within the Notice Period;(2) executes a written waiver of the Tenants' rights under this Chapter within the Notice Period; or (3) no Tenant submits a statement of interest pursuant to Section 13.89.090.C. Subsequently, Qualified Nonprofits shall have the same amount of time conferred to Tenants to perform under this Chapter, except that Qualified Nonprofits shall only have the remaining time conferred to Tenants to perform within the Notice Period, and any extensions thereof, or a minimum of 5 days, whichever is greater. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or written waiver of rights pursuant to this Paragraph shall be valid if signed by the majority of Tenants.

13.89.080 Supportive Partners.

A. Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110 must select a Supportive Partner and disclose the Supportive Partner to the City and Owner of the Rental Property within the time set forth in the Notice Period and/or the Offer Period and any extensions thereof. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

C. Conflicts of Interest; Disqualification of Supportive Partners. A Supportive Partner may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Supportive Partner.

13.89.090 Notice of Intent to Sell; Statement of Interest.

A. Notice of Intent to Sell. An Owner of a Rental Property shall provide all Tenants (if any) notice of their intent to sell prior to listing or otherwise marketing a Rental Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least 45 days before marketing a Rental Property with two or more Rental Units, or at least 20 days before marketing a Rental Property with one Rental Unit ("Notice Period"). The Notice of Intent to Sell shall be sent to each Tenant address via certified mail and posted at conspicuous locations at the Rental Property and shall include the following:

1. A statement that the Owner intends to sell the Rental Property.

2. A statement describing the rights of Tenants under this Chapter and stating the deadlines for exercising those rights.

3. A list of units by address and the rent due for each unit, if occupied, and any available contact information for each occupant.

4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.

5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

B. Notice to Qualified Nonprofits. On the same date as notice is provided to any Tenants pursuant to Paragraph A, or if there are no Tenants, on the date on which such notice would have been provided pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, the majority of Tenants may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C. The Statement of Interest shall notify the Owner of the Tenants' or Qualified Nonprofit's interest in exercising their rights under this Chapter. In the event that the majority of

Tenants submit a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J.; provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit prior to the expiration of the Notice Period. In the event that there are no Tenants in the Rental Property at the time the Owner's Notice of Intent to Sell is provided, and the Rental Property otherwise contains Rental Units that have not been lawfully withdrawn from the rental market, any Qualified Nonprofit that received a copy of the Notice of Intent to Sell pursuant to Paragraph B may submit a Statement of Interest to exercise its rights under this Chapter.

D. Formation of Tenant Organization; Selection of Supportive Partner. If the majority of Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.K and select a Supportive Partner, subject to Section 13.89.080.B. If there is only one Tenant of a Rental Property who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter but shall not be exempt from the requirement to select a Supportive Partner. A Tenant Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.100 and 13.89.110.

E. **Effect of Statement of Interest. Receipt of a timely Statement of Interest shall** trigger an Offer Period of 30 days. For Rental Properties having two to nine Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted an additional 30-day extension of the Offer Period. For Rental Properties having ten or more Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted a total of two additional 30-day extensions of the Offer Period.

F. Prohibition on Marketing Property to Third-Party Purchasers During Notice Period and/or Offer Period. Prior to the expiration of the Notice Period and/or Offer Period, the Owner of a Rental Property shall be prohibited from listing or marketing the Rental Property for sale or entering into any agreement for the sale or transfer of the Rental Property to Third-Party Purchasers.

13.89.100 Right of First Offer.

A. Right of First Offer. A Tenant or Qualified Nonprofit that submits a Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.090.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.K unless an assignment or waiver of rights have been executed pursuant to Section 13.89.070.C.

B. The Qualified Organization may deliver to the Owner of the Rental Property an offer to purchase the property, together with disclosure of its selected Supportive Partner,

at any time prior to the expiration of the Offer Period. The Owner may accept or reject any offer to purchase received from a Qualified Organization.

C. Acceptance of Offer of Purchase. Upon acceptance of any offer to purchase a Rental Property made pursuant to Paragraph A, the Owner and Qualified Organization shall make reasonable and good faith efforts to close the transaction. The Qualified Organization shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 60 days to close the transaction for the sale of property having two to nine Rental Units; and 90 days to close the transaction for the sale of property having ten or more Rental Units. The deadline to close a transaction for the sale of Rental Property having one Rental Unit shall be extended for an additional 60 days from the date of acceptance of the offer if the Qualified Organization provides written documentation that its lender will require a commercial loan for the purchase of the Rental Property. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or diligently pursing the completion of other requirements to close the transaction. Nothing in this Paragraph shall prevent the Owner and the Qualified Organization for agreeing to further extend the deadline to close the transaction.

D. **Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the Offer Period, (2) the expiration of the Offer Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally accept offers from a** Third-Party Purchaser, subject to the requirements of Section 13.89.110. The requirements of Section 13.89.110 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

13.89.110 Right of First Refusal.

A. Disclosure of Offer of Sale. The Owner shall disclose any Offer of Sale received from a Third-Party Purchaser to any Qualified Organization that exercised a valid right of first offer under Section 13.89.100, and shall provide said Qualified Organization a right of first refusal pursuant to the requirements of this Chapter. The Owner shall disclose to each Qualified Organization eligible to exercise a right of first refusal under this Section all material terms of any Offer of Sale of the Rental Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Qualified Organizations; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph may be redacted from such offers.

B. Right of First Refusal. Any Qualified Organization that exercised a valid right of first offer under Section 13.89.100 may exercise a right of first refusal and accept the Offer for Sale of the Rental Property within the time period set forth in Paragraph C. To exercise its right of first refusal, the Qualified Organization must accept all material terms of the Offer for Sale; provided, however, the financing of the Qualified Organization's purchase shall not be considered a material term of the Offer for Sale so long as it does

not affect the net value of the Sale to the Owner. Specific obligations of material terms of sale are sale price, timeline to close, and contingencies.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Qualified Organization eligible to exercise a right of first refusal under this Section at least 10 days to accept the Offer of Sale of a Rental Property having one Rental Unit, or at least 30 days to accept the Offer of Sale of Rental Property having two or more Rental Units. The acceptance of an Offer of Sale by any Qualified Nonprofit extinguishes any right of first refusal of other eligible Qualified Nonprofits.

D. Time to Close. Upon acceptance of the Offer of Sale, the Qualified Organization must agree to the material terms of the third-party offer. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or completing other requirements to close the transaction.

E. Rejection of Offer or Failure to Close. If each Qualified Organization entitled to receive an Offer of Sale rejects or fails to accept such offer of sale within the time set forth in Paragraph C or if a Qualified Organization that accepts an Offer for Sale fails to close the transaction within the time set forth in Paragraph D, the Owner may immediately proceed with the sale or transfer of the Rental Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this Section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Qualified Organization exercises a right of first refusal conferred by this Chapter.

13.89.120 Contract Negotiation.

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third-Party Purchaser.

2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.

3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.130 Incentive to Accept Offer from Qualified Organization.

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.100 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of half of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

B. Exempt Properties. An Owner of a Rental Property that is exempt from this Chapter may comply with the requirements of this Section, and shall be entitled to reimbursement of real property transfer tax pursuant to Paragraph A upon sale of the Rental Property to a Qualified Organization.

13.89.140 Confidential Information Protected.

Any information exchanged between an Owner, Tenants, or Qualified Organizations under this Chapter shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of Berkeley or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

13.89.150 Prohibited Conduct.

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.060 is prohibited unless the Owner complies with Sections 13.89.100 and 13.89.110.

B. A Tenant or Qualified Organization shall not buy or sell any right afforded to them under this Chapter or sell a waiver of any such right, nor shall any Tenant or Qualified Organization assign or otherwise transfer any such right except as authorized to do so under this Chapter.

C. An Owner shall not (1) coerce a Tenant or Tenant Organization to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

13.89.160 Complying Anew with the Right of First Offer.

An Owner shall comply anew with the Right of First Offer if one of the following occur:

A. The Owner decides not to sell the Rental Property after providing the Notice of Intent to Sell, and then proceeds to undertake a Sale again as defined in Section 13.89.050; or the Owner cancels a contract of sale entered into with Tenant or Qualified Organization after escrow has opened.

B. 365 days have elapsed since a Tenant or Qualified Organization cancelled a contract of sale entered into with the Owner after escrow has opened, and the Owner has not sold the Rental Property to a Third-Party Purchaser.

C. 90 days have elapsed from the date of an Owner's rejection of an offer from a Tenant or Qualified Organization pursuant to Section 13.89.100.B and the Owner has not provided an Offer of Sale to the Tenant or Qualified Organization pursuant to Section 13.89.110.A; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

D. 180 days have elapsed since the expiration of an Offer Period and any extensions thereof and no Tenant or Qualified Organization submitted a Statement of Interest or offer and the Owner has not sold the Rental Property to a Third-Party Purchaser; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

13.89.170 Financial Assistance.

The City Manager shall develop guidelines for providing financial assistance to allow for the acquisition of Rental Properties pursuant to this Chapter. Financial assistance may be provided to Tenants, Tenant Organizations, or Qualified Nonprofits. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Rental Property under this Chapter.

13.89.180 Price Stabilization; Tenant Protections.

A. Affordability Restriction. Except as otherwise provided herein, any Rental Unit acquired pursuant to this Chapter shall be subject to a recorded affordability restriction that ensures that each Rental Unit acquired is available to very low-, low-, or moderate-income renters or buyers in perpetuity. The City Manager shall set standards for the provisions of affordable units by Administrative Regulation and for the enforcement of the requirements of this Section.

B. Exemptions from Affordability Restriction.

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the

guidelines established under Section 13.89.170.

2. A limited equity housing cooperative that meets the requirements of Civil Code Sections 817 and 817.1 is exempt from the requirements of Paragraph A.

C. The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized over the life of the improvement. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%).

D. Rental Properties acquired pursuant to this Chapter and converted to condominiums or stock cooperatives (including limited equity housing cooperatives that meet the requirements of Civil Code Sections 817 and 817.1) subject to a recorded affordability restriction under this Section shall be exempt from the requirements of Section 21.28.070 (“Affordable housing mitigation fee”).

E. Non-Purchasing Tenants, Life Lease. Any Tenant that does not join a Tenant Organization that acquires a Rental Property pursuant to this Chapter must be offered a life lease for their Rental Unit so long as the Rental Unit remains their principal residence.

13.89.190 Anti-Speculation Penalty.

A. Purpose. Tenants, Tenant Organizations, and Qualified Nonprofits acknowledge the displacement prevention, affordable housing preservation, and neighborhood stability purposes of this Chapter, and as a condition for the rights and benefits conferred to them under this Chapter, agree not use any purchased Rental Property for speculative purposes. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must be conditioned on the terms described herein. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Section.

B. Minimum Term and Owner-Occupancy Requirement. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must not resell the Rental Property, or any separate ownership interests in the Rental Property, within 36 months of acquiring it. From the date of the initial purchase of the Rental Property up until 36 months, the Tenant must submit an annual owner-occupancy certification to the City demonstrating the use of the acquired Rental Property as their primary residence. The requirements of this Section shall materialize as a restrictive covenant placed on the recorded title deed to the purchased Rental Property that runs with the land and is enforceable by the City against the Tenant or Tenant Organization. The failure to submit an annual owner-occupancy certification to the City is a violation of this Chapter that shall be subject to the civil penalties described in Section 13.89.210 (Enforcement). The City may create Administrative Regulations for further guidelines concerning any exemptions from the requirements of this Section only in the event of an exigent circumstance.

C. Penalty. The City shall impose a penalty on any profits gained from the transfer of the purchased Rental Property, or any separate ownership interests in the Rental Property, prior to the expiration of the 36-month term described herein. The City shall create Administrative Regulations concerning the procedures for imposing such a penalty, which shall include notice to the alleged violator and the opportunity to contest the penalty at a hearing. The City shall establish such penalty as follows:

1. When the transfer occurs less than 12 months from the initial purchase date, 20 percent of the profits gained from the resale of the Rental Property or the separate ownership interest in the Rental Property;

2. When the transfer occurs more than or equal to 12 months but less than 24 months from the initial purchase date, 15 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property; or

3. When the transfer occurs more than or equal to 24 months but less than 36 months from the initial purchase date, 10 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property.

D. Required recordings and filings.

1. All covenants created in accordance with this Section shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the purchased Rental Property is located and shall contain a legal description of the purchased property, indexed to the name of the Tenant or Tenant Organization who purchased the Rental Property as grantee.

2. The City may engage a third-party monitoring agent to monitor the compliance of the annual owner occupancy certification.

13.89.200 Implementation.

A. The City Manager shall adopt Administrative Regulations necessary to implement the requirements of this Chapter, and may adopt additional rules and regulations for purposes of administering this Chapter, including but not limited to rules and regulations governing the reporting of information regarding transactions subject to the requirements of this Chapter.

B. This ordinance shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

C. Supportive partners shall report annually on the implementation of this Chapter to the City Council or to such City Council Committee as the City Council may designate. Supportive partners shall collect and analyze data in partnership with tenants or tenant organizations to evaluate the number and types of sales of tenant-occupied properties including whether purchased by a Qualified Organization or Third-Party Purchaser; the number of Qualified Organizations that purchase Real Property pursuant to this Chapter; the number and types of units covered by this Chapter; and other data and information relevant to evaluating the effectiveness of this Chapter in creating and preserving affordable housing for residents in the City of Berkeley and in preventing displacement of City of Berkeley tenants.

D. The City Manager or their designee shall provide counseling and technical assistance to Owners regarding the requirements of this Chapter to assist in achieving compliance.

13.89.210 Enforcement.

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.200.A shall be subject to administrative citation under Chapter 1.28.

B. The City Attorney, any Tenant of a Rental Property subject to this Chapter, or a Qualified Organization eligible to purchase Rental Property under this Chapter may bring a civil action to enforce this Chapter, and shall be entitled to the remedies set forth in this Section to the greatest extent permitted by law.

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed $1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each Rental Unit on a Rental Property.

D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may order that an Owner of Rental Property comply with the requirements of this Chapter.

13.89.220 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

13.89.230 Effective Date.

A. Section 13.89.100 shall take effect January 1, 2024.

B. Properties with five or more housing units will be subject to Section 13.89.110 on January 1, 2024.

C. Properties with four or fewer housing units, pending analysis findings, shall be subject to section 13.89.110 on January 1, 2027.

D. All other provisions in this ordinance are effective January 1, 2024.

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

COMPARISON OF COPA/TOPA DRAFT – 2022 AND 2023

	2022	2023
Applicability	Applied to all vacant properties; exempted all non-investor SFHs	**Exempts vacant or principal residence SFHs**
	Exempted owner-occupied duplexes if owner's only Berkeley rental Applied to all 3- and 4-unit properties	**Exempts duplexes, triplexes and quadraplexes** if one is owner's principal residence and **only Berkeley residential property**
Displacement Protections	Lacked life leases for tenants who want to remain at the property	Requires offering **life leases** to tenants who want **to remain** at the property
	No anti-speculation language	**Anti-speculation language** to ensure good faith property purchase
Effective Date	**Notice of sale provision effective 30 days after adoption; all other provisions effective with administrative regulations**	**30 days after adoption; ROFR for properties with four or fewer units considered after three years**

COMPARISON OF COPA/TOPA DRAFT – 2022 AND 2023

	2022	2023
Timelines	**Right of First Offer**	
	Offer period: ○ 1-9 units: 60 days ○ 10+: may ask for 90 days ○ 20+: may ask for 120 days ***Closing:*** ○ 1 unit: 30 days (commercial: 60 days) ○ 2: 90 days ○ 3+: 120 days	***Offer period:*** ○ **1 unit: 30 days** ○ 2-9: 60 days ○ **10+: 90 days** ***Closing:*** ○ 1 unit: same ○ **2-9: 60 days** ○ **10+ units 90 days**
	Right of First Refusal	
	Buyer accepts price/terms: ○ 1-2 units: 10 days ○ 3+: 30 days ***Closing:*** ○ 1 unit: 30 days to close ○ 2 units: 90 days to close ○ 3 or more units: 120 days to close (One 30-day extension on time to close may be granted)	***Buyer accepts price/terms:*** ○ 1 unit: 10 days ○ **2+: 30 days** ***Closing:*** **No specified period. Buyers to match closing timeline from third-party offer**

Kate Harrison
Councilmember, District 4

ACTION CALENDAR
November 28, 2023

To: Honorable Members of the City Council

From: Councilmember Harrison

Subject: Adopt Berkeley Municipal Code Chapter 13.89: Community/Tenant Opportunity to Purchase Act

RECOMMENDATION

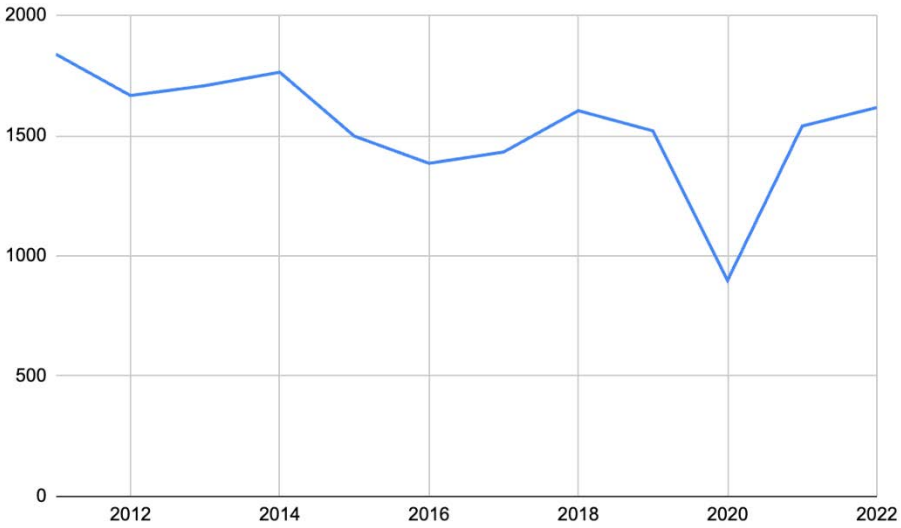
Adopt Berkeley Municipal Code Chapter 13.89: The Community/Tenant Opportunity to Purchase Act (COPA/TOPA).

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley continues to grapple with enduring housing affordability and displacement crises, leaving increasingly limited prospects for property ownership and wealth accumulation amongst residents. In Berkeley, 58% of residents are renters. Berkeley residents who have been historically and institutionally marginalized based on race, income, and immigration status face the most barriers to wealth accumulation and property ownership. Discriminatory practices, often supported and/or facilitated by financial institutions and government policy, such as redlining, inequitable use of eminent domain, and ongoing demolition of affordable housing has led to disproportionate rates of displacement, housing injustice, and poverty among Black, Brown, Indigenous, and immigrant communities.

The preservation of affordable housing is key to reaching the housing and equity goals codified in Berkeley's recently adopted 2023-2031 Housing Element and strategic plan. Properly designed, the Community/Tenant Opportunity to Purchase Act (COPA/TOPA) can be an effective strategy to help break the cycle of displacement from multi-family housing by converting naturally affordable housing into permanently affordable units. Unfortunately, our City is losing affordable housing according to data from a *Berkeleyside* study. The number of one bedroom rent controlled units have decreased over the last 11 years by approximately 220 units, one of the reasons why renting in Berkeley has become increasingly more burdensome.

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# of 1 bedroom rent controlled units in Berkeley

COPA/TOPA not only serves to stabilize housing for existing tenants and safeguard affordable housing units in Berkeley, it can also open avenues for tenants to embark on first-time homeownership through land trusts that convert rental property to ownership units. It is imperative to underscore that nothing about COPA/TOPA prevents property owners from seeking fair market value for their properties. In fact, it can benefit property owners by offering various cost-saving benefits through tax refunds and reduced relocation fees.

Attachment D provides a flowchart depicting the proposed process. In summary, the proposed legislation:

- **Excludes buildings with four-units or less that are owner-occupied** except for the financial incentive, which gives any property owner who sells to existing tenants a transfer tax refund.
- **Requires property owners to notify existing tenants (with the exception of four-unit and smaller owner-occupied buildings) of their intent to sell** between 20 and 45 days (depending on property size) in advance of putting the property on the market.
- **Allows existing tenants to express interest in purchasing the property** within the 20 or 45 days of notice.
- Requires tenants to create a tenant organization and select a supportive partner, or, alternatively, formally transfer their rights to a qualified nonprofit, and **make a formal offer, depending on property size, within another 30, 60 or 90** days starting from the date the statement of interest is submitted.

- **Allows property owners to reject the offer** within a time frame suggested by California State standards,[1] however, this time frame is ultimately decided through buyer/seller negotiation. If the property owner rejects the offer or if the offer period expires, **the property owner may take the property to market.**
- **In buildings of more than four-units, COPA/TOPA requires the property owner to notify tenants or qualified nonprofits that issued a first offer of the market offer.** Expanding this requirement to smaller buildings will be assessed in year 4.
- **Requires qualified organizations to match the substantive terms of the market offer within 10 or 30 days** (depending on property size).[2]
- **Gives the property owner discretion to decide whether to accept the offer from the tenants or the qualified nonprofit**. The property owner is not compelled to sell their property to existing tenants or a qualified nonprofit, nor are they discouraged from selling it at market price.
- **Provides a financial incentive to property owners to sell to existing tenants or qualified nonprofits by refunding 50% of the city's base transfer tax,** excluding the additional share voted on in Measure P.[3]
- **Supports tenant organizations by providing technical guidance and educational resources.** Financial assistance may be offered upon the development of guidelines by the City Manager. Nothing in the ordinance commits the City Council to providing a specified level of funding for acquiring properties.

BACKGROUND

COPA/TOPA was first introduced to Council in 2020 by Mayor Arreguin and referred to the Land Use, Housing, and Economic Development Policy Committee. After significant public input, Council Committee members recommended revisions to the legislation and planned to review it January of 2021, addressing budgetary, administrative, and outreach recommendations. However, due to the COVID-19 pandemic and subsequent lockdown, Council priorities shifted and, while agendized once in March and once in April of 2021, action was not taken by Committee members until May of 2021. At that time, COPA/TOPA passed through Committee with a 2-1 vote with a positive recommendation on the condition of additional revisions. On January 27, 2022, the Mayor conducted an informational work session regarding COPA/TOPA to provide a

[1] California Department of Real Estate, "Chapter 20: Basic Contract Provisions and Disclosures in a Residential Real Estate Transaction," *California Real Estate Reference Book*, https://dre.ca.gov/files/pdf/refbook/ref20.pdf (accessed November 1, 2023).

[2] Substantive terms include purchase price, time to close, and contingencies.

[3] 50% of the City's total base transfer tax refund is .75% of the sale price. For a house sold at $1.8 million, the amount of the base transfer tax would be $27,000, of which 50% is $13,500. "Property Transfer Tax," City of Berkeley, https://berkeleyca.gov/city-services/report-pay/property-transfer-tax (accessed October 9, 2023).

forum for the public, Council, and staff to convey their thoughts about the proposed policy. COPA/TOPA has not yet been put to a vote.

Councilmember Harrison's Office has since conducted significant outreach in collaboration with the NAACP, faith groups, senior centers, housing justice organizations, law centers, property owners, and tenant advocacy groups. Councilmember Harrison has also worked with the City Attorney's office to develop a revised version of COPA/TOPA based on the concerns and recommendations of our diverse community.

A factor that became apparent during our outreach is that, in addition to providing property owners full discretion choosing to whom they sell their properties, COPA/TOPA can also provide extensive cost saving benefits to property owners. On top of providing a transfer tax refund explained below, when a property owner sells to existing tenants, they are no longer obligated to cover relocation costs. In the case of owner move-in evictions, landlords must pay $18,011 to any tenant household that has lived in the residence for one year or more. Moreover, the landlord may also have to pay an additional $6,000 to any tenant household that is low-income, disabled, elderly, includes children, or tenancies that began prior to 1999.[4] Under COPA/TOPA, property owners can save on legal, real estate and renovation expenses.

Overview of Policy Differences Between the Proposed 2022 and 2023 COPA/TOPA

To respond to salient community concerns shared by tenants, property owners, and nonprofit partners alike, the proposed ordinance includes the following revisions and additions:

1. Expanded exemptions for owner-occupied properties;
2. Changed Right-of-First-Refusal to only be applicable to properties of more than four-units; smaller properties to be considered after assessment of the initial program;
3. Altered requirements for smaller properties;
4. Revised timelines for notice, offer, and close period for all properties;
5. Added a lifelong lease provision;
6. Clarified that properties with one-unit may only be purchased/sold under TOPA to sitting tenants with or without the assistance of a tenant organization;
7. Added provisions for anti-speculation.

Exemptions for Owner-Occupied Properties

[4] City of Berkeley, "Tenant Relocation and Repairs," City of Berkeley, https://berkeleyca.gov/doing-business/operating-berkeley/landlords/tenant-relocation-repairs (accessed November 1, 2023).

One of the most significant concerns that emerged during earlier hearings was the potential issues for owner-occupied properties. It is important to acknowledge that many Black, Brown, Indigenous and low-income people are small property owners who live in their property in Berkeley and that these small properties may be one of their only sources of generational wealth accumulation.

The policy as redrafted intends to foster a more equitable housing environment for communities that have endured significant discrimination by exempting bona fide owner-occupied triplexes and quadruplexes (in addition to owner-occupied duplexes and single-family homes as called for in the original legislation).

Smaller Properties

To address concerns raised by smaller property owners who may not have the immediate resources to implement this policy, the following section excludes implementation of Section 13.89.110, Right of First Refusal, for smaller units (four or fewer units) and only adds that requirement to those properties upon a showing of results from application of COPA/TOPA to larger properties. The Right of First Refusal provision for will take effect for larger properties on January 1, 2024 and only come into effect for properties or four or fewer units on January 1, 2027 pending analysis and findings mandated by chapter 13.89.200. In the interim, non-owner-occupied smaller properties (four or fewer units) will be subject to the Right of First Offer. The limitation of right of first refusal to larger properties is intended to balance the rights of existing tenants with the needs of smaller property owners, who may not have the resources to afford the ongoing process necessary to fairly administer COPA/TOPA, and to give the City and qualified tenant organizations needed experience with administering COPA/TOPA.

The policy that was proposed in 2022 granted full exemption to single-family homes under TOPA, regardless of whether they were currently occupied by a tenant. In the current policy, tenant-occupied single-family homes are now included within TOPA's scope, while continuing to exempt owner-occupied and vacant single-family homes or single-family homes that are a person’s primary residence. This exemption mechanism aims to balance the interests of owners and of existing tenants.

Revised Timeline for Notice, Offer, and Close Periods

Councilmember Harrison’s office also considered the impact longer timelines may have on smaller property owners. For many smaller property owners, time is money, and to wait between six months and a year to close on their property, is not a feasible financial option. In the revised ordinance, the timelines for each step of the TOPA process have shifted based on the concerns of many smaller property owners, shortening many of them and clarifying that instead of a dictated timeline for close of properties, tenant purchasers must match the substantive terms of the third-party market offer including

price, timeline to close, and contingencies.

	2022 Policy	2023 Policy
Offer Period	• 90 days for two-unit property • 120 days for three+ unit properties	• 30 days for one-unit property • 60 days for two – four-unit properties • 90 days for five+ unit properties
Close Period	• 60 days for two-unit property • 120 days for three+ unit properties	• 30 days for one-unit property • 60 days for two – four-unit properties • 90 days for five+ unit properties
Right of First Refusal – Accept Offer	• 10 days for two-unit properties • 30 days for three+ unit properties	• 10 days for one-unit property • 30 days for two+ unit properties
Right of First Refusal - Close	• 90 days for two-unit properties • 120 for three+ unit properties	• Must match terms of third-party offer including price, timeline to close, and contingencies.

Lifelong Lease Provision

The Lifelong Lease Provision intends to maintain tenant protections for tenants who are not interested in purchasing their current residence, but want to still live there. The lifelong lease ensures that if another tenant/s or qualified nonprofit purchase the property, the tenant/s who want to remain there, are protected in doing so.

Provisions for Anti-Speculation

To prevent speculation, under which tenants purchase a property with the intention of selling it in the very short term for profit, the ordinance includes an Anti-Speculation penalty aimed at furthering the intention of COPA/TOPA as an anti-displacement and homelessness prevention mechanism. These provisions apply to properties not subject to an affordability covenant with the City of Berkeley (because those will remain affordable even on sale). Section 13.89.190 lays out these provisions; in brief, the ordinance includes language to prohibit and penalize this behavior, including:

- An affirmative agreement by tenant-owners to not engage in speculation.

- Placing a temporary restrictive covenant on the title to ensure the city is notified of property resales. The covenant will expire after the three-year anti-speculation period ends.
- Requiring an annual owner-occupancy certification to prove residency for the first three years, and
- Application of a 10-20% penalty on any profits for properties sold in less than three years, depending on the transaction date.

The combined strategy that penalizes wrongful behavior and mandates reporting, encourages accountability and transparency while creating a financial deterrent for those who may leverage the policy in bad faith. The anti-speculation section protects property owners, qualified nonprofits, and tenants who are operating in accordance with the principles of this policy.

FISCAL IMPACTS OF RECOMMENDATION

This policy requires funding for administration, implementation, and enforcement. Councilmember Harrison's office submitted a budget referral that was delayed to the AAO1, which will be considered in December 2023.[5] The budget referral includes funding for:

- One Health, Housing, and Community Services (HHCS) Coordinator to develop education and outreach materials, assist and direct qualified organizations through the COPA/TOPA process, complete monitoring and data analysis to improve the policy and acquisition capacity needs.
- A portion of a Deputy City Attorney II position to manage any potential disputes or violations and support Tenant Organizations when necessary.
- Qualified organization capacity support for up to two projects a year, to assist tenants as they engage in the COPA/TOPA process.

Community Development Project Coordination for acquisition capacity, outreach, and administrative needs (HHCS)	1 FTE - $220,676*[6] *Includes $4,500 to support office, technology, and training needs

[5] City of Berkeley, "City Council Meeting Agenda - Item 26 - Referring $579,000 to the June 2023 Ballot," April 11, 2023, https://berkeleyca.gov/sites/default/files/documents/2023-04-11%20Item%2026%20Referring%20579,000%20to%20the%20June%202023.pdf (accessed October 31, 2023).

[6] An additional 1 FTE for a Community Development Project Coordinator was included in the original budget referral for programmatic capacity needs, namely, for identifying vacant or mostly vacant properties so that the City could more effectively partner with nonprofit housing providers to increase affordable housing stock. The funding request for the 1 FTE in the HHCS department will be delayed until fiscal year 2025, to allow COPA/TOPA programming to stabilize capacity and processes. Once COPA/TOPA is fully functioning, an additional HHCS FTE will be needed; funding has been requested in the budget process.

Deputy City Attorney II	0.35 FTE - $101,884
Qualified organization capacity support for two additional projects per year (in addition to existing allocation of $100,000 to the Bay Area Community Land Trust)	$50,000

The initial direct fiscal impact is estimated at $373,000 per year. With a considerable nexus with housing equity and the City's Small Sites Program, the City may also be able to leverage funds from the Measure U1 tax, the Housing Trust Fund, Measure O, and Measure M Empty Homes (Vacancy) Tax.

In addition, to the extent that properties are refunded one-half of the base transfer tax, or 0.75% of the property value, for each project valued at a price of $2 million, the amount of transfer tax foregone by the City would be $15,000. To illustrate the scope of the figures, the associated foregone transfer tax for a $1.8 million single-family residence would be $13,500. For a 21-unit building, which is the largest building that has sold in Berkeley within the two years (November 2021 – November 2023), the amount of foregone property tax if sold under TOPA would be $40,000.[7]

ENVIRONMENTAL SUSTAINABILITY

This budget referral has no effect on environmental sustainability.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

ATTACHMENTS

A. Revised BMC Chapter 13.89: Community/Tenant Opportunity to Purchase Act
B. Comparison of Revised BMC Chapter 13.89 with 2022 Version
C. 2022 Budget Referral: "Referring $579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multifamily Housing"
D. COPA/TOPA Timeline Chart

[7] MLS Listings, "Property Listing 1," https://www.mlslistings.com/Search/Result/ec6ddea7-ee1b-4620-9c3a-25190c068d1f/1 (accessed November 1, 2023); Redfin, "Property Listing 2," https://www.redfin.com/CA/Berkeley/1626-Dwight-Way-94703/home/95473170 (accessed November 1, 2023).

ORDINANCE NO. -N.S.

ADDING CHAPTER 13.89 TO THE BERKELEY MUNICIPAL CODE
COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

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

Section 1. Chapter 13.89 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.89

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

13.89.010 Title and Purpose
13.89.020 Findings
13.89.030 Definitions
13.89.040 Applicability
13.89.050 Sale Defined
13.89.060 Exemptions
13.89.070 Qualified Nonprofits
13.89.080 Supportive Partners
13.89.090 Notice of Intent to Sell; Statement of Interest
13.89.100 Right of First Offer
13.89.110 Right of First Refusal
13.89.120 Contract Negotiation
13.89.130 Incentive to Accept Offer from Qualified Organization
13.89.140 Confidential Information Protected
13.89.150 Prohibited Conduct
13.89.160 Complying Anew with the Right of First Offer
13.89.170 Financial Assistance
13.89.180 Price Stabilization; Tenant Protections
13.89.190 Anti-Speculation Penalty
13.89.200 Implementation
13.89.210 Enforcement
13.89.220 Severability
13.89.230 Effective Date

13.89.010 Title and Purpose.

A. This Chapter shall be referred to as the “Berkeley Community/Tenant Opportunity to Purchase Act.”

B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

13.89.020 Findings.

A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.

B. The current need for affordable housing units in Alameda County is 51,732 units (California Housing Partnership). Approximately 20% of residents in Berkeley are living in poverty.

C. The lack of affordable housing for Berkeley’s low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.

D. The nine-county Bay Area has been losing an annual average of 32,000 unsubsidized affordable homes occupied by low-income households since 2012. Unsubsidized affordable housing is the most common form of low-income housing, and at the same time is the most at risk of loss through rent increases, evictions, condo conversions, demolition and more. And, overall preservation is cost-effective compared to new production, at 50-70% of the cost of new affordable housing production (Enterprise Community Partners).

E. Affordable housing preservation and anti-displacement strategies will help keep low-income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.

F. The City Council finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants and qualified nonprofit organizations the opportunity to purchase the property before it may be sold on the market to a third-party purchaser.

13.89.030 Definitions.

A. “Dwelling Unit,” “Accessory Dwelling Unit,” “Single-Family Dwelling,” “Multi-Family

Dwelling," and "Group Living Accommodations" are defined in Section 23.502.020.

B. "Designated as the Owner's Primary Residence" means any unit that the Owner has validly claimed as their principal residence for purposes of either the homeowners' property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans' exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

C. "Offer for Sale" means an offer to sell a Rental Property that includes all material and commercially reasonable terms.

D. "Qualified Nonprofit" means a nonprofit, which is either exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low-income households, and is certified by the City Manager pursuant to Section 13.89.070.A.

E. "Qualified Organization" means either a Tenant Organization or a Qualified Nonprofit.

F. "Owner" means any person, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of a Rental Property. Each Owner shall be jointly and severally responsible for compliance with the requirements of this Chapter.

G. "Rental Property" means any residential property containing one or more Rental Units and located in the City of Berkeley

H. "Rental Unit" means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley, consistent with the records of the City of Berkeley Rent Stabilization Board, and subject to the exemptions set forth in Section 13.89.060

I. "Sale," "sell," or "transfer" is defined in Section 13.89.050.

J. "Supportive Partner" means any person or organization certified by the City Manager pursuant to Section 13.89.080.A to provide Tenant counseling and technical support services on first-time homeownership, obtaining financing for the purchase of Real Properties, assisting in the process of closing on property transactions, the formation and governance of legal and collective ownership structures, and supporting Tenants in the exercise of their rights pursuant to this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents.

K. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of

such Rental Unit.

