



BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING

TUESDAY, OCTOBER 13, 2026

2:30 P.M.

2180 Milvia Street, Berkeley, CA 94704

Teleconference Location - 2928 Linden Avenue, Berkeley CA 94705

Committee Members:

Mayor Adena Ishii, Councilmembers Terry Taplin and Mark Humbert

Alternate: Ben Bartlett

This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter **Meeting ID: 165 679 9780**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email policycommittee@berkeleyca.gov. All Committee meetings are recorded.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

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.

California Government Code Section 84308 (Levine Act) Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

AGENDA

Roll Call

Public Comment

Review of Agendas

1. **Approval of Minutes: September 28, 2026**
2. **Review and Approve Draft Agenda:**
 - a. 10/27/2026 – Regular City Council Meeting
3. **Adjournments In Memory**

Scheduling

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

Action Items

7. **Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies**
From: Auditor
Referred: September 15, 2026
Due: February 23, 2027
Recommendation: We recommend that City Council receive this report and direct the City Manager to implement Recommendations 1 and 2 consistent with Management's Response. We further recommend that City Council refer Recommendation 3 to the Agenda and Rules Committee for consideration of whether to pursue adoption of nepotism and cronyism provisions in the Berkeley Municipal Code.
Recommendation 3: To extend relationship conflict safeguards beyond employees, we recommend the City consider adopting both nepotism and cronyism provisions in the Berkeley Municipal Code. These provisions should apply to all City employees, elected officials, charter offices, appointed officials, boards and commissions, ensuring consistent citywide standard.
Financial Implications: See report
Contact: Jenny Wong, Auditor, (510) 981-6750

Unscheduled Items

8. Review Policy Committees Structure
9. Review Boards and Commissions Structure

Items for Future Agendas

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

Adjournment – Next Meeting Monday, November 2, 2026

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

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

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

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

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

Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee in advance of the meeting and retained as part of the official record.

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 ada@berkeleyca.gov, (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

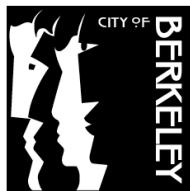
I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, October 8, 2026.

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

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.



BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

MONDAY, SEPTEMBER 28, 2026

2:30 P.M.

2180 Milvia Street, Berkeley, CA 94704

Committee Members:

Mayor Adena Ishii, Councilmembers Terry Taplin and Mark Humbert

Alternate: Ben Bartlett

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

Public Comment – 2 speakers

Review of Agendas

1. Approval of Minutes: September 14, 2026

Action: M/S/C (Humbert/Taplin) to approve the minutes of 9/14/2026.

Vote: All Ayes.

2. Review and Approve Draft Agenda:

a. 10/13/2026 – Regular City Council Meeting

Action: M/S/C (Taplin/Humbert) to approve the agenda of 10/13/2026 with the changes noted below.

- *Items 14a/b Public Right-of-Way (Commission/City Manager) – scheduled for 10/27/2026 regular meeting agenda.*

Vote: All Ayes.

3. Adjournments In Memory – None

Scheduling

4. Council Worksessions Schedule – received and filed

5. Council Referrals to Agenda Committee for Scheduling – received and filed

6. Land Use Calendar – received and filed

Unscheduled Items

7. Review Policy Committees Structure

8. Review Boards and Commissions Structure

9. **Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies**

From: Auditor

Referred: September 15, 2026

Due: February 23, 2027

Recommendation: We recommend that City Council receive this report and direct the City Manager to implement Recommendations 1 and 2 consistent with Management's Response. We further recommend that City Council refer Recommendation 3 to the Agenda and Rules Committee for consideration of whether to pursue adoption of nepotism and cronyism provisions in the Berkeley Municipal Code.

Recommendation 3: To extend relationship conflict safeguards beyond employees, we recommend the City consider adopting both nepotism and cronyism provisions in the Berkeley Municipal Code. These provisions should apply to all City employees, elected officials, charter offices, appointed officials, boards and commissions, ensuring consistent citywide standard.

Financial Implications: See report

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

Action: Scheduled for the Action Calendar at the 10/13/2026 meeting.

Items for Future Agendas

- None

Adjournment

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

Vote: All Ayes.

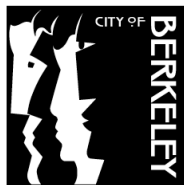
Adjourned at 2:52 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on September 28, 2026.

Mark Numainville, City Clerk

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DRAFT AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, October 27, 2026
6:00 PM

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

ADENA ISHII, MAYOR

COUNCILMEMBERS:

DISTRICT 1 – RASHI KESARWANI
 DISTRICT 2 – TERRY TAPLIN
 DISTRICT 3 – BEN BARTLETT
 DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SHOSHANA O'KEEFE
 DISTRICT 6 – BRENT BLACKABY
 DISTRICT 7 – CECILIA LUNAPARRA
 DISTRICT 8 – MARK HUMBERT

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

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Preliminary Matters

Roll Call:

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

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

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

Public Comment on Non-Agenda Matters: *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

In-person attendees wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.

Public Comment by Employee Unions (first regular meeting of the month): *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

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

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

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

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

Consent Calendar

- 1. Conversion of Two (2) Deputy City Attorney I Positions to Deputy City Attorney IV**
From: City Attorney
Recommendation: Adopt a Resolution to convert two (2) existing Deputy City Attorney I positions to Deputy City Attorney IV.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950
- 2. Waiver of Sanctuary City Ordinance for Westlaw Contract**
From: City Attorney
Recommendation: Adopt a Resolution waiving the contract prohibition of Berkeley Municipal Code Chapter 13.105, Sanctuary City Contracting, in order to enter into a contract with Westlaw.
Financial Implications: None.
Contact: Farimah Brown, City Attorney, (510) 981-6950

Consent Calendar

3. **2026 Annual Commission Attendance and Meeting Frequency Report**
From: City Manager
Recommendation: In accordance with Resolution No. 72,097-N.S., review and accept the 2026 Annual Commission Attendance and Meeting Frequency Report.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
4. **Contract: Adrien Segal Public Artwork Commission for Santa Fe Trackbed to Park Conversion**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Adrien Segal for an amount not to exceed \$150,000 for a public art commission of two unique vertical structures that will serve as habitat boxes for both birds and insects at the Community Garden Park (between Blake and Parker Streets) and the Urban Farm and Education Park (between Derby and Ward Streets).
Financial Implications: \$150,000 - Cultural Trust Fund
Contact: Carianna Arredondo, City Manager's Office, (510) 981-7000
5. **Contract No. 32500002 Amendment: Community Initiatives | Live Free USA for Gun Violence Intervention and Prevention Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32500002 with Community Initiatives | Live Free USA for gun violence intervention and prevention services to add \$257,548 in Byrne State Crisis Intervention Program (SCIP) grant funding pursuant to a budget modification approved by the California Board of State and Community Corrections (BSCC), bringing the total contract not-to-exceed amount to \$2,874,768; extend the contract term through December 31, 2027; and update the scope of services and budget accordingly.
Financial Implications: See report
Contact: Carianna Arredondo, City Manager's Office, (510) 981-7000
6. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 27, 2026**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: \$750,000 - Various Funds
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

- 7. Contract: Insight Public Sector, Inc. dba Aurelian for Non-Emergency Call-Taking Software**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or their designee to enter into a “piggyback” contract with Insight Public Sector, Inc. dba Aurelian for non-emergency call taking software for the Emergency Communications Center and services using the cooperative purchasing organization Omnia Partners Contract No. 23-6692-03. The contract base period will begin on December 1, 2026, through April 30, 2028, and will not exceed \$197,642.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473
- 8. Contract No. 104289-1 Amendment: Jackson & Coker for Locum Tenens Psychiatrists**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to amend Contract No. 104289-1 to add \$400,000 and for a not to exceed amount of \$1,814,480. The term of the contract remains the same ending on June 30, 2027.
Financial Implications: See report.
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100
- 9. Contracts for Recruitment Services**
From: City Manager
Recommendation: Adopt four Resolutions authorizing the City Manager to execute contracts and any amendments with WBCP Inc., Berkeley Search Consultants, Bob Murray & Associates, and Mosaic Public Partners to establish an on-call bench of executive recruitment firms for the period of January 1, 2027, through June 30, 2030. Each contract may have an individual not-to-exceed amount of \$250,000; however, cumulative expenditures across all four contracts shall not exceed \$250,000 during the contract term, subject to the availability of appropriated funds.
Financial Implications: See report
Contact: Janelle Rodrigues, Human Resources, (510) 981-6800
- 10. Donation: Memorial Bench at the Berkeley Waterfront in Memory of Clarence and Loreina Fuller**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Waterfront in memory of Clarence and Loreina Fuller.
Financial Implications: \$3,400 - Donation
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 11. Donation: Memorial Bench at the Berkeley Waterfront in Memory of Mary & Bob Rubenstein**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Berkeley Waterfront Park at the Berkeley Marina in memory of Mary & Bob Rubenstein.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 12. Grant Application: The 2026 Surrendered and Abandoned Vessel Exchange (SAVE) Grant Program of the California Division of Boating & Waterways**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or his designee to 1) Submit a grant application to the California Division of Boating and Waterways (DBW) 2025 Surrendered and Abandoned Vessel Exchange (SAVE) grant program for the removal and disposal of anticipated abandoned vessels located at the Berkeley Marina; 2) Accept the grant; 3) Execute any amendments; and 4) Authorize a local match contribution of \$5,000.
Financial Implications: \$95,000 (revenue)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Revenue Grant: California Office of Traffic Safety (OTS) for the 2026-2027 "Selective Traffic Enforcement Program (STEP) Grant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to accept the "Selective Traffic Enforcement Program (STEP)" grant and execute any resultant revenue agreements and amendments with the California Office of Traffic Safety. This OTS grant is \$200,000 for the period of October 1, 2026, through September 30, 2027, which corresponds to Federal Fiscal Year 2027.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900
- 14. Authorizing the City Manager to Submit a Local Highway Safety Improvement Program (HSIP) Cycle-13 Grant Application and to Execute Any Resultant Grant Agreement and Amendments**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit an application by November 2, 2026 to the California Department of Transportation (Caltrans) for a Local Highway Safety Improvement Program (HSIP) Cycle-13 grant for safety improvements to thirty (30) signalized intersections along Shattuck Avenue, University Avenue, Bancroft Way, and Oxford Street; accept the funds; and execute any resultant agreements and amendments.
Financial Implications: See report
Contact: Jamie Parks, Public Works, (510) 981-6300

Consent Calendar

15. **Authorize the City Manager to Negotiate and Execute a Project Specific Maintenance Agreement Between the California Department of Transportation and City of Berkeley for the San Pablo Avenue Safety Enhancements Project**
From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to negotiate and execute a Project Specific Maintenance Agreement (PSMA) and any extensions and amendments with the California Department of Transportation (Caltrans) for maintenance of City improvements installed in the state highway during Alameda County Transportation Commission's (ACTC) San Pablo Avenue Safety Enhancements Project.

Financial Implications: See report

Contact: Jamie Parks, Public Works, (510) 981-6300

16. **Contract No. 32300096 Amendment: SCS Engineers for Landfill Post-Closure Maintenance and Monitoring Services**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300096 with SCS Engineers for maintenance, monitoring, and compliance services related to the closed landfill, increasing the contract amount by \$1,600,000 for a total not to exceed amount of \$5,678,022.

Financial Implications: \$1,600,000 - Zero Waste Fund

Contact: Jamie Parks, Public Works, (510) 981-6300

17. **Contract No. 32300167 Amendment: POSM Software LLC for Pipeline Observation System Management Software Maintenance and Technical Support**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with POSM Software LLC for Pipeline Observation System Management software maintenance and technical support, extend the contract through October 31, 2027, increase the contract amount by \$16,000 for a total not to exceed \$64,650, and waiving competitive solicitation requirements on a sole-source basis.

Financial Implications: See report

Contact: Jamie Parks, Public Works, (510) 981-6300

Consent Calendar

18. Ordinance Vacating and Authorizing Transfer of Property Adjacent to the North Berkeley BART TOD Site

From: City Manager

Recommendation:

1. Adopt first reading of an Ordinance (a) declaring four small pieces of land described in Exhibit A and as shown in Exhibit B, adjacent to the North Berkeley BART Transit Oriented Development (TOD), to be exempt surplus land; (b) summarily vacating two of the areas that are presently public right of way; and (c) approving the transfer of all four areas to the San Francisco Bay Area Rapid Transit District (BART); and,
2. Upon conclusion of the second reading of the Ordinance, authorize the City Manager to execute quitclaim deeds conveying the four areas described in Exhibit A and as shown in Exhibit B.

Financial Implications: Fees associated with processing the proposed street vacations and property transfers offset the City's costs related to processing and implementing the recommended action.

Contact: Jamie Parks, Public Works, (510) 981-6300

19. Purchase Order: Municipal Maintenance Equipment, Inc. for the Purchase and Installation of a CCTV Sewer Inspection System in One City-Owned Electric Van

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with Municipal Maintenance Equipment, Inc. for the purchase and installation of a closed-circuit television (CCTV) sewer inspection system in one City-owned electric van in an amount not to exceed \$515,636.69.

Financial Implications: See report

Contact: Jamie Parks, Public Works, (510) 981-6300

20. Re-Name the Park at the North Waterfront as Si Se Puede Park

From: Parks, Recreation and Waterfront Commission

Recommendation: Adopt a Resolution re-naming the park at the northern end of the Berkeley Waterfront as Si Se Puede Park.

Financial Implications: See report

Contact: Roger Miller, Commission Secretary, (510) 981-6700

Council Consent Items

21. Amendment to Berkeley Municipal Code Chapter 7.18 to Explicitly Require Competitive Procurement for Services to Promote Accountability and Transparency and Refer Development of Regulations to City Manager

(Reviewed by the Budget & Finance Committee)

From: Councilmember Kesarwani (Author), Mayor Ishii (Co-Sponsor), Councilmember Taplin (Co-Sponsor)

Recommendation: Adopt an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.18, Expenditure Limitations, to require procurement through competitive solicitation for all city contracts for professional services and other services greater than \$100,000. Further, for the City Attorney's Office (CAO), require development of an Outside Council Selection Protocol whereby the CAO develops an annual report to Council for its pre-qualified list of outside attorneys and law firms based on respondents to the office's ongoing Request for Qualifications process. When outside counsel is required, senior staff in the CAO would choose from pre-qualified attorneys/firms and identify the best candidate based on expertise, quality of work, and cost. This recommendation would allow for a competitive process using the pre-qualified list, thus accommodating the CAO's need to quickly engage outside counsel while preserving best procurement practices. Additionally, request the CAO report to Council on legal services contracts and amendments to City Council quarterly to increase transparency of spending on legal services contracts.

Refer to the City Manager to promulgate any further regulations that may be needed related to the requirement for competitive solicitation except for emergencies and when market research justifies the business case for a sole-source procurement, in alignment with the existing purchasing manual. Further, refer to the CAO to develop legal services regulations to implement the competitive solicitation process for outside counsel contracts and define circumstances where a sole-source procurement is justified by emergencies, market research, conflicts of interest, or other considerations.

Policy Committee Recommendation: To send the item to Council with a Qualified Positive Recommendation as written and amended during discussion, with additional direction to further consider:

-Specifying the 5-7 year contract rebidding timeframe in the ordinance as well as the purchasing manual

-Authorizing the City Attorney's Office to promulgate legal services procurement regulations and guidelines

-Establishing annual reporting to Council on legal services contracts and amendments

-B.M.C. Section 7.18.010(A) Expenditures pursuant to Charter Article XI, Sections 67 and 67.5 is amended to read as follows:

Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which exceed the initial amount exceeds of \$1050,000, inclusive only of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based

Council Consent Items

on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

Financial Implications: Staff time

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

22. Berkeley Flea Market End-of-the-Season Fall Festival/Halloween Celebration Event: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmember Bartlett (Author)

Recommendation: Adopt a Resolution approving the expenditure of funds, including \$600 from Councilmember Ben Bartlett, for the End-of-the-Season Fall Festival / Halloween Celebration of the South Berkeley Flea Market at Ashby BART, organized by Community Services United, a 501(c)3, with funds relinquished to the City's General Fund for this purpose from the discretionary council office budget of Councilmember Bartlett and any other Councilmembers who would like to contribute.