L. "Tenant Organization" means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant Organization must adopt a Governing Document and Governing Principles and may appoint officers and any other authorized agents specifically designated to execute contracts on its behalf. If only one Tenant of a Rental Property seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit or Group Living Accommodations sleeping quarters are collectively considered to be one Tenant, and such lessees of a Group Living Accommodation or Dwelling Unit must consent to representation by the Tenant Organization, as furthered defined in Administrative Regulations.

M. "Third-Party Purchaser" means any prospective purchaser of a Rental Property other than a Qualified Organization as defined in Paragraph D.

N. "The City" shall mean the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.

O. "City Manager" means the City Manager or their designee.

P. "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.

Q. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.

R. "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.

13.89.040 Applicability.

This Chapter shall apply to the sale or transfer of all Rental Property in the City of Berkeley, unless otherwise exempted herein.

13.89.050 Sale Defined.

A. "Sale," "sell," or "transfer" is defined as the following:

1. The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Property, including beneficial use, where the value of the present interest is the fee interest in the Rental Property, or substantially equal to the

value of that fee interest.

2. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c).

3. Multiple transfers of minority interests in the Rental Property which, in effect, result in a transfer of the Rental Property.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following Rental Properties are not subject to the requirements of this Chapter.

1. Any Rental Property comprised entirely of owner-occupied Rental Units, including any owner-occupied Single-Family Dwelling.

2. Any Rental Property that has no more than one Single-Family Dwelling and is vacant at the time of sale.

3. A Rental Property containing a Dwelling Unit that is Designated as the Owner's Primary Residence, if and only if one of the following applies:

a. The Rental Property has no more than one Single-Family Dwelling, and either the Single-Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single-Family Dwelling is Designated as the Owner's Primary Residence.

b. The Rental Property has no more than one Duplex, and (1) one of the units in the Duplex is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

c. The Rental Property has no more than one Multi-Family Dwelling that contains no more than four Dwelling Units, and (1) one of the units is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

4. Rental Properties owned by the local, state, or federal government.

5. Rental Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

6. Group Living Accommodations subject to monitoring by a Monitoring Organization, as defined in Section 13.42.020.E.

7. Properties owned by housing cooperatives, if the cooperative entity is owned and controlled by a majority of residents. This definition includes non-profit mutual

housing associations and limited equity housing cooperatives.

8. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.

B. Transfers Exempted. The following transfers of Rental Properties are not subject to the requirements of this Chapter.

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent’s estate if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Rental Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Tenants or Qualified Nonprofits under the California Civil Code Sections 2924f-h, 2924m-n, or 2929.3.

4. A transfer of bare legal title into or out of a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. A transfer of a fractional interest in a Rental Property that is less than 50% of an undivided interest in the Rental Property, unless Section 13.89.050.A30 applies.

9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.

10. A transfer of a Rental Property that is the Owner’s sole Rental Property and has no more than five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such health care expenses incurred by a spouse, domestic partner, or child of any Owner (“Eligible Persons”), where requiring the Owner to comply with the requirements of this Chapter would result in medical financial hardship to an Eligible Person. For purposes of this subparagraph only, “Owner” shall be limited to a natural person having an undivided

interest in the Rental Property of at least 50%. The process and requirements for determining eligibility of this exemption shall be defined in Administrative Regulations implementing this Chapter.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.

2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.

3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

13.89.070 Qualified Nonprofits.

A. Certification, Term, and Renewal. The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter. The Qualified Nonprofit shall be a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation that is committed to furthering permanent affordability, democratic residential control, and tenant ownership, as further defined in Administrative Regulations, and shall have demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property and to provide affordable housing for very low and/or low-income households. The City Manager may prescribe additional requirements necessary to effectuate the purpose of this Chapter by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

B. Conflicts of Interest; Disqualification of Qualified Nonprofits. A Qualifying Nonprofit may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. A Qualifying Nonprofit may not act as a Supportive Partner if it exercises its right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110. The City Manager shall promptly investigate any complaint alleging that a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to be heard, the City Manager determines that an organization listed as a

Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

C. A Qualified Nonprofit is conferred a right of first offer and right of first refusal as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights under this Chapter to the Qualified Nonprofit within the Notice Period;(2) executes a written waiver of the Tenants' rights under this Chapter within the Notice Period; or (3) no Tenant submits a statement of interest pursuant to Section 13.89.090.C. Subsequently, Qualified Nonprofits shall have the same amount of time conferred to Tenants to perform under this Chapter, except that Qualified Nonprofits shall only have the remaining time conferred to Tenants to perform within the Notice Period, and any extensions thereof, or a minimum of 5 days, whichever is greater. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or written waiver of rights pursuant to this Paragraph shall be valid if signed by the majority of Tenants.

13.89.080 Supportive Partners.

A. Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110 must select a Supportive Partner and disclose the Supportive Partner to the City and Owner of the Rental Property within the time set forth in the Notice Period and/or the Offer Period and any extensions thereof. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

C. Conflicts of Interest; Disqualification of Supportive Partners. A Supportive Partner may not act in a manner that is adverse to the interests of Tenants occupying a Rental

Property that is subject to this Chapter. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Supportive Partner.

13.89.090 Notice of Intent to Sell; Statement of Interest.

A. Notice of Intent to Sell. An Owner of a Rental Property shall provide all Tenants (if any) notice of their intent to sell prior to listing or otherwise marketing a Rental Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least 45 days before marketing a Rental Property with two or more Rental Units, or at least 20 days before marketing a Rental Property with one Rental Unit ("Notice Period"). The Notice of Intent to Sell shall be sent to each Tenant address via certified mail and posted at conspicuous locations at the Rental Property and shall include the following:

1. A statement that the Owner intends to sell the Rental Property.

2. A statement describing the rights of Tenants under this Chapter and stating the deadlines for exercising those rights.

3. A list of units by address and the rent due for each unit, if occupied, and any available contact information for each occupant.

4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.

5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

B. Notice to Qualified Nonprofits. On the same date as notice is provided to any Tenants pursuant to Paragraph A, or if there are no Tenants, on the date on which such notice would have been provided pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, the majority of Tenants may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C. The Statement of Interest shall notify the Owner of the Tenants' or Qualified Nonprofit's interest in exercising their rights under this Chapter. In the event that the majority of Tenants submit a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant

Organization that satisfies the requirements of Section 13.89.030.J.; provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit prior to the expiration of the Notice Period. In the event that there are no Tenants in the Rental Property at the time the Owner's Notice of Intent to Sell is provided, and the Rental Property otherwise contains Rental Units that have not been lawfully withdrawn from the rental market, any Qualified Nonprofit that received a copy of the Notice of Intent to Sell pursuant to Paragraph B may submit a Statement of Interest to exercise its rights under this Chapter.

D. Formation of Tenant Organization; Selection of Supportive Partner. If the majority of Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.K and select a Supportive Partner, subject to Section 13.89.080.B. If there is only one Tenant of a Rental Property who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter but shall not be exempt from the requirement to select a Supportive Partner. A Tenant Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.100 and 13.89.110.

E. Effect of Statement of Interest. Receipt of a timely Statement of Interest shall trigger an Offer Period of 30 days. For Rental Properties having two to nine Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted an additional 30-day extension of the Offer Period. For Rental Properties having ten or more Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted a total of two additional 30-day extensions of the Offer Period.

F. Prohibition on Marketing Property to Third-Party Purchasers During Notice Period and/or Offer Period. Prior to the expiration of the Notice Period and/or Offer Period, the Owner of a Rental Property shall be prohibited from listing or marketing the Rental Property for sale or entering into any agreement for the sale or transfer of the Rental Property to Third-Party Purchasers.

13.89.100 Right of First Offer.

A. Right of First Offer. A Tenant or Qualified Nonprofit that submits a Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.090.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.K unless an assignment or waiver of rights have been executed pursuant to Section 13.89.070.C.

B. The Qualified Organization may deliver to the Owner of the Rental Property an offer to purchase the property, together with disclosure of its selected Supportive Partner, at any time prior to the expiration of the Offer Period. The Owner may accept or reject any offer to purchase received from a Qualified Organization.

C. Acceptance of Offer of Purchase. Upon acceptance of any offer to purchase a Rental Property made pursuant to Paragraph A, the Owner and Qualified Organization shall make reasonable and good faith efforts to close the transaction. The Qualified Organization shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 60 days to close the transaction for the sale of property having two to nine Rental Units; and 90 days to close the transaction for the sale of property having ten or more Rental Units. The deadline to close a transaction for the sale of Rental Property having one Rental Unit shall be extended for an additional 60 days from the date of acceptance of the offer if the Qualified Organization provides written documentation that its lender will require a commercial loan for the purchase of the Rental Property. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or diligently pursing the completion of other requirements to close the transaction. Nothing in this Paragraph shall prevent the Owner and the Qualified Organization for agreeing to further extend the deadline to close the transaction.

D. Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the Offer Period, (2) the expiration of the Offer Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally accept offers from a Third-Party Purchaser, subject to the requirements of Section 13.89.110. The requirements of Section 13.89.110 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

13.89.110 Right of First Refusal.

A. Disclosure of Offer of Sale. The Owner shall disclose any Offer of Sale received from a Third-Party Purchaser to any Qualified Organization that exercised a valid right of first offer under Section 13.89.100, and shall provide said Qualified Organization a right of first refusal pursuant to the requirements of this Chapter. The Owner shall disclose to each Qualified Organization eligible to exercise a right of first refusal under this Section all material terms of any Offer of Sale of the Rental Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Qualified Organizations; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph may be redacted from such offers.

B. Right of First Refusal. Any Qualified Organization that exercised a valid right of first offer under Section 13.89.100 may exercise a right of first refusal and accept the Offer for Sale of the Rental Property within the time period set forth in Paragraph C. To exercise its right of first refusal, the Qualified Organization must accept all material terms of the Offer for Sale; provided, however, the financing of the Qualified Organization's purchase shall not be considered a material term of the Offer for Sale so long as it does not affect the net value of the Sale to the Owner. Specific obligations of material terms of sale are sale price, timeline to close, and contingencies.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Qualified Organization eligible to exercise a right of first refusal under this Section at least 10 days to accept the Offer of Sale of a Rental Property having one Rental Unit, or at least 30 days to accept the Offer of Sale of Rental Property having two or more Rental Units. The acceptance of an Offer of Sale by any Qualified Nonprofit extinguishes any right of first refusal of other eligible Qualified Nonprofits.

D. Time to Close. Upon acceptance of the Offer of Sale, the Qualified Organization must agree to the material terms of the third-party offer. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or completing other requirements to close the transaction.

E. Rejection of Offer or Failure to Close. If each Qualified Organization entitled to receive an Offer of Sale rejects or fails to accept such offer of sale within the time set forth in Paragraph C or if a Qualified Organization that accepts an Offer for Sale fails to close the transaction within the time set forth in Paragraph D, the Owner may immediately proceed with the sale or transfer of the Rental Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this Section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Qualified Organization exercises a right of first refusal conferred by this Chapter.

13.89.120 Contract Negotiation.

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third-Party Purchaser.

2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.

3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.130 Incentive to Accept Offer from Qualified Organization.

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.100 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of half of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

B. Exempt Properties. An Owner of a Rental Property that is exempt from this Chapter may comply with the requirements of this Section, and shall be entitled to reimbursement of real property transfer tax pursuant to Paragraph A upon sale of the Rental Property to a Qualified Organization.

13.89.140 Confidential Information Protected.

Any information exchanged between an Owner, Tenants, or Qualified Organizations under this Chapter shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of Berkeley or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

13.89.150 Prohibited Conduct.

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.060 is prohibited unless the Owner complies with Sections 13.89.100 and 13.89.110.

B. A Tenant or Qualified Organization shall not buy or sell any right afforded to them under this Chapter or sell a waiver of any such right, nor shall any Tenant or Qualified Organization assign or otherwise transfer any such right except as authorized to do so under this Chapter.

C. An Owner shall not (1) coerce a Tenant or Tenant Organization to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

13.89.160 Complying Anew with the Right of First Offer.

An Owner shall comply anew with the Right of First Offer if one of the following occur:

A. The Owner decides not to sell the Rental Property after providing the Notice of Intent to Sell, and then proceeds to undertake a Sale again as defined in Section 13.89.050; or the Owner cancels a contract of sale entered into with Tenant or Qualified Organization after escrow has opened.

B. 365 days have elapsed since a Tenant or Qualified Organization cancelled a contract of sale entered into with the Owner after escrow has opened, and the Owner has not sold the Rental Property to a Third-Party Purchaser.

C. 90 days have elapsed from the date of an Owner's rejection of an offer from a Tenant or Qualified Organization pursuant to Section 13.89.100.B and the Owner has not provided an Offer of Sale to the Tenant or Qualified Organization pursuant to Section 13.89.110.A; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

D. 180 days have elapsed since the expiration of an Offer Period and any extensions thereof and no Tenant or Qualified Organization submitted a Statement of Interest or offer and the Owner has not sold the Rental Property to a Third-Party Purchaser; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

13.89.170 Financial Assistance.

The City Manager shall develop guidelines for providing financial assistance to allow for the acquisition of Rental Properties pursuant to this Chapter. Financial assistance may be provided to Tenants, Tenant Organizations, or Qualified Nonprofits. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Rental Property under this Chapter.

13.89.180 Price Stabilization; Tenant Protections.

A. Affordability Restriction. Except as otherwise provided herein, any Rental Unit acquired pursuant to this Chapter shall be subject to a recorded affordability restriction that ensures that each Rental Unit acquired is available to very low-, low-, or moderate-income renters or buyers in perpetuity. The City Manager shall set standards for the provisions of affordable units by Administrative Regulation and for the enforcement of the requirements of this Section.

B. Exemptions from Affordability Restriction.

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the guidelines established under Section 13.89.170.

2. A limited equity housing cooperative that meets the requirements of Civil Code Sections 817 and 817.1 is exempt from the requirements of Paragraph A.

C. The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized over the life of the improvement. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%).

D. Rental Properties acquired pursuant to this Chapter and converted to condominiums or stock cooperatives (including limited equity housing cooperatives that meet the requirements of Civil Code Sections 817 and 817.1) subject to a recorded affordability restriction under this Section shall be exempt from the requirements of Section 21.28.070 (“Affordable housing mitigation fee”).

E. Non-Purchasing Tenants, Life Lease. Any Tenant that does not join a Tenant Organization that acquires a Rental Property pursuant to this Chapter must be offered a life lease for their Rental Unit so long as the Rental Unit remains their principal residence.

13.89.190 Anti-Speculation Penalty.

A. Purpose. Tenants, Tenant Organizations, and Qualified Nonprofits acknowledge the displacement prevention, affordable housing preservation, and neighborhood stability purposes of this Chapter, and as a condition for the rights and benefits conferred to them under this Chapter, agree not use any purchased Rental Property for speculative purposes. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must be conditioned on the terms described herein. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Section.

B. Minimum Term and Owner-Occupancy Requirement. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant

Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must not resell the Rental Property, or any separate ownership interests in the Rental Property, within 36 months of acquiring it. From the date of the initial purchase of the Rental Property up until 36 months, the Tenant must submit an annual owner-occupancy certification to the City demonstrating the use of the acquired Rental Property as their primary residence. The requirements of this Section shall materialize as a restrictive covenant placed on the recorded title deed to the purchased Rental Property that runs with the land and is enforceable by the City against the Tenant or Tenant Organization. The failure to submit an annual owner-occupancy certification to the City is a violation of this Chapter that shall be subject to the civil penalties described in Section 13.89.210 (Enforcement). The City may create Administrative Regulations for further guidelines concerning any exemptions from the requirements of this Section only in the event of an exigent circumstance.

C. Penalty. The City shall impose a penalty on any profits gained from the transfer of the purchased Rental Property, or any separate ownership interests in the Rental Property, prior to the expiration of the 36-month term described herein. The City shall create Administrative Regulations concerning the procedures for imposing such a penalty, which shall include notice to the alleged violator and the opportunity to contest the penalty at a hearing. The City shall establish such penalty as follows:

1. When the transfer occurs less than 12 months from the initial purchase date, 20 percent of the profits gained from the resale of the Rental Property or the separate ownership interest in the Rental Property;

2. When the transfer occurs more than or equal to 12 months but less than 24 months from the initial purchase date, 15 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property; or

3. When the transfer occurs more than or equal to 24 months but less than 36 months from the initial purchase date, 10 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property.

D. Required recordings and filings.

1. All covenants created in accordance with this Section shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the purchased Rental Property is located and shall contain a legal description of the purchased property, indexed to the name of the Tenant or Tenant Organization who purchased the Rental Property as grantee.

2. The City may engage a third-party monitoring agent to monitor the compliance of the annual owner occupancy certification.

13.89.200 Implementation.

A. The City Manager shall adopt Administrative Regulations necessary to implement the requirements of this Chapter, and may adopt additional rules and regulations for purposes of administering this Chapter, including but not limited to rules and regulations governing the reporting of information regarding transactions subject to the requirements of this Chapter.

B. This ordinance shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

C. Supportive partners shall report annually on the implementation of this Chapter to the City Council or to such City Council Committee as the City Council may designate. Supportive partners shall collect and analyze data in partnership with tenants or tenant organizations to evaluate the number and types of sales of tenant-occupied properties including whether purchased by a Qualified Organization or Third-Party Purchaser; the number of Qualified Organizations that purchase Real Property pursuant to this Chapter; the number and types of units covered by this Chapter; and other data and information relevant to evaluating the effectiveness of this Chapter in creating and preserving affordable housing for residents in the City of Berkeley and in preventing displacement of City of Berkeley tenants.

D. The City Manager or their designee shall provide counseling and technical assistance to Owners regarding the requirements of this Chapter to assist in achieving compliance.

13.89.210 Enforcement.

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.200.A shall be subject to administrative citation under Chapter 1.28.

B. The City Attorney, any Tenant of a Rental Property subject to this Chapter, or a Qualified Organization eligible to purchase Rental Property under this Chapter may bring a civil action to enforce this Chapter, and shall be entitled to the remedies set forth in this Section to the greatest extent permitted by law.

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed $1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each Rental Unit on a Rental Property.

D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may order that an Owner of Rental Property comply with the requirements of this Chapter.

13.89.220 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void,

unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

13.89.230 Effective Date.

A. Section 13.89.100 shall take effect January 1, 2024.

B. Properties with five or more housing units will be subject to Section 13.89.110 on January 1, 2024.

C. Properties with four or fewer housing units, pending analysis findings, shall be subject to section 13.89.110 on January 1, 2027.

D. All other provisions in this ordinance are effective January 1, 2024.

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

~~———~~ORDINANCE NO. -N.S.

~~ADOPTING~~ADDING CHAPTER 13.89 ~~OF~~TO THE BERKELEY MUNICIPAL CODE

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

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

Section 1. Chapter 13.89 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.89

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

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13.89.010 Title and Purpose.

A. This Chapter shall be referred to as the "Berkeley Community/Tenant Opportunity to Purchase Act."

B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

13.89.020 Findings.

A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.

B. The current need for affordable housing units in Alameda County is 51,732 units (California Housing Partnership). Approximately 20% of residents in Berkeley are living in poverty.

C. The lack of affordable housing for Berkeley's low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.

D. The nine-county Bay Area has been losing an annual average of 32,000 unsubsidized affordable homes occupied by low-income households since 2012. Unsubsidized affordable housing is the most common form of low-income housing, and at the same time is the most at risk of loss through rent increases, evictions, condo conversions, demolition and more. And, overall preservation is cost-effective compared to new production, at 50-70% of the cost of new affordable housing production (Enterprise Community Partners).

E. Affordable housing preservation and anti-displacement strategies will help keep low-income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.

F. The City Council finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants and qualified nonprofit organizations the opportunity to purchase the property before it may be sold on the market to a third-party purchaser.

13.89.030 Definitions.

A. "Dwelling Unit," "Accessory Dwelling Unit," "Single-Family Dwelling," "Multi-Family Dwelling," and "Group Living Accommodations" are defined in Section 23F.04.01023.502.020.

B. "Designated as the Owner's Primary Residence" means any unit that the Owner has validly claimed as their principal residence for purposes of either the homeowners' property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans' exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

A.C. "Offer for Sale" means an offer to sell a Rental Property that includes all material and commercially reasonable terms.

B. "Qualified Nonprofit" means a nonprofit, which is either exempt from federal 2

B.D. income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low-income households, and is certified by the City Manager pursuant to Section 13.89.070.A.

C.E. "Qualified Organization" means either a Tenant Organization or a Qualified Nonprofit.

D.F. "Owner" means any person, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of a Rental Property. Each Owner shall be jointly and severally responsible for compliance with the requirements of this Chapter.

E.G. "Rental Property" means any residential property containing one or more Rental Units and located in the City of Berkeley.

F.H. "Rental Unit" means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley. H., consistent with the records of the City of Berkeley Rent Stabilization Board, and subject to the exemptions set forth in Section 13.89.060"Sale," "sell," or "transfer" is defined in Section 13.89.050.

I. "Sale," "sell," or "transfer" is defined in Section 13.89.050. H.I.

J. "Supportive Partner" means any person or organization certified by the City Manager pursuant to Section 13.89.080.A to provide Tenant counseling and technical support services on first-time homeownership, obtaining financing for the purchase of Real Properties, assisting in the process of closing on property transactions, the formation and governance of legal and collective ownership structures, and supporting Tenants in

the exercise of their rights pursuant to this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents.

K. ~~I.J.~~ "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of such Rental Unit.

L. ~~J.K.~~ "Tenant Organization" means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant Organization must adopt a Governing Document and Governing Principles and may appoint officers and any other authorized agents specifically designated to execute contracts on its behalf. If only one Tenant of a Rental Property seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit or Group Living Accommodations sleeping quarters are collectively considered to be one Tenant, and such lessees of a Group Living Accommodation or Dwelling Unit must consent to representation by the Tenant Organization, as furthered defined in Administrative Regulations.

~~Organization, as furthered defined in Administrative Regulations.~~

M. ~~K.L.~~ "Third-Party Purchaser" means any prospective purchaser of a Rental Property other than a Qualified Organization as defined in Paragraph D.

N. ~~L.M.~~ "The City" shall mean the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.

O. ~~M.N.~~ "City Manager" means the City Manager or their designee.

P. ~~N.O.~~ "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.

~~O.P.~~

Q. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.

R. ~~P.Q.~~ "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.

13.89.040 Applicability.

This Chapter shall apply to the sale or transfer of all Rental Property in the City of Berkeley, unless otherwise exempted herein.

13.89.050 Sale Defined.

A. "Sale," "sell," or "transfer" is defined as the following:

1. The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Property, including beneficial use, where the value of the present interest is the fee interest in the Rental Property, or substantially equal to the value of that fee interest.

2. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c).

3. Multiple transfers of minority interests in the Rental Property which, in effect, result in a transfer of the Rental Property.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following Rental Properties are not subject to the requirements of this Chapter.

1. Any Rental Property comprised entirely of owner-occupied Rental Units, including any owner-occupied Single-Family Dwelling.

2. Any Rental Property that has no more than one Single Family Dwelling and is vacant at the time of sale.

3. A Rental Property containing a Dwelling Unit that is Designated as the Owner's Primary Residence, if and only if one of the following applies:

a. The Rental Property has no more than one Single-Family Dwelling and either the Single-Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single-Family Dwelling is Designated as the Owner's Primary Residence.

b. The Rental Property has no more than one Duplex

~~residence~~, and (1) one of the units ~~and such~~ in the Duplex is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the ~~Owners~~Owner's only Rental Property in the City of Berkeley. _

c. ~~3.~~5. The Rental Property has no more than one Multi-Family Dwelling that contains no more than four Dwelling Units, and (1) one of the units is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

4. Rental Properties owned by the local, state, or federal government.

5. ~~4.~~6. Rental Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

6. ~~5.~~7. Group Living Accommodations subject to monitoring by a Monitoring Organization, as defined in Section 13.42.020.E.

7. ~~6.~~8. Properties owned by housing cooperatives, if the cooperative entity is owned and controlled by a majority of residents. This definition includes non-profit mutual housing associations and limited equity housing cooperatives.

8. ~~7.~~9. Properties defined as "assisted housing developments" pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.

B. Transfers Exempted. The following transfers of Rental Properties are not subject to the requirements of this Chapter.

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

~~3.~~ A transfer of legal title or an interest in an entity holding legal title to

a Rental ~~5~~

3. Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Tenants or Qualified Nonprofits under the California Civil Code Sections 2924f-h,

2924m-n, or 2929.3.

4. A transfer of bare legal title into or out of a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. A transfer of a fractional interest in a Rental Property that is less than 50% of an undivided interest in the Rental Property, unless Section 13.89.050.A30 applies.

9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.

10. A transfer of a Rental Property that is the Owner's sole Rental Property and has no more than five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such health care expenses incurred by a spouse, domestic partner, or child of any Owner ("Eligible Persons"), where requiring the Owner to comply with the requirements of this Chapter would result in medical financial hardship to an Eligible Person. For purposes of this subparagraph only, "Owner" shall be limited to a natural person having an undivided interest in the Rental Property of at least 50%. The process and requirements for determining eligibility of this exemption shall be defined in Administrative Regulations implementing this Chapter.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.

2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.

3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

13.89.070 **Qualified Nonprofits.**

A. Certification, Term, and Renewal. The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter. The Qualified Nonprofit shall be a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation that is committed to furthering permanent affordability, democratic residential control, and tenant ownership, as further defined in Administrative Regulations, and shall have demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property and to provide affordable housing for very low and/or low-income households. The City Manager may prescribe additional requirements necessary to effectuate the purpose of this Chapter by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

B. Conflicts of Interest; Disqualification of Qualified Nonprofits. A Qualifying Nonprofit may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. A Qualifying Nonprofit may not act as a Supportive Partner if it exercises its right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110. The City Manager shall promptly investigate any complaint alleging that a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

C. A Qualified Nonprofit is conferred a right of first offer and right of first refusal as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights under this Chapter to the Qualified Nonprofit within the Notice Period;(2) executes a written waiver of the Tenants' rights under this Chapter within the Notice Period; or (3) no Tenant submits a statement of interest pursuant to Section 13.89.090.C. Subsequently, Qualified Nonprofits shall have the same amount of time conferred to Tenants to perform under this Chapter, except that Qualified Nonprofits shall only have the remaining time conferred to Tenants to perform within the Notice Period, and any extensions thereof, or a minimum of 5 days, whichever is greater. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or written waiver of rights pursuant to this Paragraph shall be valid if signed by the majority of Tenants.

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13.89.080 Supportive Partners.

~~A.~~ Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing

A. Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110 must select a Supportive Partner and disclose the Supportive Partner to the City and Owner of the Rental Property within the time set forth in the Notice Period and/or the Offer Period and any extensions thereof. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

C. Conflicts of Interest; Disqualification of Supportive Partners. A Supportive Partner may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Supportive Partner.

13.89.0~~9~~0 Notice of Intent to Sell; Statement of Interest.

~~A.~~ Notice of Intent to Sell. An Owner of a Rental Property shall provide all Tenants (if any) notice of their intent to sell prior to listing or otherwise marketing a Rental Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least 45 days before marketing a Rental Property with ~~three~~two or more Rental Units, or at least 20 days before marketing a Rental Property with ~~two or fewer~~one Rental ~~Units~~Unit ("Notice Period"). The Notice of Intent to Sell shall be sent to each Tenant address via certified mail and posted at conspicuous locations at the Rental Property and shall include the

A. following:

1. A statement that the Owner intends to sell the Rental Property.

2. A statement describing the rights of Tenants under this Chapter and stating the deadlines for exercising those rights.

3. A list of units by address and the rent due for each unit, if occupied, and any available contact information for each occupant.

4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.

5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

B. Notice to Qualified Nonprofits. On the same date as notice is provided to any Tenants pursuant to Paragraph A, or if there are no Tenants, on the date on which such notice would have been provided pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, the majority of Tenants may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C. The Statement of Interest shall notify the Owner of the Tenants' or Qualified Nonprofit's interest in exercising their rights under this Chapter. In the event that the majority of Tenants submit a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J.; provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit prior to the expiration of the Notice Period. In the event that there are no Tenants in the Rental Property at the time the Owner's Notice of Intent to Sell is provided, and the Rental Property otherwise contains Rental Units that have not been lawfully withdrawn from the rental market, any Qualified Nonprofit that received a copy of the Notice of Intent to Sell pursuant to Paragraph B may submit a Statement of Interest to exercise its rights under this Chapter.

D. Formation of Tenant Organization; Selection of Supportive Partner. If the majority of Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.K and select a Supportive Partner, subject to Section 13.89.080.B. If there is only one Tenant of a Rental Property who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter but shall not be exempt from the requirement to select a Supportive Partner. A Tenant

Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.100 and 13.89.110.

~~E.~~ Effect of Statement of Interest. Receipt of a timely Statement of Interest shall ~~9~~

E. ~~extend the Notice~~trigger an Offer Period ~~for 60~~of 30 days. For Rental Properties having ~~10 or more~~two to nine Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted an additional 30-day extension of the ~~Notice~~Offer Period ~~upon timely written request.~~. For Rental Properties having ~~20~~ten or more Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted a total of two additional 30-day extensions of the ~~Notice~~Offer Period ~~upon timely written request~~.

F. Prohibition on Marketing Property to Third-Party Purchasers During Notice Period~~.~~ and/or Offer Period. Prior to the expiration of the Notice Period and/or Offer Period, the Owner of a Rental Property shall be prohibited from listing or marketing the Rental Property for sale or entering into any agreement for the sale or transfer of the Rental Property to Third-Party Purchasers.

13.89.100 Right of First Offer.

A. Right of First Offer. A Tenant or Qualified Nonprofit that submits a Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.090.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.K unless an assignment or waiver of rights have been executed pursuant to Section 13.89.070.C.

B. ~~A.~~B. The Qualified Organization may deliver to the Owner of the Rental Property an offer to purchase the property, together with disclosure of its selected Supportive Partner, at any time prior to the expiration of the ~~Notice~~Offer Period. The Owner may accept or reject any offer to purchase received from a Qualified Organization.

C. ~~B.~~C. Acceptance of Offer of Purchase. Upon acceptance of any offer to purchase a Rental Property made pursuant to Paragraph A, the Owner and Qualified Organization shall make reasonable and good faith efforts to close the transaction. The Qualified Organization shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 60 days to close the transaction for the sale of property having two to nine Rental Units; and 90 days to close the transaction for the sale of property having ~~two Rental Units; and 120 days to close the transaction for the sale of property having three~~ten or more Rental Units. The deadline to close a transaction for the sale of Rental Property having one Rental Unit shall be extended for an additional 60 days from the date of acceptance of the offer if the Qualified Organization provides written documentation that its lender will require a commercial loan for the purchase of the Rental Property. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or diligently pursing the completion of other requirements to close the transaction. Nothing in this Paragraph shall prevent the Owner and the Qualified Organization for agreeing to further extend the deadline to close the transaction.

~~C.~~D. ~~T~~termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the ~~Notice~~Offer Period, (2) the expiration of the ~~Notice~~Offer Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally accept offers from a

D. Third-Party Purchaser, subject to the requirements of Section 13.89.110. The requirements of Section 13.89.110 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

13.89.110 **Right of First Refusal.**

A. Disclosure of Offer of Sale. The Owner shall disclose any Offer of Sale received from a Third-Party Purchaser to any Qualified Organization that exercised a valid right of first offer under Section 13.89.100, and shall provide said Qualified Organization a right of first refusal pursuant to the requirements of this Chapter. The Owner shall disclose to each Qualified Organization eligible to exercise a right of first refusal under this Section all material terms of any Offer of Sale of the Rental Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Qualified Organizations; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph may be redacted from such offers.

B. Right of First Refusal. Any Qualified Organization that exercised a valid right of first offer under Section 13.89.100 may exercise a right of first refusal and accept the Offer for Sale of the Rental Property within the time period set forth in Paragraph C. To exercise its right of first refusal, the Qualified Organization must accept all material terms of the Offer for Sale; provided, however, the financing of the Qualified Organization's purchase shall not be considered a material term of the Offer for Sale so long as it does not affect the net value of the Sale to the Owner. Specific obligations of material terms of sale are sale price, timeline to close, and contingencies.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Qualified Organization eligible to exercise a right of first refusal under this Section at least 10 days to accept the Offer of Sale of a Rental Property having ~~no more than two~~one Rental ~~Units~~Unit, or at least 30 days to accept the Offer of Sale of Rental Property having ~~three~~two or more Rental Units. The acceptance of an Offer of Sale by any Qualified Nonprofit extinguishes any right of first refusal of other eligible Qualified Nonprofits.

D. Time to Close. Upon acceptance of the Offer of Sale, the Qualified Organization ~~shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 90 days to close the transaction for the sale of property having two Rental Units; and 120 days to close the transaction for the sale of property having three or more Rental Units.~~must agree to the material terms of the third-party offer. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or completing other requirements to close the transaction.

E. Rejection of Offer or Failure to Close. If each Qualified Organization entitled to receive an Offer of Sale rejects or fails to accept such offer of sale within the time set forth in Paragraph C or if a Qualified Organization that accepts an Offer for Sale fails to close the transaction within the time set forth in Paragraph D, the Owner may immediately proceed with the sale or transfer of the Rental Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this Section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Qualified Organization exercises a right of first refusal conferred by this Chapter.

13.89.120 Contract Negotiation.

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third-Party Purchaser.

2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.

3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. B. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.130 Incentive to Accept Offer from Qualified Organization.

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.100 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of half of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

B. Exempt Properties. An Owner of a Rental Property that is exempt from this Chapter may comply with the requirements of this Section, and shall be entitled to reimbursement of real property transfer tax pursuant to Paragraph A upon sale of the Rental Property to a Qualified Organization.

13.89.140 Confidential Information Protected.

Any information exchanged between an Owner, Tenants, or Qualified Organizations under this Chapter shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of Berkeley

or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

13.89.150 Prohibited Conduct.

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.060 is prohibited unless the Owner complies with Sections 13.89.100 and 13.89.110.

B. A Tenant or Qualified Organization shall not buy or sell any right afforded to them under this Chapter or sell a waiver of any such right, nor shall any Tenant or Qualified Organization assign or otherwise transfer any such right except as authorized to do so under this Chapter.

C. An Owner shall not (1) coerce a Tenant or Tenant Organization to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

13.89.160 Complying Anew with the Right of First Offer.

An Owner shall comply anew with the Right of First Offer if one of the following occur:

A. The Owner decides not to sell the Rental Property after providing the Notice of Intent to Sell, and then proceeds to undertake a Sale again as defined in Section 13.89.050; or the Owner cancels a contract of sale entered into with Tenant or Qualified Organization after escrow has opened.

B. 365 days have elapsed since a Tenant or Qualified Organization cancelled a contract of sale entered into with the Owner after escrow has opened, and the Owner has not sold the Rental Property to a Third-Party Purchaser.

C. 90 days have elapsed from the date of an Owner's rejection of an offer from a Tenant or Qualified Organization pursuant to Section 13.89.100.B and the Owner has not provided an Offer of Sale to the Tenant or Qualified Organization pursuant to Section

13.89.110.A; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a ~~ThirdParty~~Third-Party Purchaser.

D. 180 days have elapsed since the expiration of ~~a Notice~~an Offer Period and any extensions thereof and no Tenant or Qualified Organization submitted a Statement of Interest or offer and the Owner has not sold the Rental Property to a Third-Party Purchaser; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.
~~13~~

13.89.170 **Financial Assistance.**

The City Manager shall develop guidelines for providing financial assistance to allow for the acquisition of Rental Properties pursuant to this Chapter. Financial assistance may be provided to Tenants, Tenant Organizations, or Qualified Nonprofits. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Rental Property under this Chapter.

13.89.180 Price Stabilization; Tenant Protections.

A. Affordability Restriction. Except as otherwise provided herein, any Rental Unit acquired pursuant to this Chapter shall be subject to a recorded affordability restriction that ensures that each Rental Unit acquired is available to very low-, low~~,~~-, or moderate-income renters or buyers in perpetuity. The City Manager shall set standards for the provisions of affordable units by Administrative Regulation and for the enforcement of the requirements of this Section.

B. Exemptions from Affordability Restriction.

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the guidelines established under Section 13.89.170.

2. A limited equity housing cooperative that ~~meet~~meets the requirements of Civil Code Sections 817 and 817.1 is exempt from the requirements of Paragraph A.

~~A.~~ The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental

Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized over the life of the improvement. In no event, however, shall the allowable annual

C. adjustment be less than zero (0%) or greater than seven percent (7%).

D. Rental Properties acquired pursuant to this Chapter and converted to condominiums or stock cooperatives (including limited equity housing cooperatives that meet the requirements of Civil Code Sections 817 and 817.1) subject to a recorded affordability restriction under this Section shall be exempt from the requirements of Section 21.28.070 (“Affordable housing mitigation fee”).

E. Non-Purchasing Tenants, Life Lease. Any Tenant that does not join a Tenant Organization that acquires a Rental Property pursuant to this Chapter must be offered a life lease for their Rental Unit so long as the Rental Unit remains their principal residence.

13.89.190 Anti-Speculation Penalty.

A. Purpose. Tenants, Tenant Organizations, and Qualified Nonprofits acknowledge the displacement prevention, affordable housing preservation, and neighborhood stability purposes of this Chapter, and as a condition for the rights and benefits conferred to them under this Chapter, agree not use any purchased Rental Property for speculative purposes. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must be conditioned on the terms described herein. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Section.

B. Minimum Term and Owner-Occupancy Requirement. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must not resell the Rental Property, or any separate ownership interests in the Rental Property, within 36 months of acquiring it. From the date of the initial purchase of the Rental Property up until 36 months, the Tenant must submit an annual owner-occupancy certification to the City demonstrating the use of the acquired

Rental Property as their primary residence. The requirements of this Section shall materialize as a restrictive covenant placed on the recorded title deed to the purchased Rental Property that runs with the land and is enforceable by the City against the Tenant or Tenant Organization. The failure to submit an annual owner-occupancy certification to the City is a violation of this Chapter that shall be subject to the civil penalties described in Section 13.89.210 (Enforcement). The City may create Administrative Regulations for further guidelines concerning any exemptions from the requirements of this Section only in the event of an exigent circumstance.

C. Penalty. The City shall impose a penalty on any profits gained from the transfer of the purchased Rental Property, or any separate ownership interests in the Rental Property, prior to the expiration of the 36-month term described herein. The City shall create Administrative Regulations concerning the procedures for imposing such a penalty, which shall include notice to the alleged violator and the opportunity to contest the penalty at a hearing. The City shall establish such penalty as follows:

1. When the transfer occurs less than 12 months from the initial purchase date, 20 percent of the profits gained from the resale of the Rental Property or the separate ownership interest in the Rental Property;

2. When the transfer occurs more than or equal to 12 months but less than 24 months from the initial purchase date, 15 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property; or

3. When the transfer occurs more than or equal to 24 months but less than 36 months from the initial purchase date, 10 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property.

D. Required recordings and filings.

1. All covenants created in accordance with this Section shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the purchased Rental Property is located and shall contain a legal description of the purchased property, indexed to the name of the Tenant or Tenant Organization who purchased the Rental Property as grantee.

2. The City may engage a third-party monitoring agent to monitor the compliance of the annual owner occupancy certification.

13.89.200 Implementation.

A. The City Manager shall adopt Administrative Regulations necessary to implement the requirements of this Chapter, and may adopt additional rules and regulations for purposes of administering this Chapter, including but not limited to rules and regulations governing the reporting of information regarding transactions subject to the requirements of this Chapter.

B. This ordinance shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

~~C.~~ ~~The City Manager~~C. Supportive partners shall report annually on the implementation of this Chapter to the City Council or to such City Council Committee as the City Council may designate. ~~The City Manager's report shall include~~Supportive partners shall collect and analyze data in partnership with tenants or tenant organizations to evaluate the number and types of sales of tenant-occupied properties including whether purchased by a Qualified Organization or Third-Party Purchaser; the number of Qualified Organizations that purchase Real Property pursuant to this Chapter; the number and types of units covered by this Chapter; and other data and information relevant to evaluating the effectiveness of this Chapter in creating and preserving affordable housing for residents in the City of Berkeley and in preventing displacement of City of Berkeley tenants.

~~C.~~D. The City Manager or their designee shall provide counseling and technical assistance to Owners regarding the requirements of this Chapter to assist in achieving compliance.

13.89.~~200~~210 Enforcement.

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.~~190~~200.A shall be subject to administrative citation under Chapter 1.28.

B. The City Attorney, any Tenant of a Rental Property subject to this Chapter, or a Qualified Organization eligible to purchase Rental Property under this Chapter may bring a civil action to enforce this Chapter, and shall be entitled to the remedies set forth in this Section to the greatest extent permitted by law.

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed $1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each Rental Unit on a Rental Property.

D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may order that an Owner of Rental Property comply with the requirements of this Chapter.

13.89.~~210~~220 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining

provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

13.89.230 Effective Date.

A. Section 13.89.100 shall take effect January 1, 2024.

B. Properties with five or more housing units will be subject to Section 13.89.110 on January 1, 2024.

C. Properties with four or fewer housing units, pending analysis findings, shall be subject to section 13.89.110 on January 1, 2027.

D. All other provisions in this ordinance are effective January 1, 2024.

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

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Kate Harrison
Councilmember, District 4

CONSENT CALENDAR
April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison

Subject: Referring $579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

RECOMMENDATION

Refer $579,000 to the June 2023 Budget Process for annual City staffing costs and for allied non-profits to implement and administer programs associated with acquisition and prevention of displacement from multi-family housing including the Small Sites Program, investments related to the Empty Homes Tax, and administrative implementation of the proposed Berkeley Community and Tenant and Opportunity to Purchase Act (COPA/TOPA):

Community Development Project Coordination for acquisition capacity of 3-6 additional projects per year (HHCS)	1.5 FTE (1 FTE for the Empty Homes Tax and 0.5 FTE for COPA/TOPA) - $318,915* *Includes $4,500 to support office, technology, and training needs
Community Development Project Coordination for COPA/TOPA (HHCS)	0.5 FTE - $108,088
Deputy City Attorney II	0.35 FTE - $101,884
Qualified Organization Capacity Support for two additional projects per year (in addition to existing allocation of $100,000 to the Bay Area Community Land Trust)	$50,000

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing and displacement crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been

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particularly burdensome in a city where 58% of residents are renters.[1] While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build or acquire sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.[2] Unfortunately, Alameda County's housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.[3]

As documented by the Rent Board-sponsored Anti-eviction Mapping Project Report, the crisis has contributed to extreme displacement, with the City losing "49.2% of its Black population between 1990 and 2020," and "only 30% of households below 80% of Area Median Income (AMI) occupy[ing] units that are [ ] affordable to them."[4]

The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions including enhancing the resources of the Small Sites Program to support acquisitions under the Empty Homes Tax and COPA/TOPA, and staffing to implement and administer the COPA/TOPA. The market will not do this on its own. Acquiring and preserving affordable housing is key to reaching the housing and equity goals codified in Berkeley's recently adopted 2023-2031 Housing Element and strategic plan because this is a cost-effective way to ensure the city does not lose the affordable homes it already has while it invests in producing more affordable homes overall.[5] The City of Berkeley is pursuing a number of strategies to acquire properties and make them permanently affordable but is forced to do so without adequate resources for City staff, its non-profit partners and for acquisition of properties.

Before the 2008 financial crisis, Berkeley had a robust housing department. The department was downsized and merged with the health department to form Health, Housing, and Community Services (HHCS). Despite limited housing staff, the Department has excelled in face of unprecedent Council demand for housing and acquisition. In contrast to other housing strategies, acquiring existing properties does

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[1] Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf.

[2] Id.

[3] California Housing Partnership Housing Needs Dashboard, 2019, https://chpc.net/housingneeds/?view=37.405074,-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production.

[4] "Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity," 2022.

[5] *City of Berkeley Housing Trust Fund and Small Sites Program Guidelines*. https://berkeleyca.gov/sites/default/files/2022-04/Housing-Trust-Fund-Guidelines.pdf.

not result in carbon-intensive demolition and it maximizes continuity and price security, minimizing displacement of long-term and low-income residents. However, to meet this demand in the face of the City's new Housing Element and other policies, it is critical to bolster staffing in the housing division.

BACKGROUND

The Small Sites program, which acquires and renovates occupied, multifamily rental properties and converts into permanently affordable units or non-equity housing cooperatives, has successfully purchased properties, most recently 13 units of affordable housing on Solano Avenue and eight units in South Berkeley on a church property.[6] The program has been a critical piece of Berkeley's affordable housing strategy through the acquisition and rehabilitation of rental units. The sites guarantee below market rate rents.

On November 8, 2022 nearly two thirds of Berkeley voters approved Measure M, the Empty Homes Vacancy Tax, intended to incentivize owners of housing property to bring units back on the market and discourage speculation. The law will go into effect beginning January 1, 2024 and is expected to identify thousands of vacant units that could be candidates for acquisition, while also generating millions of dollars in revenue for housing acquisition and production. In addition to the staff needed to simply administer the tax, the City needs additional staff to help vet potential candidate properties identified as vacant and possibly available for acquisition. As a general tax, funds from the Empty Homes Tax will be placed into the General Fund. However, the voters in passing Measure M approved the non-binding intention of using the revenue in ways consistent with the Housing Trust Fund as well as other municipal purposes at the discretion of the Council.[7]

In addition, on March 10, 2020, COPA/TOPA was first presented to the Berkeley City Council's Land Use, Housing and Economic Development Policy Committee. The ordinance was heard again in March and May of 2021 before passing out of Committee on May 20, 2021 with a qualified positive recommendation. The Mayor held an informational work session on COPA/TOPA on January 27, 2022.[8] The ordinance would create legal rights for tenants to make the first offer or match any final offer to buy their home whenever the owner chooses to put it up for sale. Alternatively, tenants could assign these rights to an affordable housing developer so that it can prevent the displacement of the tenants by acquiring the property and preserving its affordability. COPA/TOPA would also provide technical assistance, education, and financing to help make these purchases possible.

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[6] Savidge, Nico. "To Boost Affordable Housing, Berkeley Looks to Buy, Not Just Build." *Berkeleyside*, 19 Sept. 2022, https://www.berkeleyside.org/2022/06/05/berkeleys-affordable-housing-acquisition-rehabilitation-small-sites.

[7] As discussed in the August 2022 Council report that accompanied the Empty Homes Tax and the tax ordinance.

[8] Mayor Jesse Arreguín, "Tenant Opportunity to Purchase Act, Adding B.M.C. Chapter 13.89," January 27, 2022, https://berkeleyca.gov/sites/default/files/2022-04/2022-01-27%20Item%2001%20Tenant%20Opportunity%20to%20Purchase%20Act.pdf

Thus, COPA/TOPA provides pathways to stabilize existing housing for tenants and preserve affordable housing, allows tenants to become first-time homeowners, and facilitates opportunities for democratic ownership of residential property. To be effective, COPA/TOPA requires a well-funded staffing infrastructure to administer and enforce it. Education, legal and technical assistance to tenants is also needed during implementation to ensure the rights that COPA/TOPA provides can be meaningfully exercised.

FUNDING DETAILS

HHCS' housing services are currently provided by two units; one unit, the Housing Development Unit, is dedicated to affordable housing development through the City's Housing Trust Fund, including the Small Sites Program. The unit has a total of 3.5 FTE. None of the staff are dedicated specifically to Small Sites. Instead, this program has been absorbed into the workload of the unit alongside other housing development projects.

The Department reports that at peak times ahead of multi-year predevelopment or development processes, each Small Sites Program project demands up to 0.5 FTE. The additional 1.5 FTE contemplated in this item could assist HHCS with expanding the capacity of the program and using data from the Empty Homes Tax to identify properties for acquisition and rehabilitation by the City or its partners, including the Land Trust, non-profit developers and the Berkeley Housing Authority.

Current Small Sites Program duties include, but are not limited to:

- Managing projects funded through the Small Sites Program, including acquisition, rehabilitation or new construction by other organizations (typically nonprofit developers);
- Coordinating the disposition of City-owned property for development as affordable housing as needed;
- Developing competitive solicitations (NOFAs, RFPs, RFQs) for development funding as well as consultant services;
- Providing technical assistance, reviewing funding applications, underwriting projects, and making funding recommendations;
- Preparing housing loan or grant agreements using boilerplate documents and negotiate revisions with borrowers. Researching and drafting other types of agreements as needed;
- Monitoring projects during predevelopment and construction. Reviewing and approving draw requests and work with the Department's fiscal unit to disburse funds;
- Preparing reports and presentations for the City Council and Housing Advisory Commission.

In addition, this budget referral includes the approximately .5 FTE as proposed by the Department in order to implement additional part-time support from HHCS to coordinate the acquisition of properties in connection with COPA/TOPA.

The .5 FTE Community Development Project Coordinator duties will include:

- Program Design and Development, including coordinating with CAO to develop process, procedures, forms, etc.
- Developing and maintaining a webpage with certified Qualified Organizations (QO) and Supportive Partners (SP), active seller notices to tenants, and tenant/QO statements of interest
- Certifying and renewing QOs and SPs monitor and evaluate them on an ongoing basis
- Advising tenants and QOs on applying for SSP funding
- Developing targeted materials and provide ongoing education for landlords and tenants.
- Organizing trainings, meetings and webinars, and act as liaison to professional and civic groups, community organizations, and individuals

The City Attorney's Office also indicates it will need additional resources to implement COPA/TOPA, as follows:

Deputy City Attorney II* **		
Task	**% FTE**	**Ordinance Reference**
Adjudicate policy exemptions, such as definition of principal residence, family in family transfer, and medical hardship waivers	5%	13.89.050
Adjudicate non-compliance with ROFR (verifies bona fide offers when dispute reported)	5%	13.89.100
Landlord/tenant mediation	5%	13.89.170
Legal Analysis of potential violations	5%	13.89.170
Remedies/Civil Action for violations	10%	13.89.170
Support advising of tenants and QOs	5%	
	35%	

***This is strictly related to ordinance implementation and does not reflect any staffing required for legal challenges to the ordinance

Finally, this request also includes an additional $50,000 per year to assist Qualified Organizations with staff support to acquire up two projects per year. The $25,000 per project line item is included to build sufficient project management capacity for partners with the City. HHCS already acquires approximately two projects per year through the Small Sites Program and provides $100,000 in capacity support to the Bay Area Community Land Trust. Berkeley will need to support additional start-up capacity and allow for ongoing support through pre-development funds related to specific small sites and/or COPA/TOPA projects.

Thanks to the foresight of Berkeley voters, the Council and staff, the Council has a wide variety of General Fund, Special Tax, and fee revenue that can be to acquire housing and maintain it as affordable for current residents and future generations. The Measure U1 tax, the Housing Trust Fund, Measure O, and Measure M Vacancy Tax all have a strong nexus to property acquisition.

It is in the public interest to consider funding staff and non-profit support for acquisition of housing to remain perpetually affordable as part of the June, 2023 budget process.

FISCAL IMPACTS OF RECOMMENDATION
$579,000 per year in staffing costs to enhance the Small Sites Program, fund programmatic and investment of Empty Homes Tax proceeds, and implement and administer COPA/TOPA.

ENVIRONMENTAL SUSTAINABILITY
Acquiring and rehabilitating existing housing stock can be a lower carbon alternative to demolition and building new affordable housing.

CONTACT PERSON
Councilmember Kate Harrison, (510) 981-7140

TOPA Timelines

Right of First Offer:

Total time to close:

The maximum time required for a TOPA sale will depend on the size of the property and the phase of the process in which the owner accepts an offer.

Step 1

Seller gives tenants and Qualified Nonprofits (QNP) **notice of intent to sell**.

Tenants or QNPs deliver **Statement of Interest** to Owner. If they do not, TOPA process ends; seller free to list on market/sell to 3rd party buyers.

Time to submit **statement of interest**:
1 unit: 20 days | 2+ units: 45 days

Step 2

Tenants/QNP who submitted a **statement of interest**, can submit an **offer**. Seller free to accept, counter, or reject offer. If tenants/QNP submits no offer, TOPA process ends.

Time to submit **offer**: 1 unit: 30 days | 2-9 units: 60 days
10+ units: 90 days

Step 3

If seller accepts offer, then parties execute contract, triggering the **closing** phase (seller eligible for transfer tax break). If offer rejected, seller is free to get 3rd party offer (subject to Right of First Refusal).

Time to **close**: 1 unit: 30 days | 2-9 units: 60 days
10+ units: 90 days (for commercial loans: additional 30 days)

1 unit: 80 days

2-9 units: 165 days

10+ units: 255 days

Right of First Refusal:*

If seller wants to accept a **3rd party offer**, seller of building* must provide tenants/QNP (whoever made the initial offer in **Step 2**) with opportunity to meet price and terms of 3rd party offer. If no tenant/QNP made offer in Step 2, then this obligation does not apply.

Time for buyer to **accept** price/terms: 1 unit: 10 days
2+ units: 30 days

1 unit: 60 days

2-9 units: 135 days

10+ units: 165 days

+ time on market and time to close

** Applies only to buildings with 5 or more units in first 3 years of policy*

05

BEN BARTLETT
VICE MAYOR

CONSENT CALENDAR
December 12, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Referral to the City Manager: Eminent Domain Feasibility Analysis for 2902 and 2908 Adeline Street Properties and Abandoned House on 1946 Russell Street

RECOMMENDATION

Refer the City Manager to conduct an analysis and report to the Council on the feasibility of using eminent domain to enable the City to purchase the blighted commercial properties on 2902 and 2908 Adeline Street, as well as the adjacent abandoned house on 1946 Russell Street for the purposes of developing mixed-use affordable housing.

CURRENT SITUATION

Our City is estimated to have more than 100 vacant residential buildings, and numerous vacant commercial properties. These often dilapidated properties negatively impact neighborhoods, business districts, City revenues, and the overall quality of life. One such example is the blighted properties on 2902 and 2908 Adeline Street, and the adjacent abandoned house located on the corner of Adeline Street and Russell Street (collectively “2902 Adeline”). The three properties were bundled by the Realtex Group of San Francisco for the purposes of developing housing. However, the project appears to be inactive, and for years has been in a state of persistent, significant, deterioration and disrepair, which has subjected the community to unsafe, and unhealthy conditions.

Chapter 12.92 of the Berkeley Municipal Code on Anti-Blight, states that the purpose of the chapter is to require “a level of maintenance of residential and commercial property which will promote healthy neighborhoods and protect and preserve the livability and appearance of the City.” Yet the dilapidated and unsafe conditions of 2902 Adeline continue to threaten the health, safety, and general welfare of our citizens.

Numerous community members and neighbors have complained about the dangerous conditions associated with the abandoned site. Community members noted several fire hazards, and the presence of rats and other vectors that transmit disease and parasites. It is for these reasons that we find 2902 Adeline to be in violation of BMC 12.92.030.

At the same time, the City has a pronounced need for mixed-use affordable housing. According to Berkeley's 1000 Person Plan to Address Homelessness and its accompanying affordable housing report, the City's current system has not created sufficient "permanently subsidized housing resources" to service the homeless population, and, instead, relies on short-term solutions, such as rapid rehousing, that do not provide any structural changes to the housing market. Furthermore, the number of people experiencing homelessness in Berkeley has increased by an average of 10% every two years, with dramatic racial disparities: since 2006, "65% of homeless service users in Berkeley identify as Black or African American."[1] To add to the problem, Berkeley's homeless services shelter beds have been serving "fewer unique households over time".[2]

As a result, the Council should uphold BMC 12.92 and ensure we take action by referring the City Manager to analyze the feasibility of using eminent domain to purchase 2902 Adeline to develop mixed-use supportive housing that is both affordable and also provides mental and physical health care to its residents.[3]

This recommendation is within the City's authority. Chapter 12 of the municipal code goes on to state, "Whenever the City determines that property in the City is maintained as a nuisance," it shall follow per 12.92.050, and must provide a Notice to the Owner of Abatement of Nuisance.

As public agencies may condemn property only for public use, the City Manager should include in the analysis a resolution of necessity as set forth in CCP §§ 1245.210 et seq. Such resolution must establish all of the following:

- The public interest and necessity require the project
- The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury
- The property in question is necessary for the project

BACKGROUND

The City has the power of eminent domain – to take private property for public use upon payment of just compensation. State law authorizes cities to condemn property necessary to carry out their municipal duties and functions. In Kelo v. New London, the

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[1] https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response__1000_Person_Plan.aspx#:~:text=Simply%20put%2C%20a%20plan%20to,right%2Dsizing%E2%80%9D%20the%20system.

[2] https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response__1000_Person_Plan.aspx#:~:text=Simply%20put%2C%20a%20plan%20to,right%2Dsizing%E2%80%9D%20the%20system.

[3] https://www.cbpp.org/research/housing/supportive-housing-helps-vulnerable-people-live-and-thrive-in-the-community

Supreme Court allowed the use of eminent domain to facilitate the city's redevelopment and community enhancement efforts.[4] In Hawaii Housing Authority v. Midkiff, an eminent domain was used to break up land oligopolies, again in the interest of serving the community.[5] Finally, in Berman v. Parker, the Court upheld Congress' directive to redevelop parts of DC to enhance the conditions of those living in substandard housing.[6] While this strategy has not been readily employed by many cities, there are significant precedent-setting cases to justify the City of Berkeley considering this option as a way to acquire the 2902 Adeline properties to serve the public.

Based on the referral response item that originally appeared on the agenda of the May 16, 2017, Council Meeting and was submitted by City Attorney Zach Cowan, cities are permitted to use their eminent domain powers for purposes beyond those that the Legislature has expressly identified as public purposes. City Attorney Cowan concluded that providing affordable housing for those who cannot afford market-rate housing is a "public use" for purposes of eminent domain. In addition, with respect to open space, it has also long been generally recognized that providing open space is a public purpose. Similarly, acquiring property to provide public services, such as courthouses, municipal buildings, public health, or recreational services, is also appropriate. In sum, the City may use its power of eminent domain to acquire property for public services and buildings, affordable housing, and open spaces.

There exist healthy precedents for the successful use of eminent domain to establish affordable housing.

a. Vermont Housing Land Fund: The Sarah Cole House was chosen for the project because of its history as an owner-occupied rooming house. Despite having resident owners, the building had fallen into disrepair. Neighbors first objected to the development as another assault on the neighborhood and protested to the local zoning board. BCLT responded with an appropriate site plan, staffing plan, and house rules. Opposition was dropped and the zoning was approved. After BCLT rehabilitated the house and grounds, area residents expressed satisfaction with the neighborhood improvement.
b. In Lawrence, Kansas. This CDC promotes low-income housing by providing home ownership programs and credit counseling to help people qualify for mortgages. The organization acquires properties to sell to moderate and low-income people and renovate or build homes to sell to people not qualifying for traditional loans. Tenants become homeowners through education, communication, home improvement, and creative financing.

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[4] Kelo et al. v. City Of New London et al. https://www.law.cornell.edu/supct/html/04-108.ZS.html
[5] Hawaii Housing Auth. v. Midkiff https://supreme.justia.com/cases/federal/us/467/229/case.html
[6] Berman v parker https://supreme.justia.com/cases/federal/us/348/26/case.html

POTENTIAL USES FOR PROPERTY

After thorough consideration of alternatives for this blighted property, we find it in the best interest of the City of Berkeley and its communities that we explore more affordable housing initiatives for this property. As it stands, the 2902 Adeline properties are prime locations for construction of new residential living accommodations.

At the same time, the City has a pronounced need for mixed-use affordable housing. Mixed-use housing development allows for the placement of a variety of land uses, including commercial, office, and residential uses, within the same development or district. Mixed-use developments allow for a balanced mix of local jobs and services to be situated at or near residential areas, promoting walkability by reducing the need for commuting trips to and from work. They also offer cost savings for both developers and residents, as commercial uses can help subsidize affordable housing units. Since Berkeley is in need of more local job creation and more affordable housing, especially for young people, the Council should seek to promote these types of developments to tackle both needs at once.

Mixed-use developments can also serve as artistic spaces like theaters, performance spaces, and community art spaces for neighbors to use and enjoy.

It is also possible to use these locations for open green spaces. Open space has long been generally recognized as a public purpose for land. A green space would provide welcome refuge in such a dense, commercial section of Berkeley. South Berkeley suffers from an inequitable amount of green space. In fact, the City Council passed the Equity in Green Space policy of 2017[7], specifically prioritizing the creation of green space in South Berkeley.

Acquiring property to provide public services, such as municipal buildings, public health, or recreation, is also appropriate. Services like these are often starved of land in a city where property prices have risen astronomically in recent years.

The City may use its power of eminent domain to acquire the 2902 Adeline properties for affordable housing, open spaces, and public services and buildings.

RATIONALE FOR RECOMMENDATION

Our publicly owned land is scarce. Social service programs, housing developments, and other public services require adequate land, which is in short supply in Berkeley. There

[7] Cal. Berkeley City Council, Reg. Meeting, Referral. (2017). https://drive.google.com/file/d/1J5Ded2H-8J1UCFw35n3cQKaHEEV8syQi/view?usp=sharing

have been voluminous complaints from residents, neighbors, and local businesses, with health and safety complaints directly stemming from these properties. These properties are located near daycare centers, a park, and a library, directly impacting the safety of families and nearby residents when out walking. Given the current unsafe conditions of the 2902 Adeline properties, which are in violation of BMC 12.92.030 and the purpose of the BMC Chapter 12.92, the Council should refer the City Manager to perform an analysis on the properties to conclude whether or not the City can and should use eminent domain to purchase the properties for public good. By using the properties for much-needed public benefits–such as recreational options– we will be serving Berkeley residents while also incentivizing property owners to maintain their parcels and promote healthy neighborhoods.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impacts of this recommendation are normal operating Staff time for the analysis to be conducted at normal hourly rates.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with conducting an analysis on the properties. However, if the City Manager concludes the use of eminent domain is appropriate, maintaining the properties will promote healthy neighborhoods and protect and preserve the livability and appearance of the City. Given the fact that the properties are blighted, eminent domain will allow us to effectively address any potential environmental contamination of the building.

CONTACT PERSON

Councilmember Ben Bartlett 510-981-7130
James Chang jchang@cityofberkeley.info

Attachment

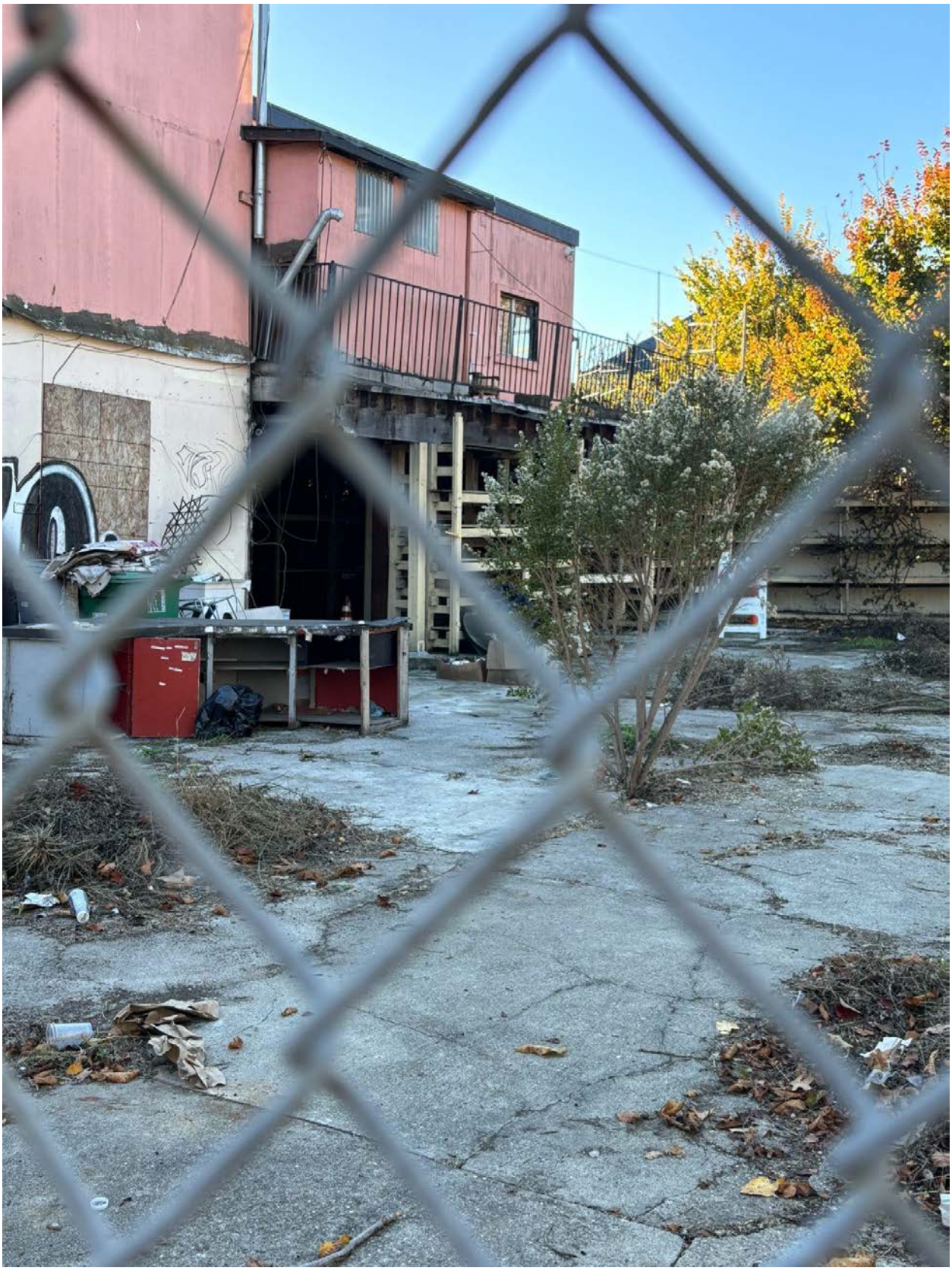
1. Photos of 2902 - 2908 Adeline Street Properties
2. Photos of abandoned house at 1946 Russell Street

Attachment 1:

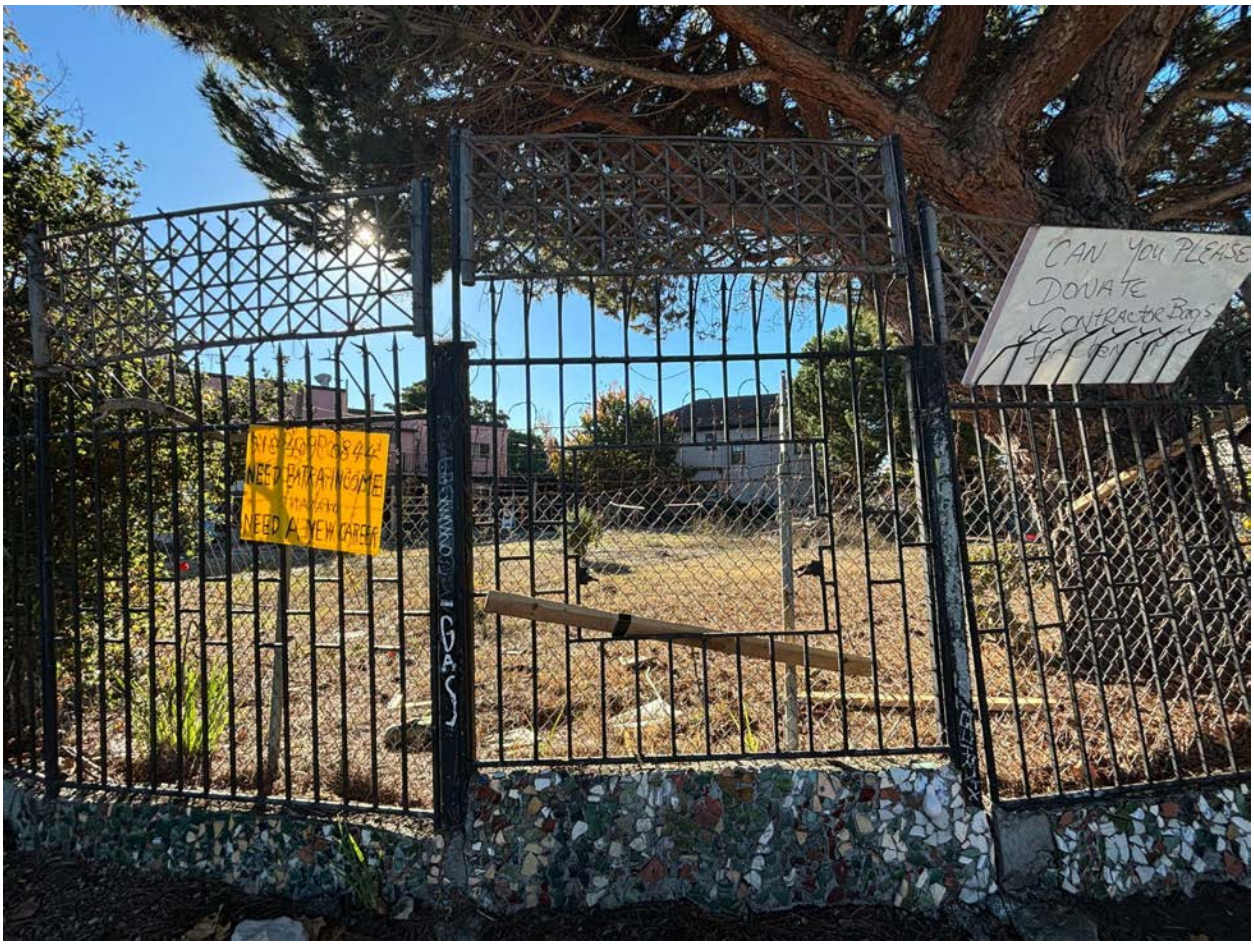





TOW-AWAY






CAN YOU PLEASE
DONATE
NEED A NEW CAREER



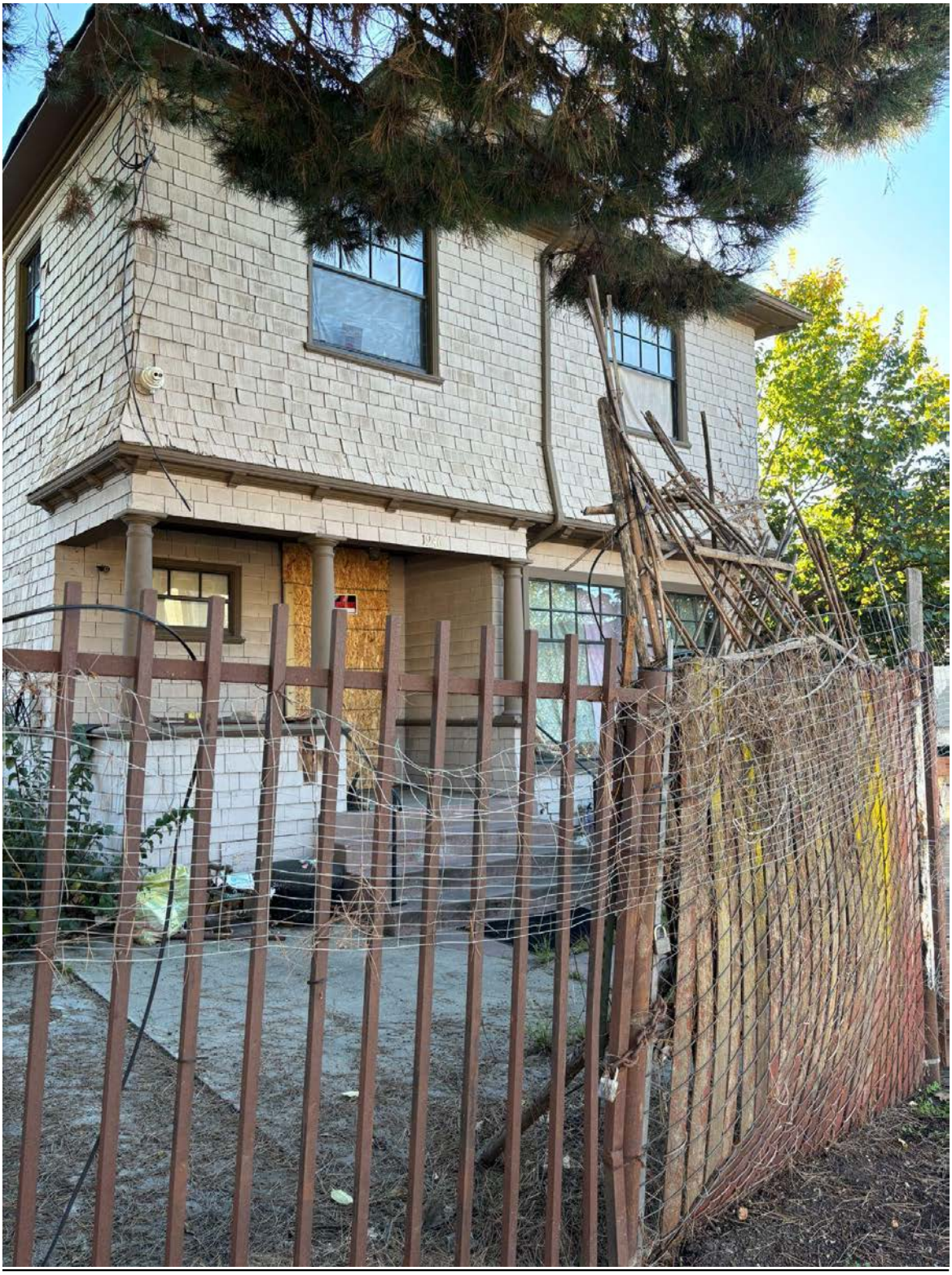








Attachment 2:



06

BERKELEY CITY COUNCILMEMBER TERRY TAPLIN DISTRICT 2

BEN BARTLETT CITY COUNCILMEMBER, DISTRICT 3

CONSENT CALENDAR
Feb. 13, 2024

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-author)

Subject: Incentives for Equitable and Affordable Middle Housing

RECOMMENDATION

1. Refer to the City Manager and the Planning Commission to study and return to Council potential amendments to the Berkeley Municipal Code and General Plan to further the City of Berkeley's goals for affirmatively furthering fair housing with additional incentives for affordability and ownership opportunities, including first-time homebuyers and households inheriting properties from relatives, in "Middle Housing" zoning categories. At a minimum, consider:

    a. A local density bonus for on-site affordable housing for Middle Housing, including additional dwelling units, Floor Area Ratio, lot coverage, reduced or waived fees, and ministerial approval for projects with on-site deed-restricted units affordable to Low- and Moderate-Income households, and incentives for first-time homebuyer opportunities. Consider regulating maximum buildable width and/or depth to disincentivize higher-cost dwelling units.

    b. A density bonus for additional Accessory Dwelling Units in exchange for the inclusion of deed-restricted ADUs on-site affordable to Low- and Moderate-Income households. To the extent feasible, incorporate scope of study with Council's referral to develop an Efficiency Unit Ordinance.

    c. A density bonus for Middle Housing residential projects in which an owner-occupier receives a minimum of in-kind compensation for the parcel with on-site ownership unit(s) in the project. Consider standard form agreements and other technical assistance.

    d. Pre-approved designs for bonus-compliant projects.

    e. Seek to leverage consistency and compatibility with state and regional resources including the Bay Area Housing Finance Authority (BAHFA), MTC/ABAG, AC Boost, and the CA Dream For All program.