Financial Implications: See report

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

23. Harriet Tubman Terrace Residents' Low-Income Housing Bay Cruise Lunch Event on Thursday, November, 5, 2026 - Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmember Bartlett (Author)

Recommendation: Adopt a Resolution approving the expenditure of funds, including \$500 from the discretionary Council Office Budget of Councilmember Ben Bartlett for the Harriet Tubman Terrace residents' low-income housing Bay Cruise Lunch event on Thursday, November, 5, 2026, to Nonprofit and 501(c)3: Lifesteps, to fund operational resources. The funds will be relinquished to the City's General Fund from the Discretionary Council Office Budget of Councilmember Ben Bartlett and the Discretionary Council Office Budgets of any other Councilmembers who would like to contribute.

Financial Implications: See report

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

Action Calendar

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

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

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

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

Action Calendar – New Business

24. **Ashby BART East Lot Developer Selection for Exclusive Negotiation and Reservation of Predevelopment Funding**

From: City Manager

Recommendation: Adopt two Resolutions that enable the City to move forward into negotiation and predevelopment with a selected development team for the Ashby East Lot Transit Oriented Development (TOD) project, located at the intersection of Woolsey St. and Tremont St., directly east of the Ed Roberts Campus, by: 1. Authorizing the City Manager or designee to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) and any required amendments with Satellite Affordable Housing Associates (SAHA), Habitat for Humanity East Bay/Silicon Valley, and Deborah D. Matthews Consulting (collectively, "the SAHA Team"). 2. Authorizing the City Manager or designee to negotiate and enter into an ENRA and any required amendments with the alternative developer, Related California and the Kelsey (collectively, "the Related Team"), in the event that the ENRA with the SAHA Team is terminated or if the City does not enter into a ENRA with the SAHA Team. 3. Approving the reservation of \$1 million of Affordable Housing Mitigation Fees (Fund 120) to the SAHA Team or their affiliate(s) to support master planning and predevelopment activities related to the development of affordable housing at the Ashby East Lot BART site. 4. Affirming that the City's Housing Trust Fund Guidelines will apply to the use of funds to support master planning and predevelopment activities related to the development of affordable housing at the Ashby East Lot BART site. 5. Authorizing the City Manager or designee to execute all original or amended documents or agreements in accordance with the intent of this Resolution.

Financial Implications: See report

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100

Action Calendar – New Business

- 25a. Enforcement of Public Right-of-Way Accessibility Guidelines (PROWAG)**
(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)
From: Commission on Disability
Recommendation: The Berkeley City Council shall refer to the City Attorney the requirement to include, in all City of Berkeley contracts that impact the public right-of-way, a clause that obligates City contractors to comply with the Public Right-of-Way Accessibility Guidelines (PROWAG).
Policy Committee Recommendation: Send the item to Council with a Qualified Positive Recommendation to refer the development of the PROWAG guidelines to the City Manager with the input of the Commission on Disability.
Financial Implications: See report
Contact: Thomas Gregory, Commission Secretary, (510) 981-6300
- 25b. Companion Report: Enforcement of Public Right-of-Way Accessibility Guidelines (PROWAG)** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: City Manager
Recommendation: The City Manager recommends that the Public Right-of Way Accessibilities Guidelines item be referred to the Facilities, Infrastructure, Transportation, Environment and Sustainability Committee for discussion of potential impacts.
Policy Committee Recommendation: Send the item to Council with a Qualified Positive Recommendation to refer the development of the PROWAG guidelines to the City Manager with the input of the Commission on Disability.
Financial Implications: See report
Contact: Jamie Parks, Public Works, (510) 981-6300
- 26. Public Access to Supplemental Materials and Amendments at City Council Meetings, Including the Timing of Presentation of Such Materials by the Mayor or City Council Members, Such That the Public May Comment on Them**
From: Open Government Commission
Recommendation: Adopt a policy requiring that prior to the commencement of public comment on each Agenda Item, councilmembers will be asked to present any material they have prepared that is not already included in the packet.
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
- 27a. Adopt Amendments to Ordinances Governing Special Events: Block Parties; Park Events; Street Events**
From: Zero Waste Commission
Recommendation: Adopt first reading of an ordinance amending BMC 6.46 (Park Events) and BMC 13.44 (Block Parties and Street Events).
Financial Implications: See report
Contact: Julia Heath, Commission Secretary, (510) 981-6300

Action Calendar – New Business

27b. Companion Report: Adopt Amendments to Ordinances Governing Special Events: Block Parties; Park Events; Street Events

From: City Manager

Recommendation: Adopt first reading of two ordinances, as referred to Council by the Zero Waste Commission's report titled, "Adopt Amendments to Ordinances Governing Special Events: block parties; park events; street events," specifically amending: Berkeley Municipal Code (BMC) Chapter 6.46 (Park Events) and Chapter 13.44 (Block Parties and Street Events);

Financial Implications: See report

Contact: Jamie Parks, Public Works, (510) 981-6300

28a. Enforceable Mechanism for Berkeley Green Code Compliance

From: Zero Waste Commission

Recommendation: Recommend Council to direct the City Manager to refer Public Works Zero Waste staff and Planning, Safety and Building, Energy and Sustainability and Green Building staff work together to develop recommendations to implement a clear path to enforcement for non-compliance with Berkeley Green Code (BMC 19.37) Construction and Demolition (C&D) waste diversion requirements, including the possibility of fines and citations and other mechanisms to increase compliance.

Financial Implications: See report

Contact: Julia Heath, Commission Secretary, (510) 981-6300

28b. Companion Report: Enforceable Mechanism for Berkeley Green Code Compliance

From: City Manager

Recommendation: Direct the City Manager to assign the Public Works Department, in conjunction with the Planning and Development Department, to: 1. Review and consider research conducted by the Zero Waste Commission and UC Berkeley student researchers on enforcement mechanisms in other jurisdictions; and, 2. Develop a recommendation for Council to adopt an appropriate enforcement mechanism(s) to strengthen compliance with California Green Building Standards Code by adding to Berkeley Green Code (BMC 19.37).

Financial Implications: See report

Contact: Jamie Parks, Public Works, (510) 981-6300

Action Calendar – New Business

29a. Research on Proper Space Allocation for Standardizing Compliance with Source Separated Refuse Collection Procedures

From: Zero Waste Commission

Recommendation: Recommend that Council refer the matter to the City Manager with direction to: 1. Instruct the Zero Waste Division, in collaboration with the Planning Department and Fire Department, to study, research, and recommend policies that standardize requirements for: a. Tenant-facing materials collection rooms for refuse, dual-stream recycling, and composting; b. Central collection rooms or enclosures; c. Curbside collection staging areas for all new construction. 2. Develop minimum per-unit service requirements, design parameters, and enforcement mechanisms; pursuant to Chapter 12.32.030 and 12.35 of the Berkeley Municipal Code.

Financial Implications: See report

Contact: Julia Heath, Commission Secretary, (510) 981-6300

29b. Companion Report: Proper Space Allocation for Standardizing Compliance with Source Separated Refuse Collection Procedures

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 12.32 Adequate Space for Collection Containers.

Financial Implications: See report

Contact: Jamie Parks, Public Works, (510) 981-6300

Action Calendar – Policy Committee Track Items

- 30. Amending Resolution No. 71,513-N.S. Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods to Include Prohibitions Against Encampments in Close Proximity to Preschools and In-Home Daycare Facilities**
From: Councilmember Kesarwani (Author), Councilmember Blackaby (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Approve an amendment to Resolution No. 71,512-N.S., Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods, that adds proximity to licensed preschools and/or in-home early childhood daycare facilities to the list of circumstances in which the City Manager is authorized to close an encampment with an offer of shelter whenever practicable. Specifically, it is recommended to add a 600 foot buffer zone prohibiting encampments around preschools and in-home daycare facilities in order to safeguard the health and welfare of young children. Preschool-aged children are particularly vulnerable to a range of public health concerns because they are more likely to play closer to the ground, touching potentially infected objects and then putting their hands in their mouth. A buffer zone around these institutions should be adopted to minimize public health and safety risks. Resolution No. 71,513-N.S should add to the list of enforcement circumstances: The encampment is located within 600 feet of any licensed preschool and/or in-home daycare facility as measured by a straight line from the nearest point of the property line of the parcel on which the preschool/in-home daycare facility is located to the nearest point of the encampment, including its associated belongings.
Financial Implications: Staff time
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Information Reports

- 31. Audit Status Report: 2009 Leases Audit Follow-Up**
From: City Manager
Contact: Jamie Parks, Public Works, (510) 981-6300

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at: berkeleyca.gov/council-agendas and may be accessed at reference desks at the following locations:

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Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

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This meeting is being held in a wheelchair accessible location.

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

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Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at clerk@berkeleyca.gov.

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Parks, Recreation and Waterfront Commission

02a.20

CONSENT CALENDAR

October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Parks, Recreation and Waterfront Commission

Submitted by: Allan Abshez, Chairperson

Subject: Re-Name the park at the North Waterfront as Si Se Puede Park

RECOMMENDATION

Adopt a Resolution re-naming the park at the northern end of the Berkeley Waterfront as Si Se Puede Park.

FINANCIAL IMPLICATIONS

Renaming the park at the northern end of the Berkeley Waterfront will require new signage with an estimated cost of approximately \$20,000, which is not funded. Once funds have been identified, this item will be brought back to Council for consideration.

CURRENT SITUATION AND ITS EFFECTS

In the Council agenda for March 24, 2026, Councilmember Kesarwani and co-sponsors Taplin, Bartlett, and Blackaby made a referral to the Parks, Recreation and Waterfront Commission as follows: Refer to the Parks, Recreation and Waterfront Commission to officially rename Cesar Chavez Park. This referral to the Parks Commission initiates a community process which should incorporate feedback from the Commemorative Committee (which initiated the first renaming process of the park in 1994) as well as input from other community members and stakeholders. We recommend that Dolores Huerta be among the options considered for renaming (see Attachment 2).

In the Council agenda for April 14, 2026, Mayor Ishii made a referral to the Parks, Recreation, and Waterfront Commission as follows: Refer to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley, may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America (see Attachment 2).

In response to the referrals regarding the renaming of the park at the northern end of the Berkeley Waterfront, at its regular meetings of May 13, June 10, July 8, and

Re-Name the park at the northern end of the Berkeley Waterfront as  
Si Se Puede Park

CONSENT CALENDAR  
October 27, 2026

September 10, 2026, the Parks, Recreation, and Waterfront Commission agendaized this item and heard public comment on the renaming of the park at the northern end of the Berkeley Waterfront. The Commission gave deference to the work and recommendations of the Commemorative Renaming Committee as had been requested by the City Council in its referral of the matter to the Commission. Per the Council Naming Policy procedures, on July 8, 2026, the PRW Commission conducted a public hearing, and on September 10, 2026, took action to recommend that Council rename the park at the northern end of the Berkeley Waterfront as Si Se Puede Park as recommended by the Commemorative Renaming Committee. (M/S/C: Stewart/Granzella/U); Ayes: Abshez; Granzella; Nash; Philip; Rybscynski; Samelson; Stewart; Yeo; Noes: none; Absent: Muszynski.

### BACKGROUND

The Parks, Recreation, and Waterfront Commission agendaized this item and heard public comments at its regular meetings in May, June, July, and September of 2026. Public comments received by the Commission, including the work of the Commemorative Renaming Committee suggested several possible names (see Attachment 2).

### CITY MANAGER

The City Manager takes no position on the recommendation contained in this report.

### ENVIRONMENTAL SUSTAINABILITY

There are no negative environmental impacts were identified as a result of this recommendation.

### RATIONAL FOR RECOMMENDATION

At its regular meetings of May 13, June 10, July 8, and September 10, 2026, the Parks, Recreation, and Waterfront Commission agendaized this item and heard public comment on the renaming of the park at the northern end of the Berkeley Waterfront. The PRW Commission concurs with the work of the Commemorative Renaming Committee to rename the park at the northern end of the Berkeley Waterfront as Si Se Puede Park.

### ALTERNATIVE ACTIONS CONSIDERED

None

### CONTACT PERSON

Allan Abshez, Chair, Parks, Recreation, and Waterfront Commission, 310-922-7573  
Roger Miller, Secretary, Parks, Recreation and Waterfront Commission, 510-981-6704

### Attachments:

- 1: Resolution;
- 2: Council Referral, April 14, 2026;
- 3: Commemorative Renaming Committee Report, June 3, 2026

RESOLUTION NO. – N.S.

RE-NAME THE PARK AT THE NORTHERN END OF THE BERKELEY WATERFRONT  
AS SI SE PUEDE PARK

WHEREAS, in the Council agenda for March 24, 2026, Councilmember Kesarwani and co-sponsors Taplin, Bartlett, and Blackaby made a referral to the Parks, Recreation and Waterfront Commission as follows: Refer to the Parks, Recreation and Waterfront Commission to officially rename Cesar Chavez Park. This referral to the Parks Commission initiates a community process which should incorporate feedback from the Commemorative Committee (which initiated the first renaming process of the park in 1994) as well as input from other community members and stakeholders. We recommend that Dolores Huerta be among the options considered for renaming; and

WHEREAS, in the Council agenda for April 14, 2026, Mayor Ishii made a referral to the Parks, Recreation, and Waterfront Commission as follows: Refer to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley, may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America; and

WHEREAS, in response to the referrals regarding the renaming of the park at the northern end of the Berkeley Waterfront, at its regular meetings of May 13, June 10, July 8, and September 10, 2026, the Parks, Recreation, and Waterfront Commission agendized this item and heard public comment on the renaming of the park at the northern end of the Berkeley Waterfront. The Commission gave deference to the work and recommendations of the Commemorative Renaming Committee as had been requested by the City Council in its referral of the matter to the Commission; and

WHEREAS, per the Council Naming Policy procedures, on July 8, 2026, the PRW Commission conducted a public hearing, and on September 10, 2026, took action to recommend that Council rename the park at the northern end of the Berkeley Waterfront as Si Se Puede Park as recommended by the Commemorative Renaming Committee. (M/S/C: Stewart/Granzella/U); Ayes: Abshez; Granzella; Nash; Philip; Rybscynski; Samelson; Stewart; Yeo; Noes: none; Absent: Muszynski.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the park at the northern end of the Berkeley Waterfront is named Si Se Puede Park.



Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
March 24, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmembers Terry Taplin, Ben Bartlett and Brent Blackaby (Co-Sponsors)

SUBJECT: Referral to the Parks, Recreation and Waterfront Commission to officially Rename Cesar Chavez Park.

### **RECOMMENDATION**

Refer to the Parks, Recreation and Waterfront Commission to officially rename Cesar Chavez Park. This referral to the Parks Commission initiates a community process which should incorporate feedback from the Commemorative Committee (which initiated the first renaming process of the park in 1994) as well as input from other community members and stakeholders. We recommend that Dolores Huerta be among the options considered for renaming.

And further, direct the City Manager to remove or cover all signage bearing the name Cesar Chavez from park property as soon as practicable while leaving intact signage related to directions and park rules.