2. Refer to the Fiscal Year 25/26 biennial budget process $250,000 for technical assistance.

FINANCIAL IMPLICATIONS
$250,000 or $125,000 per fiscal year, equivalent of one (1) FTE Senior Planner positions.

Berkeley's 2023 Housing Element Update, Program 30: Accessory Dwelling Units, includes the following provision: "Providing one dedicated ADU planner to respond to questions and offering office hours and other educational programs for those interested in creating ADUs."

CURRENT SITUATION AND ITS EFFECTS
Developing incentives for affordable and equitable Middle Housing is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

Berkeley made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020 Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle mandates roughly 3 times as many units as the previous cycle's total of 2,959 units across all income tiers.[1]

As of February 17, 2023, the City of Berkeley's Housing Element Update contains Policy H-6, Low Income Homebuyers, under Goal A: Housing Affordability: "Support efforts that provide opportunities for successful home ownership."

The Element also contains Policy H-29, Middle Housing, under Goal E: Affirmatively Furthering Fair Housing: "Promote and facilitate a mix of dwelling types and sizes, particularly infill middle housing in high resource neighborhoods."

Further, the Element includes Policy H-32, under Goal F: Mitigate Governmental Constraints: "Provide incentives where feasible to offset or reduce the costs of affordable housing development, including density bonuses and flexibility in site development standards."

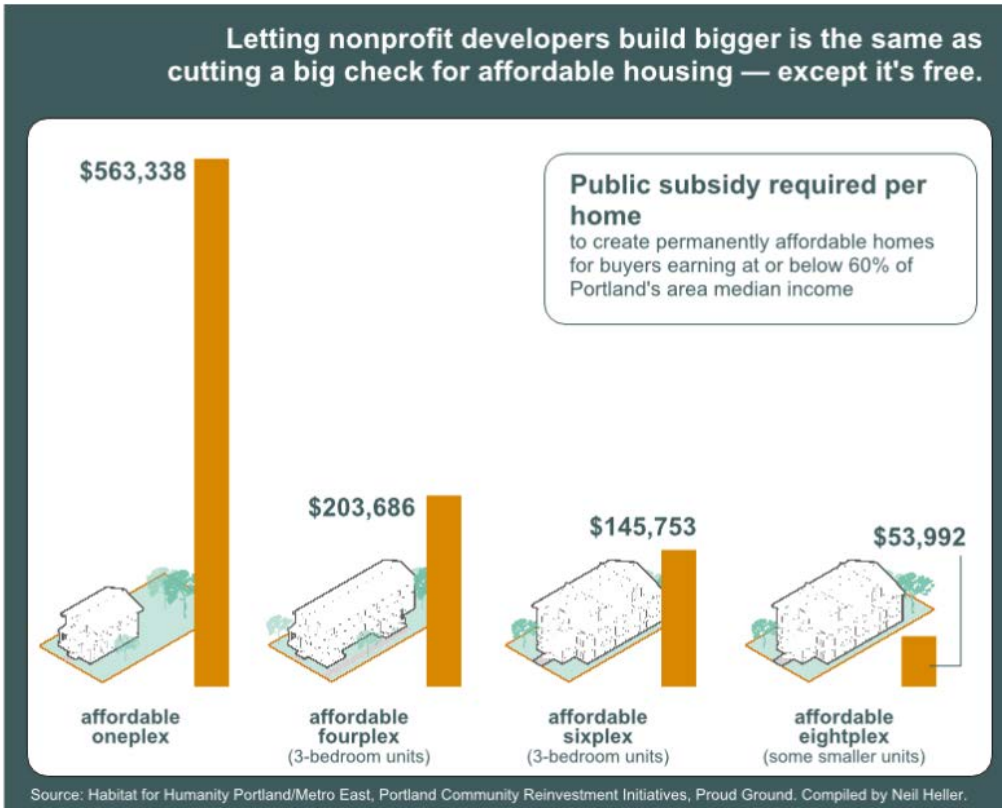
Leveraging both policy frameworks together can more directly mitigate spatial inequalities stemming from local and regional histories of systemic racism and segregation. With rising land costs and varying lot sizes, opportunity site planning for subsidized affordable housing in Berkeley has tended to concentrate along commercial corridors. However, including incentives for additional affordability in Middle Housing could enable greater geographic equity in affordable housing distribution, with no public subsidy needed to break ground.

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[1] https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf

BACKGROUND

The City of Portland, Oregon adopted its Residential Infill Project (RIP), a package of middle housing zoning reforms, in August of 2020. Portland's residential zones now generally permit four dwelling units per parcel, with a Deeper Affordability density bonus for on-site affordable housing. This reform was strongly supported by Oregon's affordable housing builders, including Habitat For Humanity, which is able to provide more first-time homeownership opportunities to lower-income households in Portland thanks to the additional density and economies of scale.[2] A City of Portland staff report summarized: "*These new housing types will complement existing neighborhoods. Smaller in size, they provide more choices for first-time homebuyers, downsizing empty-nesters and middle-wage earners… Conversely, without allowing additional housing types to occur in single-dwelling neighborhoods, one conclusion is certain: When homes are demolished or when vacant sites are developed, the resulting redevelopment will result in only one house (likely large and expensive), when options for two, three or four households could have been built in its stead.*"[3]



Data visualization from Sightline Institute

[2] Andersen, M. (2020). Do Portland's low-density zones need a deeper affordability option? *Sightline Institute. Retrieved from* https://www.sightline.org/2020/01/10/do-portlands-low-density-zones-need-a-deeper-affordability-option/

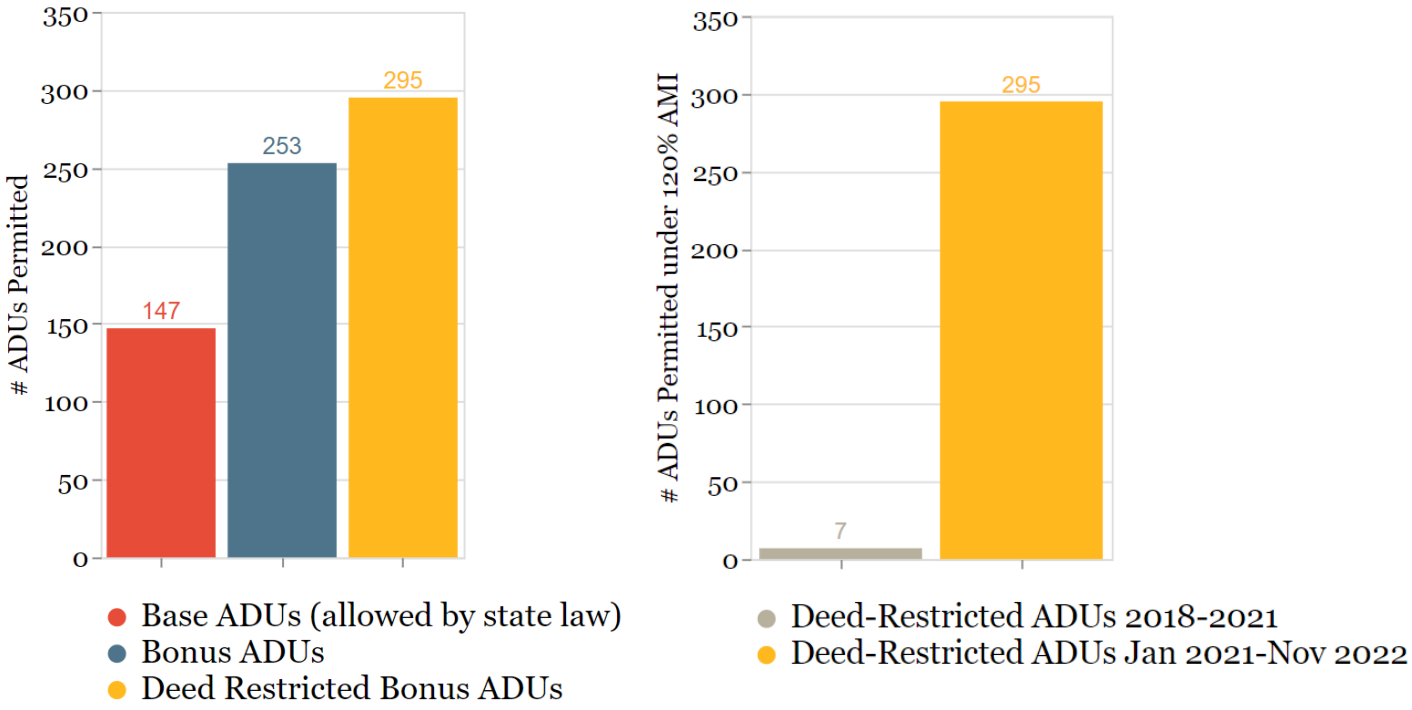
[3] https://www.portland.gov/bps/rip/documents/exhibit-b-volume-1-staff-report/download

"The same building envelope accommodates one, two, four, and eight units." Opticos Design

The City of San Diego was able to incentivize affordable housing production through a residential density bonus by enabling additional Accessory Dwelling Units in exchange for deed-restricted affordable units, subject to state ADU streamlining provisions under AB-68. Citywide, the bonus allows one additional market-rate ADU in addition to one deed-restricted affordable ADU, with deed restriction periods varying by level of income restriction. Additionally, in Transit Priority areas, the ADU Bonus waives the upper limit on ADUs per project so long as each additional pair of units maintains the 1:1 affordability ratio.

The UC Berkeley Terner Center for Housing Innovation reports that San Diego's ADU Bonus has permitted 295 deed-restricted affordable ADUs since its passage in 2020, roughly double the amount of ADUs permitted as a "base" project under state law.[4] San Diego's ADU Bonus is similar to other "Backyard Infill" programs like the Portland RIP in that it "activates existing space by allowing lower density parcels to increase the number of homes without significantly impacting existing neighborhoods and structures"—reducing a housing development's potential disruption of "neighborhood character."

[4] Alameldin, M. & Underriner, Q. San Diego's Success in Spurring Missing Middle Housing: The Accessory Dwelling Unit Bonus Program. *UC Berkeley Terner Center for Housing Innovation.* Retrieved from https://ternercenter.berkeley.edu/research-and-policy/san-diego-adu-bonus-program/



San Diego ADU Bonus Data. Alameldin & Underriner (2023).

In addition to affordable rental housing, expanding first-time homeownership opportunities is critical for affirmatively furthering fair housing.

The racial wealth gap in the United States is primarily driven by inequitable access to homeownership, stemming from systemic exclusion in land use as well as discrimination in lending and appraisals.[5] Subsidies for both supply and demand channels have been historically insufficient while support for American asset wealth primarily in white communities has been more robust and resilient. This has widened the racial wealth gap between white and Black households, and ultimately proved incompatible with universal housing security.

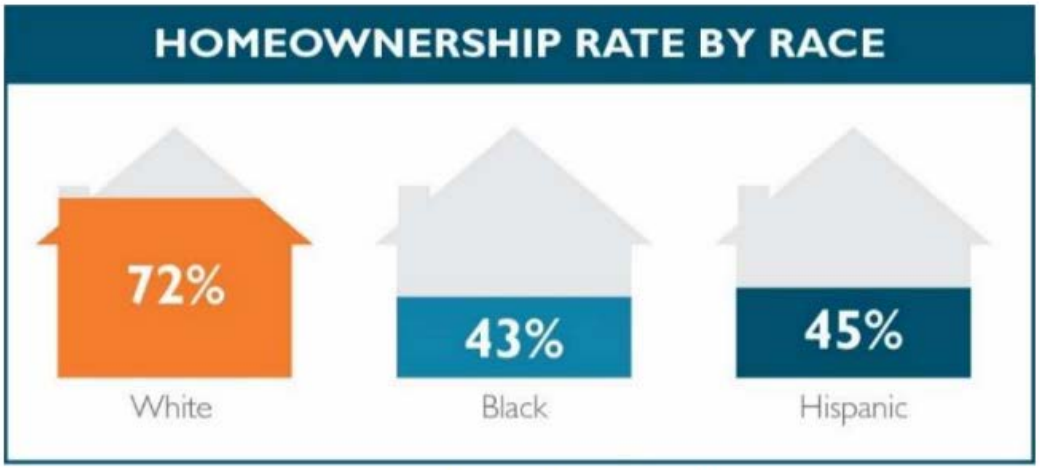
By way of example, the Great Recession of 2008/9 effected a significant transfer of wealth from lower-income Black homeowners[6] targeted with predatory subprime loans

[5] Ray, R. et al. (2021). Homeownership, racial segregation, and policy solutions to racial wealth equity. *Brookings Institution.* Retrieved from https://www.brookings.edu/essay/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/

[6] White, G.B. (2015). The Recession's Racial Slant. *The Atlantic*. Retrieved from https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/

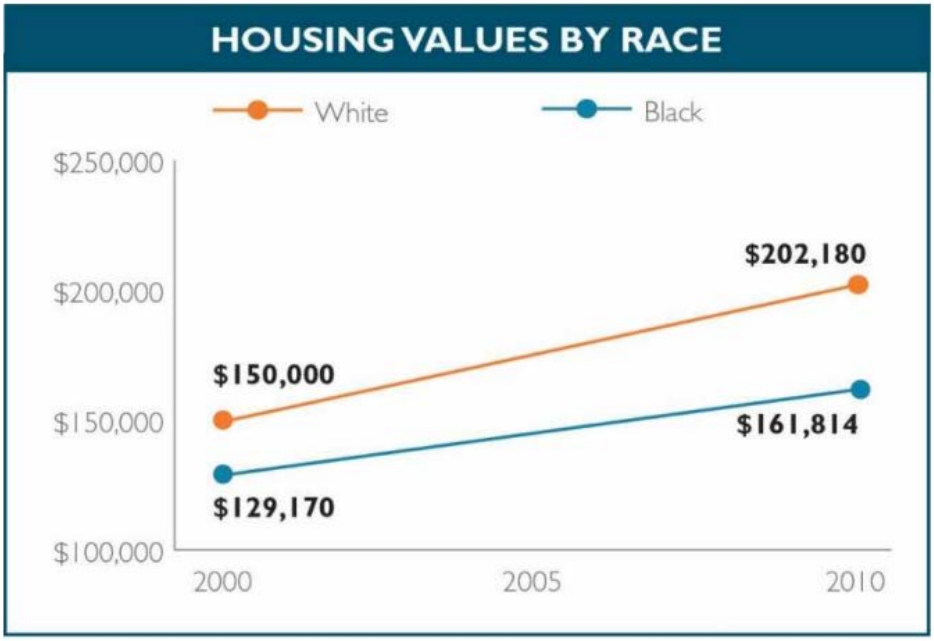
to private equity firms[7] buying up large portfolios of "distressed" properties before the economy recovered. This historical pattern of usury and community displacement has further excluded people of color from the fruits of economic recovery and deepens the racial wealth gap.

The California state legislature has recognized the importance of first-time homebuyers in its broader efforts to redress and repair the harms of historically racist institutions, most recently by establishing the CA Dream For All program to provide down payment assistance for first-time homebuyers statewide.

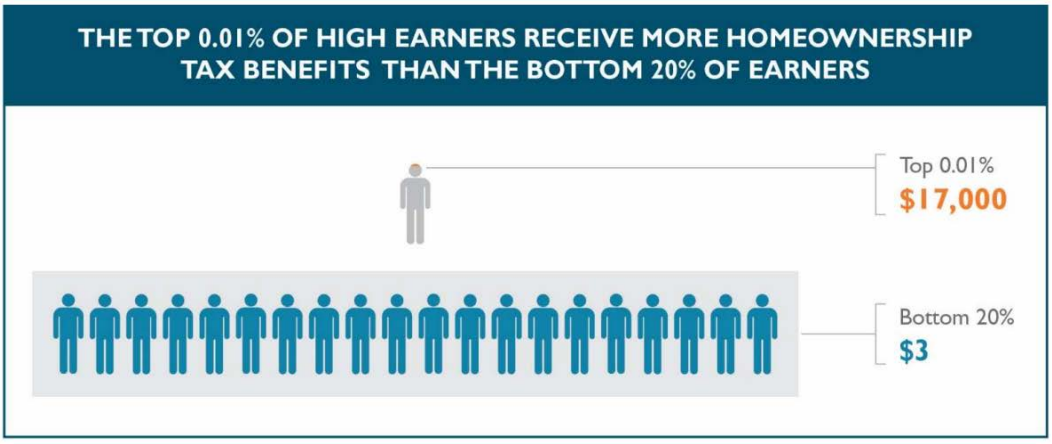


Source: Pew Research Center, 2017

[7] Warren, E. & Fife, C. (2020). Families see a looming catastrophe. Private equity firms see dollar signs. *The Washington Post*. Retrieved from https://www.washingtonpost.com/opinions/2020/08/06/nation-is-facing-housing-crisis-private-equity-firms-just-see-dollar-signs/



Source: *Institute on Assets and Social Policy*, 2014



Source: *From Upside Down to Right-Side Up*, 2014

How the racial wealth gap manifests in homeownership: The homeownership rate for white Americans was 29% higher than for Black Americans in 2017. White homeowners also have higher property values on average, and the highest-earning homeowners receive the lion's share of tax benefits.

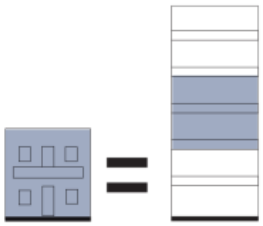
However, high housing costs in Berkeley have significantly limited the efficacy of homeownership assistance programs. AC Boost, Alameda County's Down Payment Assistance loan program, limits its maximum loan amount to $160k-$210k for a 0-3% down payment. In AC Boost's first and second funding cycles, out of 17 Berkeley

residents who submitted complete applications, 3 have purchased homes in neighboring cities, but not in Berkeley.[8]

Because condominiums offer significantly more affordable prices for first-time homebuyers compared to single-family homes, the Berkeley City Council recently updated its Affordable Housing Mitigation Fee to eliminate the discrepancy between ownership and rental units that disincentivized condo construction.

Encouraging equitable condominium ownership models can strengthen the City's efforts to reduce displacement and promote community-based generational wealth-building and accommodating growing families in historically disadvantaged areas. Neighbors adjacent to new development often anecdotally report that they fear the pressure to "sell out" to highly capitalized institutional investors, or otherwise lament the erosion of familiar community bonds. Thus, one policy mechanism for consideration is incentivizing a "land for housing" or "flats-for-land" swap in which an owner-occupier can cash in part of their home equity without displacement by receiving condominium units on-site as partial compensation from a developer for their property.

Modern flats-for-land exchanges emerged as equity financing in lieu of a public housing program in postwar Greece, after two world wars and a civil war left the state without resources and banks without credit lines to build housing for a rapidly growing urban population. Under the *antiparochi* system, homeowners in Athens, Thessaloniki, and other cities sold their land to developers with partial compensation provided with a deed to one or several units in the resulting *polikatoikía* apartment buildings. This increased housing available for migrants and refugees as well as employment opportunities in the construction sector. Research has found that the "flats-for-land" model enabled substantially increased housing supply and GDP per capita in postwar Greece.[9]



Antiparochi illustration[10]

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[8] https://berkeleyca.gov/sites/default/files/documents/2022-11-03%20Item%2026%20Budget%20Referral%20Down%20Payment%20Assistance.pdf

[9] Petris, P., et al. (2020). The "flats-for-land" system in Greece: An idiosyncratic equity financing mechanism in the post-War period, *The Journal of European Economic History*, ISSN 2499-8281, Associazione Bancaria Italiana, Roma, Vol. 49, Iss. 2, pp. 175-202. Retrieved from https://www.econstor.eu/bitstream/10419/231559/1/49-2020-2-175-202.pdf

[10] *CoHab Athens*. Antiparochi. Retrieved from https://cohabathens.org/portfolio/antiparochi-land-for-flat/

While statewide construction defect reform[11] would likely be needed to further increase the scale of condominium construction in California, the City of Berkeley could study incentives and provide technical assistance for similar exchanges.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In an analysis of 252 California Cities, Durst (2021) finds that "each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes."[12]

AC Boost's down payment assistance fund includes incentives to reduce Vehicle Miles Traveled (VMT) while mitigating displacement by encouraging home purchases close to jobs and public transit. According to Wheeler et al (2018), the urban core of the San Francisco Bay Area (including Berkeley) contains some of the lowest carbon emissions per capita in California, making urban infill housing a key policy lever for cities to reduce carbon footprints by reducing VMT per capita.[13] Preventing displacement from Berkeley also prevents increased emissions from households who otherwise may be priced out to areas with higher per capita emissions.

CONTACT PERSON

Councilmember Taplin	Council District 2	510-981-7120
Councilmember Bartlett	Council District 3	510-981-7130

ATTACHMENTS

1. City of Portland Ordinance 190093, Adopted August 12, 2020
2. Build Small Coalition Letter Re: Residential Infill Project 2.0 (4/14/2022)
3. City of San Diego Staff Report - Housing Legislation Code Update to the Municipal Code and Local Coastal Program (9/9/2020)

[11] Parolek, D. (2020). *Missing middle housing: Thinking big and building small to respond to today's housing crisis*. Island Press.

[12] Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *UC Berkeley Terner Center for Housing Innovation.* Retrieved from http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf

[13] Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, *3*(2), 35-51.

ORDINANCE No. 190093 As Amended

Amend the Comprehensive Plan, Comprehensive Plan Map, Zoning Map, Title 33 Planning and Zoning, and Title 30 Affordable Housing, to revise the Single-Dwelling Residential designations and base zones. (Ordinance; amend Code Title 33, Title 30 and amend the Portland Comprehensive Plan and zoning maps)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. Portland is expected to grow by more than 100,000 households by the year 2035.
2. The cost of housing in Portland is rising. The average cost of rent in Portland increased by 5 percent or more between 2012 and 2016, and by 2 percent in 2017. Between 2011 and 2018, the median home sale price citywide rose 60 percent — or more than $150,000. As of 2018, the median home sale price exceeded $475,000 in more than half the neighborhoods in the city. In order to afford the median price home in Portland today, families must earn 130% to 160% of the median family income.
3. In addition, the city's history of racially discriminatory decision-making and public policies have contributed to today's racial disparities in homeownership rates and wealth attainment and has resulted in geographic racial segregation in Portland.
4. For these reasons, the ability for many households to gain entry into many of the city's single-dwelling neighborhoods is increasingly out of reach.
5. At the same time, the city is becoming more diverse, the overall population is aging, and the number of people per household is getting smaller.
6. The Comprehensive Plan includes policies directed toward encouraging more housing choices to accommodate a wider diversity of family sizes, incomes and ages (Policy 4.15); encourage development and preservation of small resource-efficient and affordable single-family homes in all areas of the city (Policy 4.18); expanding housing choice in all of Portland's neighborhoods (Policy 5.4); encouraging middle housing—multi-unit or clustered residential buildings that provide relatively smaller, less expensive units (Policy 5.6); and encouraging a variety of ownership opportunities and choices (Policy 5.43).
7. Nearly half of the city's land area is zoned for single-dwelling residential development, however, apartments are the predominant housing type being built in Portland—74 percent of all units built in 2016.
8. Portland's single-dwelling zoning currently allows up to two dwelling units per lot—one house and one accessory dwelling unit, or in some cases, a duplex on a corner. And yet, due to the high cost of land, the size of dwelling units continues to increase, and the price of the units is higher than most Portlanders can afford.
9. In 2015, the Bureau of Planning and Sustainability began the Residential Infill Project with the goal of responding to these trends and changing demographics. Then-Mayor Charlie Hales appointed a Stakeholder Advisory Committee (SAC) to assist the Bureau of Planning and Sustainability in developing a plan to amend the city's single-dwelling

zoning code to alleviate the rising cost of housing and reduce the size of new houses. The SAC met 14 times between September 2015 and October 2016.

10. The Residential Infill Project Concept Plan was released for public review on June 15, 2016. City Council held public hearings on the concept plan in November 2016 and passed Resolution No. 37252 on December 7, 2016 endorsing the concepts in the plan.
11. The Residential Infill Project Proposed Draft was released for public review on April 2, 2018.
12. On April 2, 2018 notice of the proposed draft was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
13. On April 4, April 9, and April 11, 2018 notice of the proposed draft was mailed to all property owners potentially affected by proposed zoning map and code changes as required by ORS 227.186.
14. On May 8, 2018 and May 15, 2018, the Planning and Sustainability Commission held public hearings on the proposed draft. In addition, the Commission held 2 briefings and 9 work sessions before voting to forward the Residential Infill Project to City Council on March 12, 2019.
15. The Residential Infill Project Recommended Draft was released for public review on August 2, 2019.
16. On October 9, 2019 a revised notice of the recommended draft was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-045.
17. On December 12, 2019 notice of the January 15, 2020 and January 16, 2020 City Council public hearings was mailed to those who presented oral and written testimony at the Planning and Sustainability Commission public hearing. In addition, the City emailed notice of the hearing to its Residential Infill Project email list.
18. The Residential Infill Project amendments allow up to six dwelling units per lot (based on lot sizes and affordability level) in the R7, R5 and R2.5 zones, and allows the units to be arranged in multiple configurations including a single structure with up to six dwelling units or a combination of a primary and accessory structure.
19. The amendments provide opportunities for a wider variety of housing options and can reduce the cost of a single unit by roughly half the cost of a single new house.
20. The amendments encourage additional regulated affordable housing units.
21. The amendments also include a cap on house size by limiting the amount of floor area allowed per lot in the R7, R5 and R2.5 zones. The cap is intended to ensure that:
    - Additional development in these zones is compatible with existing development; and
    - Additional dwelling units are affordable to a wider cross-section of Portland residents because smaller dwelling units are often less expensive than larger units.
22. The Residential Infill Project also rezones approximately 7,000 lots from R5 to R2.5. The rezoned lots are narrow, platted lots—generally 2,500 square feet in size—that are substandard for the R5 zones. The rezoning is intended to increase opportunities for

homeownership as dwelling units on these lots are generally smaller and therefore less expensive.

23. The amendments also help the city to comply with the following:
    - House Bill 2001, which the Oregon State Legislature passed on August 8, 2019, and requires cities with a population greater than 10,000 to allow duplexes on any lot zoned for single-family dwellings; and
    - Senate Bill 534, which the Oregon State Legislature passed on July 23, 2019, and requires local governments to allow single-family dwellings on residential lots platted and zoned for such uses.
24. The Findings of Fact Report, attached as Exhibit A, includes additional findings demonstrating consistency with the Statewide Planning Goals, Metro Urban Growth Management Functional Plan, and the City of Portland *2035 Comprehensive Plan*.
25. The amendments to Title 30 are necessary to extend the Deeper Housing Affordability FAR Density Program to the single-dwelling zones to support the Affordable Fourplexes and Multi-dwelling Structures Residential Infill Option.

NOW, THEREFORE, the Council directs:

a. Adopt amended Exhibit A, dated July 2020, as additional findings.

b. Amend the Portland Comprehensive Plan as shown in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020.

c. Adopt the commentary in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020, as legislative intent and further findings.

d. Amend Title 33, Planning and Zoning, of the Municipal Code of the City of Portland, as shown in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020, but excluding the amendments to Section 33.110.212 (When Primary Structures are Allowed), Chapter 33.675 (Lot Consolidation), Chapter 33.676 (Lot Confirmation), and the amendments to the lot-related and lot line-related definitions in 33.910 (Definitions).

e. Amend Section 33.110.212 (When Primary Structures are Allowed), Chapter 33.675 (Lot Consolidation), Chapter 33.676 (Lot Confirmation), and the lot-related and lot line-related definitions in Chapter 33.910 (Definitions) as shown in Exhibit B, Residential Infill Project As-Amended Draft, dated July 2020.

f. Amend the Portland Comprehensive Plan Map as shown on Exhibit C.

g. Amend the official Zoning Map as shown on Exhibits D and E.

h. Amend Title 30, Affordable Housing Preservation and Portland Renter Protections, of the Municipal Code of the City of Portland, as shown in Exhibit B, Residential Infill Project, As-Amended Draft, dated July 2020.

Section 2. Directives b, d, f, g, and h shall be in full force and effect on August 1, 2021. Directives a, c, and e shall be in full force and effect 30 days after final passage by City Council.

Section 3. If any section, subsection, sentence, clause, phrase, diagram or drawing contained in this ordinance, or the map, report, inventory, analysis, or document it adopts or amends, is held

to be deficient, invalid or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the map, report, inventory, analysis, or document each section, subsection, sentence, clause, phrase, diagram and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

Passed by the Council: **August 12, 2020**

Mayor Ted Wheeler
Prepared by: Morgan Tracy
Date Prepared: December 12, 2019

Mary Hull Caballero
Auditor of the City of Portland
By C Phillips
Deputy

551 648 654

Agenda No.

ORDINANCE NO. 190093 As Amended

Title

Amend the Comprehensive Plan, Comprehensive Plan Map, Zoning Map, Title 33 Planning and Zoning, and Title 30 Affordable Housing, to revise the Single-Dwelling Residential designations and base zones. (Ordinance; amend Code Title 33, and Title 30 and Portland Comprehensive Plan and zoning maps)

INTRODUCED BY
Commissioner/Auditor:
Mayor Wheeler

CLERK USE: DATE FILED JAN 07 2019

COMMISSIONER APPROVAL

Mayor—Finance & Administration - Wheeler

Position 1/Utilities - Fritz

Position 2/Works -

Position 3/Affairs - Hardesty

Position 4/Safety - Eudaly

BUREAU APPROVAL

Bureau: Planning and Sustainability
Bureau Head: Andrea Durbin

Prepared by: Morgan Tracy
Date Prepared: 12/12/19

Impact Statement
Completed ☒ Amends Budget ☐

Portland Policy Document
If "Yes" requires City Policy paragraph stated in document.
Yes ☐ No ☒

City Auditor Office Approval:
required for Code Ordinances

City Attorney Approval:
required for contract, code, easement, franchise, comp plan, charter

Council Meeting Date **January 15, 2020**

Mary Hull Caballero
Auditor of the City of Portland

By: _____
Deputy

ACTION TAKEN:

JAN 15 2020 **Continued to January 16, 2020 at 5:00 p.m. Time Certain**

JAN 16 2020 **Continued to January 29, 2020 at 2:00 pm Time Certain**

JAN 29 2020 **Continued to February 12, 2020 at 2:00 pm Time Certain**

FEB 12 2020 **CONTINUED TO** MAR 12 2020 2 P.M TIME CERTAIN

MAR 12 2020 **Rescheduled to date to be determined**

June 3, 2020 Continued to June 11, 2020 at 2:40 p.m. Time Certain
June 11, 2020 Rescheduled to June 18, 2020 at 2 p.m. Time Certain
June 18, 2020 Continued to July 9, 2020 at 2:00 p.m. Time Certain

July 9, 2020 Continued to August 5, 2020 at 2:00 p.m. Time Certain As Amended
August 5, 2020 Passed to Second Reading August 12, 2020 at 9:45 a.m. Time Certain As Amended

AGENDA

TIME CERTAIN ☒
Start time: 2:00 pm

Total amount of time needed: 3 hours
(for presentation, testimony and discussion)

CONSENT ☐

REGULAR ☐

Total amount of time needed: _____
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	YEAS	NAYS
1. Fritz	1. Fritz		X
2.	2. Vacant		
3. Hardesty	3. Hardesty	X	
4. Eudaly	4. Eudaly	X	
Wheeler	Wheeler	X	

Members of the Build Small Coalition
Re: Residential Infill Project 2.0

April 14, 2022

Dear Mr. Mayor and Portland City Commissioners,

Firstly, everyone who has worked on RIP1 and/or RIP2 should be proud: Portland has exhibited extraordinary leadership, spurring reforms statewide and around the country. Since RIP1 passage, many cities and multiple other states have introduced legislation (re)legalizing "missing" middle housing types. We specifically wish to thank both BPS and the utility bureaus in advance for their continued work to help with the collective goal of making middle housing development a reality.

While we understand the more limited scope of RIP2 relative to the HB 2001 deadline, **we encourage this Council to consider whether we are poised to deliver on the promises of RIP1 and address our ongoing housing crisis.** We must do everything in our power to both prevent the housing shortage from becoming more acute, while doing all we can to open up below-market rental and homeownership opportunities in ALL our neighborhoods.

We have gained new information since RIP1 went into effect, and we should apply those lessons with this update. **A few minor changes should be considered to improve rules and incentives, with a laser focus on affordable housing production.** The recommendations below are focused on the viability of recently-legalized middle housing options, and on improving performance of rules and incentives for regulated-affordable homes:

Summary of key changes for affordability:

- Achieve FAR (home size) parity and improve viability of four-plexes,
- Create feasible development paths for affordable 5- to 6-plexes, and
- Fully implement SB 458 to remove barriers for affordable, fee-simple attached homes.

1. **Graduate FAR for four-plexes: allow up to 0.8 FAR (from 0.7)**
    a. Maintain bonus of additional 0.1 FAR (to 0.9) if regulated affordable

Narrative: Floor Area Ratio (or "living area") in single-dwelling zones is currently graduated according to the number of homes, giving +0.1 FAR for duplexes above single-detached homes, and an additional +0.1 FAR for triplexes and above. Permitting an additional +0.1 FAR for four-plexes above triplexes would greatly increase feasibility of more 2- and 3-bedroom, family sized homes. Four-plexes carry some additional benefits with them: Unlike duplexes and triplexes, four-plexes must meet Fair Housing Act requirements for accessibility of ground-floor homes. Land and fixed costs are also shared among more units, further lowering *price per home*. *While we appreciate that one goal of the FAR limits is to keep plex units relatively small and inexpensive, the lack of FAR for four-plexes may have the unintended consequence of making other redevelopment options, such as*

a comparatively expensive single- detached home, more compelling than a plex of any type: As of February 8, permits under RIP1 had only yielded 16 four-plexes compared with 80 single-detached homes with no ADUs.

2. **Ensure that development standards for qualifying five-to-six-unit projects meeting affordability standards are feasible - both stacked and side-by-side.** To qualify a project must must be either:

    - 50% or more homes at 60% MFI rental/ 80% MFI ownership, or
    - 100% of units at 100% MFI ownership, *permanently* up to 120% MFI

    a. Create standards for **affordable two-story side-by-side "townhome-style" plexes**. This would yield some three-bedroom but mostly two-bedroom homes:
        i. 1.2 FAR
        ii. 65% lot coverage
        iii. 5 foot front setbacks (5 foot setbacks all round)
        iv. 48 sf outdoor space per unit, overlapping with setbacks,

    b. Create standards for **affordable three-story, smaller footprint "townhome-style" plexes**. This would yield up to six three-bedroom homes:
        i. 1.4 FAR
        ii. 60% lot coverage
        iii. 10 foot front setback
        iv. Unchanged outdoor space, and

    c. Improve standards for affordable five-to-six-plex stacked flats (only development type allowed currently). This would yield more affordable three-bedroom homes:
        i. Increase FAR to 1.4 (currently 1.2)
        ii. Other standards remain unchanged

Narrative: We should be tailoring our code to maximize affordable rental and first-time homeownership opportunities, and to accommodate differences in physical ability and household size. These standards will allow flexibility, on a standard lot, for nonprofit organizations working to meet community-specific needs and preferences - whether they be one's own front door in a townhome or a fully physically accessible stacked flat. Portland did a *potentially* revolutionary thing in legalizing up to six homes with an aggressive affordability requirement. To realize its full benefit, and to serve as many income-qualifying households as we can, we must ensure that development standards are suitable and flexible. Portland must also invest in lasting affordability, or our efforts will be lost too soon given the market trends. This is especially important to Portland's stated commitments to equity and to addressing the racial disparity gap in homeownership.

3. **Create a path for affordable attached homes, mirroring the development standards in #2(a)&(b) per historical PSC Amendment 5.** For only those attached home projects that meet the affordability requirements identified for five-to-six-plexes:
    a. Adjust minimum lot sizes for each attached house to 800 sf
    b. Increase allowed density to match minimum lot sizes,
    c. Reduce minimum lot depth to 50 feet, and
    d. Incorporate any other small adjustments to match #2(a)&(b).

Narrative: In addition to the innovative “deeper affordability bonus” for five- and six-plexes, we recommend permitting analogous five to six unit attached home projects that meet the same affordability levels. These projects are most likely to occur on corner lots where each home can meet street frontage requirements, creating opportunities for first-time homeownership and having one’s own front door - priorities explicitly expressed by community members accessing these homes. This suggestion, together with #2 above and #4 below, also helps fulfill the stated goals of historical PSC Amendment 5, creating a fee-simple path for affordable five-to-six home projects. The concept was supported by the PSC, who directed staff to keep working on it.

4. **Fully implement SB 458 to permit expedited Middle Housing Land Divisions (MHLDs) for all attached house projects**, including both market-rate and affordable (per the development standards proposed in #2 above).

Narrative: SB 458 clearly requires that townhouses be eligible for middle housing expedited land divisions, in addition to duplexes, triplexes, four-plexes and cottage clusters. Springfield, Eugene, and many other cities are proposing to make townhouses eligible for middle housing land divisions, regardless of the fact that townhouses can already use the existing subdivision and partition process. Implementing the expedited process for a townhouse project consisting of up to six units on an existing lot would be significant in reducing time and costs for townhouse creation. The express intent of SB 458 is to allow a path to facilitate easier land divisions for middle housing types, and HB 2001 clearly defines a townhouse as middle housing. *In the midst of a housing crisis, why wouldn’t we do everything that we can to facilitate more efficient paths for affordable homeownership where feasible?*

Attached homes in Portland are also known as “Townhouse Projects” according to the State. To quote OAR 660-046-0020 ""Townhouse Project” means one or more townhouse structures constructed, or proposed to be constructed, together with the development site where the land has been divided, or is proposed to be divided, to reflect the Townhouse property lines and any commonly owned property."

<u>Summary of additional code improvements:</u>

- Adjust ADU size allowances for fairness to smaller homes and for visitability,
- Adjust cottage cluster standards for better site layout and flexibility,
- Improve strategies to preserve existing homes while adding new ones,
- Allow for shared stormwater and single tap into main for sewer and water, and
- Calculate lot coverage based on pre-dedication lot size.

5. **Adjustments to ADU size for visitability and fairness for smaller homes:**
    a. Allow a visitable (or fully accessible) ADU up to 900 sf of living area,
    b. Calculate ADU size from combined duplex living area, not larger of two, and
    c. Improve “ADU fairness” by allowing up to 800 sf or up to size of the primary house.

Narrative: While the new “detached duplex” option creates a valuable new path for fee simple homeownership, it doesn’t eclipse the need to refine ADU standards, providing flexibility to meet different needs: (a) Given the extra sf needed for a visitable ADU, increasing the size to 900 sf will ensure that other spaces in the home are not impacted by the visitable requirement. *The 900 sf building size also complements the PSC’s amendment allowing a 900 sf footprint for accessory*

structures. Together, this makes a two bedroom, one-story, fully accessible ADU much more feasible. (b) There are many smaller duplexes throughout Portland with potential to add an ADU. We propose that the livable sf of the duplex (both units combined) be used to calculate the maximum size of the ADU in order to increase preservation of existing homes. This will ensure that an ADU is in proportion to the combined existing duplex structure. (c) In order not to penalize owners of smaller homes, make maximum ADU size 800 sf or that of the primary home, whichever is smaller. This is still smaller than many jurisdictions (e.g. Seattle (1,000 sf), San Diego (1,200 sf), and Corvallis (900 sf or 85% of primary, whichever is less)) but can still accommodate two bedrooms. If not possible, then increase ADU size up to 85% of the main house (vs.75% allowed currently) or 800 sf.

6. **Adjust "cottage cluster" standards for better site flexibility, and label "cluster housing"** for greater accuracy per statewide middle housing definitions:
    a. Allow up to 50% of cottages to be attached
    b. Set maximum number of units relative to site size (instead of blanket 16 unit cap)
    c. Allow small clusters (four or fewer) on lots under 5,000 sf

Narrative: a) Allowing some cottages to be attached allows for much greater flexibility in layout and design, including considerations such as terrain, local context, large tree preservation, and more. b) While we understand the regulatory complexities surrounding density, a blanket cap makes less sense than a graduated approach proportional to site area. c) Finally, allowing tiny cottage clusters on smaller lots echoes recently-reduced minimum lot sizes for other middle housing types.

7. Improve strategies to preserve existing homes by building behind them.
    a. Allow attached duplexes and triplexes to be built behind the existing house.

8. Allow for shared stormwater and private sewer lateral with multiple connections (single tap into main) for sewer & water.

Narrative: Allowing for a shared private sewer lateral with a single connection to the main within an easement, with each middle housing unit tapping into the shared lateral, avoids the expense (and lack of street frontage) that would be associated with individual laterals/connections for each unit. Many attached- and courtyard-style homes being built now already do this.

9. **Calculate lot coverage based on pre-dedication lot size** to match how FAR is calculated.

Thank you for your ongoing work and dedication to housing our full community, affordably.

Signed, *(continued on next page)*

Preston Korst, Habitat for Humanity
Diane Linn, Proud Ground Community Land Trust
Douglas MacLeod and Madeline Kovacs, UrbanRoost Development LLC
Alexis Biddle, 1000 Friends of Oregon
Elizabeth Decker, JET Planning
Kol Peterson, Accessory Dwelling Strategies
Eric Thompson, Oregon Homeworks

Neil Heller, Neighborhood Workshop
Shane Boland, Owen Gabbert LLC
Jill Cropp, Studio Cropp Architecture
Annie Fryman, Abodu
Sean Heyworth and Mike Mitchoff, Portland Houseworks
John Miller, BackHome ADU
Garlynn Woodsong, Woodsong Associates
Dirk Knudsen, Dirk Knudsen Real Estate
Joe Wykowski, Community Vision

The City of San Diego

Staff Report

DATE ISSUED: 9/9/2020

TO: City Council

FROM: Planning

SUBJECT: Housing Legislation Code Update to the Municipal Code and Local Coastal Program

Primary Contact:	Kelley Stanco	Phone: (619) 236-6545
Secondary Contact:	Brian Schoenfisch	Phone: (619) 533-6457

Council District(s): Citywide

OVERVIEW:

The Housing Legislation Code Update Package addresses California State housing law requirements, including a number of bills passed at the end of 2019. These include changes to State density bonus, housing for the homeless, and accessory dwelling unit laws, along with other miscellaneous housing laws. The Housing Legislation Code Package will provide amendments to the City's Municipal Code and Local Coastal Program that are required to implement and comply with State law, as well as additional amendments tailored to address local needs.

PROPOSED ACTIONS:

Approve the proposed Housing Legislation Code Update to the Municipal Code and Local Coastal Program.

DISCUSSION OF ITEM:

The Land Development Code (LDC) provides the City's regulations for the development and use of property within the City of San Diego and provides information on zoning, subdivisions, grading and other related land use activities. The LDC is updated regularly through comprehensive updates that promote in-fill development and streamline the permitting process, and through single-issue or topic-specific updates as needed.

The California state legislature passed a number of land use and housing laws in 2019 that became effective January 1, 2020. These laws primarily address accessory dwelling units, affordable housing, and supportive housing for the homeless, as well as requirements to preserve dwelling units and "protected dwelling units" affordable to very low- and low-income households. Local implementation of these laws is mandatory and amending the LDC to reflect the requirements of these laws will provide clarity for staff, applicants, decision-makers and the public at large. Additionally, while reviewing the applicable state laws and drafting the proposed LDC amendments, staff identified some areas where the LDC is no longer in conformance with the latest state law provisions and the Housing Legislation Code Update package addresses those issues. Lastly, where permitted, the package also includes adaptations and incentives to address local housing needs.

The Housing Legislation Code Update Package is grouped into four issue areas: Housing for the Homeless, Affordable Housing Regulations, Accessory Dwelling Units and Junior Accessory Dwelling Units, and Miscellaneous Housing Items. A brief summary of the proposed amendments is provided below.

I. Housing for the Homeless

The following LDC amendments address items related to housing for the homeless:

- Low Barrier Navigation Centers

  Assembly Bill (AB) 101, passed in 2019, requires local jurisdictions to permit Low Barrier Navigation Centers that connect individuals experiencing homelessness with transitional housing by-right in mixed-use and commercial zones that permit multi-family. The Housing Legislation Code Update Package would amend the LDC to define Low Barrier Navigation Centers as a new Separately Regulated Residential Use and permit them, by-right, as a Limited Use in all zones required by AB 101.

- Emergency Shelters

  Senate Bill 2, passed in 2007, requires local jurisdictions to identify a zone or zones where emergency shelters are allowed by-right without a conditional use or other discretionary permit. The zones which permitted emergency shelters as a by-right use were located primarily within the Midway-Pacific Highway Community, which was rezoned with the recent comprehensive update to the Community Plan. The Housing Legislation Code Update Package would amend the Community Commercial (CC) base zone tables to permit emergency shelters by-right as a Limited Use in all CC zones in order to provide adequate capacity in compliance with SB 2.

- Transitional Housing and Permanent Supportive Housing

  AB 2162, passed in 2018, requires local jurisdictions to permit Transitional Housing Facilities (THF) and Permanent Supportive Housing (PSH) by-right in all zones that permit multi-family development. The City implemented the requirements of AB 2162 in 2019 with the 12th Update to the LDC, Phase 1; however, staff has subsequently identified several zones that were inadvertently excluded. The Housing Legislation Code Update Package would amend the RM Base Zone Use Table to permit THF in the RM-5-12 zone; the Industrial Base Zone Use Table to permit THF by-right as a Limited Use in the IP-3-1 base zone and clarify that THF and PSH are subject to the requirements of footnote 15 related to residential development; and the Mixed-Use Base Zone Use Table to permit THF and PSH by-right as Limited Uses.

II. Affordable Housing Regulations (AHR)

The following LDC amendments address items related to the City's Affordable Housing Regulations:

- Density Bonus for 100% Affordable Projects (Pre-Density Bonus)

  AB 1763, passed in 2019, requires local jurisdictions to provide a new density bonus program that grants a density bonus of 80% outside of Transit Priority Areas (TPAs) and an unlimited bonus within TPAs to projects that construct at least 100% of the pre-density bonus units as affordable to very low income and low income households, except that 20% may be reserved for moderate income households. Eligible projects are also required to receive 4 incentives and within TPAs, 3 additional stories or 33' in height. Waivers are not permitted with this program. The Housing Legislation Code Update Package would amend

the City's Affordable Housing Regulations to provide this required incentive, with a local adaptation to allow 5 incentives as opposed to 4 in accordance with the City's more permissive allowances for incentives.

- Density Bonus for 100% Affordable Projects (Total Project)

  This proposed amendment is not mandated by state law; rather, this amendment is a local adaptation of AB 1763 intended to provide a similar bonus to projects within TPAs that are fully affordable to very low, low, and moderate income households. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to provide an unlimited density bonus, 5 incentives, and an additional 3 stories or 33 feet to projects within TPAs that provide 100% of the total pre-density bonus and post-density bonus units as affordable to very low, low, and moderate income households in any combination.

- Density Bonus for Lower Income Student Housing

  SB 1227, passed in 2017, requires a local jurisdiction to provide a density bonus of 35% to projects that provide 20% of the pre-density bonus units as affordable to lower income students, as defined by the bill. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to provide this required incentive, with a local adaptation to allow 2 incentives where none are provided by state law in accordance with the City's more permissive allowances for incentives.

- Micro Unit Density Bonus

  This proposed amendment is not mandated by state law; rather, this amendment provides regulatory relief for an existing City density bonus program for micro units, which must average no more than 600 square feet with no dwelling unit exceeding 800 square feet. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to eliminate the requirement that micro unit density bonus projects comply with height and setback requirements, and would allow use of the program within the Downtown Community Planning Area once a project either maximizes the use of other bonus programs or earns a 3.0 FAR through other bonus programs, whichever is less, ensuring that other FAR Bonus programs specific to Downtown continue to be utilized.

- Density Bonus on FAR-Based Density Sites

  This proposed amendment is not mandated by a modification to state law; rather, it is a correction to the City's regulations to clarify how density bonuses are calculated within zones where the density is controlled by floor area ratio, including Downtown and the recently adopted mixed-use base zones. The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to clarify the method by which density bonuses are calculated for FAR-based density zones where the adopted land use plan includes an allowable density range in dwelling units per acre (i.e. the mixed use zones) and those that include only a maximum FAR (i.e. Downtown). Additionally, the amendments will clarify that incentives cannot be used to increase floor area ratio in such zones, which would result in an additional density bonus.

  Within Downtown, the proposed amendments would change how affordable housing density bonuses are calculated, since Downtown only regulates intensity through FAR limits and not dwelling units/acre. Currently, such bonuses are based on the Base Maximum FAR permitted in Figure H of the Centre City Planned District Ordinance (CCPDO). Under the

proposed change, the density bonus would be calculated based on the actual project's FAR up to the Maximum FAR permitted in Figure L of the CCPDO. For instance, if a project with a Base Maximum FAR of 6.0 earned an additional 4.0 FAR from other FAR bonus programs provided Downtown to achieve a total 10.0 FAR, then the bonus for affordable housing would be added on top of the 10.0 FAR rather than the 6.0 FAR. This can result in the production of additional affordable and market rate units, as illustrated in this table utilizing the Affordable Housing Regulations:

	FAR	UNITS	AFFORDABLE UNITS
EXISTING REGULATIONS			
BASE MAXIMUM FAR	6.0	180	
MAXIMUM FAR	10.0	300	
AHR BONUS (60%)	3.6	108	
TOTAL	13.6	408	27
PROPOSED REGULATIONS			
MAXIMUM FAR	10.0	300	
AHR BONUS (60%)	6.0	180	
TOTAL	16.0	480	45

- Miscellaneous AHR Clean-Up Items

  The Housing Legislation Code Update Package would amend the City's Affordable Housing Regulations to provide additional clean-up items to ensure compliance with state density bonus law, including minor language edits and updates to the parking table.

III. Accessory Dwelling Units and Junior Accessory Dwelling Units

The following LDC amendments address items related to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs):

- Replacement of the Companion Unit, Junior Unit and Movable Tiny Homes Regulations with New Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations in Order to Implement New State ADU and JADU Legislation

  Several bills were passed at the end of 2019 which addressed ADUs and JADUs, including AB 68, AB 587, AB 881, and SB 13. In addition to providing increased allowances for ADUs in conjunction with multiple dwelling unit development, prohibiting the requirement of replacement parking when garages or carports are converted to ADUs or JADUs, prohibiting the rental of ADUs and JADUs for less than 31 days, and requiring local jurisdictions to permit at least 1 ADU on a premises regardless of maximum lot coverage, maximum floor area ratio, or minimum opens space requirements, the state legislation also required local ADU and JADU ordinances to be reviewed by the California Department of Housing and Community Development (HCD) for consistency with the state regulations. In order to best align our local regulations with state regulations, the Housing Legislation Code Update Package proposes to strike the existing "Companion Unit, Junior Unit and Movable Tiny Houses" regulations in Section 141.0302 in their entirety, and replace them with new "Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations that fully comply with and exceed the requirements of state law. As part of this overhaul of the existing regulations, the local defined terms "companion unit" and "junior unit" will be

replaced with “Accessory Dwelling Unit (ADU)” and “Junior Accessory Dwelling Unit (JADU)”, respectively, and their definitions will be aligned with state law. The new regulations will exceed the requirements of state law in regard to setbacks, by allowing ADUs to encroach into interior side and rear yard setbacks up to the property line, where state law allows the City to require a 4-foot setback in these locations. HCD reviewed the initial draft of the new regulations, and the proposed amendments reflect comments and edits received by HCD. Lastly, the recently adopted Movable Tiny Houses, which do not fall within the state ADU laws, will be pulled out and established as their own Separately Regulated Residential Use.

- Affordable ADU Incentives

  AB 671, passed in late 2019, requires local jurisdictions to incentivize the construction of deed-restricted affordable ADUs, without specific parameters or direction as to what those incentives should be. The Housing Legislation Code Update Package would include in the Accessory Dwelling Unit and Junior Accessory Dwelling Unit regulations a new affordable ADU incentive that would allow the construction of 1 additional ADU for every ADU deed-restricted to very low, low, or moderate income households for a period of 15 years. Outside of TPAs the number of bonus ADUs is limited to 1, and within TPAs there is no limit on the number of bonus ADUs permitted.

- ADU and JADU Parking

  State law, specifically Government Code Section 65852.2(d), prohibits the City from requiring parking for ADUs in any of the following instances:

  - within one-half mile walking distance of public transit;
  - within a designated historic district;
  - when the ADU is part of the proposed or existing primary residence or an accessory structure (i.e. if it is attached to an existing structure);
  - when on-street parking permits are required but not offered to the occupant of the ADU;
  - when there is a car share vehicle within one block of the ADU.

  If the above don't apply, then State law allows the City to require parking that does not exceed 1 space per ADU or per bedroom, whichever is less (Gov Code Section 65852.2(a)(1)(D)(x). Due to the highly limited circumstances in which the City is allowed to require parking, and given the City’s desire to encourage both the construction of ADUs and JADUs and use of alternative mobility options, the Housing Legislation Code Update Package will exceed the requirements of state ADU and JADU law by simply eliminating parking requirements for ADUs and JADUs.

IV. Miscellaneous Housing Items

The following LDC amendments address miscellaneous housing items:

- Employee Housing (6 or Fewer)

  California Health and Safety Code Section 17021.5(b) requires Employee Housing for 6 or fewer employees to be permitted by-right in all zones that permit single-family. The Housing Legislation Code Update Package would amend the LDC to permit Employee

Housing (6 or Fewer) by-right as a Limited Use in all zones that permit single dwelling units.

- Residential Development Consistent with the Land Use Plan

  This proposed amendment is not mandated by state law; rather, this amendment was identified by staff as a means to provide regulatory relief and streamline the permitting process. The Housing Legislation Code Update Package would amend the General Rules for Base Zones to allow residential and residential mixed-use development that exceeds the allowable density of the base zone but complies with the density identified in the adopted land use plan to be permitted by-right with a construction permit, rather than through a Planned Development Permit process. The amendment would allow sites to develop in accordance with the density planned and mitigated for through the land use planning process. This streamlining provision also requires clean-up amendments to the regulations related to Neighborhood Development Permits, Site Development Permits, Planned Development Permits, and Affordable, In-Fill Development and Sustainable Buildings.

- Dwelling Unit Protection Regulations

  SB 330, known as the Housing Crisis Act of 2019, requires local jurisdictions to ensure that the number of dwelling units present on a site is not reduced as a result of a single-family, multi-family, residential mixed-use (with at least 2/3 residential), transitional housing, or permanent supportive housing project. It further requires that "protected dwelling units" affordable to very low income and low income households (including both deed-restricted units and units occupied by such households without a deed-restriction in place) be replaced with deed-restricted units affordable to very low income and low income households. The legislation also includes provisions for relocation assistance and right of first refusal in limited circumstances. The Housing Legislation Code Update Package would amend the LDC to include a new Division 12 in Chapter 14, Article 3 entitled the "Dwelling Unit Protection Regulations." The Dwelling Unit Protection Regulations implement the dwelling unit and protected dwelling unit replacement provisions of SB 330 precisely, with no additional regulations or requirements. The new division would sunset on January 1, 2025, consistent with the sunsetting of SB 330.

The Housing Legislation Code Update Package was presented to stakeholder groups that included City staff in implementing departments, land development professionals, housing advocates, community planning representatives, and members of the public who participated in the meetings. The actions taken by these stakeholders and the Planning Commission are as follows:

- Housing Legislation Code Update Package Ad Hoc Working Group: In 2019, in accordance with Charter Section 43(b), the Technical Advisory Committee (TAC) and its subcommittee, the Code Monitoring Team (CMT) were disbanded as a recommending body with a vote presented to decision makers. Instead, the Technical Advisory Committee (TAC) modified its operational framework to become a monthly Ad Hoc Committee for a one-year period advising the Development Services on a variety of process improvements. Additionally, members of the former CMT are invited to serve on project-specific, temporary citizens' working groups to advise the Planning Department on LDC updates.

  The Housing Legislation Code Update Package Ad Hoc Working Group was formed in early June 2020, and the proposed package of amendments was reviewed at virtual workshops on June 12th

and 26th. The working group discussed the items in the Housing Legislation Code Update Package and provided feedback on the amendment language as presented. Understanding that the majority of the proposed amendments are mandated by state law, comments were limited and minor and have been incorporated into the package wherever possible. Consistent with the group's function as an Ad Hoc Working Group, no vote or action was taken.

- Community Planners Committee (CPC): On July 28, 2020 the Housing Legislation Code Update Package was presented to the Community Planners Committee. The CPC voted 19-5-5 to recommend approval of all proposed amendments with the exception of two: 1.) a proposed development incentive for multi-family development within transit priority areas on sites less than 0.5 acre (this item has subsequently been withdrawn); and 2.) the elimination of parking requirements for all ADUs and JADUs. On August 25, 2020 the CPC discussed the elimination of parking requirements for all ADUs and JADUs and voted 14-8-4 to recommend approval of the amendment as proposed.

- The Downtown Community Planning Council: On July 15, 2020 the Downtown Community Planning Council (DCPC) reviewed the Housing Legislation Code Update and tabled discussion of the item to their August meeting. On August 19, 2020 the DCPC voted 20-0-0 to recommend approval of the proposed amendments.

- The Planning Commission: On August 27, 2020 the Planning Commission reviewed the Housing Legislation Code Update to the Municipal Code and Local Coastal Program and recommended that the City Council adopt the update as presented by a vote of 6-0-1 with Commissioner Austin recusing. While not part of the motion, a request from Commissioner Whalen that the maximum size of an Accessory Dwelling Unit be included in the defined term has been incorporated into the proposed amendments.

The Housing Legislation Code Update Package implements California state housing and land development laws and includes several local adaptations and provisions that address local needs to streamline housing construction. The proposed amendments have been reviewed by stakeholders, including CPC and DCPC, and the Planning Commission, and all recommending bodies have supported adoption of the amendments as proposed. Therefore, staff recommends that the City Council approve the proposed Housing Legislation Code Update to the Municipal Code and Local Coastal Program.

City Strategic Plan Goal(s)/Objective(s):
Goal #3: Create and sustain a resilient and economically prosperous City. Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability. Objective #4: Prepare and respond to climate change. Objective #7: Increase the net supply of affordable housing.

Fiscal Considerations:
None. Costs associated with implementation of this ordinance would be covered by project applicants.

Charter Section 225 Disclosure of Business Interests:
N/A; there is no contract associated with this action.

Environmental Impact:
The CEQA and Environmental Policy Section of the Planning Department has reviewed the Housing Legislation Code Update amendments and conducted a consistency evaluation pursuant to CEQA Guidelines Section 15162. Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified Environmental Impact Report (EIR) for the 2008 General Plan EIR No. 104495/SCH No. 2006091032, certified by the City Council on March 10, 2008, Resolution No. R-303473; the 2020 Addendum to the 2008 General Plan EIR No. 104495/SCH No. 2006091032 for the General Plan Housing Element Update, certified by the City Council on June 18, 2020, Resolution No. R-313099; and the following documents, all referred to as the "CAP

FEIR": FEIR for the City of San Diego Climate Action Plan (CAP) (EIR No. 4106603/SCH No. 2015021053), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). The 2008 General Plan EIR and CAP FEIR are both "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168.

Previous Council and/or Committee Actions:
This item will be heard at the Land Use and Housing Committee prior to Council.

Key Stakeholders and Community Outreach Efforts:
Key Stakeholders include neighborhood and community planning groups, residents, visitors and property owners.

Mike Hansen	Erik Caldwell
Department Director	Deputy Chief Operating Officer, Smart & Sustainable Communities

07

Office of the City Manager

ACTION CALENDAR
February 27, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Proposed Amendments to the Building Emissions Saving Ordinance (BESO)

RECOMMENDATION

Adopt first reading of an Ordinance amending the Building Emissions Saving Ordinance (BESO), Chapter 19.81 of the Berkeley Municipal Code, to establish a flexible resilience standard for small residential buildings containing up to four units.

SUMMARY

Berkeley's Building Emissions Saving Ordinance (BESO) is one of the City's main programs designed to reduce emissions from existing buildings. In 2015, BESO removed the mandatory prescriptive requirements required through Berkeley's Residential Energy Conservation Ordinance (RECO) and focused on an assessment-based approach at time of sale. Currently, BESO relies on building owners to voluntarily complete energy upgrades and take the necessary steps to decrease their building's emissions. However, few building owners completed the recommended upgrades under BESO's voluntary model. City Council amended BESO in 2020, including direction to staff to develop energy upgrade requirements for all building sizes for City Council's consideration. The proposed amendments to BESO, re-establishing requirements to make upgrades that increase resilience, alongside an assessment, are critical to achieving Berkeley's ambitious climate action and greenhouse gas (GHG) reduction goals (note that throughout this staff report and the BESO, "emissions savings" and "emissions reductions" are used interchangeably).

The proposed amendments to BESO would establish a flexible resilience standard that requires small residential building owners to complete upgrades from a menu of options when a property is sold. With the proposed time of sale requirements, building owners can choose which measures to complete to satisfy the requirements in order to accommodate building conditions and owner interests. For homes that haven't met compliance prior to sale, an escrow deposit will ensure that funds to cover the cost of the upgrades have been set aside so that the buyer can complete the upgrades. BESO upgrade requirements include a number of exemptions, including for first-time home buyers receiving federal assistance and for all-electric buildings and buildings that have at least one heat pump system.

The proposed time of sale requirements cover one to four-unit residential buildings including condominium units residing within a two to four-unit building and will be implemented in two phases beginning in 2025. Following the establishment of time of sale requirements, staff will develop proposed requirements for large buildings.

FISCAL IMPACTS OF RECOMMENDATION

Current staffing levels within the BESO program are sufficient to accommodate the proposed BESO amendments if updates are made to BESO's compliance software. Updates are needed to BESO's Online Application portal to incorporate the new workflows and application types, develop additional automations to reduce staff-time, and provide additional customer support options for building owners. One-time costs to upgrade BESO's compliance software will not exceed $100,000.

Currently, the Finance Department allocates 0.5 FTE of an Accounting Office Specialist II to process escrow deposits for Berkeley's Private Sewer Lateral Program. BESO would require a similar process and an additional 0.5 FTE will likely be needed to process the increase in escrow deposits. Recovering this cost will be addressed through a new fee to obtain a BESO Certificate. This fee will be included an updated BESO fee structure that will be brought to Council within the next year.

Fiscal Impacts on the Property Owner:

The seller would maintain responsibility to complete the currently required BESO assessment, which costs an average of $350 per dwelling unit. The cost to a buyer to complete upgrades varies depending on which upgrades are selected and the building characteristics and condition. The easiest and cheapest upgrade that meets compliance is to install a heat pump water heater, with a current average cost of $6,800 in Alameda County. Additional rebates and tax credits are available to offset the costs of heat pump water heaters and many of the other applicable measures to reach compliance.

CURRENT SITUATION AND ITS EFFECTS

Expanding BESO to establish a flexible resilience standard for small residential buildings is in response to Council direction in the 2020 BESO Amendments[1], and is a Strategic Plan Priority Project, advancing the City's goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

[1] As per Building Emissions Saving Ordinance, BMC Chapter 19.81.040-060, amended on 12/15/20, "*The Administrator of this Chapter shall develop recommendations for Energy Upgrade requirements for [large, medium small and single family] Buildings based on building performance that are consistent with requirements of State and Federal law. The Administrator shall identify incentives, rebates or other compliance resources to off-set the costs of the Energy Upgrade requirements. The Administrator shall then report the proposed Energy Upgrade requirements for Single Family Buildings to the City Council for consideration*."

Berkeley's BESO has been one of the City's main programs to improve indoor air quality and reduce GHG emissions from existing buildings. Since BESO's adoption in 2015, more than 3,500 BESO assessments have been completed and more than 300 medium and large buildings have been regularly tracking and reporting their energy use. However, BESO has relied on voluntary uptake of the assessment recommendations to achieve Berkeley's climate action goals, and few building owners have acted. BESO includes an exemption pathway that allows building owners to complete energy upgrades in lieu of an assessment and only 2-3% of building owners have opted to complete energy upgrades. The proposed amendments to BESO, which would require upgrades designed to reduce emissions at the time of sale, are critical to achieving Berkeley's ambitious climate action and GHG reduction goals and its goals of improving public health and the resilience of its built environment.

There are several benefits to requiring buildings to complete upgrades when sold. Many new homeowners renovate soon after moving in and buyers can incorporate the cost of the upgrades into their budget when purchasing a home. By requiring buildings to complete upgrades that incentivize all-electric technologies or otherwise result in reductions in air pollution or GHG emissions, building owners can meet BESO compliance, decrease their building's emissions, and receive additional electrification benefits, such as better indoor air quality and increased comfort.

Flexible Resilience Standard:
The proposed amendments will establish a flexible resilience standard for small residential buildings based on a credit system. Building owners who have already taken steps to reduce emissions by installing a heat pump water heater or HVAC system would not be required to complete additional upgrades. The standard will be verified when a property is sold.

The flexible resilience standard will utilize a credit-based compliance system to ensure the greatest flexibility. Building owners can choose which measures to complete in order to accommodate the range of building conditions and owner interests. Each measure will have a corresponding credit value based on its emissions savings. Measures that contribute to resilience but don't directly reduce emissions will have their credit values based on cost. Bonus credits may be added to specific measures that provide additional health, safety, or equity benefits. Initial measures include:

- Heat Pump Water Heater
- Heat Pump HVAC
- EV Charging Station
- Bi-Directional EV Charger
- Induction Range
- Knob and Tube Replacement
- Panel Upgrade
- Pre-wiring & 240v Outlets
- Attic Insulation
- Wall Insulation
- Window Replacements
- Air Sealing
- Floor Insulation/Crawlspace Improvement
- Solar PV Installation
- Battery Storage Installation

- Smart Panel
- Duct Sealing/Replacement
- Greywater System

Staff will assemble a Technical Advisory Committee to establish guidelines for each measure, formalize the credits and scoring criteria, and vet new measures to include. See **Attachment 2** for the list of measures and example credits.

The cost of compliance will vary as a building owner can choose which measures to complete based on their home's conditions and priorities. Buyers may also recoup costs of some of the upgrades through their monthly utility bills as some compliance measures may have the ancillary impact of increasing their building's energy efficiency. Many of the measures align with current rebates or tax credits provided by Federal, State, and local programs, such as BayREN Home+, TECH Clean California, and the Inflation Reduction Act. For example, switching out a gas water heater for an electric heat pump is an easy and straightforward path to compliance. Without rebates, the average purchase and installation cost of a heat pump water heater in Alameda County is ~$6,800[2]. Currently, a heat pump water heater installation is eligible for a $2,000 Federal tax credit, a $400 rebate from BayREN Home+, and a $3,100 rebate from TECH Clean California. With these rebates, the average cost of installing a heat pump water heater can drop to ~$1,300. See **Attachment 2** for additional compliance cost examples.

In the case where the building is not all-electric, does not have a heat pump, and has not met the requisite number of credits in the last five years, the buyer will have up to two years from the date of sale to make upgrades that comply with the flexible resilience standard.

If upgrades are needed, a monetary deposit to cover the cost of compliance will be held by the City through escrow, serving as an important compliance mechanism to assure that upgrades are completed. Funding for the deposit can be negotiated between a buyer and a seller. A similar escrow deposit process is used currently to enforce Berkeley Municipal Code Chapter 17.24, Abatement of Nonconforming/Substandard Sewer Laterals on Private Property. The deposit will be set at an amount equivalent to the minimum estimated cost of compliance.

The deposit will be refunded in full once the buyer meets the flexible resilience standard. The deposited funds will be forfeited and transferred to the City if the buyer does not complete the required upgrades before the expiration of the two-year deadline. The flexible resilience standard may be enforced by fines and penalties, as well as forfeiture of the escrow deposit.

[2] Based on project installation data available through TECH Clean California: https://techcleanca.com/public-data/

An escrow deposit equivalent to the cost of the upgrades is an effective compliance mechanism to ensure upgrades are completed after the sale. It serves as a monetary incentive for buyers to complete the required upgrades in a timely manner in order to receive their deposit back. If upgrades are not completed the forfeited deposit will be used to reduce emissions in low-income homes, through such programs as the City's Climate Equity Fund or Just Transition Residential Electrification Program, further helping to guarantee emissions savings from BESO.