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

On March 18, 2026, *The New York Times* published an investigation finding extensive evidence that United Farm Workers (UFW) co-founder Cesar Chavez, now deceased, sexually abused young girls and women who worked within The Farmworkers Movement.<sup>1</sup> Two women, now in their sixties, described to the *Times* how the civil rights icon and leader abused them for years. The investigation, based on interviews with more than 60 people—including top aides, relatives, and members of the UFW—found extensive evidence to support their accusations and those raised by several other women, including Dolores Huerta, working within The Movement.

That same day, Dolores Huerta issued a statement publicly acknowledging the abuse she had kept secret for the last six decades in the interest of protecting The Farmworkers Movement.<sup>2</sup> Huerta identified herself as a survivor “of violence, of sexual abuse, of domineering men who saw me, and other women, as property, or things to control....” Huerta also commented that she carried this secret for years “because building the movement and securing farmworker rights was my life’s work...I channeled

<sup>1</sup> New York Times, March 18, 2026: “Cesar Chavez, a Civil Rights Icon, Is Accused of Abusing Girls for Years” <https://www.nytimes.com/2026/03/18/us/cesar-chavez-sexual-abuse-allegations-ufw.html>

<sup>2</sup> Medium, March 18, 2026: “A Statement from Dolores Huerta” [https://medium.com/@dolores\\_huerta/march-18-2026-e74c20430555](https://medium.com/@dolores_huerta/march-18-2026-e74c20430555)



everything I had into advocating on behalf of millions of farmworkers and others who were suffering and deserved equal rights.”<sup>3</sup>

That inner strength and dedication to human rights sustained Dolores Huerta throughout her entire career. In addition to co-leading the UFW, she worked with the Feminist Majority Foundation to help Latina women become more active within politics, founded the Dolores Huerta Foundation<sup>4</sup> that advocates for social justice issues and marginalized communities through grassroots organizing and civic engagement, and has been active in politics by supporting causes such as immigration reform and LGBTQ rights.

Born on April 10, 1930 in New Mexico, Dolores Huerta grew up mostly in California, moving to the state during her early elementary school years after her mother divorced her father. Throughout her life, she has remained active in California-based human rights issues, starting with her deep involvement supporting farmworkers throughout the state, continuing on with the Bakersfield-based Dolores Huerta Foundation, as well as her campaigning for statewide propositions and supporting local politicians. In addition to her many awards honoring her human rights work, the California State Senate awarded Ms. Huerta “Outstanding Labor Leader” in 1984. In 2018, then-Governor Jerry Brown signed into law Assembly Bill 2644, first introduced by Assemblywoman Eloise Gomez Reyes, designating April 10th Dolores Huerta Day.<sup>5</sup>

## **BACKGROUND**

Cesar Chavez Park was officially renamed after the labor leader on July 26, 1994 when the Berkeley City Council passed resolution No. 57,627 N.S. (attached). Before that it had been called North Waterfront Park. The name change was in recognition of the labor leader’s influence on the Berkeley community and the rest of the world, and to commemorate his life’s work for future generations. When news of the sexual abuse accusations against him surfaced on March 18th, many residents reached out to City Council inquiring about changing the name of this park, reflecting community members’ current pain and anger that a leader of such significance would use his status to dominate, silence, and abuse women who worked beside him.

Since the news broke, cities, school districts, and leaders throughout the state and country have been grappling with the information and the many public facilities and events that have honored Cesar Chavez. As a once-revered labor hero, many parks, pathways, streets, murals, schools, and community buildings bear his name as a way to honor his work and advocacy on behalf of workers. Currently, many city, school board and state leaders are considering changing the names of the facilities that honor him, as *Berkeleyside* and *The San Francisco Chronicle* have covered.<sup>6</sup> State legislators have

<sup>3</sup> Medium, March 18, 2026: “A Statement from Dolores Huerta”

[https://medium.com/@dolores\\_huerta/march-18-2026-e74c20430555](https://medium.com/@dolores_huerta/march-18-2026-e74c20430555)

<sup>4</sup> Dolores Huerta Foundation: <https://doloreshuerta.org/>

<sup>5</sup> Dolores Huerta Wikipedia page: [https://en.wikipedia.org/wiki/Dolores\\_Huerta](https://en.wikipedia.org/wiki/Dolores_Huerta)

<sup>6</sup> *Berkeleyside*, March 18 article by Natalie Orenstein, Alec N. Gecan, Vanessa Arredondo, Felicia Mello and Zac Farber: “Berkeley lionized Cesar Chavez. Now it’s reevaluating” <https://www.berkeleyside.org/2026/03/18/cesar-chavez-berkeley-reevaluates> and San Francisco Chronicle March 19 article by Roland Li: Cesar Chavez’s name is all over the Bay Area. Will streets, schools and parks get renamed?” <https://www.sfchronicle.com/bayarea/article/cesar-chavez-name-streets-parks-rename-22083714.php>

agreed to legislation to rename the upcoming holiday on March 31, 2026 Farmworker Day.

#### **RATIONALE FOR RECOMMENDATION**

Like others, community leaders in Berkeley are struggling to integrate the painful news of the accusations against Cesar Chavez while many are also wanting to elevate and honor Dolores Huerta who shines as a pillar of strength even more so now that we know she hid her own pain in an effort to focus on support for laborers. Dolores Huerta has accomplishments as a labor organizer equal to Cesar Chavez, as well as a significant background advocating for human rights issues. Considering renaming the park for her would be a fitting tribute to her life and accomplishments and her survivorship..

#### **ENVIRONMENTAL SUSTAINABILITY**

There is no significant environmental impact of this referral. Renaming the park could be a way of promoting a sense of healing within the community and thus be a way of advancing a more positive social environment.

#### **FISCAL IMPACT**

This referral has no fiscal impact save staff time for the Parks, Recreation and Waterfront Commission secretary. It is expected that this commission would also investigate costs for replacement signage to accommodate the renaming.

#### **CONTACT PERSON**

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

Attachments:

- 1) Resolution NO. 57,627-N.S. RE-NAMING NORTH WATERFRONT PARK THE "CESAR E. CHAVEZ PARK"

**CITYWIDE COMMEMORATION COMMITTEE AGENDA**  
**Zoom meeting tentatively planned for Monday, April 13, 5 pm**

**REBOOT CITYWIDE COMMEMORATIVE COMMITTEE & MAKE RECOMMENDATIONS TO BUSD AND COB**

|                                                      |                                                |
|------------------------------------------------------|------------------------------------------------|
| Mayor Ishii's representative (Andrea Bernal) ?       | Todd Kerr, Editor, Berkeley Times              |
| BUSD Supt. Representative                            | Beatriz Leyva Cutler, BUSD Director, Emeritus  |
| School Board Rep - Ana Vasudeo                       | Seasonal Gathering Coordinator (Vivian White)  |
| State Senator Arreguin's rep - Ariana Casanova       | Santiago Casal, Founder/Director, Tribute Site |
| Council representative (Cecilia Lunaparra, or D1/D2) | Coordinator of Site Stewards (Carlos Hill)     |
| Latinos Unidos rep (Lupe Gallego-Diaz, Chair)        | BCC rep (Lissette Flores)                      |
| BFT representative (Matt Meyer)                      | Multicultural Institute (Mirna Cervantes)      |
| Ecology Center rep. (Martin Bourque)                 | Adult School (?)                               |
| UCB rep (Rubén Lizardo, Dir. Govt. & Com. Relations) |                                                |
| Sheila Jordan, Alam Cty Brd of Ed, Emeritus)         |                                                |
| Martin Nicolaus, CEO of the C..... Park Conservancy  |                                                |

**DISCUSS AND RECOMMEND CHANGES TO PARK**

- The name of the park.
- Statement on how to strongly frame any references to Chavez.
- Update and replace, the three main signs at the Park (Partially removed)  
And within those signs the 12" by 25" updated section on the Tribute Site (DONE)
- Remove the wood pieces above the three main signs that say "Cesar E. Chavez Park) (DONE)
- Chavez Park road signage routing people driving toward the Park.

**BUSD CHANGES**

- Remove/Replace Chavez related curriculum for Commemorative Period
- **NOTE:** Begin to work on how to introduce all this to Berkeley Students, particularly around boys and demeaning and exploitive attitudes/behavior toward young women and girls, and sexual violence in general.

See attached article from EdSource - <https://edsource.org/2026/cesar-chavez-schools-remove-names/754713>

**CHANGES TO CITYWIDE COMMEMORATIVE COMMITTEE**

In addition to weighing in on the above:

- Change the name of the Citywide *Commemorative Period*
- Rethink *Commemorative Period dates*: Currently March 20<sup>th</sup> (Planting Season), thru Chavez Day, March 31 and on to April 10 Dolores' birthday.
- The name of the Chavez Park Conservancy, which is already underway
- The name of the Cesar Chavez Off Leash Area at the Park, which is also underway

**REVIEW CHANGES TO TRIBUTE SITE**

- Seek City funding for the following:
- Change name of Tribute Site
- Redesign and reproduce all the signage (8 signs) and half of the audio and video pieces linked to QR Codes (i.e., 6 audio and video pieces)
- Redesign/produce the content of the website: [www.solarcalendar.org](http://www.solarcalendar.org)
- Redesign the content and name of Commemorative Period website: [chavezhuerta.org](http://chavezhuerta.org)
- Change Email address – [chavezhuertatributesite@gmail.com](mailto:chavezhuertatributesite@gmail.com) to [tributesite@gmail.com](mailto:tributesite@gmail.com)??

Other changes??



CONSENT CALENDAR  
April 14, 2026

To: Honorable Members of the City Council

From: Mayor Adena Ishii (Author), and Council Members Lunaparra, Humbert and O'Keefe (Co-Sponsors)

Subject: Referral to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez, and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.

RECOMMENDATION

Refer to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley, may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.

BACKGROUND

Cesar Chavez, the late United Farm Workers (UFW) co-founder and labor leader has long been an icon and hero to communities across the country. Berkeley has a long history of honoring the legacy of Cesar Chavez dating back to 1996 by naming the City's waterfront park after him and with an official city holiday that aligns with the State of California holiday. Over the years, the City has worked collaboratively with the Latinx community, local educational institutions, and community based organizations to organize commemorative activities that honor Cesar Chavez, Dolores Huerta, and farm workers.

The following is an initial list of locations and events:

- Cesar Chavez Park (1996)
- Cesar Chavez Day -March 30/31 (2000 - aligned with the State Holiday)
- Chavez/Huerta Tribute Site and Solar Calendar (2011)
- Cesar Chavez-Dolores Huerta Commemorative Period (2021)
- Cesar Chavez Park Perimeter Trail Project (2024 -aka Olivia Stegman Trail)

On March 18, 2026, the New York Times published an in-depth investigation documenting extensive evidence that Mr. Chavez groomed and sexually abused young girls who worked in the farmworker movement<sup>1</sup>. In the same story it was revealed that Mr. Chavez raped UFW co-founder Dolores Huerta. After 60 years of silence, Ms. Huerta, a renowned labor leader and civil rights activist issued a statement with her personal story recounting how Chavez had raped her and how she stayed silent because she “believed that exposing the truth would hurt the farmworker movement I have spent my entire life fighting for.”<sup>2</sup>

The members of the Berkeley City Council condemns sexual violence and stands with the survivors who bravely told their story. In light of the in-depth reporting of credible accusations against Mr. Chavez the City must work on a path forward to remove Cesar Chavez’s name from city locations, events, and holidays.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No Impact

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time to develop a plan and cost allocation to change the name.

#### ALTERNATIVE ACTIONS CONSIDERED

No name change

#### CONTACT PERSON

Mayor Adena Ishii  
(510) 981-7100

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<sup>1</sup> <https://www.nytimes.com/2026/03/18/us/cesar-chavez-sexual-abuse-allegations-ufw.html>

<sup>2</sup> [https://medium.com/@dolores\\_huerta/march-18-2026-e74c20430555?](https://medium.com/@dolores_huerta/march-18-2026-e74c20430555?)

**Miller, Roger**

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**From:** Nancy Carleton <nancy94705@gmail.com>  
**Sent:** Tuesday, March 31, 2026 12:32 PM  
**To:** All Council; Manager, C  
**Cc:** Miller, Roger  
**Subject:** Renaming Cesar Chavez Park and the Legacy of the Farmworker Movement

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Honorable Mayor and City Councilmembers (with cc to members of the Parks, Recreation and Waterfront Commission):

Some thoughts on renaming Cesar Chavez Park, from someone who volunteered extensively for the UFW in the 1970s and was a full-time volunteer 1975-1976: Like many I was shocked to learn of the sexual assault allegations against Cesar Chavez as reported recently in the New York Times. I was already disillusioned about the UFW by 1977. I later submitted a lengthy essay to the Farmworker Movement Documentation Project, whose archives are stored at UC San Diego. In it I did my best to describe my experiences both positive and negative of that time as a low-level volunteer for "la causa." But while I'd seen firsthand that in addition to being a brilliant and charismatic organizer, Cesar was a petty tyrant whose paranoia was becoming more and more damaging to the farmworker cause by the late 1970s, I never would have predicted sexual abuse, of which he now stands credibly accused. I guess I still bought his carefully crafted persona as a servant leader who led a life of almost monklike simplicity.

But here's what I'll say to my well-meaning friends who'd simply like to swap out Cesar Chavez's name with Dolores Huerta's name on streets, parks, and holidays: While Chavez's flaws now include sexual transgressions, all of the leadership of the UFW, including Huerta, share responsibility for the hierarchical UFW culture that prohibited debate, mandated silence, and punished even the mildest questioning, dissent, or truth-telling (witness the staff purges of the late 1970s well documented in books as well as articles in the LA Times). I have great admiration for Dolores Huerta and the many good causes she has supported over the decades. And I understand that as a woman of my mother's generation -- their birthdays are one day apart -- there is deeply ingrained conditioning at play. But withholding the truth about her experience for decades strikes me as not so far removed from the many ways the UFW leadership, including Huerta, tried to control what could and could not be said through a code of silence as well as an undemocratic and authoritarian structure.

It's the farmworkers themselves, along with their supporters across the country, who made the movement. Could it be time to release the idea that we have honor individual heroes rather than the movements they represent? Can we at long last learn from the flaws not just of one man but of entire structures? I continue to bow before the many, many individuals I met while working for the UFW, some depicted in the drawing below. They will always represent to me the best of humanity, whatever the flaws of the leadership they followed. Together they won important improvements for farmworkers, but much more remains to be done. I'm grateful to the State of California legislature and governor for renaming this year's March 31st holiday Farmworkers Day.

I trust you will allow a full community process to unfold as you consider alternate names for our precious park by the bay. I hope you will refrain from honoring a specific individual as you rename the park.



Farmworkers -- who harvest the food we all eat -- and the movement they built deserve consideration in that process.