All-Electric Building and Heat Pump System Exemptions:
In order to increase the resilience of Berkeley homes and to reduce their GHG and air pollution emissions as soon as possible, the proposed amendments include a heat pump exemption pathway to encourage early compliance. Buildings where all units are completely served by at least one electric heat pump system would qualify for an exemption from any additional upgrades required by the flexible resilience standard.

Gas-based water heating and gas-based space heating are the two largest sources of emissions in Berkeley homes, and electrifying either one of these systems will yield significant reductions of GHG emissions. By providing a heat pump system exemption, building owners are incentivized to use currently available rebates to achieve BESO compliance and reduce their home's emissions well before they intend to sell. Based on data collected through BESO's Home Energy Score Assessments, it is estimated that 5-7% of Berkeley homes have at least one heat pump system and would already qualify for this exemption.

The minimum standard for the exemption will likely need be increased over time to further decrease emissions from Berkeley's small residential buildings. Staff will monitor this exemption and propose an update along with requirements for large buildings for Council's consideration.

Additionally, because they have already substantially eliminated emissions, all-electric buildings that have electrified all building systems and appliances and capped all gas lines are exempt from the BESO assessment requirement and the flexible resilience standard.

Covered Buildings and Phase-In:
The proposed time of sale requirements will cover one to four-unit residential buildings including condominium units residing within a two to four-unit building. Condominiums were previously excluded from BESO, but these units tend to operate similarly to a single-family home and have access to the same rebates and incentives for completing energy upgrades. Each year around 2-3% of Berkeley's one to four-unit residential building stock is sold. The following approximate number of buildings/units would need to complete upgrades each year, assuming compliance hasn't already been met:

Building Type	Avg. # of Buildings Sold per Year	% of Annual Property Sales[3]
Single Family	600	61%
Duplex	60	6%
Condominiums (within 2-4 Unit Buildings)	30	3%
3-4 Units	50	5%

The proposed time of sale requirements will be implemented in two phases:

- **Time of Sale Phase I - Single-family homes, ADUs, Duplexes, and Condominium units:** These buildings/units cover ~70% of Berkeley's annual real estate sales and they are more likely to be owner occupied. Requirements for these buildings will take effect January 1, 2025.
- **Time of Sale Phase II - Triplexes and Fourplexes:** These buildings are often rental properties and many have complex mix of shared and in-unit systems. Requirements for these buildings will take effect on January 1, 2027. The additional time will help ensure that staff have the capacity to adequately implement the program at a larger scale, and will also allow policy-makers time to consider whether to establish additional renter protections to mitigate any unintended consequences that may result from required construction projects.

BESO's time of sale requirements will continue to exclude refinances, transfers due to inheritance, and partial transfers, such as a change in title due to marriage or divorce.

Assessment Requirement:
The current BESO assessment requirement will be maintained, requiring sellers of one to four-unit residential buildings to complete a comprehensive energy and electrification assessment prior to listing their building for sale. The assessment will confirm whether a building qualifies for an exemption, by having at least one heat pump system, or if the buyer needs to complete upgrades to meet the flexible resilience standard. If upgrades are required, the assessment will recommend which upgrades to prioritize based on a building's conditions, list the current incentives for each upgrade, and provide clear instructions on how to achieve the required credits. The current ability to defer the assessment responsibility to the buyer will be eliminated to ensure the BESO compliance status of a property is communicated to all potential buyers when it's listed for sale.

[3] The remaining 25% of sales include vacant lots, commercial buildings, industrial buildings, 5+ unit multifamily buildings, and condominium units within a 5+ unit multifamily building.

Additional Exemptions and Support:
Many of BESO's current deferrals and exemptions will no longer be relevant to small residential buildings, such as a major renovation deferral, but new exemptions and support are proposed to help building owners comply with the upgrade requirements. Some exemptions and support opportunities for building owners include the following:

- **First-time Homebuyers** – First time home buyers participating in an approved income-qualified first-time home buying program or down payment assistance program would be exempt from the flexible resilience standard, because the additional costs of upgrade requirements could prevent these income-qualified buyers from purchasing in Berkeley. These owners will still receive the assessment and will be encouraged to apply for other income-qualified incentive programs to help improve the resilience of their new home.

- **Early Refund Exception** – Building owners may apply for an early refund of their deposited funds if they supply sufficient evidence, such as issued building permits and a contract for qualifying work, to show the upgrades will be completed.

- **High Home Energy Score Credit** – Buildings that demonstrate a high level of energy efficiency by receiving a high Home Energy Score will receive bonus credits so fewer upgrades will be needed to meet the standard. High scoring buildings are often smaller buildings with lower energy use and many have already completed several energy efficiency upgrades in the past.

- **Hardship Deferral** – A building owner may be eligible to defer the required upgrades past two years if experiencing financial hardship. Financial hardship may be demonstrated by participating in an energy assistance income qualified program, participating in a property tax postponement program, or providing other proof that they are not able to complete the required upgrades within two-years of the sale.

BACKGROUND
The development of time of sale energy upgrade requirements was recommended in the BESO evaluation completed in 2015, directed by Council in the 2020 BESO Amendments, and one of the four recommended strategies of Berkeley's Existing Building Electrification Strategy (BEBES) adopted by Council in 2021.

Path to Requirements
Prior to the passage of BESO in 2015, the City maintained time of sale requirements for residential buildings since 1987 through the Residential Energy Conservation Ordinance (RECO).

RECO played an important role in advancing building energy and water efficiency and reducing Berkeley's GHG emissions. The ordinance prescribed a list of basic energy and water saving measures that were required to be installed in residential buildings at the point of sale or during significant remodels.

In 2015, RECO was replaced by BESO in order to create a more individually tailored approach to energy upgrades and achieve deeper energy savings and further reduce emissions from existing buildings. RECO's prescriptive measures were out of date with building science, lacked flexibility, lagged behind the current Title 24 California Energy Code and did not align with rate-payer funded incentive programs. BESO removed the mandatory prescriptive requirements and, instead, focused on an assessment-based approach. BESO currently requires building owners to complete a comprehensive energy and electrification assessment which provides information on how to best upgrade their building to decrease energy, emissions and operating costs. By providing valuable information on energy savings opportunities as well as access to incentive and financing programs, the goal of BESO was to on-ramp building owners to local energy efficiency and electrification rebate programs, such as BayREN Home+. BESO relies on building owners to voluntarily complete energy upgrades and take the necessary steps to decrease their building's emissions.

In 2019, an evaluation of BESO was conducted by *Energy Solutions* to evaluate the outcomes of the program[4]. The evaluation assessed whether BESO was meeting its goals of being easy, affordable, and valuable, and identified ways to better align BESO with Berkeley's policy goals of electrification and community resilience. The evaluation concluded that mandatory energy upgrades are needed to achieve Berkeley's climate action goals and transition our buildings off fossil fuels.

Based on the BESO evaluation, Berkeley City Council amended BESO in 2020 to increase its effectiveness in decreasing building emissions, advancing Berkeley's goal to become fossil fuel free, and furthering the public health of Berkeley residents. The amendments further aligned BESO with the City's emissions reduction goals, streamlined requirements for small and medium-sized buildings, and directed staff to develop requirements for Council's consideration[5].

In November 2021, Berkeley City Council adopted the Berkeley Existing Building Electrification Strategy (BEBES). BEBES provides a framework for the transition to all-electric buildings in a way that includes and benefits all residents, especially members of historically marginalized communities. One of the four primary electrification strategies identified in BEBES was to develop and implement time of sale energy upgrade requirements through BESO.

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[4] Staff Report regarding the Evaluation and Recommended Updates to the Building Energy Savings Ordinance (Special Council meeting of July 21, 2020)
[5] Ordinance No. 7,740–N.S. Amendments to the Building Emissions Saving Ordinance (Adopted December 15, 2020)

In January 2023, the City of Berkeley joined cities across the nation in the National Building Performance Standards (BPS) Coalition[6], a nationwide group of state and local governments that have committed to inclusively design and implement equitable building performance standards and complementary programs and policies, working to advance legislation and/or regulation, with a goal of adoption by Earth Day 2024. The BESO upgrade requirements proposed here would meet the City's commitments to the National BPS Coalition by establishing a resilience standard for small residential buildings. The resilience standard would require buildings to complete one or more upgrades to achieve an emissions reduction and/or resilience target.

The proposed BESO requirements will also help prepare Berkeley building owners for the recent Bay Area Quality Management District (BAAQMD) ruling that will stop the sale and installation of gas-powered water heaters and furnaces, starting in 2027. In Spring 2023, the BAAQMD amended two Air District rules to support improvements to regional air quality and public health, Regulation 9 – Rule 4 (Rule 9-4) and 6 (Rule 9-6). Beginning in 2027, Rule 9-6 will only allow the sale and installation of zero NOx residential water heaters (75,000 BTU/hr or less) throughout the Bay Area. In 2029, Rule 9-4 will require zero NOx residential and commercial furnaces. Currently, no gas systems can meet a zero NOx standard and building owners will instead be required to install electric heat pumps. While this is a step forward for building electrification, there are some homes that need additional electrical upgrades to accommodate these all-electric systems. The proposed update will help new building owners prepare their homes for their future heat pump installations. When their gas systems fail, a replacement with an electric heat pump will be a simple and straightforward replacement. The proposed BESO requirements and BAAQMD's new ruling complement each other by having different trigger points (time of sale for BESO and time of replacement for BAAQMD Rules 9-4 and 9-6) but are both satisfied by installing heat pumps instead of new gas systems.

Developing the Proposal

Based on extensive Community outreach, staff developed six objectives to guide the development of this proposal:

- **Accelerate building electrification and resilience upgrades** – Create upgrade requirements to reduce harmful emissions and increase resilience.
- **Promote early compliance** – Encourage building owners to complete the BESO upgrades as soon as possible, prior to selling their building.
- **Align with available resources** – Include requirements that are eligible for incentive programs or other resources to offset costs.
- **Ensure smooth sales process** – Align requirements and timelines with the selling/buying process.

[6] National BPS Coalition Website: https://nationalbpscoalition.org/

- **Provide flexible compliance paths** – Allow owners to prioritize upgrades that improve the health, safety, and comfort of their building and maximize ease of compliance.
- **Ensure renters are protected** – Prevent additional burdens for renters while improving rental units.

These objectives provided the framework when working with partners and groups on the potential upgrade requirements.

Technical Advisory Committee:
Staff assembled a Technical Advisory Committee (TAC) in spring 2023 to provide expert input on energy upgrade requirements for small residential buildings to accelerate decarbonization in existing buildings. The Technical Advisory Committee included contractors, architects, BESO assessors, and building decarbonization experts from local, state, and federal organizations, such as PG&E, Ava Community Energy (formerly known as East Bay Community Energy or EBCE), California Energy Commission, Berkeley Lab, BayREN and the Building Decarbonization Coalition. Staff facilitated a series of meetings to discuss various policy components and develop a list of energy upgrade measures. Key takeaways from the TAC included:

- 81% of the TAC supported establishing a heat pump system as baseline compliance with the remaining 19% noting this was either too low or too high of a requirement.

- 85% of the TAC supported allowing building owners to choose which measures to complete, using a credit-based compliance system of potential energy upgrades, to provide maximum flexibility.

- In order to ensure that building owners can access rebates and incentives for energy upgrades, an ordinance can’t require specific measures or technologies.

Outreach and Engagement:
In addition to the Technical Advisory Committee, staff engaged with a variety of partners and groups on the proposed requirements, including:
- Real Estate Professionals (including realtors and title company officers)
- Berkeley Rent Board’s Ad Hoc Sustainability Committee
- Bridge Association of Realtors
- Berkeley Property Owners Association
- Berkeley Neighborhood Council
- Climate Advocacy Groups (including the Berkeley Climate Action Committee’s Electrification Working Group, Sierra Club, Citizens Climate Lobby, and the League of Women Voters)

Staff also worked with the Environment and Climate Commission at various stages throughout the policy's development and presented the proposal to Council's Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee. At the Environment and Climate Commission's meeting on October 18, 2023, the Commission unanimously voted to approve the concept of a resilience standard for small residential buildings verified at time of sale as proposed in this action. The Commission suggested that staff consider future requirements for additional upgrades, and recommend that Council support staff in collaborating with the Rent Board and local and regional stakeholders.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The adoption of BESO was a key implementation action of the Climate Action Plan (CAP). Existing buildings are the second largest source of GHG emissions and account for 43% of GHGs in Berkeley's most recent emission inventory. Adopting the proposed BESO amendments would further Berkeley's environmental sustainability and climate goals, including becoming a Fossil Fuel Free City and Berkeley's Race to Zero commitment, pledging to decrease emissions by 60.5% from 2018 levels by 2030, being responsive to the Declaration of a Climate Emergency and Just Transition framework, and spurring high-road construction jobs in building electrification.

RATIONALE FOR RECOMMENDATION

In order for Berkeley to achieve its climate action, GHG reduction, resilience, and public health goals, all buildings will need to transition off fossil fuels to clean electricity. Requiring buildings to complete upgrades at time of sale is one of the four primary strategies adopted by Council through Berkeley's Existing Building Electrification Strategy. Berkeley will not be able to achieve its GHG emissions reduction goals without adopting time of sale upgrade requirements for small residential buildings, which constitute 84% of Berkeley's building stock. BESO is one of the best tools for addressing emissions from existing buildings and the proposed amendments will further our ability to reach our goals. The upgrade requirements proposed will also help building owners comply with the upcoming BAAQMD regulations by switching to heat pumps early before their gas system burns out or by upgrading their home to ensure a seamless transition.

ALTERNATIVE ACTIONS CONSIDERED

Staff explored a variety of energy upgrade requirement options. Extensive work was done with a Technical Advisory Committee to determine what upgrades were feasible for small residential buildings to complete at time of sale. It was recommended to utilize a flexible compliance pathway since each building needs a custom approach to electrification and there are limitations to requiring building owners install specific technologies or equipment.

Council could choose to take no action on this proposal and continue with BESO's voluntary uptake of energy upgrades. In this case, the City would not be able to comply

with its National BPS Coalition commitment and would fall further behind in meeting its climate action and resilience goals including commitments to become a Fossil Fuel-Free City, meet Race to Zero by reducing GHG emissions 60.5% from 2018 by 2030, and becoming carbon neutral by 2045.

CONTACT PERSON

Sarah Moore, Interim Manager, Office of Energy & Sustainable Development, 510-981-7494
Ammon Reagan, Community Services Specialist II, Office of Energy & Sustainable Development, 510-981-7416

Attachments:
1: Ordinance
2: Example Credits and Compliance Costs

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 19.81; BUILDING EMISSIONS SAVING

CHAPTER 19.81
BUILDING EMISSIONS SAVING

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

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

19.81.010 - Purpose.

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

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

19.81.030 - Definitions.

A. "Administrator" means the Director of Planning and Development or their designee.

B. "Building Owner" means the owner of record of a building or a unit within a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall also refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.

C. "Building Energy Score" means a measurement of how efficiently a building uses energy and/or water based on modeled simulations or actual energy use of the building over time compared to similar buildings, which can be in the form of a performance score, asset score or other comparable metric that meets standards and formats established by the Administrator.

D. "Credits" means a numerical value based on the improved resiliency, emissions savings, cost, or other measured benefit associated with a Resiliency Upgrade.

E. “Dwelling Unit” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

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

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

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

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

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

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

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

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

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

~~M~~O. "Real Estate Listing" means any listing of a building for sale in the City of Berkeley. "Real Estate Listings" include listing a building for sale by a property owner or by a licensed agent. "Real Estate Listings" include any printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services.~~include any listing for sale by any advertisement, internet posting, or publicly displayed sign.~~

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

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

~~P~~Q. "~~Single Family Building~~1 to 4 Unit Residential Building" means any building comprised solely of 1 to 4 ~~residential~~ Dwelling U~~u~~nits, regardless of size. A single condominium unit within a 1 to 4 Unit Residential Building qualifies as a 1 to 4 Unit Residential Building unto itself.

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

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

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

19.81.040 – Large Buildings.

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

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

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

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

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

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

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

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

19.81.050 – Medium and Small Buildings.

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

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

1. Prior to the Real Estate Listing of the building for sSale; or

2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

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

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

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

Section 5. That Berkeley Municipal Code Section 19.81.060 is amended to read as follows:

19.81.060 – ~~Single Family~~1 to 4 Unit Residential Buildings.

A. *Resilience Standard*. When a unit within a 1 to 4 Unit Residential Building is transferred, or when an entire 1 to 4 Unit Residential Building is transferred, the entity being transferred shall achieve a required number of Credits, as determined by the Administrator, by undergoing Resilience Upgrades.

~~A~~B. *Energy Report.* Owners of ~~Single Family~~1 to 4 Unit Residential Buildings and owners of a unit residing within a 1 to 4 Unit Residential Building shall have a Registered Service Provider prepare and submit to the Administrator an Energy Report:

1. Prior to the Real Estate Listing of the building or unit for sSale; or

2. Within 6 months of a lender having acquired title due to foreclosure or deed in lieu of foreclosure.

~~The requirement at time of Real Estate Listing may be transferred to the buyer and deferred for 6 months under the provisions of Section 19.81.090.B of this Chapter.~~In the event the property owner fails to complete the Energy Report an administrative fee shall be charged, which fee is set forth in Section 19.81.120 of this code.

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

D. *Verification at Time of Transfer.* Prior to Transfer of title:

1. A BESO Certificate of Compliance for the subject property must be obtained, or

2. The Administrator may grant a one-year extension, with an opportunity for an additional one-year extension, to meet the requirements of BMC 19.81.060(C) if the Transferor and Transferee deposit funds with the City in an amount the Administrator determines to be sufficient to render compliance. The Transferor and Transferee must execute and deliver to the Administrator or her designee a binding agreement in a form acceptable to the City providing that any funds deposited with the City shall be forfeited and transferred to the City if a BESO Certificate of Compliance for the subject property has not been obtained upon the expiration of the extension period. Forfeited deposit funds shall be used for local low-income building upgrade programs, such as the Climate Equity Fund or Just Transition Residential Electrification Programs.

a. If a BESO Certificate of Compliance for the subject property is obtained prior to the expiration of the extension period, then the Transferor and Transferee shall recoup their deposit in full.

b. If a BESO Certificate of Compliance for the subject property was not obtained prior to the expiration of the extension period, then the funds will be forfeited and transferred to the City.

E. *Appeals.*

1. If deposit funds are forfeited and transferred to the City pursuant to BMC 19.81.050(D)(2)(b), notice shall be mailed no more than 14 calendar days after the expiration of the extension period to the Transferor and Transferee of (i) the forfeiture and transfer and (ii) the opportunity to appeal. The cost of notice shall be deducted from the deposit made pursuant to BMC 19.81.050(D)(2).

2. Within 14 calendar days of mailing of forfeiture notice, the Transferor or Transferee may appeal the forfeiture and transfer.

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

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

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

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

5. When acting on an appeal, the Hearing Officer will use the same decision-making criteria and shall make the same findings as the prior review authority.

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

~~B~~F. *Disclosure.* All compliance documentation, including ~~a deferral or~~ a summary version of the most recent Energy Report including a Building Energy Score~~, when available,~~ and the Resilience Standard compliance status shall be made publicly available by the Administrator and shall be provided by the Building Owner to existing lessees and prospective lessees, to all licensed real estate agents working on the seller's behalf, and to prospective buyers who visit the building while it is listed for sale. The Building Energy Score shall be included in all Real Estate Listings and a URL link to the Energy Report included if links are supported by the listing service.

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

1. January 1, 2025 for 1 to 4 Unit Residential Buildings containing one or two residential units and units residing within a 1 to 4 Unit Residential Building.

2. January 1, 2027 for 1 to 4 Unit Buildings containing three or four residential units.

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

~~C. *Reporting Schedule.* The requirements of this Section of the ordinance shall become effective December 1, 2015.~~

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

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

19.81.090 – Exceptions, Deferrals and Extensions.

A. *High Performance Exemption.* Exemptions from the Energy Report requirements for current reporting periods may be granted for buildings that demonstrate effective and reasonably achievable level of efficiency, electrification of building systems and appliances, and/or emissions reduction, based on the specific building type, use, vintage, and condition, that supports Berkeley's commitment to become a Fossil Fuel Free City~~-~~, meet Race to Zero by reducing GHG emissions 60.5% from 2018 by 2030, and become carbon neutral by 2045.~~and the Berkeley Climate Action Plan (CAP) goal of 33% energy-related greenhouse gas reduction from 2000 levels by 2020 and 80% reduction by 2050~~. Qualified exemptions shall include, but are not limited to:

1. Any Large ~~building~~ Building that receives a Building Energy Score or Green Building Rating that demonstrates an effective and reasonable level of efficiency, as determined by the Administrator.

2. Any building, except for 1 to 4 Unit Residential Buildings, that completes a multi-measure energy improvement project with a verified minimum improvement, as determined by Administrator.

3. Any whole building that has been served by an income-qualified Weatherization Assistance program for low-income households.

4. Any new building or Extensive Renovation, except for 1 to 4 Unit Residential Buildings, with a construction completion date within ten years of the reporting deadline.

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

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

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

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

1. Proof of participation in an energy assistance income qualified program, administered through the State of California or the local energy utility.

2. Proof of approved participation in Property Tax Postponement or Property Tax Assistance for Senior Citizens, Blind or Disabled, or equivalent program as determined by Administrator.

3. Proof that the property qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes, within two years prior to the due date of the Energy Report.

4. Proof that a court appointed receiver is in control of the asset due to financial distress.

5. Proof that the senior mortgage is subject to a notice of default.

6. Proof that the responsible party is otherwise not able to meet the obligations of this Chapter.

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

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

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

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

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

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

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

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

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

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

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

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

~~K. *Exemption based on building size.* Buildings 600 square feet or a higher size threshold, as determined by the Administrator, are exempt from the requirements of this Chapter.~~

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

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

M. *Early Refund Exception*. Owners of 1 to 4 Unit Residential Buildings may apply for early remittance of their escrow deposit prior to completion of the Resilience Upgrades upon a showing that the owner has obtained building permits for the requisite Resilience Upgrades and supplied sufficient evidence that they Resilience Upgrades will be completed, as determined by the Administrator. If the application for an early refund is approved, the City will refund the funds deposited pursuant to BMC 19.81.060(D)(2) to the owner so that they owner may complete the Resilience Upgrades. Once the requisite Resilience Upgrades are complete, the Owner must obtain a BESO Certificate of Compliance. In the event the property owner fails to complete the requisite Resilience Upgrades within the compliance extension period, an administrative fee shall be charged, which fee is set forth in Section 19.81.120 of this code.

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

Section 7. These amendments to Berkeley Municipal Code Chapter 19.81 shall become effective on January 1, 2025.

Section 8.
Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ATTACHMENT 2 - EXAMPLE CREDITS AND COMPLIANCE COSTS

Measure	Credits[1]	Credit Criteria[2]
Heat Pump Water Heater	6 *(Full)*	Emissions savings
Heat Pump HVAC	6 *(Full)*	Emissions savings
Knob + Tube Replacement	6 *(Full)*	Cost
Smart Panel	6 *(Full)*	Cost
Solar PV + Storage	6 *(Full)*	Cost
Panel Upgrade	4	Cost
Duct Sealing & Replacement	3	Emissions savings
Bi-Directional EV Charger	3	Cost
EV Charger	2	Cost
Induction Range	2	Emissions savings
Window Replacements	2	Emissions savings
Attic Insulation	2	Emissions savings
Wall Insulation	2	Emissions savings
Floor Insulation	1-2	Emissions savings
Greywater System	1-2	Cost
Air Sealing	1	Emissions savings
Prewiring & 240v Receptacles	½ per receptacle	Cost

[1] The credit values are subject to change once vetted by the Technical Advisory Committee.
[2] Emissions saving values were estimated through California statewide cost-effectiveness studies completed by California Codes and Standards Reach Codes program for Single Family Residential Retrofits: https://localenergycodes.com/content/resources. Cost data was pulled from a variety of sources including: TECH Clean CA, BayREN Home+, Statewide Cost-Effectiveness studies, and analysis from the Building Electrification Institute

Example Compliance Cost 1: Heat Pump Water Heater

Measure	Credits	Average Cost	Source
Heat Pump Hot Water Heater	6	$6,800	TECH Clean CA[3]
	Total	$6,800	
*Includes the $2,000 Federal Tax Credit, $400 BayREN Home+ rebate, & $3,100 TECH Clean CA rebate	**Total with Rebates**	$1,300*	

Example Compliance Cost 2: Electrification Ready

Measure	Credits	Average Cost	Source
Panel upsizing and replacement	4	$4,300	BEI Analysis[4]
240v outlet installation (oven, dryer, water heater, EV charger)	2	$1,800	Statewide Cost-Effectiveness study[5]
	Total	$6,100	

Example Compliance Cost 3: Energy Efficiency Envelope Improvements

Measure	Credits	Average Cost	Source
Attic Insulation	2	$2,500	BayREN Home+[6]
Air Sealing	1	$1,500	Statewide Cost-Effectiveness study
Duct Sealing/Replacement	3	$4,600	BayREN Home+
	Total	$8,600	
*includes a BayREN Home+ $1,000 attic insulation rebate & $800 duct replacement rebate	**Total with Rebates**	$6,800*	

[3] TECH Clean California Public Data for Alameda County: https://techcleanca.com/public-data/data-visualizations/

[4] The Building Electrification Institute (BEI) completed a measure cost analysis using E3's 2019 report "Residential Building Electrification in California" and updated based on local research for Berkeley's Existing Building Electrification Strategy

[5] California statewide cost-effectiveness studies completed by California Codes and Standards Reach Codes program for Single Family Residential Retrofits: https://localenergycodes.com/content/resources

[6] Data was provided by the BayREN Home+ for projects completed in Alameda County from 2020 to 2023

08

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
June 4, 2024

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Affordable Housing for Artists: AB-812 Implementation and Cultural District Statutory Standardization

RECOMMENDATION

Pursuant to California Government Code Section 65914.8, refer to the City Manager, City Attorney, and Planning Commission:

1. To study and develop an Ordinance and implementation plan for Assembly Bill 812 (2023) to reserve for artists up to 10 percent of Below Market Rate units under Berkeley Municipal Code 23.328 (Inclusionary Housing) within a half-mile of a state-designated cultural district or within any similar locally designated cultural district, with consideration for consistency with existing Affordable Housing Preference Policy;
2. Consider common standards for locally designated cultural districts, including but not limited to Overlay Zones, and implementation of cultural district designation within the boundaries of Area Specific Plans, including but not limited to the Adeline Corridor and San Pablo Corridor Specific Plans;
3. Pursuant to California Government Code Section 8758, consider solicitation of state designation for cultural districts in the City of Berkeley.

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

According to a 2022 survey produced for Berkeley's Civic Arts Commission by Creative Equity Research Partners, the 163 local artists surveyed represent a cross-section of Berkeley's most vulnerable populations, and high housing costs are placing the community's thriving cultural sector at increasing risk of displacement.[1]

Artistic professions are highly valued but poorly compensated. Of the 88% respondents who had Bachelor's degrees, 60% reported an annual household income of $69,000 or below, which qualified as Low Income in Alameda County. 45% were rent-burdened. This disparity also intersects with the racial wealth gap: among respondents who identified as non-White, 72%, reported low household incomes, compared to 55%

[1] https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/1.19.2022%20Civic%20Arts%20Commission%20Agenda%20and%20Attachments.pdf#page=9

among those who identified as White or Caucasian. At the same time, diverse sources of income could complicate the process of certifying eligibility for deed-restricted affordable housing.

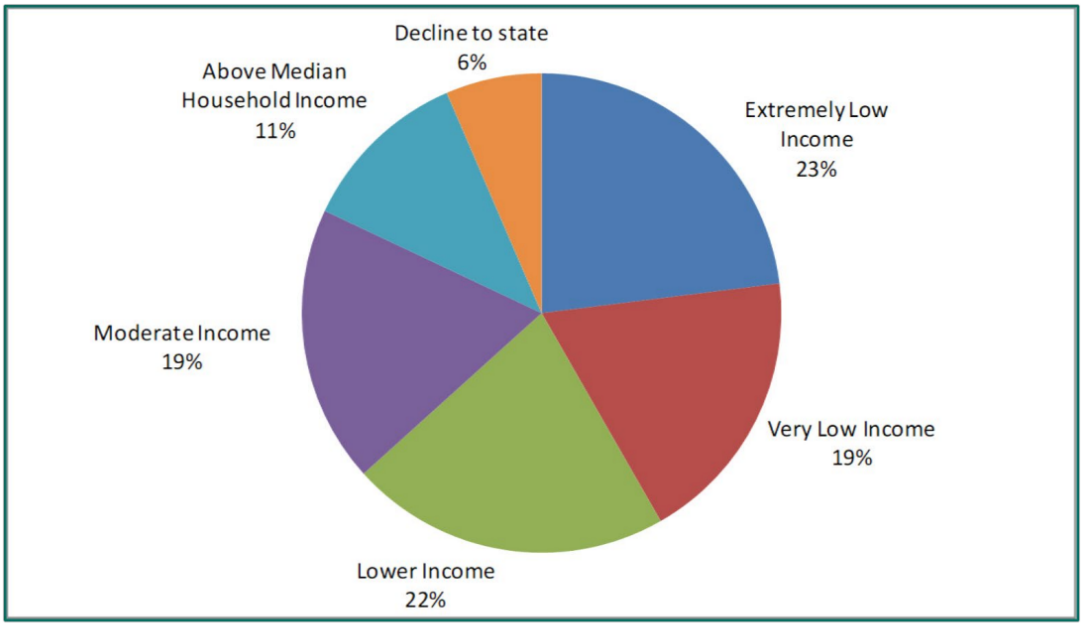


Figure 4a: Income categories for all artist respondents

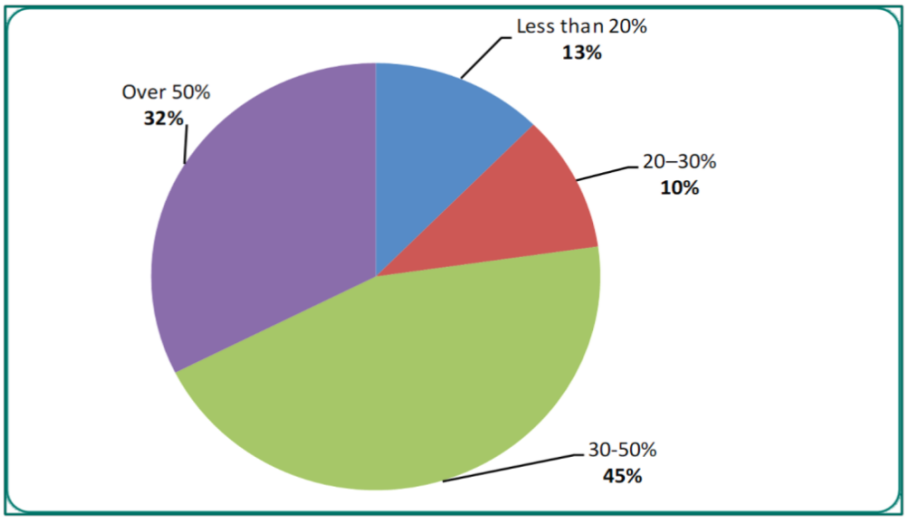


Figure 5: Respondents' percentage of monthly household income spent on rent

While artists reflect the greater housing affordability crisis in the region, most artists surveyed also expressed unique needs for living space that can accommodate their productive endeavors. 82% of respondents reported that they make their art where they live, with 56% of those requiring extra ventilation.

The report recommended that the City of Berkeley "consider creating a priority category for artists who meet income qualification to access affordable housing." Assembly Bill 812 (2023) offers a framework for such prioritization. Further, the report also recommended "a guaranteed basic income program for qualifying artists." While not specific to the arts community, the City Council allocated $50,000 In FY2024 to "engage a consultant to recommend a Universal Income Pilot for Berkeley."[2]

In 2023, the City Council approved the City of Berkeley's 2023-2031 Housing Element Update, which included several programs to produce and preserve affordable housing for a broad population:[3]

- Policy H-4 (Economic Diversity): Encourage mixed income housing developments through both regulatory requirements and incentives.

- Policy H-8 (Workforce Housing): Develop Workforce Housing for low- and moderate-income households, including teachers, *artists* [emphasis added], and other residents who work in the City of Berkeley.

In 2023, the City Council also approved an Affordable Housing Preference Policy to individuals who have previously been displaced from Berkeley and desire to return.[4] Any implementation plan for additional prioritization will need to maintain consistency with these priorities to support overall anti-displacement and social justice goals.

Expanding affordable housing availability for artists is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

BACKGROUND

With the passage of Assembly Bill 812 in 2023, California Government Code Section 65914.8 states:

(a) If a local agency requires, as a condition of approval of the development of residential units, that a certain percentage of the units of the development be affordable housing, the local agency may reserve for artists up to 10 percent of those required affordable housing units if all of the following conditions are satisfied:

(1) The units reserved are located within or within one-half mile from a state-designated cultural district certified pursuant to Chapter 9.2 (commencing with Section 8758) of Division 1 of Title 2 or within any similar locally designated cultural district.

(2) The local agency adopts an ordinance for this purpose that does all of the following:

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[2] https://berkeleyca.gov/sites/default/files/documents/FY-2024-Mid-Biennial-Adopted-Budget-Book.pdf#page=18

[3] 2023 Housing Element Update: https://berkeleyca.gov/sites/default/files/documents/Berkeley_2023-2031%20Housing%20Element_02-17-2023v2_0.pdf

[4] https://berkeleyca.gov/sites/default/files/documents/2023-07-11%20Item%2032%20Referral%20Response%20Affordable.pdf

(A) It is consistent with the Local Tenant Preferences to Prevent Displacement Act (Chapter 12.76 (commencing with Section 7061) of Division 7 of Title 1).
(B) It prohibits an existing tenant from being evicted in favor of an artist.
(C) It contains a fair and comprehensive vetting process that includes, but is not limited to, initial and annual income verification consistent with applicable affordable housing laws and artist status verification.

(b) If an insufficient number of artists apply for and occupy the units, the unoccupied units may be offered to general members of the public.

(c) For purposes of this section, the following definitions apply:

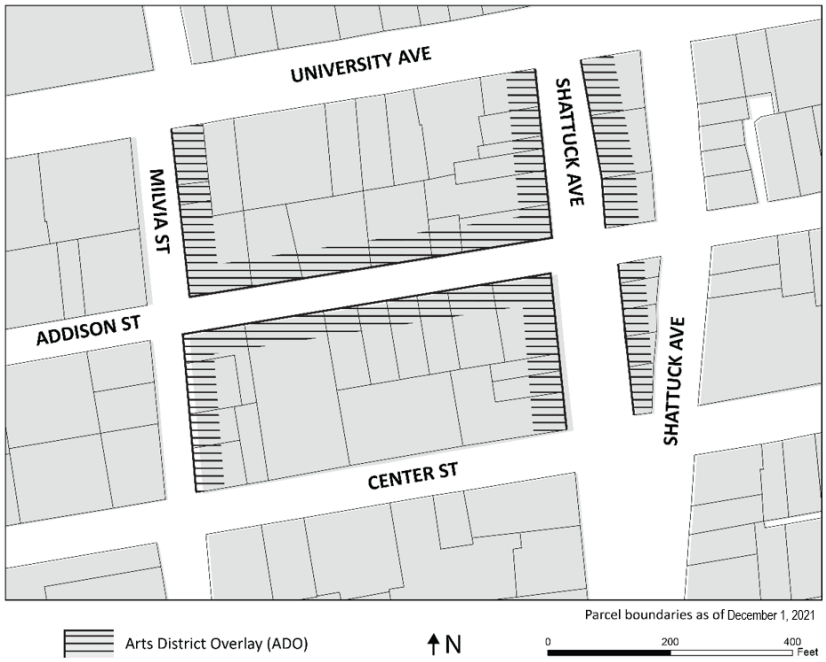
(1) "Affordable housing" means units dedicated to moderate-income, lower income, very low income, or extremely low income households, as defined in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, at an affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code.
(2) "Artist" means the creator of any work of visual, graphic, or performing art of any media, including, but not limited to, a painting, print, drawing, sculpture, craft, photograph, film, or performance.
(3) "Local agency" means a city, county, or city and county.