Sincerely yours,

Nancy Carleton

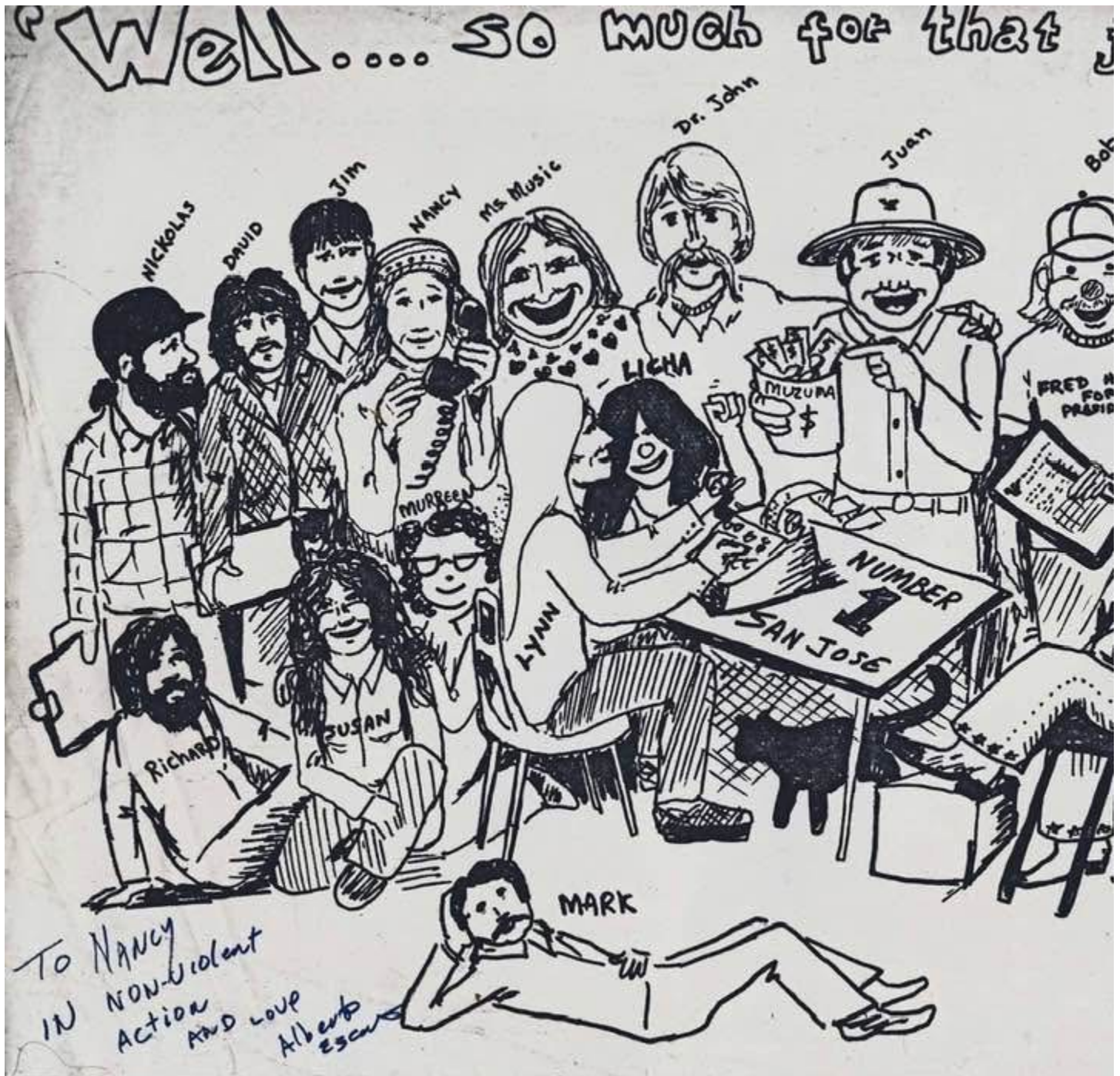
Former Vice Chair, Parks and Recreation Commission (before the Waterfront was added!)

Former UFW staff, 1975-1976

3044-B Halcyon Ct.

Berkeley CA 94705

510-644-0172



(Art by Alberto Escalante, 1976, depicting the incredible San Jose Boycott staff, who helped get Prop. 14 on the ballot in record time in the spring of that year. I'm the organizer fourth from left, top row, with the ubiquitous phone in my hand.)



**Miller, Roger**

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**From:** Ryan <ryncsy@gmail.com>  
**Sent:** Saturday, April 18, 2026 4:18 PM  
**To:** Miller, Roger  
**Cc:** All Council; Save CC  
**Subject:** Cesar Chavez Park - Renaming & PRW Item

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Good Afternoon

I'm emailing you today about the upcoming name change to Cesar Chavez Park. Is this item going to be at the next PRW meeting?

I would like to suggest that the City not rename the park after another person. Rather it should be a generic name, like "Bay Park" or "North Waterfront Park".

Thanks,

**Ryan Casey**  
**1300 Parker Street**  
951-265-6314

## Miller, Roger

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**From:** Everett Wetchler <everett.wetchler@gmail.com>  
**Sent:** Saturday, April 18, 2026 4:37 PM  
**To:** Miller, Roger  
**Cc:** All Council  
**Subject:** New name for CCP. Please include in the PRW agenda item.

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Miller,

I have been informed that the Park, Recreation, and Waterfront (PRW) commissioners are seeking public comments and suggestions about a new name for what was formally called Cesar Chavez Park.

Please inform the PRW that I would like the Park's new name to be: "Isle of Dogs"

Thank you for your attention to this matter,

Everett Wetchler

## Miller, Roger

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**From:** Jen Chou <jelo510@gmail.com>  
**Sent:** Monday, April 20, 2026 12:23 PM  
**To:** Miller, Roger  
**Cc:** All Council  
**Subject:** Suggestions for renaming Cesar Chavez Park

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Thank you for considering what to rename the Cesar Chavez park.

I go to the park several times a week, and have winced every time referring to it by that name since the NY Times article came out.

-As Chavez was an activist for farmworkers, how about Farmworkers Park?

Other notable activists for farmworkers:

-Dolores Huerta [https://en.wikipedia.org/wiki/Dolores\\_Huerta](https://en.wikipedia.org/wiki/Dolores_Huerta)

-Larry Itliong ... [https://en.wikipedia.org/wiki/Larry\\_Itliong](https://en.wikipedia.org/wiki/Larry_Itliong)

To change topics, how about the Burrowing Owl Park? (To bring public awareness)

Thanks for your kind attention,  
Jennifer Chou  
Berkeley resident since 2003

*Jennifer S. Chou*

*The arc of the moral universe is long, but it bends towards justice.*

## Miller, Roger

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**From:** Sherry Shannon <sherry.sfbike@gmail.com>  
**Sent:** Monday, April 20, 2026 11:00 AM  
**To:** Miller, Roger  
**Cc:** All Council; Save CC  
**Subject:** New name for CCP

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Miller,

I have been informed that the Park, Recreation, and Waterfront (PRW) commissioners are seeking public comments and suggestions about a new name for what was formally called Cesar Chavez Park.

Please inform the PRW that I would like the Park's new name to be: "Dolores Huerta Park"

Thank you for your attention to this matter!

Sherry Shannon

"Women belong in all places where decisions are being made... It shouldn't be that women are the exception." —Ruth Bader Ginsburg

**Miller, Roger**

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**From:** Ken Blum <ecuadorblum@hotmail.com>  
**Sent:** Tuesday, April 21, 2026 1:57 PM  
**To:** Miller, Roger  
**Cc:** All Council  
**Subject:** Re:North Waterfront Park Name

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To Mayor Miller,

Please create a committee of citizens to figure out new name for this park.  
Keep the North Waterfront name until a more descriptive and wonderful name is chosen.

I have used this park hundreds of times because my Cal graduate son lives in the area.

Best,  
Ken Blum  
Santa Monica, CA

## Miller, Roger

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**From:** Daniel Borgstrom <danielfortyone@gmail.com>  
**Sent:** Tuesday, April 21, 2026 8:43 PM  
**To:** Miller, Roger; All Council  
**Cc:** Martin Nicolaus; savecc6@gmail.com  
**Subject:** Suggested name for the Waterfront Park

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Roger Miller and Berkeley City Council,

Since so many interesting birds live in the Berkeley Waterfront Park, I suggest we name it

"Jardin de los pajaros"

Sincerely,  
Daniel Borgstrom



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## Miller, Roger

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**From:** Virginia Browning <vexxie@yahoo.com>  
**Sent:** Tuesday, April 21, 2026 2:16 PM  
**To:** Miller, Roger  
**Cc:** All Council  
**Subject:** Name for Chavez Park

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

I suggest El Jardin. (The garden) It's Spanish which continues connection with the farmworker theme to some degree. Has a nice sound. It seems appropriate as the place has been recycled into a lovely garden from the waste site that it was before. Thank you, I'm in District 1.

My partner suggests El Jardin de Pajaros (of birds) .

Virginia Browning

[Yahoo Mail: Search, Organize, Conquer](#)

**Miller, Roger**

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**From:** Gerald Derblich <yidlgetzl@gmail.com>  
**Sent:** Tuesday, April 21, 2026 4:09 PM  
**To:** Save CC  
**Cc:** All Council; Miller, Roger  
**Subject:** Re: Time to rename CCP! This is an opportunity to voice your opinion to the PRW and City Counsel regarding a new name for our beloved park.

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

On Apr 21, 2026, at 1:30 PM, Save CC <saveecc6@gmail.com> wrote:

**Time to rename CCP! This is an opportunity to voice your opinion to the PRW and City Counsel regarding a new name for our beloved park.**

Dear Friends of North Waterfront Park and the Off-Leash-Area (OLA)!

(As I mentioned earlier, I will use the original name of the park, "North Waterfront Park," until a new name has been decided.)

Allison & Bodhi recently sent this message to me:

I attended a PRW (Park, Recreation, and Waterfront) meeting this evening and it sounds like **Cesar Chavez Park is going to be renamed**. The PRW was supposed to have a public hearing on it tonight but there were only 4 people attending and they decided they will take more public comment before deciding. **I wanted to let you know that they will bring this up again at the next meeting on the May 13th agenda**. Seems there's a shared agreement of the commission that the park will not be renamed after another person. A suggestion provided by a community member was the original name: "North Waterfront Park."

Just an FYI for you, this could be the optimal time for a poll from your followers and bring the results to the next PRW meeting on May 13th.

There you have it. If you are receiving this message, I know that you use or have used the Park. It doesn't matter where you live. If you are a Berkeley resident or not, now is the time to send the PRW, the City Counsel, and the mayor the new name you would like for our park.

This is your park so thanks for helping to keep it clean and safe, Jeff

.....

Please send your suggestions and/or comments to:



Roger Miller at: [rmiller@berkeleyca.gov](mailto:rmiller@berkeleyca.gov)

Copy: [council@berkeleyca.gov](mailto:council@berkeleyca.gov)

This email goes directly to the mayor, each individual Councilmember, and the City Clerk for inclusion in the public record.

Copy me at: [savecc6@gmail.com](mailto:savecc6@gmail.com)

**Subject line: New name for CCP. Please include in the PRW agenda item.**

Dear Mr. Miller,

I have been informed that the Park, Recreation, and Waterfront commissioners are seeking public comments and suggestions about a new name for what was formally called Cesar Chavez Park.

Please inform the PRW that I would like the Park's new name to be: "Bayview Park....."

Thank you for your attention to this matter,

**Gerald Derblich**

**2410 Jefferson Avenue 94703**

## Miller, Roger

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**From:** judyandrich <judyandrich@gmail.com>  
**Sent:** Tuesday, April 21, 2026 8:59 PM  
**To:** Miller, Roger  
**Subject:** Park rename

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Please rename Cesar Chavez park to become Delores Huerta Park.

**Miller, Roger**

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**From:** Sally Nelson <sallynels7@gmail.com>  
**Sent:** Tuesday, April 21, 2026 8:03 PM  
**To:** Miller, Roger; Miller@berkeleyca.gov; All Council; All Council  
**Cc:** savecc6@gmail.com  
**Subject:** New name for CCP. Please include in the PRW agenda item.

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Miller,

I have been informed that the Park, Recreation, and Waterfront commissioners are seeking public comments and suggestions about a new name for what was formally called Cesar Chavez Park.

Please inform the PRW that I would like the Park's new name to be: "Burrowing Owl Park"

Thank you for your attention to this matter,

Sally Nelson  
D-4  
2200 McGee Avenue  
Berkeley, CA 94703

## Miller, Roger

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**From:** Virginia Browning <vexxie@yahoo.com>  
**Sent:** Friday, April 24, 2026 7:18 AM  
**To:** Miller, Roger; All Council  
**Cc:** Martin Nicolaus  
**Subject:** De Colores (UFW anthem title) for Chavez Park name

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

For some reason it has been decreed that labor and farmworkers be honored with the renaming of Chavez Park. While always worthy of honor, many never understood what farmworkers or UFW (United Farmworkers Union) had to do with Chavez Park. HOWEVER,

I hit on the anthem used by the UFW, "De Colores." It is appropriate in honoring the United Farmworker theme, and also in honoring the multifarious colors in evidence daily at the park, new each day.

Here's a thumbnail history of the song, not written by Chavez but going back to the 16th century, though adopted as a well-known anthem sung by Dolores Huerta's UFW movement. Below that are 2 renditions and the lyrics. While we don't have chickens (as briefly mentioned in the song) we sometimes have turkeys and many singing birds, as in the song. And anyway the literalness of this traditional song in praise of all was never the point.

Virginia Browning  
see below:

from AI summary: "De Colores" is a traditional Spanish folk song with unknown, ancient origins, likely brought from Spain to the Americas in the 16th century. It is considered a Mexican folk song celebrating creation, and it later became the anthem of the [United Farm Workers union](#)

<https://www.youtube.com/watch?v=ZwAi4dQHqys>

<https://www.youtube.com/watch?v=9aRZLbZFeLU>

De Colores  
De Colores se visten los campos en la primavera  
De Colores  
De Colores son los pajarillos que vienen de afuera  
De Colores  
De Colores es el arco iris que vemos lucir

Y por eso los grandes amores  
De muchos colores  
Me gustan a mi

Y por eso los grandes amores

De muchos colores  
Me gustan a mi

Canta el gallo  
Canta el gallo con el quiri quiri quiri quiri quiri  
La gallina  
La gallina con el cara cara cara cara cara  
Los polluelos  
Los polluelos con el pio pio pio pio pi

Y por eso los grandes amores  
De muchos colores  
Me gustan a mi

Y por eso los grandes amores  
De muchos colores  
Me gustan a mi



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## Miller, Roger

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**From:** Save CC <savecc6@gmail.com>  
**Sent:** Sunday, May 3, 2026 1:15 PM  
**To:** Save CC; Miller, Roger; Allan Abshez & Jasper  
**Subject:** New name for CCP. Please include in the PRW agenda item.

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Miller and Mr. Abshez,

On April 8 I received the message below from one of 4 attendees at the PRW meeting:

I attended a PRW (Park, Recreation, and Waterfront) meeting this evening and it sounds like Cesar Chavez Park is going to be renamed. The PRW was supposed to have a public hearing on it tonight but there were only 4 people attending and they decided they will take more public comment before deciding. I wanted to let you know that they will bring this up again at the next meeting on the May 13th agenda. Seems there's a shared agreement of the commission that the park will not be renamed after another person. A suggestion provided by a community member was the original name: "North Waterfront Park."

Just an FYI for you, this could be the optimal time for a poll from your followers and bring the results to the next PRW meeting on May 13th.

I confirmed this message was correct with another attendee. Since I was under the assumption that the PRW was interested in taking more public comment before deciding on a name for what was CCP, I sent a request to our group asking for suggestions to be emailed to you and the City Counsel. This is the reason you have been receiving emails about suggested names.

Then, on April 21 I received an email from Mr. Casal asking if I wanted to join the "Citywide Commemorative Committee" to come up with a name for the park. The "Committee" is composed of 21 people representing various groups. I declined the invitation since I do not have time to join the committee but more importantly, I really thought the naming process would be open to the general public.