The City of Berkeley currently has two locally-designated cultural districts. However, they are implemented differently:

(1) The Black Arts and Culture District was designated by the City Council on February 13, 2024 by Resolution No. 71,212–N.S.[5]
(2) The Arts District Overlay was established in Berkeley Municipal Code 23.204.130.D in 2012 as part of the Downtown Area Plan.[6]

As illustrated below, the Arts District Overlay has specific boundaries outlined in the Downtown Mixed-Use District.

[5] https://berkeleyca.gov/sites/default/files/documents/2024-02-13%20Item%2014%20Establishing%20a%20Black%20Arts%20Bartlett%20-%20Supp2.pdf
[6] https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf



By contrast, the Black Arts and Cultural District is not designated with its own unique boundaries, but rather by reference to the Adeline Corridor Specific Plan, which allows and "strongly encourage[s]" arts and entertainment uses in ground floor spaces.[7] As the City is currently conducting outreach and community engagement on the development of the San Pablo Avenue Specific Plan, the community may express a similar desire to preserve and promote arts and culture. Therefore, the Commission and staff should consider a standard process for cultural district designation such that the above and future designations can qualify under AB-812 as a "similar locally designated cultural district."

With the adoption of AB 189 (2015), the state of California launched the California Cultural Districts program as a pilot in 2017 with 14 state-designated cultural districts certified by the California Arts Council (see Attachment 2). Designation criteria is established under California Government Code Section 8758:

> *(a) As used in this chapter, "state-designated cultural district" means a geographical area certified pursuant to this chapter with a concentration of cultural facilities, creative enterprises, or arts venues that does any of the following:*
>
> *(1) Attracts artists, creative entrepreneurs, and cultural enterprises.*
>
> *(2) Encourages economic development and supports entrepreneurship in the creative community.*

[7] https://berkeleyca.gov/sites/default/files/2022-03/Adeline-Corridor-Specific-Plan.pdf

(3) Encourages the preservation and reuse of historic buildings and other artistic and culturally significant structures.

(4) Fosters local cultural development.

(5) Provides a focal point for celebrating and strengthening the unique cultural identity of the community.

(6) Promotes opportunity without generating displacement or expanding inequality.

(b) The Arts Council shall establish criteria and guidelines for state-designated cultural districts. In executing its powers and duties under this chapter, the council shall do all of the following:

(1) Establish a competitive application system by which a community may apply for certification as a state-designated cultural district.

(2) Provide technical assistance for state-designated cultural districts from, among others, artists who have experience with cultural districts and provide promotional support for state-designated cultural districts.

(3) Collaborate with other public agencies and private entities to maximize the benefits of state-designated cultural districts.

(c) A geographical area within the state may be certified as a state-designated cultural district by applying to the council for certification. Certification as a state-designated cultural district shall be for a period of five years, after which the district may renew certification every three years.

The 2017 pilot only permitted applicants in the form of partnerships which “must include three organizations: a cultural nonprofit or artist collective; a local business or business association; and a branch of local government and/or a community development corporation.” State designation of cultural districts has the added benefit under AB-812 of expanding priority for artists in affordable housing to a half-mile radius outside of cultural district boundaries.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
None.

CONTACT PERSON
Councilmember Taplin Council District 2 510-981-7120

Attachments:
1: AB-812 (2023)
2: California Cultural Districts Program Development Final Report (2016)

Assembly Bill No. 812

CHAPTER 747

An act to add Section 65914.8 to the Government Code, relating to housing.

[Approved by Governor October 11, 2023. Filed with Secretary of State October 11, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 812, Boerner. Housing development approvals: reserving affordable units in or near a cultural district for artists.

Existing law requires the Arts Council to establish criteria and guidelines for certification of state-designated cultural districts and collaborate with other public agencies and private entities to maximize the benefits of state-designated cultural districts. The Planning and Zoning Law imposes various requirements on cities and counties with regard to their review and approval of certain housing developments.

This bill would authorize a city or county that requires, as a condition of approval, that a certain percentage of units of a residential development be affordable housing, as specified, to reserve for artists up to 10% of those required affordable housing units, except as provided, if certain conditions are met, including that the units reserved are located within or within one-half mile from a state-designated cultural district or within a locally designated cultural district, as specified.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The people of the State of California do enact as follows:

SECTION 1. Section 65914.8 is added to the Government Code, immediately following Section 65914.7, to read:

65914.8. (a) If a local agency requires, as a condition of approval of the development of residential units, that a certain percentage of the units of the development be affordable housing, the local agency may reserve for artists up to 10 percent of those required affordable housing units if all of the following conditions are satisfied:

(1) The units reserved are located within or within one-half mile from a state-designated cultural district certified pursuant to Chapter 9.2 (commencing with Section 8758) of Division 1 of Title 2 or within any similar locally designated cultural district.

(2) The local agency adopts an ordinance for this purpose that does all of the following:

(A) It is consistent with the Local Tenant Preferences to Prevent Displacement Act (Chapter 12.76 (commencing with Section 7061) of Division 7 of Title 1).

(B) It prohibits an existing tenant from being evicted in favor of an artist.

(C) It contains a fair and comprehensive vetting process that includes, but is not limited to, initial and annual income verification consistent with applicable affordable housing laws and artist status verification.

(b) If an insufficient number of artists apply for and occupy the units, the unoccupied units may be offered to general members of the public.

(c) For purposes of this section, the following definitions apply:

(1) "Affordable housing" means units dedicated to moderate-income, lower income, very low income, or extremely low income households, as defined in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code, at an affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code.

(2) "Artist" means the creator of any work of visual, graphic, or performing art of any media, including, but not limited to, a painting, print, drawing, sculpture, craft, photograph, film, or performance.

(3) "Local agency" means a city, county, or city and county.

SEC. 2. The Legislature finds and declares that Section 1 of this act adding Section 65914.8 to the Government Code addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act applies to all cities, including charter cities.

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California Cultural Districts

FINAL REPORT: CULTURAL DISTRICTS PROGRAM DEVELOPMENT

To encourage the development of a broad array of authentic and sustainable cultural districts that reflect the breadth and diversity of California's extensive cultural assets.

Prepared for the California Arts Council

FALL 2016

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I. PROPOSED PROGRAM PURPOSE, GOALS AND STRUCTURE

The California Arts Council's (CAC) cultural districts program will assist Californians in leveraging the state's considerable assets in the areas of culture, creativity, and diversity, as initially set out in the enabling legislation, AB 189. A cultural district is generally understood as a well-defined geographic area with a high concentration of cultural resources and activities[1].

The California cultural districts program will have the following goals:

- To encourage the development of a broad array of authentic and sustainable cultural districts that reflect the breadth and diversity of California's extensive cultural assets
- To identify, support, and connect centers of arts and cultural activity throughout the state through the certification process
- To provide increased access to the arts and culture through the development and preservation of cultural centers throughout the state
- To foster increased opportunities for artists, craftsmen, and other small businesses contributing to the creative economy
- To encourage the retention of homegrown assets and actively work to mitigate displacement
- To support enhancements to the built environment and resident's pride and stewardship of place by helping to foster remarkable places
- To contribute to increased public awareness of, and visits to, California's centers of cultural activity

California's cultural districts initiative offers an opportunity to create a program that is tailored to the nature and circumstances of a large, populous, and diverse state. It is recommended that the program be built around three major components: 1) certification, 2) funding, and 3) a resource center, which will be put in place over time. In addition, because of the tremendous interest in cultural districts, and the complexity of tailoring a program to adequately support the full range of types of cultural centers throughout the state, the consultants propose that the program be initiated via a two-year long pilot, where a select cohort of designated districts actively engage in refining the final design of the program. Applications for the pilot cohort will be solicited in early 2017 with the goal of selecting a small group of 10 to 15 districts that represent the many possible manifestations of cultural centers present in California. At a minimum the cohort should include districts from urban, suburban and rural locations, as well as districts with an emphasis on cultural consumption, cultural production and cultural heritage. Further it should include districts that are at varied points in the life-cycle, from emerging to established.

[1] See glossary, appendix 1.

II. RESEARCH AND PUBLIC INPUT METHODS

This report, and the associated recommendations for a state cultural districts program, are based on findings from research conducted by the consulting team, along with the information gathered through a comprehensive public input process that the team conducted in coordination with the CAC staff.

Research

The consulting team engaged in a research process over several months which consisted of literature review, document review and interviews. The team compiled information on cultural districts nationally, including program materials and evaluations from several state programs, and conducted interviews with 25 selected local and national experts and thought leaders in a number of fields. Respondents include arts administrators, artists, community developers, and government officials, among others[2].

Public Input

Broad participation in public meetings, along with a robust survey response, provide a clear sense of hopes and concerns regarding state cultivation of cultural districts. Specifically, five public meetings, with over 400 participants, were held in Escondido, Fresno, Los Angeles, Oakland and Redding. Preliminary findings from the initial research phase were included in the materials presented at these meetings, and were also used to shape an on-line questionnaire completed by 326 respondents[3]. Participants at the public meetings had the option of submitting comment cards regarding their hopes and concerns for the cultural districts program, as well as providing formal testimony. The consultants also gathered feedback during two panel sessions at conferences for the art and design communities in Sacramento and San Jose. Finally, interested parties were given the option of organizing an in-person feedback session in their community, with a set of standard questions, although no information was received from these sessions.

The geographic distribution of the meetings along with the geographic distribution of survey respondents resulted in perspectives from people in diverse regions throughout the state. Most meeting participants and survey respondents were from the arts and cultural sector; primarily artists and arts administrators, along with a number of business owners and government officials. There was limited participation from developers and elected officials.

[2] See appendix 2 and 3 for a list of interviews and sample interview protocol
[3] See appendix 4 for a summary analysis of the survey responses

III. OVERVIEW OF FINDINGS FROM NATIONAL REVIEW

As of this year, thirteen states have established statewide cultural district programs, while two others, Arkansas and California, have enacted cultural district policies but have yet to launch programs. In addition, several states are considering cultural district legislation. Rhode Island has the oldest program, established in 1998, and the newest, in South Carolina, was just launched in 2014. These programs have certified over 250 districts collectively, although the number of districts per state varies tremendously. In addition to state certification programs, cities throughout the country have mechanisms in place to designate cultural districts at the local level.

The National Assembly of State Arts Agencies (NASAA) has developed two comprehensive reports[4] on state mandated cultural district programs, which provide valuable insights into the approaches taken by various states. The following summary of programs by state was developed by NASAA:

State	Number of Districts (Year Program Began)	Certification Cycle	Recertification Process	Decertification	Evaluation/Metrics Method
CO	18 (2010)	Biennial (pending)	Yes (every 5 years)	n/a	Annual report
IA	35 (2005)	Ongoing	Yes (every 10 years)	No	Periodic evaluation by the department of revenue
IN	6 (2008)	No policy; in practice about every other year	n/a	Yes, but no formal process	Annual report
KY	6 (2011)	Annual	Yes (each year district files public value report)	Yes	Annual report, site visits
LA	78 (2008)	Annual	n/a	Yes	Annual report
MA	32 (2010)	Rolling applications	Yes (every 5 years)	No formal process	Annual report, site visits
MD	24 (2001)	Biannual	Yes (every 10 years)	n/a	Annual report
NM	8 (2008)	Biennial (districts in cities w/ population over 50,000 can self-designate)	Yes (every 5 years)	Yes	Annual report, site visits
OK	7 (2013)	Triennial	Yes (every 3 years)	n/a	Annual report, site visits
RI	9 (1999)	Ongoing	n/a	No formal process	State tax office collects data on tax incentives; state arts agency has conducted one survey
SC	6 (2014)	Ongoing	Yes (every 5 years)	No	Annual report
TX	28 (2009)	Annual	Yes (every 10 years)	n/a	n/a
WV	8 (2005)	Ongoing	Can be evaluated every 3 years	Yes	State arts agency evaluation any time after first 3 years

[4] NASAA policy brief and NASAA strategy sampler

The consultants sought to answer the following questions through the national review.

1. *What are the main benefits of cultural district designation?*

   While the benefits of becoming a certified cultural district vary by state, most of the programs offer access to selected state resources, from grants to tax credits and other financial incentives, as well as partnerships with various state agencies which take many forms, from expedited permit review to special marketing initiatives. In addition, most of the programs offer technical assistance, including peer to peer learning opportunities such as convening.

2. *What factors contributed to the success of cultural districts in programs throughout the country?*

   Some of the contributing factors to a successful cultural district include a pre-existing density of cultural resources in an area with a cohesive identity, which as the legislation notes can take many forms, and range from facilities to programs, and from historic and cultural resources, to creative individuals. One of the best ways to document the density of cultural resources in an area is to undertake a comprehensive approach to the development of a cultural asset inventory[5]; one that goes beyond just cultural organizations and facilities, and is inclusive of the many diverse contributing elements that make for a vibrant cultural center.

   Other success factors include clearly articulated goals, such as the retention of artists or an increase in annual visitors; dedicated staff (full or part-time), along with multi-sector leadership, where non-profit organizations have come together with businesses and government to foster and manage the district; partnerships that go beyond the leadership of the district and involve the broader community; and finally, the ability to track and capture data that correlates to the district's goals.

3. *What have been some of the outcomes of a cultural districts initiative?*

   Successful cultural districts offer many beneficial outcomes to the geographic area in which they are located and the surrounding community. Nationally, the beneficial outcome that has gotten the most attention is that cultural districts tend to become destinations for both locals and visitors, and as such contribute to economic influx and revitalization. Cultural districts are also being viewed as a tool to assist with the retention of homegrown assets and uses, including artists and arts organizations, as well other culturally and ethnically diverse facilities and uses, and small businesses.

4. *What are some of the challenges that are being experienced in cultivating cultural districts?*

   In a review of the evaluations conducted by four of the existing state programs, as well as in interviews conducted with thought leaders, some key challenges to implementing successful

[5] See glossary, appendix 1

cultural districts programs emerged. The most often cited, at both the state and district level, is the lack of dedicated leadership and staffing. Another related challenge is the lack of clearly documented objectives and corresponding data. At the district level people cited displacement or the loss of existing assets, with the accompanying loss of authenticity, as one of the primary challenges to anticipate and prevent.

IV. IMPLICATIONS FOR CALIFORNIA'S PROGRAM FROM BOTH THE RESEARCH AND PUBLIC INPUT

1. *Program priorities vary by geographic area and include access to a broad range of resources, both informational and financial.*

   The most desired benefits of certification include recognition, funding, and tools to help preserve existing cultural resources, with a focus on equitable development and ways to mitigate displacement especially in communities that feel vulnerable given rapid development, escalating real estate prices, and other contextual circumstances. Combined these represent the top three categories identified in both the survey and the comment cards. Another priority that emerged is assistance in developing better partnerships with local government, as well as a better understanding of the value and importance of artists and cultural resources.

2. *Community impacts as a result of cultural districts elicit enthusiasm as well as concerns regarding access, competition, and additional pressure on fragile cultural centers*

   Benefits associated with cultural districts range from an increased pride of place, to enhanced marketing opportunities for arts and cultural organizations as well as local businesses. Expanded cultural tourism is also frequently cited, in particular by rural and smaller communities.

   Survey respondents were evenly split between those with no concerns, and those with concerns, while most participants at the public meetings did submit areas of concern. The most often cited concern is a top down planning approach and the associated lack of equitable distribution of resources. This was also stated as a desire for an inclusive and transparent process; one that does not pit cultural districts in the same town against each other, or arts against heritage, or small rural areas against more developed communities. In the survey 32% of respondents articulated some aspect of this issue.

   Of equal importance is the concern that cultural district certification will exert increased pressure on cultural centers, leading to even more rapid gentrification and corresponding displacement. This mirrors the fact that one of the most urgent needs or benefits is access to comprehensive information on land-use controls[6] and other ways of preserving existing 'organic' cultural

[6] See glossary, appendix 1

districts. Another key issue across the board is how to ensure that artists and other creatives, who traditionally are the engines of cultural district creation, benefit from the increased attention and resources flowing to certified districts.

3. *Strong and complex demand for the program calls for a two-year pilot approach including an opportunity for program co-design with intended beneficiaries.*

   The anticipation initially expressed after the legislation's adoption in late 2015, when the CAC received inquiries from over 400 individuals and organizations, has been confirmed by extensive participation in this initial planning process by people throughout the state. There is tremendous interest on the part of artists, cultural organizations, and local government in the prospect of certification as a state cultural district. The CAC can most likely anticipate a correspondingly large volume of applications, depending on the requirements articulated for certification, and that the initial application process and first group of certified districts will be subject to considerable attention and scrutiny. A pilot program, one that engages a select group of district participants in a well-documented refinement of the certification process and associated requirements, will help to ensure the success of the program over the long-term. By engaging artists, arts organizations, community developers, the business community, and local government representatives in a transparent, community engaged design[7] process, the CAC and the state can benefit from the collective insight of a wide cross-section of disciplines and approaches.

V. RECOMMENDED INITIAL CAC APPROACH TO IMPLEMENTATION

The following are key recommended elements for CAC's approach to the cultural districts program.

1. *An accessible certification process, refined through a two-year pilot, will be the core of this important new state initiative.*

   The cultural district certification process, managed by the CAC, will be the core of California's new cultural district initiative. It will start with a two-year pilot in which a small (10 to 15) representative cohort will actively participate in shaping the final certification process and related benefits and services. This initial group will be selected through an open application process, and will play a critical role in ensuring, through their feedback and experience, that the full program, once launched, is accessible and supportive. And that it works for various types of cultural centers, in a wide variety of urban, suburban and rural settings.

   The district typology that is recommended includes the general categories in the table below. It is important to note that in regard to the cultural focus, it is likely that many districts will include

[7] See glossary, appendix 1

aspects of each, but will none the less have a higher concentration of one of the three. Districts will be asked to identify according to this broad typology. So, for example, a district might be rural, focused on cultural consumption and established, etc.

CONTEXT	FOCUS	LIFE-CYCLE
urban	cultural production	emerging
suburban	cultural consumption	mid-point
rural	cultural heritage	established

The pilot cohort will help shape the final cultural district certification process and as such it is vitally important that they collectively represent all of the possibilities listed above and also include districts with a range of partnership approaches and goals.

Ideally, in order to structure and document the feedback of the pilot cohort to shape the final certification process, it is recommended that the CAC allocate resources to hire a developmental evaluation[8] team that can work with the CAC and the initial cohort throughout the two-year pilot.

It is recommended that this pilot cohort of certified cultural districts receive an array of benefits as part of the process that could include the following.

- Official state certification – each district will enter into a memorandum of understanding (MOU) with the CAC certifying state designation as a cultural district for a period of five years and granting the district the right to use the state cultural district brand in its marketing
- Branding materials – including the state cultural district logo, as well signage and banner templates
- Technical assistance - including at a minimum an annual convening session, as well as peer to peer and other group learning opportunities given available resources
- Joint marketing support – leveraging resources from state tourism partners
- A stipend – recommended at $5,000 per district per year, to be used to support participation in the developmental evaluation process that will lead to the refinement of the design of the cultural districts program
- Participation in developmental evaluation – the pilot cohort will receive support from the consulting team conducting the developmental evaluation of the cultural districts program, including at a minimum one site visit per year

2. *Development of a funding stream will be critical to the long-term success of the cultural districts initiative, and ultimately to the state's ability to effectively leverage California's extensive diverse cultural resources.*

[8] See glossary, appendix 1

Many of the cultural districts programs throughout the country provide grants to support the work of the districts, in addition to access to other resources, such as tax incentives, regulatory assistance, and other forms of support. Each state is providing the support through different methods and sources. Massachusetts and Colorado have particularly large grant programs, in Colorado's case funded through a partnership with a private foundation. In some cases, such as in Texas, certification makes the entity eligible to apply for grants. Maryland and Louisiana focused primarily on tax incentives. Although there are many benefits that the CAC can confer working within existing resources and by partnering with other state agencies, over time one or more funding stream will need to be identified and cultivated for the cultural districts initiative to reach its full potential.

3. *Development of a comprehensive resource center is key to California's ability to foster a wide range of authentic sustainable cultural districts.*

For the cultural districts initiative to be able to properly serve a state as complex as California, with its breadth and diversity, and its corresponding varied needs, the CAC will need to foster a clear understanding of the many different approaches to cultivating and managing diverse types of cultural districts. This can be achieved through the development of a comprehensive resource center, complete with a resident expert staff person, to complement the certification program. This on-line repository of knowledge will be marketed and made available to all interested parties, from diverse policy sectors.

Development of this resource is particularly critical since each cultural district will need to assemble a different group of tools and solutions to achieve its goals, from artist retention to heritage preservation or cultural development. Many of the mechanisms for impacting land use, as well as the development incentives available to foster or preserve concentrations of cultural resources, need to be initiated at the local level. By making available select models and best-practices, along with a compilation of existing land use tools, financial and regulatory incentives, and other information on the development and management of cultural districts, the CAC will be able to support a thoughtful and varied approach to cultural districts throughout the state, one that encourages an organic, locally focused, approach to cultivating and preserving cultural assets. The on-line resources will be complemented by a program, or programs, to facilitate peer to peer learning, such as convening and regional networks.

The documents listed in the bibliography, along with the resources referenced in the glossary can provide an excellent starting point for the resource center. In addition, several states that have cultural district programs have extensive on-line resources. It is recommended that the CAC explore partnering with a university or other educational institution, to develop the full content of the on-line resource center.

The pilot cohort will also play a role by providing a constructive critique of initial resources and by sharing additional models and tools that work in their community. The resource center will

also play a critical role in supporting places and organizations that are interested in becoming certified, but are just beginning to coalesce.

4. *Additional considerations for the CAC as it embarks on implementing the new legislation, in partnership with other state departments, the cultural community and the private sector.*

    a. To ensure that this new program reaches its full potential, it is recommended the CAC dedicate staff to the initiative that can develop the agency's knowledge and expertise in this complex, multi-disciplinary area and take an entrepreneurial approach to partnership development. As the program grows, the associated time requirements could quickly translate to a full-time staff person or equivalent. In addition, the agency will need to identify resources to work with the initial cohort on the two-year pilot.

    b. The critical role partnerships play in effective cross-sectoral work emerged as primary theme in the research, at all levels, local, regional and state; and as such, partnership development will be a critical component of this initiative. The CAC has played an important leadership role over the last few years in developing new programmatic partnerships that foster greater engagement and understanding of the value of the arts within government as well as the private sector. The Arts in Corrections partnership with the California Department of Corrections & Rehabilitation (CDCR) is an excellent example of this approach. Staff has begun to cultivate partnerships for the cultural districts initiative, forging official strategic partnerships with Visit California and the California Department of Transportation (Caltrans) which will provide increased visibility and marketing support for the pilot cohort, and improved understanding and access to Caltrans resources for cultural district events and for local identifiers such as public art or signage, respectively. Given the overlap between the missions of the following agencies and cultural districts, the Office of Historic Preservation, the Office for Business and Economic Development, and the Department of Housing and Community Development all offer substantial opportunities for partnership in implementing the cultural districts initiative.

    c. One of the potential sources of a funding stream for the cultural districts initiative is a partnership with a foundation, or a coalition of foundations, interested in developing stronger, more livable communities. For the last several years, particularly at the national level, there has been a revival of interest in cross-sectoral, comprehensive, place-based strategies to revive disinvested neighborhoods and communities. Alongside this revival of interest has been a heightened interest in the roles of art, culture and heritage as a driving element of community revitalization. This is evident in funding programs focused on creative placemaking[9] and, relatedly, a growing interest in community engaged design. Understanding the possible intersections between cultural districts and these funding and community development impulses is crucial.

[9] See glossary, appendix 1

d. Economic incentives for the development of cultural resources, along with regulatory or land-use tools that can be used to preserve existing cultural centers are two of the most eagerly anticipated benefits of this initiative. While many of these will need to be cultivated and implemented at the local level, the CAC could potentially encourage their adoption by making them a requirement of state certification and encouraging the involvement of community development and urban planning fields in the cultural district development work. Tools that may prove to be beneficial to cultural district development may include business improvement districts [10], land trusts, community benefit agreements, rent stabilization tactics, small business development programs, and a host of other tactics and tools frequently used by community developers and urban planners. There is also an opportunity to collaborate with planners and community developers to create and experiment with new tools that do not readily exist. This includes the possibility of a cultural impact assessment potentially aligned or embedded with widely practiced environmental impact assessment processes -- possibly as a component of the requirements under the California Environmental Quality Act (CEQA), for example.

VI. PROPOSED REQUIREMENTS FOR THE INITIAL APPLICANTS

Applications for the pilot cohort will be solicited in early 2017 with the goal of selecting a small group of districts that represent the many possible manifestations of cultural districts present in California. At a minimum the cohort should include districts from urban and rural locations, as well as districts with an emphasis on cultural consumption, cultural production and cultural heritage. A framework for that selection process is attached in appendix 4, with key requirements highlighted below.

Only partnerships will be eligible to apply, ones that include, at a minimum, a cultural non-profit or artist collective, a local business or business association, and a branch of local government and/or a community development corporation. The majority of organizations in the partnership must be located in the district. In addition, to be eligible to apply, the cultural district must have at a minimum completed a preliminary cultural asset survey or inventory , as outlined in appendix 7.

Ensuring that all parties have a good understanding of the full array of cultural assets present in the district will be critical to its long-term success. A comprehensive approach to cultural assets helps to ensure authenticity and the preservation of homegrown assets, both of which were indicators of a successful district based on the research. These were also areas of particular concern for the public based on the comments and survey.

[10] See glossary, appendix 1

The application and review process will have three steps, including an open call for initial letters of interest, site visits for semi-finalists, and an invited finalist application. A multi-disciplinary and multi-sector selection panel, along with representatives from other state agencies that are partnering on the initiative, will review each phase and select the pilot cohort.

VII. RECOMMENDED TIMELINE AND BUDGET FOR THE PILOT

The application and selection process for the pilot cohort could be implemented over approximately six months if adequate staff and financial resources are available. Proposed key milestones include the following:

- **January 2017**
  - Issue notice of opportunity for the pilot cohort and request letters of interest (open for 8 weeks)
  - Issue an RFP for developmental evaluation consultant(s) to support the pilot process
- **February 2017**
  - Conduct application/LOI webinar
  - Develop lists of potential panelists
- **March 2017**
  - Letters of interest due to the CAC
  - Appoint panel
  - Select developmental evaluation team
  - Publish guidelines for the final application
  - Identify site visitors and finalize site visit protocol
- **April/May 2017**
  - Panel selects semi-finalists (late April)
  - Conduct site visits for semi-finalists
- **May 2017**
  - Notify finalists, finalist application period opens
- **June/July 2017**
  - Final applications due (allow a minimum of 30 days from notification)
  - Panel selects pilot cohort

In order to execute the pilot program as recommended, including stipends for the cohort, two annual convening sessions, and the extensive participation of a developmental assessment team, the CAC will need to identify between $150,000 and $175,000 per year for the two year period, in addition to dedicating a substantial amount of staff time.

VIII. CONCLUSION

With the adoption of AB 189, the state legislature put in place an important new tool for the development, support, and preservation of California's extensive and diverse cultural assets. Implementing the program will require a carefully tailored approach, one that harnesses the creative energy of the many individuals and organizations working in the field, and considers the unique circumstances of California.

As stated earlier in this report, the recommendations for the program's structure and the selection of the initial group of designated districts are based on research, best practices, and public input regarding the divergent needs of individuals, organizations, and communities throughout the state. Working with a select group of intended beneficiaries to refine these recommendations as they are put into practice offers an exciting opportunity to innovate and craft a program that is truly responsive to, and reflective of, the breadth and complexity of the state. In implementing these recommendations, the CAC has the potential to build a new set of resources and partnerships that will complement the work it and other state agencies are doing to support thriving communities throughout the state.

LIST OF APPENDICES:

1. Glossary of terms
2. Selection framework for the pilot cohort
3. Template for preliminary cultural asset inventory
4. List of interviews
5. Interview protocol
6. Summary analysis of survey responses
7. Strategic Partnership Details (Visit California and Caltrans)
8. Bibliography

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 1

GLOSSARY

Business improvement district (BID) - A defined area within which businesses pay an additional tax or fee in order to fund improvements within the district's boundaries. An example of a business improvement district with a cultural and historic focus is the new Central Avenue Historic District BID in Los Angeles http://www.centralavenuehistoricdistrict.org/

Community engaged design, as defined by the Surdna Foundation, one of the leading funders of the approach, is when *community members contribute to decisions, policies and projects that impact their lives. We believe that artists, architects, and designers can play an important role in translating community values into design solutions that will benefit the communities where they live and work*. Although most often used in reference to the design of physical resources, it also applies to policies and programs.

For additional information on community engaged design please see this site funded by the Surdna Foundation http://communityengageddesign.org/about-us/

Creative placemaking, as defined by the National Endowment for the Arts is *when artists, arts organizations, and community development practitioners deliberately integrate arts and culture into community revitalization work - placing arts at the table with land-use, transportation, economic development, education, housing, infrastructure, and public safety strategies.*

For additional information on creative placemaking please see ArtPlace America http://www.artplaceamerica.org and the Our Town Program at the National Endowment for the Arts https://www.arts.gov/grants-organizations/our-town/introduction.

Cultural asset inventory is a compilation of the people, places, organizations, and events that contribute to the history and culture of a neighborhood or district. It can take many forms including a list, a database or a map. Communities throughout the country, and throughout the world, are finding it to be a valuable tool in understanding the unique qualities that they value in a place. In California, the Alliance for Traditional Culture (ACTA) recently completed a 'cultural treasures' inventory for four communities.

For additional information on cultural asset inventories or mapping please see ACTA, http://www.actaonline.org/content/building-healthy-communities-cultural-treasures or the

examples available on the National Endowment for the Arts website at https://www.arts.gov/exploring-our-town/showcase/type/Asset-Mapping or the comprehensive Australian site http://camra.culturemap.org.au/. Two useful handbooks on cultural asset mapping are available at the following links: one from Ontario Municipal Cultural Planning http://www.ontariomcp.ca/toolkits/CulturalResourceMapping_digital.pdf and from the Creative City Network of Canada https://www.creativecity.ca/publications/ccnc-toolkits.php

Cultural district is generally understood as a well-defined geographic area with a high concentration of cultural resources and activities. In AB 189, the legislation that establishes cultural districts in California, the following inclusive language is used to describe districts and the purposes they serve: "*state-designated cultural district" means a geographical area certified pursuant to this chapter with a concentration of cultural facilities, creative enterprises, or arts venues that does any of the following:*

(1) Attracts artists, creative entrepreneurs, and cultural enterprises.

(2) Encourages economic development and supports entrepreneurship in the creative community.

(3) Encourages the preservation and reuse of historic buildings and other artistic and culturally significant structures.

(4) Fosters local cultural development.

(5) Provides a focal point for celebrating and strengthening the unique cultural identity of the community.

(6) Promotes opportunity without generating displacement or expanding inequality.

General information on cultural districts is available from Americans for the Arts at http://www.americansforthearts.org/by-program/reports-and-data/toolkits/national-cultural-districts-exchange-toolkit

Examples of cultural districts are available on the National Endowment for the Arts website at https://www.arts.gov/exploring-our-town/showcase/type/Cultural-District-Planning

Developmental evaluation is an emerging approach to evaluating complex processes that was pioneered by Michael Quinn Patton, and is considered to be particularly applicable to situations where a funder is developing and testing its strategies while it proceeds with a project or program. It is intended to combine the rigor of evaluation with the flexibility required for a project still in development.

Two publications on developmental evaluation are available from the JW McConnell Family Foundation here:
http://www.mcconnellfoundation.ca/assets/Media%20Library/Publications/A%20Developmental%20Evaluation%20Primer%20-%20EN.pdf
http://mcconnellfoundation.ca/assets/Media%20Library/Publications/DE%20201%20EN.pdf

Land-use tools are multiple and varied, with the most common being land-use restrictions generally accomplished through zoning. Various articles on land-use written for non-planners are available here at Planners Web http://plannersweb.com/topics/basic-tools/zoning-land-use-regulations/. A primer on land-use in California is available through the Office of Planning and Research https://www.opr.ca.gov/docs/StrategiesforSustainableCommunities.pdf

Technical assistance (TA) is the process of providing the expertise needed to an individual or organization in order to assist with a specific issue or to promote greater capacity within the organization. Some of the most common ways of providing technical assistance include one-on-one consultation, peer to peer learning, or through an on-line information resource. A resource for technical assistance in California is the Center for Non-Profit Management https://cnmsocal.org/

Types of cultural districts - this report proposes a basic typology for cultural districts in California, including geographic context (urban, suburban, & rural), focus (consumption, production, heritage) as well as where the district is in a life-cycle (emerging, mid-point & established).

- **Cultural consumption** district means a district that emphasizes experiencing art, with a concentration of venues and facilities where the public can go and have a range of art experiences. An example might be a theater district.
- **Cultural production** district means a district that emphasizes the creation of art, craft, and other creative products, with a concentration of artist studios, creative workplaces, and other assets focused on production. An example might be an artist studio district.
- **Cultural heritage district** means a district that focuses on a particular culture, tradition or history. An example might be a Chinatown district or a downtown historic district.
- **Emerging** means a district that is just forming or has been in existence, as a partnership or management structure with staff and programming, for less than five years.
- **Established** means a district that has been in existence with a management structure, staff, and programming for more than ten years.
- **Mid-point** means a district, with a management structure, staff, and programming, that has been in existence for between five to ten years

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 2

RECOMMENDED SELECTION FRAMEWORK FOR THE PILOT COHORT

The California Arts Council's (CAC) Cultural Districts program will assist Californians in leveraging the state's considerable assets in the areas of culture, creativity, and diversity, as initially set out in the enabling legislation, AB 189. A cultural district is generally understood as a well-defined geographic area with a high concentration of cultural resources and activities.

California's cultural districts initiative offers an opportunity to create a program that is tailored to the nature and circumstances of a large, populous, and diverse state. It is recommended that the program be built around three major components: 1) certification, 2) funding, and 3) a resource center, which will be put in place over time. In addition, because of the tremendous interest in cultural districts, and the complexity of tailoring a program to adequately support the full range of types of cultural centers throughout the state, the consultants propose that the program be initiated via a two-year long pilot, where a select cohort of designated districts actively engage in refining the final design of the program.

An initial cohort of ten to fifteen districts will be selected through an open application process. Applications will be solicited in early 2017 with the goal of identifying a small well rounded group of communities that are diverse in make-up, geography and purpose, and that represent the many possible manifestations of cultural districts present in California.

The typology of districts envisioned is discussed in the overall report, and is based on a flexible matrix that includes the following.

CONTEXT	FOCUS	LIFE-CYCLE
urban	cultural production	emerging
suburban	cultural consumption	mid-point
rural	cultural heritage	established

So, for example, a district might be rural, focused on cultural consumption and established, etc. At a minimum the cohort should include representatives of each of these types.

A. RECOMMENDED ELEMENTS OF THE APPLICATION AND SELECTION PROCESS

The selection of the initial pilot cohort will take place through a three phase process, starting with an open call to all interested communities to submit a letter of interest (LOI). A panel will review the initial submittals and select a group of semi-finalists who will receive site visits. Findings from the site visits will be reviewed and a group of finalists will be invited to submit a full application.

At each stage of the process, applicants will be grouped by type, and each group will be reviewed separately to help ensure adequate representation of all types of cultural districts in the pilot cohort and to help ensure a fair and equitable review of all applications. The following are recommendations for the selection process and review criteria that will need to be operationalized by CAC staff in keeping with existing applicable CAC processes, criteria, and conventions.