Now that I have been informed this is not the case, I would still like to list the suggestions from our group. I will include mine as well since I don't see anything prohibiting our suggestions:

Gerald Derblich suggested "Bayview Park"  
Berkeley

Virginia Browning and her partner suggested: "El Jardin" and "El Jardin de Pajaros"  
Berkeley

Ryan Casey suggested: "Bay Park" or "North Waterfront Park"  
Berkeley

Everett Wetchler suggested "Isle of Dogs"  
Berkeley

Michael & Hannah Bennett suggested “Blackbird Park” (for the Red Winged Blackbirds)  
Berkeley

David King suggested “George Washington Park”

Sherry Shannon suggested “Dolores Huerta Park”

Sally Nelson suggested “Burrowing Owl Park”  
Berkeley

Gianna Michael suggested “Berkeley Paradise Peninsula”  
Berkeley

Judy Andrich suggested “Delores Huerta Park”

Daniel Borgstrom suggested "Jardin de los Pajaros"

Kristine Larsen suggested “Blue Heron Park” or “Brown Pelican Park”

Kathleen McLaughlin suggested “Berkeley Waterfront Park” or “Berkeley Marina Park”

Regarding my suggestions, I learned from Mr. Casal’s email that a set of Criteria has also been established. In keeping with the Criteria, I suggest any of the following:

Parque de los Obreros  
Parque de los Olvidados  
Parque del Bracero  
Parque de los Braceros

or:

Jardín de los Obreros  
Jardín de los Olvidados  
Jardín del Bracero  
Jardín de los Braceros

All of my suggestions should be self-explanatory with two exceptions: Parque de los Olvidados and Jardín de los Olvidados. All of these suggestions however are keeping with the Criteria.

For 38 years I have worked to help severely injured limited English and mono-lingual Spanish speakers navigate the worker comp system to obtain their rightful vocational benefits. Of the more than 10,000 (!) injured workers I have helped during these nearly 4 decades, the vast majority have been agricultural field workers and laborers. For some, I had the opportunity to develop and coordinate funding for scores of self-employment plans for injured Spanish speakers in rural Mexico and Central America. Examples include shoe repair shops, dairy farms, slaughterhouses, lime orchards, cattle breeding farms, bakeries, an art gallery, grocery stores, tailor shops, and one of my favorites, I had a computer/internet facility at primary school in a rural village installed.

Nevertheless, for the vast majority of limited English and mono-lingual Spanish speaking injured workers, I have seen firsthand the rampant system-wide bias and disastrous effects they and their families experience as the result of work related injuries. Once injured, these workers have no use to their prior employers or any other employer. Their primary value was their pre-injury physical abilities. Once injured, these agricultural workers

and laborers are, in essence, tossed aside like so much debris and forgotten. For these thousands upon thousands of injured agricultural workers and laborers, I suggest Parque de los Olvidados or Jardín de los Olvidados.

Regardless of my suggestions, I believe that all suggestions made by the public should also be entitled to fair consideration.

Thank you,

Jeff Malmuth  
Berkeley D-1



Miller, Roger

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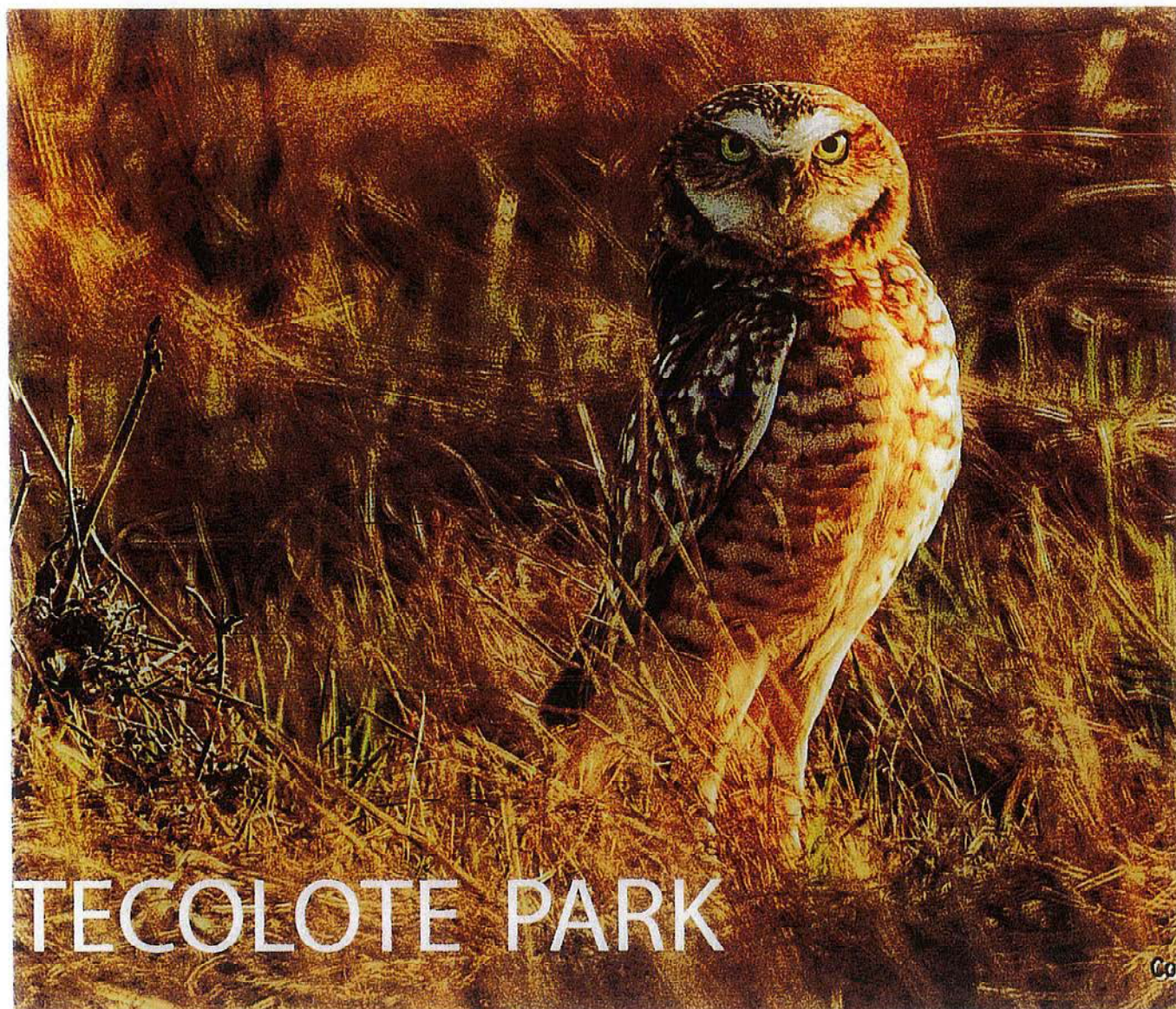
From: Wendy Abshez <wendyabshez@sbcglobal.net>  
Sent: Wednesday, May 13, 2026 2:44 PM  
To: Miller, Roger  
Subject: Tonight's PRWC Meeting - Agenda Item 16

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

### TECOLOTE PARK

My name is Wendy Abshez. I live in Berkeley. I've been a docent at the Shorebird Park Nature Center in the Berkeley Marina for about 3 years. As a volunteer at the Nature Center I've spent a lot of time in the marina with school kids who are visiting on field trips. We take bird walks, search the muddy shoreline for crabs and discover the colorful sponges that live on the docks. When I'm there I am continually amazed that an area that is landfill and totally man-made has become such a rich habitat for all kinds of life. Now that a new name is being considered for the Cesar Chavez portion of the park, I think it's a wonderful chance to choose a name that highlights an actual feature of this specific location. You probably already know that there is a very special species of migratory owl that spends the fall and winter months here. Western Burrowing Owls were once abundant in California but are now listed as a California Species of Concern due to their greatly reduced numbers. One of the few areas you can find them is right here in Berkeley. They live in abandoned ground squirrel burrows on the grassy hills of Cesar Chavez Park. They are here from about October until March. They're diurnal and spend most of their time on the ground, so if you're lucky you might see one, but they are rare, and we are very lucky to have them right here in Berkeley. I'm asking the commission to consider renaming Cesar Chavez Park for these unique and amazing birds. I know other people have suggested the name Burrowing Owl Park, but I have a slightly different idea. In Mexico they call these small owls "Tecolote". It's a word that came to Mexican Spanish from an indigenous Mexican language. Naming the park Tecolote Park evokes this beautiful animal, but also honors and will be an enduring reminder of Berkeley's rich and diverse cultural heritage. That's why I think it's a great choice. Thank you for allowing me this time and I hope you'll give serious consideration to renaming the park Tecolote Park.





**Miller, Roger**

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**From:** Beatriz Leyva-Cutler <beatrizleyvac@gmail.com>  
**Sent:** Tuesday, June 2, 2026 3:50 PM  
**To:** Ferris, Scott; Miller, Roger  
**Cc:** Santiago Casal; Natasha Beery  
**Subject:** Recommendation for renaming Meeting on June 10, 2026  
**Attachments:** 1. Park Renaming Report for 6\_10\_2026 PRW Meeting.pdf; 2. Appendix for Renaming Report to PRW 06\_10\_26.pdf

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Ferris and Mr. Miller,  
On behalf of the Commemorative Renaming Committee, which has been working to provide the Parks, Recreation, and Waterfront Department with a recommendation on the renaming of Chavez Park, we hereby submit our recommendation for discussion at the upcoming meeting on June 10, 2026.

As previously requested, we would greatly appreciate being placed early on the agenda and being given 15 minutes to present and discuss. Attached are the documents to be provided to the commissioners, the public, and for your review. There are a few items in the document that have links to open and view.

We look forward to hearing from you and plan to attend, along with some of our committee members. Please let us know if you have any questions or need any additional information.

*Respectfully,*

Beatriz Leyva-Cutler  
Santiago Casal  
Natasha Beery

**Attachments:**

1. Renaming Report

2. Appendix includes:

- Rationale for 2nd and 3rd polled names
- Straw Poll Results
- Committee Members



Date: June 3, 2026

To: **Parks, Recreation, and Waterfront Commission**

cc: Mayor Ishii, City Manager Paul Buddenhagen, PRW Director Scott Ferris

From: **Commemorative Committee Renaming Working Group**

Re: **Recommendation for Renaming the Waterfront Park**

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Following the April 14, 2026, referral by the Mayor,<sup>1</sup> members of the Citywide Commemorative Committee<sup>2</sup> constituted a renaming working group in order to submit a recommendation to the Parks, Recreation and Waterfront Commission and City Manager for renaming the waterfront park. The committee of 21 members was drawn from many constituencies and stakeholders, including representatives from Latinos Unidos, the Multicultural Institute, Berkeley Unified School District, the Park Conservancy, the Off-Leash Association, the Tribute Site, the Ecology Center, UC Berkeley, the mayors and council aides, and community members (see Appendix).

Each individual and constituency brought a unique perspective on the park's history, current use, and potential. We conducted a substantial deliberative process that included reviewing the Mayor's referral, consulting city policy on naming and renaming, and developing criteria to review proposed names before polling representatives and discussing the poll results.

This committee process adapted the successful model developed and refined during recent BUSD school renaming efforts to carefully consider each name, including its educational implications and any caveats. We hope you will find this report illuminating for your discussion and deliberation, and believe you may find this process helpful for your future naming or renaming work.

We are pleased to have reached a strong consensus on a recommendation for a new name, one that we believe will endure and inspire our Berkeley community for generations to come: **¡Sí Se Puede! Park**. Please read the attached report for supporting details.

Respectfully submitted on behalf of the Committee,

Beatriz Leyva-Cutler, BUSD School Board Director, Emerita

Santiago Casal, Founder of The Tribute Site & Former Chair of Latinos Unidos

Lupe Gallegos-Diaz, UC Berkeley Lecturer and Current Chair of Latinos Unidos

Natasha Beery, BUSD Superintendent's Designate & Former Director of Community Relations

This report includes the following components:

- 1) *Naming Background and Renaming Working Group Process*
- 2) *Naming Recommendation and Rationale for Sí Se Puede Park*
- 3) *Appendices: Rationales for 2nd & 3rd Choices (Esperanza and Campesino/a), Poll Results, Working Group Roster*

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<sup>1</sup> [5/13/2026 PRW Agenda, page 12](#)

<sup>2</sup> formerly known as the Citywide Chavez-Huerta Commemorative Committee

## **Park Naming and Renaming Background**

Thirty years ago, in 1996, the City of Berkeley renamed Waterfront Park to César Chávez Park in recognition of the Farmworker movement and of Chávez as one of its leaders.

In 2003, a citywide Chávez-Huerta Commemoration period was established as a collaboration between the City of Berkeley, the Berkeley Unified School District, and the Berkeley community. It begins on the Spring Equinox to coincide with the planting season and César Chávez's birth, and concludes on Dolores Huerta's birthday, April 10th.

In 2004, the Berkeley City Council approved a Chávez Tribute Site in César Chávez Park, designed as an ancient solar calendar to honor key virtues of the Farmworker movement: Hope, Determination, Courage, and Tolerance/Non-Violence.

The park, the Tribute Site, and the Commemoration period have played a crucial role in 23 years of city-wide celebrations and are a source of pride for the Latino community in Berkeley and beyond. With the shocking and painful news about Chávez that broke in March of this year, new and founding members of the Commemorative Committee stepped up to offer to work toward the park's renaming.

On April 14th, 2026, the Mayor requested the City Manager and the PRW Comisión to “engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley...to bring back to City Council recommendations for...name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.”

## **Renaming Working Group Timeline**

The Working Group adapted a process used by the Berkeley Unified School District in the recent renaming of two of our elementary schools. Five meetings were held over the past two months to work intensively and thoughtfully together. Following is a snapshot of the process:

April 16: Reviewed the Mayor's directive, City policy on naming and renaming, and discussed potential criteria for selecting a new name. A poll on criteria was conducted April 21-26.

April 27: Reviewed results of the criteria poll, agreed to use eight key criteria to assess possible names, began soliciting names from committee members and their constituencies, and shared updates on district and city actions so far. Straw poll on names April 29-May 3.

May 4: Reviewed and discussed results of first poll, and prepared for May 13 update to PRW Comisión. Discussed the creation of rationales and learning opportunities for each name. Conducted a second straw poll, May 6-12, which included new names written in during the first poll. The writing group began working on drafts of top-name rationales, May 17-25.

May 26: Shared results of 2nd poll and initial drafts, found consensus on top name.

June 1: Reviewed report drafts and discussed presentation ahead of the June PRW meeting.

## Committee Consensus Recommendation:

### ¡Sí Se Puede! Park



3

#### 1. Summary Statement

Coined by civil rights activist Dolores Huerta for the United Farmworkers Movement in 1972, **¡Sí Se Puede!** has served as an empowering rallying cry for labor and immigrant rights as well as for political change, emphasizing collective action to overcome obstacles. What others saw as insurmountable obstacles, Dolores and others saw as the next hill to climb. Their example motivated and inspired others to follow their leadership. It has become an international phrase of the will to overcome.

The name not only meets all the committee's naming criteria, but you'll also find "**Sí Se Puede**" reflected in the Park's [Tribute Site and Solar Calendar](#) as one of the four directions linked to the virtue of Determination.

Dolores Huerta has indicated that [she does not want to have places named/renamed after her personally](#), but rather to honor the farmworker movement itself, and "**Sí Se Puede**" manages to honor both Huerta and the movement without being about one person.

Barack Obama used the saying "Yes We Can" during his presidential campaign, and [he acknowledged his debt to Huerta](#) for these words of inspiration. In fact, **Sí Se Puede** can serve as a rallying cry for many in our community to overcome the enormous setback posed by the shocking revelations about Chavez. "Yes, we can overcome this!" The name also lends an uplift to a beautiful park that once suffered from its status as a garbage dump and is now a community gathering place.

---

#### 2. Results of the Committee Poll

In two rounds of polling, **¡Sí Se Puede! was consistently the #1 choice** of a majority of the committee. In the first poll, with 19 names under consideration and five additional write-ins, **66% ranked Sí Se Puede Park as the top choice, and 83% placed it in their top three names.** In the second poll, **Sí Se Puede Park rose to the top three for 93% of respondents and was the #1 choice for two-thirds.** The May 26th meeting confirmed that the committee as a whole would move forward with this consensus name.

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<sup>3</sup> Image created by 2nd graders at Sylvia Mendez elementary school for the Si Se Puede march

### 3. Opportunities for Learning and Celebration

*¡Sí Se Puede!* rings through the halls of our public schools during the [Commemorative Period](#). This name readily lends itself to many existing educational materials used District-wide. Each year, our students will be inspired to honor the farmworker movement leaders and organizers, particularly Dolores Huerta, and to imagine themselves as change-makers and champions for their community.

**Sí Se Puede** connects directly to the history of the Farmworker Movement and conveys a celebratory sense that “we can do it,” which is uplifting and engaging. Banners that say “Sí Se Puede” could be used and reused in many settings - schools, parades, gatherings of all kinds.

It is a beautiful expression of what Berkeley is all about. The phrase invites curiosity about its origin and use and is found in many places, including as one of the four directions at the Tribute Site, re: [determination](#). It is the *Sí Se Puede* attitude (It Can Be Done!).

---

### 4. Relevance to Committee Criteria

A. Celebrates **FARMWORKERS**:

Yes - it is the motto of the United Farm Workers of America

B. Honors the **HISTORY OF LABOR ORGANIZING**:

Yes - this chant has been used widely throughout labor and other organizing movements

C. Reflects **SPANISH-SPEAKING** and/or **CHICANO/LATINX HERITAGE**

Yes - this saying is in the Spanish language and connected to this heritage

D. Reflects our **SHARED VALUES**

Yes - this chant reflects the possibility of community and positive change

E. Promotes **UNITY**

Yes - this is meant to be chanted together with united voices

F. Is likely to **ENDURE**

Yes, there is not likely to be any controversy over this saying

G. Uplifts the **COMMUNITY** rather than just one individual

Yes - this reflects a community working together

H. Resonates with **BERKELEY** and/or the **BAY AREA**

Yes - this phrase is used at many Berkeley and Bay Area gatherings...and beyond!



## 5. **Additional Considerations, Caveats, and Variations**

- The phrase honors Dolores Huerta, who coined the phrase.
  - The phrase brings a smile and a shout to the lips of all who say it!
  - One person commented that it could be hard to pronounce, but we don't think that's a major concern. The phrase has been in the public sphere for 50 years and is widely used by English and Spanish speakers alike.
  - The word Sí (“yes”) should be written with an accent. (Note that the name César Chávez should also have accents, but these are often omitted by many.)
  - The phrase is typically used with at least one exclamation point, or in the Spanish usage, ¡an inverted exclamation point followed by another exclamation point!
  - Multiple variations could be acceptable in actual use:
    - Sí Se Puede Park
    - Sí Se Puede! Park
    - ¡Sí Se Puede! Park
- 

## 6. **How is this name being used elsewhere?**

- [Denver's César Chávez celebration will be called "Sí, se puede" this year](#)
  - [30th Annual \*\*Sí Se Puede\*\* Celebration | California State University Stanislaus](#)
  - [County replaces César Chávez Day name with “\*\*Dolores Huerta - Sí Se Puede\*\*”](#)
  - [Mesa County “\*\*Sí Se Puede\*\*” celebration](#)
  - [What will Cesar Chavez Park be renamed? Modesto narrows list to 3 options](#)
  - [\*\*Sí Se Puede\*\* Academy - El Centro de la Raza](#)
  - [\*\*Sí Se Puede!\*\* | Los Lobos Farmworker Fundraiser Album](#)
- 

## 7. **Google AI Response to “Is Sí Se Puede a Good Name for a Park?”**

**"Sí Se Puede"** is an excellent name for a park because it honors civil rights and community resilience. Originating as a famous rallying cry in the farmworker labor movement co-founded by Dolores Huerta, the phrase embodies hope, collective struggle, and the possibility of positive social change. [1, 2, 3, 4]

## Key Reasons the Name Works:

- *Empowerment and Hope*: It transforms a park into a symbol of encouragement, reminding visitors that challenges can be overcome through community effort and perseverance.
- *Cultural Heritage*: The phrase is deeply tied to the Chicano and farmworker civil rights movements. Naming a public space "Sí se puede" serves as an enduring tribute to the hard work and dignity of laborers
- *Inclusivity*: Rather than being dedicated to a single historical figure, the name emphasizes the community's strength. It invites everyone to feel welcome and capable of achieving great things.
- *Universal Motivation*: In addition to its deep roots in Latinx and labor history, the phrase has become a universal, uplifting motto used across various campaigns for social and economic justice. [[1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#)]

## 8. Wikipedia: Sí Se Puede:

"Sí, se puede" (Spanish for "Yes, you can"), pronounced ['sí se 'pwe.ðe], is the motto of the United Farm Workers of America and has since been taken up by other activist groups. UFW co-founder Dolores Huerta created the phrase in 1972.<sup>[1][2][3]</sup>

"Sí se puede" has long been a UFW guiding principle that has inspired the accomplishment of goals. The phrase has been widely adopted by other labor unions and civil rights organizations and has drawn widespread political and media attention as a rallying cry during the U.S. immigration reform protests.<sup>[4][5]</sup>



## APPENDIX:

Rationale for 2nd Choice:  
Esperanza Park

Rationale for 3rd Choice:  
Campesino Park

Poll Results

Commemorative Committee  
Roster

**Second Choice Name:**  
**Esperanza Park**

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### **1. Summary Statement**

**Esperanza** was the second choice among the many suggested names, but a distant second compared to “Sí Se Puede.”

While Esperanza is a positive feeling that conveys support and resonates with the Latino community, in the farmworker movement, it is not necessarily as strong a word as a movement that requires action and change. “Hope” was famously popularized by civil rights leader and politician Rev. Jesse Jackson during his 1988 presidential campaign as a rallying cry for equality, justice, and collective resilience in the face of systemic adversity.

Esperanza is a popular name for parks, particularly in revitalized or historically underserved areas. It transforms green spaces into symbols of community renewal, safety, and a brighter future. The park offers a majestic view of the west, San Francisco, which inspires hope, especially at [sunset](#). Esperanza is also one of the cardinal virtues of the Farmworker Movement (Hope, Determination, Courage, and Tolerance) reflected in the [Tribute Site and Solar Calendar](#) at the park.

---

### **2. Results from the Committee Poll**

**Esperanza** came in as a fairly strong second choice in the Committee straw poll, with **44%** of respondents placing it in 2nd or 3rd place (although none had it as a first choice). In the second poll, support increased, with **57%** in 2nd or 3rd place, although it was again not a first choice for any respondent (71% had selected “Sí Se Puede” in first place, and 93% in top three)

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### **3. Opportunities for Learning and Celebration**

Esperanza is a verb, an action, a feeling. Learning materials would need to be created to explicitly connect Hope and Activism: Hope for change; Hope for farm workers to be valued; Hope for improved conditions, wages, and benefits; and Hope for stopping the deportation of farm workers.

Hope is directly connected with the EAST at the Tribute Site, and indirectly to the UFW rallying cry of *¡Viva La Causa!* The creation of the UFW gave highly exploited and abused farm workers Hope that they could overcome seemingly insurmountable odds. Common spring metaphors (the planting season) include birth, renewal, new beginnings, and HOPE.

#### **4. Committee Criteria**

A. Celebrates **FARMWORKERS**

? - The word itself, “Esperanza,” does not directly celebrate Farmworkers

B. Honors the **HISTORY OF LABOR ORGANIZING**

Yes - Esperanza, meaning “Hope,” is a part of the labor movement

C. Reflects **SPANISH-SPEAKING and/or CHICANO/LATINX HERITAGE**

Yes - The word is in Spanish

D. Reflects our **SHARED VALUES**

Yes - We all hope / Esperanza for things to be better.

E. Promotes **UNITY**

Yes - We all hold hope / Esperanza as a uniting factor

F. Is likely to **ENDURE**

Yes, the concept of Esperanza can endure and is uncontroversial

G. Uplifts the **COMMUNITY** rather than just one individual

Yes, Esperanza is a feeling, a desire, a communal wish.

H. Resonates with **BERKELEY** and/or the **BAY AREA**

? - Can be a word that resonates, but we would need to market it more!

---

#### **5. Additional Considerations, Caveats and Variations**

The connection to the Farmworker movement is indirect, or not obvious to many, and it will take further education and explanation to make that link. Some may find the word less strong than other options. However there is a direct connection to the Tribute Site at the park, with the cardinal direction of “Hope”.

Esperanza is pronounced in Spanish, with soft a; Esperanza does not rhyme with Anza, as in Lake Anza.

The word “la” serves as a definite article in Spanish, equivalent to “the” in English, but specifically used with the feminine singular noun, like Esperanza, so in Spanish this would be Parque de la Esperanza

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## 6. How is this name being used elsewhere?

- [La Esperanza Park](#), Brownsville, Texas
  - [Esperanza Park in Cathedral City, California](#).
  - [Esperanza Hills Regional Park](#)
- 

## 7. Google AI Response to “Is Esperanza a Good Name for a Park?”

"Esperanza Park" is a strong name because "esperanza" translates to "hope" in Spanish. It is frequently used by communities to symbolize renewal, resilience in the face of adversity, and the realization of a long-awaited vision for neighborhoods that have been historically overlooked. [[1](#), [2](#), [3](#), [4](#), [5](#)]

The name works well for a few key reasons:

- Symbol of Renewal: "Hope" embodies the transformation of neglected land, a former landfill, or an empty lot into a vibrant, safe community space for families and children.
  - Cultural Connection: In neighborhoods with strong Hispanic roots, using Spanish names directly connects the park's identity to the heritage of local residents.
  - Community Advocacy: Often, these parks result from years of grassroots campaigning. The name serves as a monument to the long-awaited vision and perseverance of the people who fought for the space.
  - Promotes Community Gathering: The meaning of "hope" translates directly to the park's purpose: a vibrant, free space that encourages families to celebrate, gather, and recreate together
  - Environmental Transformation: It honors the journey of healing or repurposing land. For example, a former landfill in L.A. County was transformed and renamed *Esperanza Hills Regional Park*.
- 

## 8. Wikipedia: Esperanza

*Esperanza* is the Spanish word for hope, and may refer to [a long list of places, including mines, people, films, TV shows, music, and organizations such as Esperanza International, a non-profit organization that develops Dominican Republican communities through microfinancing, Esperanza Peace and Justice Center, a non-profit community-based arts & cultural organization that advocates for social justice, Esperanza Unida, Inc., a non-profit organization that provides job training and placement to unemployed minority workers in Milwaukee, Wisconsin, United States

## Third Choice Name: **Campesino/a Park**

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### **1. Summary Statement**

In the United Farm Worker (UFW) movement, *Campesino* signifies a profound relationship to the land, and often a familial way of life. It centers the park on recognition of farm workers who powered the movement. Organizers used the word to foster a collective identity among farmworkers who cultivate the land, often highlighting their struggles for dignity, fair wages, and land rights, rather than just their economic status. *El Teatro Campesino* (The Farmworkers' Theater) used this term to empower striking workers through performances that illustrated their struggle against exploitation. Rather than using "peasant," the UFW used *Campesino* to dignify the agricultural laborer. It celebrated a deep, spiritual, and communal relationship with the land.

Campesino may underscore awareness of farm workers who are currently facing mass deportations and threats, with workplace protections being rolled back and efforts to reduce their hard-won hourly benefits. Between 1/3 and 1/2 of all farmworkers in America reside in California, or roughly 500,000 - 800,000 farmworkers. Approximately 1/3 are women, and they range in age from their teens to their 60s. In addition, 400,000 children work in U.S. fields.

However, since "Campesino" is the masculine form of the word, the alternative "Campesina" to honor women is a viable alternative. Women farmworkers (Campesinas) are often systematically subjected to sexual slurs, groping, threats, beatings and even rape in the fields. In California, 80% of farmworker women (campesinas) state that they have experienced sexual harassment. Using "Campesina" brings attention to their struggle.

---

### **2. Results from the Committee Poll**

In the first round of Committee polling, Campesino Park was the first choice of only two of 18 respondents; two listed it in second place and two in third, for a total of 6 respondents (33%) who included it in their top three choices.

By the second round, Campesino had dropped considerably in favor, with no committee members listing it as a first or second choice, and only 3 people listing it as a third choice. In fact, another option, "El Pueblo Unido" initially polled slightly higher than Campesino. However, we included Campesino in the top three due to its popularity with the Conservancy. In the Conservancy's final online poll in late April, when choices they offered to their readers were limited to just three options (*Campesino*, *Sí Se Puede*, and *Farmworker*), and their leadership declared in favor of Campesino when launching the poll, a plurality (55.6%) preferred *Campesino*, with *Sí Se Puede* in second place, and *Farmworker* in third place.

### 3. Opportunities for Learning and Celebration

For Campesina Park, per se, a new series of educational materials would need to be developed unless there are examples of existing curricula specifically related to this version of the name. Part of the benefit would be to move the many women leaders from the background to the foreground of the movement. This particular opportunity could be applied equally to the two other names, *Esperanza Park* and *¡Si Se Puede! Park*, and the distinct leadership and can-do spirit of women.

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### 4. Committee Criteria

#### A. Celebrates **FARMWORKERS**

Yes - for example, *El Teatro Campesino* uses this term to empower striking workers through performances, illustrating their struggle against exploitation.

#### B. Honors the **HISTORY OF LABOR ORGANIZING**

Yes - It bridges Mexican and Filipino laborers in a shared struggle against poor working conditions, low pay, and exploitation by growers.

#### C. Reflects **SPANISH-SPEAKING** and/or **CHICANO/LATINX HERITAGE**

Yes - a Spanish word

#### D. Reflects our **SHARED VALUES**

? - it is the male version of the word in Spanish, and this usage could be more in question today. The word "Campesina" honors women.

#### E. Promotes **UNITY**

? - Perhaps people would unite around the intent of honoring farmworkers.

#### F. Is likely to **ENDURE**

Yes - as the referral says, "Farmworkers are the backbone of America."

#### G. Uplifts the **COMMUNITY** rather than just one individual

? - If the name "Campesino" is used, it refers to a group, but given the male version, the image that comes to mind often doesn't include women.

#### H. **Resonates** with **BERKELEY** and/or the **BAY AREA**

Yes - May resonate well if Berkeley chooses to make the case for featuring women farmworkers with "Campesina". Possibly connect it to the fact that parts of Berkeley were farmland. In a committee member's West Berkeley backyard (8th Street between Virginia and Cedar), an old plow is still there.



## 5. Additional Considerations, Caveats and Variations

Given that the word Campesino is the male version of the term, it would have to be written with a slash as “Campesino/a or Campesinx”. Alternatives such as Campesinx or Campesine are not universally accepted and are problematic for signage.

“Campesina” Park could serve as an affirmation/ celebration of women farm workers; however, many people might accidentally default to “Campesino,” since it may not resonate with those used to talking about the “Campesino” movement.

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## 6. How is this name being used elsewhere?