The application materials and process are envisioned as the first step in technical assistance and will be developed accordingly, with the goal of cultivating widespread understanding of the potential benefits of cultural districts, and the tools associated with the designation, at the local and the state level. For example, the guidelines for the LOI could provide examples of the types of resources each partner might bring to the table in the final application, which would help applicants in both planning and negotiating a final partnership.

B. MINIMUM ELIGIBILITY

The following are recommended as the minimum requirements that would need to be met for groups to be eligible to apply for cultural district certification during this pilot round.

- Only partnerships will be eligible to apply
    - At a minimum the partnership must include a cultural non-profit or artist collective, a local business or business association, and a branch of local government
    - The partnership needs to be formalized, including formal acknowledgement by the local government partner through a letter or resolution by the time of final application.
    - Local community development corporations (CDCs) can serve as a partner in lieu of government, which could be particularly important in low-income neighborhoods and traditional ethnic heritage communities
- The majority of organizations in the partnership must have offices or facilities or conduct a majority of the organization's programming within the area seeking designation as a district.
- There will be two tracks within the certification process, urban and rural, with different eligibility requirements in regards to geographic boundaries.
    - Urban cultural districts are generally expected to be a contiguous geographic area that is walkable.

- Rural districts do not need to be walkable or even contiguous, but will need to make the case for how the participating areas/entities are complementary and synergistic

- Completion of a preliminary cultural asset inventory by the time of the final application. A template will be provided for applicants who have not yet undertaken this process.
  - Ensuring that all parties have a good understanding of the full array of cultural assets present in the district will be critical to its long-term success. A comprehensive approach to cultural assets helps to ensure authenticity and the preservation of homegrown assets, both of which were indicators of a successful district based on the research, including extensive public input.

C. ACCESS

The staff at the CAC will work to include in the process as broad a cross-section of places and groups as possible, including those that may not initially appear to have the administrative capacity or the structure to apply, in an effort to ensure that the pilot cohort is ultimately as representative of the state as possible. Staff will work with partner organizations throughout the state to notify groups of this opportunity and will provide application support to all interested parties via email and phone and via an online webinar. It is envisioned that designated staff at the CAC will be available by phone to discuss the application process, to clarify requirements and to direct potential applicants to resources on cultural districts. In addition the CAC will encourage nascent cultural districts to utilize available resources materials and to apply for professional development grants that could support the development of the district for future open applications.

D. APPLICATION

As previously stated, the application process will unfold in three phases, with each phase designed to solicit the information necessary to identify an inclusive and diverse pilot cohort.

1. Letter of Interest (LOI)

   The letter of interest phase will be open to all communities interested in receiving state certification in the first round of the program, and in participating in the pilot cohort by helping the CAC finalize the cultural districts initiative. Applicants will be asked to provide the following information for consideration. In addition, applicants will need to provide three letters of support from individual community members or artists located in the proposed district beyond the participating partners. Applicants will also be required to submit a completed eligibility checklist.

   - Who are the partners applying for cultural district designation?

  - Briefly describe each of the participating entities and the role each plays in the proposed district
- Where is this place?
  - Provide the location and context – including basic demographic and socio-economic statistics (SES), as well as a map indicating the boundaries of the proposed district
- Where is the district in its lifecycle? Is it established, emerging, or some other point? If other, please describe.
- What is the primary focus or emphasis of the district: cultural production, cultural consumption or cultural heritage?
  - What makes the district distinct and sets it apart?
  - What facilities, activities, events, and history shape the district?
- How is this place used by the community currently?
- How will existing residents and uses benefit from the establishment of a district?
- Do the boundaries of the district overlap with other districts or designations?
  - Such as a city designated cultural district or heritage district, Business Improvement District, Main Street, Promise Zone, etc.
- What types of public infrastructure and amenities, such as public transportation, parks, or plazas, support the district?
- Are there municipal or development plans in place or in process that affect the district? If yes, please describe.
  - Such as a general plan, specific plan, transportation plan, cultural plan, etc.
- What types of space for artists, arts organizations, and cultural activities are currently present in the district? If there is the potential or plans for additional space, please describe as well.
  - Such as affordable housing (rental or purchase), studio and performance space; theaters, modular open spaces, live/work space, etc.
- What are the key issues and opportunities facing the district? And what do you seek to achieve with the cultural district designation?

  For example: Is displacement of artists a current community concern? If so, how will the proposed district address this concern?

2. <u>Semi-Finalist Selection and Site Visits</u>

   The panel will review the letters of interest, grouped by type, and select a representative group of approximately 30 semi-finalists to receive site visits. The primary purpose of the site visits will be to meet with the applicants and confirm the information provided in the LOI and provide additional insights to the panel during the final application review process. It is envisioned that a majority of the semi-finalists will be invited to submit full applications unless substantial discrepancies are encountered.

At the time of selection semi-finalists will be reminded that all finalists will be required to submit a basic cultural asset inventory, completed within the last three years, as a part of the final application. The CAC will develop and make available a simple methodology for completing an initial cultural asset inventory that will help ensure that districts have a good understanding of the array of authentic cultural resources shaping the district, from places and organizations to people, history and events.

Site visits will be conducted by CAC staff, panelists, or contractors depending on which option proves to be the most feasible depending on the available resources and timeline. Site visits will adhere to the following general protocol.

Site visitors will be assigned a group of applications and will:

- Read the assigned applications and conduct due diligence, including review of select independent sources of information
- Contact the applicants to set up a tour and interviews with the partners as well as other stakeholders or residents of the district
- Conduct a physical tour the proposed district and develop a written and photographic description of the place designed to ascertain the concentration of cultural resources and the physical qualities of the place
- Conduct interviews with each of the partners using a standard list of questions designed to ascertain the commitment of the partners to the project and the capacity of the professionals participating in process
- Meet with additional stakeholders, including the authors of letters of support designed to ascertain community buy-in for the process and authenticity of proposed district goals and leadership
- Complete a site visit report form

Staff will convene all of the site visitors to discuss the findings and identify the participants who will be invited to submit full applications.

3. Full Application

A diverse group of finalists will be invited to submit full applications. The CAC will utilize the same application for all, and will include an introductory section designed to allow the applicant to define the nature of the proposed district, i.e. established or emerging, urban or rural, etc. The first section of the application will include a majority of the questions from the LOI, giving the finalists the opportunity to update or revise the original responses.

In addition, finalists will be asked to provide the following information:

- What are the intended outcomes for the district over the first five-year certification period? How will the outcomes be measured?
- What specifically will the district accomplish in year one? In year two?

    - Such as programs, festivals, facility development, artist housing, planning or marketing initiative, fundraising, etc.
- What is the district's budget for the first two years?
- Describe what resources each entity brings to the partnership and how they align with the issues and opportunities facing the district?
- What are the roles and responsibilities of staff, volunteers, and partners organizations in planning and managing district activities?
- Do you intend to collaborate with additional district stakeholders beyond the core partners? If so, please describe.
- Will the proposed cultural district impact the affordability of real-estate for current residents and stakeholders? Please explain.
- How will the applicant work to help maintain current residents and uses?
- If changes in residents and uses are envisioned, please explain how the applicant will work to avoid displacement or other negative impacts.

E. REVIEW

Applications for the pilot cohort will be evaluated based on the requirements and criteria articulated below at each phase of the selection process, as applicable. The overarching goal will be to identify a cohort that is representative of the state in order to demonstrate the potential of the cultural district program to positively impact diverse neighborhoods, cities, and regions throughout California. The pilot cohort will help shape the final cultural district certification process and as such it is vitally important that they collectively represent rural, urban and suburban areas; districts that are emerging and established; districts with a focus on cultural production, cultural consumption, and cultural heritage; and also include districts with a range of partnership approaches and goals.

1. Criteria

In evaluating each applicant the panel will consider the nature of the proposed cultural district, and the following aspects of the applicant's engagement in the promotion, preservation, and interpretation of the arts and culture of the district, as illustrated in the application and supporting materials:

- Presence of a high concentration of artistic, cultural, heritage, or entertainment resources
- Clear articulation of the following elements:
    - Vision for the district
    - Measurable goals and defined evaluation measures
    - Achievable objectives for each of the first two years
    - Defined management budget with associated income and expenses
- Quality, diversity, and commitments of participating partners
- Degree to which the partners reflect the broader community
- Demonstrated authentic community engagement from a broad and representative array of stakeholders
- Presence of clearly defined leadership

- Presence of professional personnel dedicated (full or part-time) to district operations and programming
- Anticipated impact of designation

2. Review Panel

The CAC will appoint a panel of qualified professionals to evaluate the applications and to select the pilot cohort. In addition to cultural and geographic diversity, the panel will include representatives from different disciplines and sectors whose expertise reflects the varied fields and skills relevant to development of successful cultural districts, from the arts, to cultural heritage and community development. The same panel will serve throughout the selection of the first cohort, from LOI to final application. Ideally the panel will also include representatives from other California departments and agencies, at a minimum those who are partnering with CAC on the program.

F. RECOMMENDED TIMELINE

The application and selection process could be implemented over approximately six months if adequate staff and financial resources are available. Proposed key milestones include the following:

- **January 2017**
  - Issue notice of opportunity for the pilot cohort and request letters of interest (open for 8 weeks)
  - Issue an RFP for developmental evaluation consultant(s) to support the pilot process
- **February 2017**
  - Conduct application/LOI webinar
  - Develop lists of potential panelists
- **March 2017**
  - Letters of interest due to the CAC
  - Appoint panel
  - Select developmental evaluation team
  - Publish guidelines for the final application
  - Identify site visitors and finalize site visit protocol
- **April/May 2017**
  - Panel selects semi-finalists (late April)
  - Conduct site visits for semi-finalists
- **May 2017**
  - Notify finalists, finalist application period opens
- **June/July 2017**
  - Final applications due (allow a minimum of 30 days from notification)
  - Panel selects pilot cohort

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 3

COMMUNITY CULTURAL ASSET INVENTORY
Background, Instructions, and Template

What is a Cultural Asset? Professor Ross Gibson, Sydney College of the Arts

In every community that manages to sustain or revive itself over time, there are cultural factors that contribute to the vitality and robustness of the people living there. These factors are shared and creative, which is to say they are cultural and they are assets that make life valuable, that make life worth living. These cultural assets can be material, immaterial, emotional, or even spiritual. They can be 'solid' things like concert halls, galleries, gardens, parklands and stadiums. They can be special tracts of the natural environment which encourage particular types of cultural activities. Or the climate itself might be a cultural asset if it encourages special kinds of creative and communal activities that bind people together in a place over time. Stories too might be cultural assets if they are attached to particular peoples and places if they are powerful enough to encourage people to care about and care for their place. In these stories, values can circulate, and special memories often reside in particular locations mentioned in the tales. Thus the places mentioned in the stories can be regarded as cultural assets if people tell of these places and visit them regularly and develop regular practices or rituals or ceremonies to care for them.

http://camra.culturemap.org.au/page/what-cultural-asset

BACKGROUND:

One of the best ways to document the density of cultural resources and activities in an area is to undertake the development of a cultural asset inventory; one that goes beyond just cultural organizations and facilities, and is inclusive of the many diverse contributing elements that make for a vibrant cultural center. A cultural asset inventory can take many forms, from a simple list, to a database or interactive map. In this case the product will be a categorized list, with location and notes sections (see attached template).

Ensuring that all parties have a good understanding of the full array of cultural assets present in the district will be critical to its long-term success. A comprehensive approach to cultural assets helps to ensure authenticity and the preservation of homegrown assets, both of which were indicators of a successful district based on the research conducted to develop this program.

HOW TO COMPLETE THE TEMPLATE:

Conduct an outreach process to engage members of the community in identifying cultural assets, through an in-person convening, as well an on-line survey, with the results of both being used to populate your list.

Prepare a list of questions for the survey, and to be used as prompts for the meeting. Possible questions include:

- What contributes to the community's cultural identity?
- Who are the people and organizations that help shape it?
- What places and events give the community its character?
- How does the history of the neighborhood contribute to the community's cultural identity?
- Who are the creative people in the community?
- Where are the places people go to have a cultural experience, of any form?
- What organizations in the community are contributing to the arts and culture? In what ways?

Be inclusive. Reach out as broadly as possible and try and identify partners who will help you reach beyond your organization's usual audience.

Be open to a variety of perspectives. Encourage participants to think broadly about what is important to document and include in the inventory. Include at a minimum the categories in the template, and expand the categories as needed to reflect community perspectives and priorities.

Be sensitive to potential barriers to participation, such as language. Make sure all materials are available in the primary alternate language used in the community, in addition to English. In addition, make sure to include native speakers as translators at the convening.

Additional information about cultural asset inventories or mapping is available through the Alliance of California Traditional Cultures (ACTA) http://www.actaonline.org/content/building-healthy-communities-cultural-treasures or the examples available on the National Endowment for the Arts website at https://www.arts.gov/exploring-our-town/showcase/type/Asset-Mapping The Artscape website also has a useful toolkit at http://www.artscapediy.org/Creative-Placemaking-Toolbox/Who-Are-My-Stakeholders-and-How-Do-I-Engage-Them/An-Introduction-to-Cultural-Asset-Mapping.aspx

DRAFT: Cultural Asset Inventory Worksheet

Applicants should use as many pages as necessary.

District Name:

Applicant Partners:

DESCRIPTION OF THE COMMUNITY PROCESS:

CATEGORY	ASSETS	LOCATION	NOTES/ADDITIONAL INFORMATION
1. PEOPLE			
2. PLACES			
3. ORGANIZATIONS			
4. EVENTS			
a. Historic			
b. Current			
5. ADDITIONAL CATEGORIES			

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 4

INTERVIEW LIST

As part of the research process the consultants conducted a number of one on one and group interviews with local and national thought leaders in a variety of disciplines to gather information for the California Cultural Districts initiative.

First	Last	Affiliation
Larry	Baza	Chair, San Diego Arts Commission
Marybel	Batjer	Secretary, Government Operations Agency, State of California
Ryan	Becker	Vice President, Communications, Visit CA
Roberto	Bedoya	City of Oakland, Cultural Affairs
Caroline	Beteta	President, Visit, CA
Ben	Caldwell	Artist, Los Angeles
Ada	Chan	Project Manager, SoMa Pilipinas
Laura	Cole-Rowe	Executive Director, CA Main Street Alliance
Teri	Deaver	Vice President, Consulting & Strategic Partnerships, Artspace
Juan	Devis	Chief Creative Officer, KCET
Sherri	Franklin	Central Avenue Historic District
Kathy	Gallegos	ED, Avenue 50 Studios
Margaret	Hunt	Director, California Creative Industries
Amanda	J. Ashley	Assistant Professor, Community and Regional Planning, Boise State University
Shannon	Jackson	Associate Vice Chancellor for Arts & Design, UC Berkeley
Kelley	Kahn	Special Projects Director, City of Oakland
Amy	Kitchener	Executive Director, Alliance for California Traditional Arts
Kelley	Lindquist	President, Artspace
Libby	Maynard	Executive Director, Ink People Center for the Arts
Lynne	McCormack	Director of Creative Placemaking, Local Initiatives Support Corporation (LISC)
Steven	Oliver	Oliver and Company
Armando	Pena	Armando Pena and Associates
Peter	Shapiro	Executive Director, Revenue Authority of Prince George's County
Keith	Robinson	Principal Landscape Architect, Division of Design, Caltrans
Jason	Shupbach	Director of Design Programs, National Endowment for the Arts
Will	Shuck	Deputy Director, External Affairs, Caltrans
Nicole	Winger	Deputy Controller for Public Affairs, Office of State Controller, State of California
Kristin	Zaremba	City of Oakland, Public Art

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 5

INTERVIEW PROTOCOL

Core Questions

- When you think of "cultural districts," what comes to mind for you?
- Are there any cultural districts that you know of that you think are particularly successful? Please describe any examples. Why do you think these are successful?
- What are benefits of cultural districts? For whom?
- What are shortcomings of cultural districts? For whom?
- Do you know of funding mechanisms for cultural districts? Other supports?
- Do you personally have any experience in planning or developing a cultural district?
- Who else do you think we should talk with about cultural districts?

Supplemental Questions Group 1

- What do you hope a cultural district program accomplishes? Do you have any concerns about a cultural districts program? Please discuss.
- Whose involvement is essential to the success of this program? Why?
- Who, if anyone, do you anticipate, would oppose it? Why?

Supplemental Questions Group 2

- How does/has the concept of cultural districts connect(ed) to your national work?
- As it stands now, are cultural districts a significant factor in what you do? If so, how? Why?
- Are you aware of any discussions or debates focused on cultural districts? If so, please describe.

Supplemental Questions Group 3

- Could you envision cultural districts serving as a tool for community development? If so, how? If not, why not?
- Do you have any concerns about cultural districts in relation to displacement of vulnerable populations?
- Do you have any insights about how zoning and codes foster or impede cultural districts?

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 6

CULTURAL ARTS DISTRICT SURVEY RESPONSES ANALYSIS NOTES

Q1. In what Zip code are you located?

- 326 respondents
- The respondents are evenly represented across geographic areas.
    - 11% or 37 respondents are from “True North” zip codes including Sonoma, Mendocino, Lake, Eureka, Humboldt, Butte, Shasta, Tehama, Siskiyou Counties.
    - 18% or 59 respondents are from “Central Valley” zip codes including Sacramento, Stanislaus, San Joaquin, Fresno, Kern, Tulare and Yolo Counties.
    - 13% or 42 respondents are from a “San Diego region” zip codes including San Diego County.
    - 21% or 70 respondents are from “Bay Area” zip codes including San Mateo, Santa Clara, San Francisco, Alameda, Contra Costa, Marin Counties.
    - 16% or 51 respondents are from “Los Angeles area” zip codes including Los Angeles Counties.
    - 21% or 67 respondents are from “other” zip codes which include San Bernardino, Riverside, Orange, Ventura, Santa Barbara, Monterey, Santa Cruz, Tuolumne, Mariposa and Placer and El Dorado Counties.

Q2. Please select the category that best describes your point of view.

- The majority of the 326 respondents (197) describe themselves as either Artists/Creative Entrepreneurs or Arts Administrators.
- Very few respondents were developers or elected officials
- Respondents describe their point of view as follows:

Artists/Creative Entrepreneurs	97
Arts Administrator	100
Business Owner	16
Community Activist	16
Cultural Tradition Bearer	14
Developer	2
Elected Official	4
Government Employee	22
Private Citizen	19
Other	36
Total	**326**

- Other points of view were mostly related to arts administration and or arts sector and were described by respondents as follows:
    - Executive Director of Downtown Los Angeles Art Walk
    - Arts consultant
    - Architecture Commissioner
    - Teaching Artist/Multidisciplinary Artist
    - Museum Employee
    - owner of an arts marketing firm
    - Museum of Earth Science and Paleontology
    - Employee of a business
    - Board member arts organization and business organization
    - Librarian
    - museum professional - history museum
    - Grant Writer
    - Cultural tourism marketing
    - Archivist
    - Educator
    - History Museum Director
    - City of Selma. Theatre/Visual Arts/Murals, etc...
    - Museums and Cultural Arts Commissioner
    - Student
    - Musician and Administrator of Non Profit Performing Art Space
    - President, Livermore Cultural Arts Council
    - Educator/Art Critic
    - Arts Educator/Arts Board Appointee
    - An Executive Director of a nonprofit arts org and also a restaurant owner
    - Grassroots Filipino American Historian and Preservationist
    - Non profit theatre grant writer
    - Art and jewelry maker
    - Artist; Arts Admin; Business Owner; Private Citizen; Teaching Artist
    - Radio programmer
    - Volunteer for countywide arts non-profit
    - Private citizen, Business owner, artist , community activist
    - Arts Advocate
    - Board Member Folsom Lake Community Concert Association
    - Arts org admin, arts biz owner, community arts activist EQUALLY!
    - Arts Consultant
    - Community Radio Station Manager

Q3. Are you familiar with any Cultural Districts? Y/N

- 326 respondents
- Respondents did not indicate high familiarity with cultural districts.
    - 50% of respondents or 160 answered no.

  - 50% or 161 answered yes.
- Familiarity with cultural districts was equally spread across California regions.

Q4. If yes, please name.

Respondents provided a wide range of examples of cultural districts. The examples clustered within the following broad categories and indicate a varied interpretation of what is considered an “Arts District”.

The examples also reflect the respondents point of view, with the majority of the 326 respondents (60%) describing themselves as either Artists/Creative Entrepreneurs (97) or Arts Administrators (100).

1. **Arts districts/Theatre districts (often downtown).** Examples cited include Historic Theatre District-Seattle; Cleveland’s Arts District; Dallas Arts District; Eugene Gallery and Arts District; Downtown Portland; Downtown Los Angeles Arts District ; Broad Street Art and Cultural District-Richmond Virginia; Laurence, KS downtown cultural district; Noho Arts District; Portland Cultural District; San Pedro Water front Arts District; Wynwood-Arts District-Florida; Arts District, Portland Maine; Berkeley Theatre District; Downtown Riverside; Downtown Redlands; downtown San Diego; Downtown Santa Ana; Downtown Ventura; Downtown LA Eastside Arts District
2. **Parks or outdoor/open spaces.** Examples include Hutchins Street Square in Lodi-CA; Joshua Tree; Yerba Buena Garden; Balboa Park-San Diego; Barrio Logan, Chicano park;
3. **Entire Cities/regions.** Examples cited include Berkeley, CA; Boise; Chicago; Chula Vista; Culver City, CA; Davis; Denver; District of Beverly Hills; Escondido, CA; Idaho; Laguna Beach; Los Angeles; Long Beach; New Orleans; Boise; Grandville Island, Vancouver, BC; Laguna Beach; West Hollywood; Los Angeles County; San Francisco; New York; Monterey; Pasadena; Pittsburgh; Providence-RI; Massachusetts; Seattle; Redlands; Reno; San Rafael; Santa Ana; Santa Barbara; Santa Cruz; Santa Fe; Seattle; Sebastopol; Sonoma County; Washington DC; Oregon, Texas
4. **Arts Organizations and their surrounding neighborhoods.** Examples cited include Buffalo Arts Studio; Eugene Gallery and Arts District, Elk Grove Committee for Arts and Multicultural Committee; Elk Grove Fine Art Center; LA County Arts Council; Liberty Station Arts District; Lincoln Center-NYC; Music Center-Los Angeles; Los Angeles Dorothy Pavilion; Lodi Arts Commission; Los Angeles at MOCA, Geffen, Broad; Malonga Center for African Culture; Megijima Eco Arts, Miracle Mile LA Museum Row; Pilchuck Glass School; Regional Arts and Cultural Council-Portland/Vancouver; Riverside Mission Inn; Sacramento Arts Commission; Smac; SOFA; San Francisco War Memorial/Civic Centers
5. **Historical ethnic neighborhoods.** Examples cited include “Little Tokyo”; “Little Italy”; Leimert Park; Brooklyn; “Chinatown”; Chinatown-SF; Filipinotown-Los Angeles; Harlem; Barrio Logan-San Diego; San Jose Japantown; New Orleans French Quarter

6. **Other neighborhoods/ arts and cultural hubs:** Arts and Entertainment district of H Street-NE Washington DC; Arts and entertainment district, Los Angeles Grand Avenue Corridor; Fruitvale Unity Village; Georgetown District in Seattle; Providence,RI; Creamery District, Arcata, CA; Arts District at Liberty Station; Midtown Atlanta; midtown San Francisco; Mission district-SF; Navy Pier Chicago; NE Minneapolis Riverfront; North Beach San Francisco, North Hollywood, North Park-SD; Chelsea, SoHo; East Austin; East Village; Pittsburgh Cultural District; Shell town San Diego; Short North-Columbus, Ohio; Temescal Neighborhood-Oakland; Wynwood -Florida; Uptown-Oakland; Willowbrook-LA County;
7. **Main Streets/Old Towns:** Eureka Main Street; Old town Sacramento, Old town New Hall Cultural Districts; Old Town San Diego; Olvera Street-Los Angeles

Q5. What makes this cultural district successful?

Answers are clustered among the following key categories:

1. Accessibility- pedestrian friendly; easy access to public transportation
2. Geographic Concentration of diverse and "complimentary" institutions and cultural activity (restaurants, galleries, museums, small independent retail shops, farmers market, outdoor venues/open space)
3. Public/Private partnerships/collaborations in support of arts, artists , and broad participation in arts and cultural activity including tax incentives, Cultural Arts Master plan, public art programming, place-making initiatives, open studio culturally events; art walk events)
4. Artist centric support institutions (affordable live work spaces, access to professional development,)
5. Unique/Iconic architecture/public art/built environment
6. Honoring/preserving historically/ significant hub/space

Q6. At best, what would be the benefits of cultural district designation? List up to three Features.

- 320 respondents.
- Overall, the listed benefits of cultural district were evenly spread across the 5 suggested categories.

	Total Count	Percent
Recognition	175	20%
Access to funding for district improvements	259	30%
Protection of pre-existing community assets	□□□□□	21%
Technical assistance with marketing resources	□□□	12%
Convening and connecting people involved in cultural districts around the state	146	17%

- Access to funding for district improvements received the most responses, followed by protecting of pre-existing community assets and Recognition.
- Technical assistance with marketing resources received the least responses.

Q6. Other

- "Other" examples of benefits provided by respondents are clustered within the previously suggested 5 categories as well as the following three additional categories:
  - Promoting Equity and Social Justice;
  - Providing Opportunity for arts and cultural participation and connection with artists;
  - Promoting economic development and growth via the arts.

Q. 6 Other Benefits	Total Count
Recognition	5
Access to funding for district improvements	4
Protection of pre-existing community assets	☐
Technical assistance with marketing resources	☐
Convening and connecting people involved in cultural districts around the state	9
Promoting Equity and Social Justice	11
Providing Opportunity for arts and cultural participation and connection with artists	10
Promoting economic development and growth via the arts.	12
Other	2

Q7. Do you have concerns about cultural district program? Y/N

- 313 respondents and 13 blank responses.
- Responses were evenly split between "No": 165 (53%) and "Yes": 148 (47%)

No	165
Yes	148
(blank)	13
Grand Total	**326**

- Those with no concerns about cultural districts were evenly spread among geographic areas.

Inquiry Area	No Concerns	%
1-True North	20	12%
2-Central Valley	34	21%
3-San Diego	23	14%
4-Bay Area	25	15%

5-Los Angeles	24	15%
6-Other	39	24%
Total	**165**	**100%**

- Of those with concerns about cultural districts, respondents from the Bay Area (Inquiry Area 4) recorded the highest number of concerns: 42 or 28%. This finding is likely associated with the regions high concentration of arts and cultural activity.

- Other respondents were evenly spread among remaining geographic areas.

- It is interesting to note that respondents from the Los Angeles area which could also be characterized as having a large concentration of cultural activity did not indicate a higher level of concern.

Inquiry Area	Yes Concerns	%
1-True North	16	11%
2-Central Valley	23	16%
3-San Diego	16	11%
4-Bay Area	42	28%
5-Los Angeles	26	18%
6-Other	25	17%
Total	**148**	**100%**

- Among the Bay Area respondents, Alameda County had the highest number of respondents indicating concerns (22), of which a little over half (14) were associated with respondents from the City of Oakland.
- Respondents from the County and City of San Francisco recorded the next highest number of concerns (9).
- This finding is likely associated with the cities' availability and concentration of arts and cultural activity and associated experiences/impacts, particularly for low income communities and communities of Color.

4-Bay Area	Yes Concerns
Alameda County	
Alameda	2
Albany	1
Emeryville	1
Fremont	1
Livermore	2

Oakland	14
San Leandro	1
Sub-Total	**22**
Contra Costa County	
Richmond	1
Rodeo	1
Sub-Total	**2**
Marin County	
Larkspur	1
Mill Valley	1
Sub Total	**2**
San Francisco County	
San Francisco	9
Sub-Total	**9**
San Mateo County	
Burlingame	1
Redwood City	1
Sub-Total	2
Santa Clara County	
San Jose	5
Sub-Total	**5**
Total	**42**

Q8. If You Answered Yes to Concerns about Cultural Arts Districts, please describe.

- In general, concerns described by the 148 respondents that answered yes, fell within the following 8 broad categories.
- Concerns about a top down planning/development approach and associated lack of equitable distribution of resources and accountability surfaced as the top concern among the respondents. Respondents were particularly concerned about the selection criteria and possible exclusion of areas as well as competition between districts.
- Concerns about the Arts districts triggering gentrification and displacement of existing residents including low income residents, arts and small non-profit arts organizations accounted for about 25% of the responses.

Types of concerns	Count of Types of Concerns	%
1. Gentrification (particularly of existing arts and cultural activity/communities)	25	13%
2. Displacement of existing residents including artists	23	12%
3. Lack of grass-roots focus and community inclusion including artists	26	14%

4. Lack of comprehensive and sustainable development focus (arts investment at exclusion of or in competition with other opportunities)	15	8%
5. Top down development, lack of equitable distribution of resources, and accountability	61	32%
6. Exclusion of Rural Areas	6	3%
7. Lack of funding and broad public support for long term sustainability	23	12%
8. Other	11	6%
Total	**190**	**100%**

- Among the respondents from the Cities of Oakland, San Francisco, concerns clustered around the following key issues:

    1. Gentrification (particularly of existing arts and cultural activity/communities)
    2. Displacement of existing residents
    3. Lack of grass-roots focus and community inclusion
    4. Lack of comprehensive development focus
    5. Top down development
    6. Exclusion of Rural Areas
    7. Lack of Funding

	Oakland	**Issue Area**
1.	Black cultural district will focus on pat nd be a historical district while former Black Oakland residents continue to be displaced and cannot afford to live in a place dedicated to cultural group	• Gentrification/ • Displacement of Black Oakland Residents
2.	Displacement of existing communities within and at the edges of the district. The speed of the organized shift to a named district is it affects neighboring communities.	• Displacement of existing communities
3.	Do not want to stifle thoughtful development particularly in regards to housing and indie retail and other important opportunities for economic development in Oakland.	• Lack of Comprehensive development focus
4.	Gentrification	• Gentrification
5.	I believe this will lead to continued gentrification and displacement of people of color and low-income people in the San Francisco Bay Area.	• Gentrification and displacement
6.	I love whole communities. The emphasis on "marketing" concerns me because I read it as a an external orientation (read tourism or shifting market orientation read: gentrification) do not want to lose the more organic qualities of how cultures evolve. Would like some thinking around how to support communities in being whole - with lived arts and culture. vs. arts and culture being a consumer commodity.	• Lack of Grass roots focus/community inclusion • Top down Development
7.	My concern is that the district is well funded from the state and federal levels.	• Lack of sufficient funding?
8.	Once any program becomes top-down managed, it dies. Gov. assistance comes with strings.	• Top down Development
9.	That it would be window dressing and full of useless bureaucratic hurdles instead of being genuine.	• Lack of Grass roots focus/community inclusion
10.	That political considerations and considerations from outside the culture being highlighted will steer the district away from its	• Lack of Grass roots focus/community inclusion

	intended purposes	
11.	That the authentic arts neighborhoods become replaced by gentrified arts districts (SOHO, DUMBO, etc). That affordable housing not be included with affordable warehouse studio spaces, that industrial lands with manufacturing/maker opportunities convert to residential.	• Cultural Gentrification • Displacement of existing communities
12.	That the district would become something commercial, lose its identity and price out present homeowners	• Gentrification
13.	The artists build up the "cultural capital" and then get displaced when market forces take over.	• Displacement of existing communities
14.	There must be room for creative growth within all cultures and at all levels and ages, of creative development. It will fail the community if it is purely a competitive process for "professionals".	• Cultural Gentrification • Lack of Grass roots focus/community inclusion

	San Francisco	**Issue Area**
1.	After CCA meeting, I am concerned about rural areas in huge geographic parts of state that wouldn't be eligible. They need help to connect.	• Exclusion of Rural Areas
2.	How do we get culture bearers a dedicated venue when we don't have $ to compete with tech companies buying up everything?	• Lack of Grass roots focus/community inclusion • Displacement of existing communities
3.	I care.	• ?
4.	I'm concerned that it will be taken over by big money interests such a big real-estate, big art "non-profits" etc. and be transformed into a gentrifying rather than one that truly protects the interests of blue collar low income residents of the culture (e.g. Latinos)	• Gentrification (commercial and arts) • Lack of Grass roots focus/community inclusion
5.	It puffs up overrated, self-interested, charming, and sociopathic Executive Directors who use professional association involvement to inflate their credentials and create barriers to entry for true artistic entrepreneurs, siphoning off funds from artists, and creating a well-connected elite capable of blackballing.	• Gentrification (arts/culture elite) • Lack of Grass roots focus/community inclusion
6.	Not enough to develop districts	• Lack of Comprehensive development focus
7.	place keeping' services and reflecting the culture and arts of folks who live & work in the district instead of 'place making' code for new comers to be made comfortable as they take over neighborhoods and displace the very people whose culture have been essential to the unique features the district.	• Gentrification (arts/culture) • Lack of Grass roots focus/community inclusion • Displacement of existing communities
8.	That a designation could become limiting.	• Lack of Comprehensive development focus
9.	They must be done in away that will not cause gentrification.	• Gentrification

Q9. Do you have any additional comments about cultural districts?

- 163 respondents

Inquiry Areas	Count of Q9-Do you have any additional comments on cultural districts?
1-True North	21
2-Central Valley	29
3-San Diego	21
4-Bay Area	31
5-Los Angeles	25
6-Other	36
	163

- Respondents were fairly equally represented among regions.
- In general, respondents to this question were supportive the formation Cultural Arts District and sought more information about the planning and district designation process which needs to be inclusive of all geographic areas of California and seek broad community support
- Benefits and concerns mirrored the categories of benefits and concerns discussed in earlier questions.

CALIFORNIA CULTURAL DISTRICTS

APPENDIX 7

STRATEGIC PARTNERSHIP DETAILS
(as of 12/8/2016)

Partner: California Department of Transportation (Caltrans)

Recipients of the State of California Cultural Districts certification may benefit from access to the following Caltrans resources:

- **Transportation Art and Community Identifier Programs**– Certified Cultural Districts in municipalities where participation in the Caltrans Transportation Art program is feasible will have access to Caltrans liaison services provided by the California Arts Council. These services may result in technical assistance for Districts to navigate the application process for the Caltrans Transportation Art and Community Identification programs. This may include the development of murals and other public art projects as well as aesthetic features on Caltrans properties.

- **Street Closures on Caltrans Properties** – Certified Cultural Districts in municipalities where state highway street closures are proposed for festivals or other public cultural activities will have access to Caltrans liaison services provided by the California Arts Council in order to process closure and access requests.

- **Signage** – Certified Cultural Districts in municipalities where Caltrans signage is feasible per the California Manual on Uniform Traffic Control Devices (MUTCD) will have access to Caltrans liaison services provided by the California Arts Council. The California Arts Council and Caltrans will work to provide technical assistance to determine if Certified Cultural Districts are eligible for signage based on the MUTCD.

- Other opportunities as mutually arranged by the California Arts Council and Caltrans.

Additionally, a Caltrans staff representative will be invited to serve on the adjudication panel as part of the review and selection process for district certification.

Partner: Visit California

- **General Organizational Benefits** – The California Arts Council and Visit California may collaborate in the following ways:

    - Governance – sharing best practices for programmatic and promotional related activities.
    - Advisory – providing guidance for organizational activities and efforts.

  - Leverage – utilizing strategic partnership to foster mutually beneficial opportunities as they arise.

- **Evaluation of Potential Certified Districts** – Visit California representative invited to serve on the adjudication panel as part of the review and selection process for district certification.

- **Benefits for Certified Districts** – Recipients of the State of California Cultural Districts Certification may benefit from inclusion in the following Visit California initiatives:

  - Promotion at California Welcome Centers.
  - Inclusion in Visit California promotional efforts as appropriate.
  - Inclusion in Visit California press efforts as appropriate.
  - Inclusion in Visit California public and industry events and presentations as appropriate.

- Other opportunities as mutually agreed upon by the California Arts Council and Visit California.