- Campesino Park (Santa Ana, CA): This Orange County landmark reverted to its original name to reflect inclusivity for a broader coalition of farmworkers.
  - Camino Campesino (Hollister, CA): Following community outreach, the city renamed a prominent avenue to Camino Campesino to honor the enduring agricultural legacy of the region.
  - Campesinos Unidos: A prominent resource and community assistance hub based in El Centro, California, serving the migrant and agricultural working populations of the Imperial Valley.
- 

## 7. Google AI Response to “Is Campesino a Good Name for a Park?”

"Campesino" (Spanish for "farmer" or "farmworker") is a powerful and fitting name for a park because it honors the essential, hardworking laborers who cultivate the land. It reflects cultural heritage, grounds the space in community history, and represents values of perseverance, dignity, and connection to the earth. [[1](#), [2](#), [3](#), [4](#), [5](#)]

### **Key Reasons the Name Works:**

- Honors Laborers: It pays direct tribute to the agricultural workers whose sweat and labor form the backbone of local and regional economies, particularly in agricultural states like California.
- Cultural Representation: In areas with large Latino and Hispanic populations, it uses an accessible, recognizable term that speaks directly to the local community's heritage and history.
- Connection to the Land: "Campo" (from the Latin for field) signifies a relationship with nature. A name like Campesino reinforces the park's purpose as a green, natural space intended for the community to nurture, enjoy, and find peace



- Promotes Community Gathering: The meaning of "hope" translates directly to the park's purpose: a vibrant, free space that encourages families to celebrate, gather, and recreate together
  - Environmental Transformation: It honors the journey of healing or repurposing land. For example, a former landfill in L.A. County was transformed and renamed *Esperanza Hills Regional Park*.
- 

## 8. Wikipedia: Campesino

Campesino means 'farmer' or 'peasant' in Spanish and may refer to:

- a translation of the word "peasant", referring to a Latin American farmer
  - Los Campesinos!, an indie pop band from Cardiff, Wales
  - Teatro Campesino, a theater group founded by the United Farm Workers
  - Valentín González, El Campesino, a military leader during the Spanish Civil War
  - Via Campesina, the collaborating body for an international peasant movement
  - *Bloque Obrero y Campesino*, the Workers and Peasants' Bloc in 1930s Barcelona
  - *Confederación Revolucionaria de Obreros y Campesinos*, Mexico
  - *Confederación Sindical Única de Trabajadores Campesinos de Bolivia*, Unique Confederation of Rural Laborers of Bolivia
-

## Straw Poll Results

Each member was asked to rank their top three names

In the first round, additional write-in votes were also solicited

Any park name that received a first, second or third place vote was included in the next round.

| POLL NAMES ROUND ONE                       |  | POLL NAMES ROUND TWO                     |
|--------------------------------------------|--|------------------------------------------|
|                                            |  |                                          |
| <b>¡Sí Se Puede! Park</b>                  |  | <b>¡Sí Se Puede! Park</b>                |
| <b>Esperanza Park</b>                      |  | <b>Esperanza Park</b>                    |
| <b>Campesino Park</b>                      |  | <b>Campesino Park</b>                    |
|                                            |  |                                          |
| <i>Farmworker Park</i>                     |  | <i>El Pueblo Unido Park</i>              |
| <i>El Pueblo Unido Park</i>                |  | <i>Parque (or Jardín) de los Obreros</i> |
| <i>Movimiento Park</i>                     |  | <i>Farmworker Park</i>                   |
| <i>Huelga Park</i>                         |  | <i>Farmworker Solidarity Park</i>        |
| <i>¡Viva La Causa! Park</i>                |  | <i>Bahia Del Sol (Dorado) Park</i>       |
| <i>¡Hasta La Victoria! Park</i>            |  |                                          |
|                                            |  |                                          |
| <i>¡Viva La Huelga! Park</i>               |  | <b>IN POLL, NO VOTES RECEIVED</b>        |
| <i>La Gente Unida Park</i>                 |  | <i>Movimiento Park</i>                   |
| <i>North Waterfront Park</i>               |  | <i>Huelga Park</i>                       |
|                                            |  | <i>¡Viva La Causa! Park</i>              |
| <b>NEW SUGGESTIONS</b>                     |  | <i>¡Hasta La Victoria! Park</i>          |
| <i>Parque (or Jardín) de los Obreros</i>   |  | <i>¡Viva La Huelga! Park</i>             |
| <i>Bahia Del Sol (Dorado)</i>              |  | <i>La Gente Unida Park</i>               |
| <i>Farmworker Solidarity</i>               |  | <i>North Waterfront Park</i>             |
| <i>Parque (or Jardín) de los Olvidados</i> |  |                                          |
| <i>Parque (or Jardín) de los Braceros</i>  |  |                                          |
|                                            |  |                                          |
| <b>IN POLL, NO VOTES RECEIVED</b>          |  |                                          |
| <i>Águila Negra Park</i>                   |  |                                          |
| <i>Burrowing Owl Park</i>                  |  |                                          |
| <i>Comunidad Park</i>                      |  |                                          |
| <i>Hope Park</i>                           |  |                                          |
| <i>Jardín de los Pájaros Park</i>          |  |                                          |
| <i>Oceanview Park</i>                      |  |                                          |
| <i>Park del Movimiento</i>                 |  |                                          |

## Commemorative Committee Membership and Constituencies

|    | Name                                 | Title, Representative                               |
|----|--------------------------------------|-----------------------------------------------------|
| 1  | Cydney Chilimidos                    | Mayor Adena Ishii Representative*                   |
| 2  | Beth Gerstein for<br>Rashi Kesarwani | City Council District 1                             |
| 3  | Ruben Hernandez for<br>Terry Taplin  | City Council District 2                             |
| 4  | Senator Jesse Arreguin               | State Senator                                       |
| 5  | Ariana Casanova                      | State Senator Arreguin, Representative*             |
| 6  | Ana Vasudeo                          | BUSD Board Director                                 |
| 7  | Natasha Beery                        | BUSD Superintendent Designate                       |
| 8  | Beatriz Leyva-Cutler                 | BUSD Board Emerita, Tribute Site Education Director |
| 9  | Ruben Lizardo                        | UCB Representative                                  |
| 10 | Sheila Jordan                        | Alameda County Board of Education, Emeritus         |
| 11 | Lisette Flores                       | Peralta College                                     |
| 12 | Lupe Gallegos-Diaz                   | Latinos Unidos Representative                       |
| 13 | Daniela Gonzalez<br>Mirna Cervantes  | Multicultural Institute                             |
| 14 | Martin Nicolaus                      | Park Conservancy                                    |
| 15 | Santiago Casal                       | Founder/Director, Tribute Site                      |
| 16 | Carlos Hill                          | Coordinator of Site Stewards                        |
| 17 | Vivian White                         | Seasonal Gathering Coordinator                      |
| 18 | Jeff Malmuth                         | Off-Leash-Area (OLA)                                |
| 19 | Martin Borque                        | Ecology Center                                      |
| 20 | Alexis Adorador                      | Community Member                                    |
| 21 | Todd Kerr                            | Berkeley Times                                      |
|    |                                      |                                                     |
|    |                                      | *Advising, non-voting                               |

## Commemorative Renaming Committee

|    | <b>Name</b>                          | <b>Title/Representative</b>                 |
|----|--------------------------------------|---------------------------------------------|
| 1  | Cydney Chillimidos                   | Mayor Adena Ishii Representative            |
| 2  | Beth Gerstein for<br>Rashi Kesarwani | City Council District 1                     |
| 3  | Ruben Hernandez for<br>Terry Taplin  | City Council District 2                     |
| 4  | Ana Vasudeo                          | BUSD Board Director                         |
| 5  | Natasha Beery                        | BUSD Superintendent Appointee               |
| 6  | Ariana Casanova                      | State Senator Arreguin, Representative      |
| 7  | Senator Jesse Arreguin               | State Senator                               |
| 8  | Martin Borque                        | Ecology Center                              |
| 9  | Ruben Lizardo                        | UCB Representative                          |
| 10 | Mirna Cervantes<br>Daniela Gonzalez  | Multicultural Institute                     |
| 11 | Alexis Adorador                      | Community Member                            |
| 12 | Beatriz Leyva-Cutler                 | Tribute Site Education Director             |
| 13 | Carlos Hill                          | Coordinator of Site Stewards                |
| 14 | Lupe Gallegos-Diaz                   | Latinos Unidos Representative               |
| 15 | Martin Nicolaus                      | Park Conservancy                            |
| 16 | Sheila Jordan                        | Alameda County Board of Education, Emeritus |
| 17 | Santiago Casal                       | Founder/Director, Tribute Site              |
| 18 | Todd Kerr                            | Berkeley Times                              |
| 19 | Vivian White                         | Seasonal Gathering Coordinator              |
| 20 | Lisette Flores                       | Peralta College                             |
| 21 | Jeff M                               | Off Leash Area (OLA) Community              |
|    |                                      |                                             |

April 16, 2026  
 1920 7<sup>th</sup> Street, Berkeley  
 5-6:30 PM

## Commemorative Renaming Committee

|    | <b>Name</b>                          | <b>Title/Representative</b>                 |
|----|--------------------------------------|---------------------------------------------|
| 1  | Cydney Chillimidos                   | Mayor Adena Ishii Representative            |
| 2  | Beth Gerstein for<br>Rashi Kesarwani | City Council District 1                     |
| 3  | Ruben Hernandez for<br>Terry Taplin  | City Council District 2                     |
| 4  | Ana Vasudeo                          | BUSD Board Director                         |
| 5  | Natasha Beery                        | BUSD Superintendent Appointee               |
| 6  | Ariana Casanova                      | State Senator Arreguin, Representative      |
| 7  | Senator Jesse Arreguin               | State Senator                               |
| 8  | Martin Borque                        | Ecology Center                              |
| 9  | Ruben Lizardo                        | UCB Representative                          |
| 10 | Mirna Cervantes<br>Daniela Gonzalez  | Multicultural Institute                     |
| 11 | Alexis Adorador                      | Community Member                            |
| 12 | Beatriz Leyva-Cutler                 | Tribute Site Education Director             |
| 13 | Carlos Hill                          | Coordinator of Site Stewards                |
| 14 | Lupe Gallegos-Diaz                   | Latinos Unidos Representative               |
| 15 | Martin Nicolaus                      | Park Conservancy                            |
| 16 | Sheila Jordan                        | Alameda County Board of Education, Emeritus |
| 17 | Santiago Casal                       | Founder/Director, Tribute Site              |
| 18 | Todd Kerr                            | Berkeley Times                              |
| 19 | Vivian White                         | Seasonal Gathering Coordinator              |
| 20 | Lisette Flores                       | Peralta College                             |
| 21 | Jeff M                               | Off Leash Area (OLA) Community              |
|    |                                      |                                             |

April 16, 2026  
 1920 7<sup>th</sup> Street, Berkeley  
 5-6:30 PM

## Commemorative Renaming Committee

### Individual Comments from Straw Polls on Names

#### May 2026

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#### **Sí Se Puede Park**

- Sí Se Puede Park captures the essence of the United Farm Worker Movement. "Sí se puede" is a Spanish phrase meaning "Yes, it can be done." Coined by civil rights activist Dolores Huerta, it serves as an empowering rallying cry for labor and immigrant rights and for political change, emphasizing collective action to overcome obstacles. It also gives an uplift to what has become a beautiful park that once suffered from its "former garbage dump status." It is also a beautiful expression of what Berkeley is all about. And will ring through the halls of schools during the CityWide Commemorative Period each year, as our students march to honor the farm worker movement leaders and organizers, particularly Dolores Huerta.
- While I could live with Esperanza Park and maybe Campesina Park (re: honoring the women of the movement), I do not think that they give the park the dramatic boost and direct link to the farmworker movement that the ¡Sí Se Puede! Park name does. It has an elaborate history, is linked directly to Dolores Huerta, is a marching chant known to all, is linked directly to the Tribute Site and one of the four directions (South) and the virtue of Determination, and lends itself easily to much of the existing educational materials that we have used during the Citywide Commemorative Period, and at the Tribute Site. In fact, it can serve as a rallying cry for us to overcome the enormous setback posed by the SHOCKING Chavez revelations. "Yes, we can overcome this!" It also represents an added, consistent boost to a Park that has had to overcome its "former dump" reputation. AND it meets all the park naming criteria.
- It resonates with Berkeley's activist history and with the farmworker movement. "Sí Se Puede" was used to defy and resist authorities who believed farmworkers could not win against growers who, for generations, grew wealth on the backs of farmworkers. "Sí "Se Puede" is used to unite people - Yes We Can! Sí Se Puede Park will give Berkeley a rallying cry for unity, hope, and resilience in the face of this era of hate, war, and divisiveness.
- Si Se Puede connects directly to the Farmworker Movement and honors Dolores Huerta without naming her. It captures the spirit of Berkeley, of positive change, and was adopted by Obama (Yes We Can). We do have to deal with how it is spelled (with an accent on Sí) and with exclamation points, but it is so positive and unifying.
- Sí Se Puede is the iconic saying coined by Dolores Huerta. It is an uplifting, positive message that says that any obstacles can be overcome. The farm workers movement overcame incredible odds to form the first union by and for farm workers. This saying is a testament to the movement's grit, sacrifice, and determination.

- Si se puede is a chant that transcends time. I met Dolores last year, and she informed our group that she was the one who coined this chant, even though the credit was always given to Cesar. This chant has the opportunity to mean so much more to so many more people.
- Si Se Puede is a slogan associated with a farmworkers' movement, and yet its literal translation is very polite. All in all, it calls for a thoughtful reconsideration of history and suggests a nuanced, positive attitude.
- "Si se puede" ... a thought which opens endless possibilities for el Pueblo Unido to achieve its objectives despite all obstacles. Dolores contribution to the labor movement & uplifting humanity itself are encapsulated in that idea
- It's a slogan associated with Dolores Huerta and the farmworkers' movement, and it has a positive "can do" tone that embodies the value of resilience. There's a history lesson or two in this name and a value as well. I prefer a name in Spanish.
- It meets most of the criteria for naming and is a well-known saying from the farm worker movement. It reflects an enduring positive message.
- Concept reflecting possibilities in our struggles as a Pueblo for human dignity, respect, and compassion to emerge triumphant via determination (*esfuerzo*)
- Strong association with the farmworker movement. Can be applied universally by all different kinds of communities. It's positive and inspiring.
- It aligns with the spirit of Berkeley's activism for social justice and its status as a Sanctuary City. It is also the rallying cry for justice, human rights, and unity.
- Another important chant which lifts up the unity of the farmworkers in their fight for justice.
- The rallying cry of the farmworkers, championed by Dolores Huerta, seems fitting.
- Teaches the legacy of determination from the farmworkers movement
- I really like the positiveness of Si Se Puede and people recognize the saying.
- Encourages optimism in our various struggles.
- Acknowledges that we can make a change.
- Promotes collective agency
- Encompasses all the criteria
- empowerment
- It's a call to action

## Esperanza Park

- Esperanza is one of the values associated with the Farmworkers movement, and it is associated with a forward-looking perspective, which this westward-facing park enjoys.
  - I feel that “Hope” is an invisible energy in the heart chakra. When the heart opens hope floods into the sanctuary of our being. It is the light of our Creator, Dios, always within us. Hope and Love are brother and sister.
  - Esperanza (translation>>hope) is a value associated with the farmworkers' movement, and it's a value that is universal.
  - Esperanza: It's important not to lose hope with everything occurring, which speaks to a collective dream
  - “Esperanza” is the root of our faith in seeking truth and justice. Hope becomes action and is the invisible force that fuels lasting victories through time
  - Esperanza - really speaks to the Hope for the future and being in a place where we can find joy.
  - Hope is something we always need, and it's a cardinal direction of the Tribute Site
  - It embeds a value of hope
  - Who doesn't need hope?
- 

## Campesino Park

- This centers the park and the recognition of the farm workers who powered the movement. This is especially important at a time when farm workers are facing mass deportations and threats by the administration, and workplace protections are being rolled back.
- Campesino Park is problematic because of the masculine gender.
- Honors the people who stood to lose the most in the movement.
- Lifting up the workers who make sacrifices every day
- Really acknowledges the workers in the fields.
- A way to honor our farmworkers.
- Means “Farmworker”



# No# 1 Choice







Welcome! ¡Bienvenidos!

*Sí Se Puede Park*

Berkeley, CA



I



## STATEMENT FROM MAYOR ADENA ISHII

**(Berkeley, CA)** – On Wednesday, March 18, 2026, Berkeley Mayor Adena Ishii issued the following statement in response to recent reporting detailing allegations of abuse of women and girls by the late

labor leader César Chávez\*: *"As a city that has long honored the labor movement and its leaders, including through the naming of our treasured waterfront park, the information now coming to light about César Chávez is deeply disturbing and heartbreaking. Like much of the world, we are only just learning of these allegations."*

*My office is in conversation with Latinx community leaders, and we will keep residents informed as we consider how to move forward while continuing to honor the importance of the farm worker labor movement in our nation's history. Any action by the City Council will be guided by thoughtful consideration and meaningful input from our community.*

*Berkeley stands with the survivors who bravely came forward. We honor their courage in sharing the traumatic experiences they have carried for decades.*



## Miller, Roger

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**From:** lupeatcal@gmail.com on behalf of LatinosUnidos de Berkeley  
<latinosunidosdberk@gmail.com>  
**Sent:** Monday, May 25, 2026 7:59 PM  
**To:** Berkeley Mayor's Office; Sinai, Julie; All Council; Miller, Roger; Ferris, Scott;  
jmann@berkeleyca.gov  
**Cc:** LatinosUnidos de Berkeley; Beatriz Leyva-Cutler  
**Subject:** Letter of Support

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Mayor Ishii and Berkeley City Council members:

On behalf of the Latinos Unidos de Berkeley (LUdB)- a grassroots community group - we are in full support of the relocation of the Korean War monument that is currently located at the Veterans Memorial Building on center street to the James Kenny Park in west Berkeley. This is the right thing to do as these five young men were from west Berkeley.

Latinos Unidos de Berkeley hopes that the city and city council members will find the funds to make this move as a sign of respect to these veteran's and their families.

-Latinos Unidos de Berkeley

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To: Mayor Ishii, Berkeley City Council, and Senior Aide Julie Sinai,  
CC: Scott Ferris, Director of Parks and Recreation  
Roger Miller, Staff  
Waterfront Commission, c/o John Mann, Waterfront Manager

Today, on Memorial Day, we commemorate U.S. military personnel who made the ultimate sacrifice while serving in the Armed Forces. Specifically, here in Berkeley, we have a monument located in front of the Veterans Building that honors five young West Berkeley soldiers who gave their lives in service to our country. So it is fitting that we reach out to you today,

We are writing to formally request that funding be included in the City of Berkeley's 2027-2028 budget for the relocation of this Korean War monument. Several city staff members have come up with different estimates as to the cost of relocation.

Over the years, this memorial has been neglected, including the placement of portable toilets right in front of the site. Following meetings in January between our community representatives, City officials, and Councilmember Tregub, the portable toilets were moved to the street and sidewalk in front of the Veterans Building.

La Colectiva Latina de Berkeley, which created the Berkeley Historical Society and Museum exhibit on the history of Latinos in Berkeley, discussed this issue with Mayor Ishii during her visit to the exhibit. We agreed that relocating the monument to James Kenney Park would be the most appropriate and respectful long-term solution. This park is part of the community these young men

called home, and it would provide a more dignified setting to preserve and honor their memory. We intend to work with all stakeholders to determine the most suitable location within the park.

The West Berkeley community originally funded both the monument's creation and its placement in front of the Mobilized Women of Berkeley center at University Avenue and 10th Street. When that center closed, the community again raised funds to relocate the monument to the Veterans Building. We now respectfully ask the City to provide the financial and logistical support necessary for a permanent relocation.

We appreciate your consideration and look forward to your support for this issue, which is of deep importance to the Latino community.

Sincerely,

Representatives from the Five Families:

Larry Pozos

David Martínez

Sam Martínez

Yolanda Fernández

Christina Fernández Franco

Representatives of La Colectiva Latina de Berkeley:

Clementina Durón

Harvey Smith

Larry Reyna Sr.

Beatriz Leyva-Cutler

--

**Latinos Unidos de Berkeley**

[latinosunidosdberk@gmail.com](mailto:latinosunidosdberk@gmail.com)

Like us on [Facebook](#)

Join our [Facebook Group](#)

The mission of Latinos Unidos de Berkeley is to improve the quality of life of Latinos who live and work in the City of Berkeley by addressing and advocating for emerging issues.

## Miller, Roger

---

**From:** Alexis Adorador <alexisadorador@gmail.com>  
**Sent:** Tuesday, June 2, 2026 11:10 AM  
**To:** Miller, Roger  
**Subject:** Renaming of Cesar Chavez Park

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Miller,

I am writing to voice my support for the recommendations being made by the committee to rename Cesar Chavez Park. As a member of that committee, I can attest to the thorough and inclusive process that was lead by Beatriz Leyva Cutler, Santiago Casal and others.

It is my hope that the Commission will recognize the hard work and many hours that have been put into this recommendation so that it can move forward for approval by the city council.

Best wishes,

Alexis Adorador MFT  
Community member  
1737 Blake st. Berkeley

Sent from my iPhone

## Miller, Roger

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**From:** Martin Nicolaus (via Google Docs) <manicolaus@gmail.com>  
**Sent:** Wednesday, June 3, 2026 4:21 PM  
**To:** Miller, Roger  
**Cc:** Miller, Roger; Miller, Roger  
**Subject:** Park Name Poll backs "Campesino Park"  
**Attachments:** Park Name Poll backs "Campesino Park".pdf

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

## Martin Nicolaus attached a document

Martin Nicolaus ([manicolaus@gmail.com](mailto:manicolaus@gmail.com)) has attached the following document:  
[Learn more](#)

Dear Roger,

I would appreciate it if this could be included in the agenda for the June 10 meeting of the Commission.

Thank you.

Martin Nicolaus



Park Name Poll backs "Campesino Park"

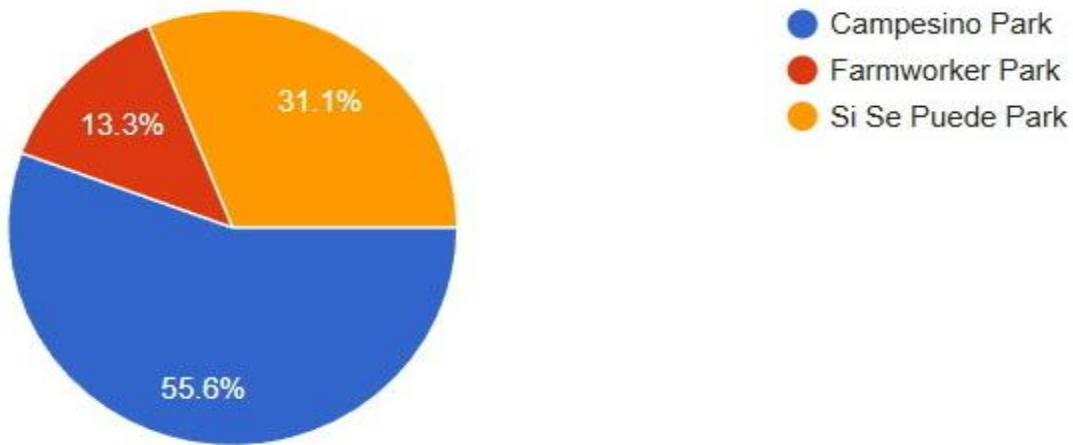
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## Park Name Poll backs “Campesino Park”



The fourth edition of the Park Name Poll published [Apr 17](#) (and still live) is showing a strong majority for “Campesino Park” as the new name.

This is the first poll showing a clear majority for a new name. The initial poll, published here [March 19](#), showed an exactly 50 percent vote in favor of “Dolores Huerta Park.” ([March 20](#)). A day later, that slipped to 40 percent. ([March 21](#)).

Then the news hit that Dolores Huerta did not want her name put on public property. A second poll, posted [Mar 26](#), dropped the Dolores Huerta option. The results, published [Mar 31](#), were a fractured mess. No name had as much as 20 percent of the vote. (The leading name was “Burrowing Owl Park” with 19.5 percent.) The lack of consensus, the wide scattering of opinions, offered no guidance whatever to the ultimate deciders, the members of City Council.

Then came a breakthrough. On April 14, City Council met and unanimously approved a statement by Mayor Adena Ishii, stating clearly that the new name “will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.”

Immediately, just about the whole slate of options in the earlier polls was wiped clean. There are only three names, so far, that fit the bill that the Mayor has spelled out. It’s Campesino Park, Sí Se Puede Park. or Farmworker Park.

Of these three, Campesino Park is the strong favorite in the current poll, with a 55 percent majority. No other name, not even “Dolores Huerta” when that was an option, captured as high a response.

This is of course not an official vote. There is a process starting up involving the Commemorative Committee and then going to the Parks Commission which must hold a public hearing and then report to the City Manager who will take it to City Council. This will take long dreary months during which the park has no name and the C\*\*\*\*\* Park Conservancy has no name either but is compelled to keep using the [chavezpark.org](http://chavezpark.org) website address.

-- [chavezpark.org](http://chavezpark.org) Apr 22 2026



## Portland City Council advances proposal to rename Cesar E. Chavez Boulevard to Campesinos Boulevard

A five-person committee unanimously approved a proposal to fast-track the renaming process, potentially bypassing the city's requirements for resident approval.

Author: Evan Watson

Published: 4:57 PM PDT May 26, 2026

Updated: 10:34 AM PDT May 27, 2026

PORTLAND, Oregon — A Portland City Council committee unanimously advanced a proposal Tuesday to [rename Cesar E. Chavez Boulevard to Campesinos Boulevard](#), following a New York Times investigation alleging the late labor leader [sexually abused women and girls for decades](#).

The proposal, introduced by Councilor Loretta Smith, would bypass city code that requires the support of 2,500 Portlanders or 75% of residents living on a street before a name change can occur.

The word "campesinos" is a Spanish term for farmworkers, and supporters say the name would honor the Latino community and their fight for labor rights. The full city council will now hold a hearing on the measure....

Marta Guembes, co-chair of Por La Causa Committee, made an emotional appeal at the council meeting in support of the Campesinos name.

"Long after we are gone people will still drive this boulevard, what story will each name tell? We are asking for the name to reflect our community's strength, honesty, and inclusion. Please vote for Campesinos Boulevard, and que vivan los campesinos," she said....

Reyna Lopez, executive director of PCUN, said in a statement that she supports the Campesinos name change as a tribute to migrant farmworkers.

"Campesinos Boulevard honors the collective struggle of farmworkers while making clear that accountability and justice must exist inside our movements too," Lopez said. "We do not move forward by protecting legacies at all costs. We move forward by telling the truth and continuing the fight for dignity for all workers."

Date: July 1, 2026

Re: Letter of Support

We, the members of the Citywide Commemorative Committee, are pleased to write in support of the CONSENSUS vote of the Committee for renaming the waterfront park formerly known as Cesar Chavez Park to a new, uplifting name **!Sí Se Puede! Park**.

Since the heart-breaking New York Times revelations about Cesar Chavez (March 18, 2026) we, long-standing community members, are grateful for the immediate action, proposed by Councilmember Kesarwani, to remove the name, and for the recommendation made on April 14, 2026, by Mayor Ishii and Council members Lunaparra, Humbert and O'Keefe, in which direction was provided to the City Manager and the Parks, Recreation, and Waterfront Commission and Director, "to engage with the Chavez/Huerta Commemoration Period partners and Latino Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley may move forward with a name change that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America."

We proudly report that our 19-member Commemorative Committee, representing multiple stakeholders and constituencies across Berkeley, met several times since the April 14th Consent Calendar item, and also convened with constituencies and conducted a deliberate process that included reviewing the Mayor's referral, the City's policy on naming and renaming, and developing criteria to test proposed names before polling representatives and discussing the poll and comments of committee members. In doing so, we adapted the successful renaming process utilized to rename schools in BUSD as a model. We highly recommend that the City adopt this model for the future naming and renaming of community places, parks, and buildings. We have attached a copy of the report submitted to the PRW Commission, which further details our process and rationale.

We, the Citywide Commemorative Committee, are pleased to present to the Mayor and the Berkeley City Council a strong consensus that we believe will endure and inspire our Berkeley community for generations to come: **¡Sí Se Puede! Park**.

**Respectfully submitted,**

- **Santiago Casal**, Founder of the Tribute Site & Co-Founder/Formal Chair of Latinos Unidos
- **Beatriz Leyva-Cutler**, BUSD School Board Director, Emerita
- **Natasha Beery**, BUSD Superintendent's Designate, Former Dir. of Community Relations
- **Matt Meyer**, Berkeley Federation of Teachers
- **Alexis Adorador** MFT- Community Member
- **Larry Reyna Sr**, Berkeley Latino Historical Exhibit Committee, La Colectiva Latina de Berkeley committee, renaming of Cesar Chavez Park committee, relocating of the Korean War West Berkeley Chicano veterans memorial committee.
- **Lupe Gallegos-Diaz**, Chair, Latinos Unidos de Berkeley
- **Jeff Malmuth**, Off-Leash Area Group
- **Martin Bourque**, Ecology Center
- **Ana Vasudeo**, BUSD School Board Director
- **Vivian White**, Solar calendar steward and astronomer
- **Mirna Cervantes**, Multicultural Institute, Executive Director
- **Daniela Gonzalez**, Multicultural Institute, Engagement Director





Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
October 27, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Mayor Adena Ishii (Co-Sponsor), and Councilmember Terry Taplin (Co-Sponsor)

SUBJECT: Amendment to Berkeley Municipal Code Chapter 7.18 to Explicitly Require Competitive Procurement for Services to Promote Accountability and Transparency and Refer Development of Regulations to City Manager

**RECOMMENDATION**

Adopt an ordinance amending Berkeley Municipal Code (BMC) Chapter 7.18, Expenditure Limitations, to require procurement through competitive solicitation for all city contracts for professional services and other services greater than \$100,000.

Further, for the City Attorney's Office (CAO), require development of an Outside Council Selection Protocol whereby the CAO develops an annual report to Council for its pre-qualified list of outside attorneys and law firms based on respondents to the office's ongoing Request for Qualifications process. When outside counsel is required, senior staff in the CAO would choose from pre-qualified attorneys/firms and identify the best candidate based on expertise, quality of work, and cost. This recommendation would allow for a competitive process using the pre-qualified list, thus accommodating the CAO's need to quickly engage outside counsel while preserving best procurement practices. Additionally, request the CAO report to Council on legal services contracts and amendments to City Council quarterly to increase transparency of spending on legal services contracts.

Refer to the City Manager to promulgate any further regulations that may be needed related to the requirement for competitive solicitation except for emergencies and when market research justifies the business case for a sole-source procurement, in alignment with the existing purchasing manual. Further, refer to the CAO to develop legal services regulations to implement the competitive solicitation process for outside counsel contracts and define circumstances where a sole-source procurement is justified by emergencies, market research, conflicts of interest, or other considerations.

## **POLICY COMMITTEE RECOMMENDATION**

On October 5, 2026, the Budget & Finance Committee adopted the following action: M/S/C (Kesarwani/Blackaby) to send the item to Council with a Qualified Positive Recommendation as written and amended during discussion, with additional direction to further consider:

- Specifying the 5-7 year contract rebidding timeframe in the ordinance as well as the purchasing manual
- Authorizing the City Attorney's Office to promulgate legal services procurement regulations and guidelines
- Establishing annual reporting to Council on legal services contracts and amendments
- B.M.C. Section 7.18.010(A) Expenditures pursuant to Charter Article XI, Sections 67 and 67.5 is amended to read as follows:

Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which exceed the initial amount exceeds of \$1050,000, inclusive only of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

Vote: Ayes

## **CURRENT SITUATION AND ITS EFFECTS**

***City Auditor Recommends Competitive Procurement for Service Contracts.*** The City Auditor's report, *City Contracts: Outdated Process Led to Non-Competitive Contracts* (released Feb. 19, 2026) found that in fiscal year 2021-22, Berkeley executed two large recycling contracts with the Ecology Center and Community Conservation Centers for nearly \$85 million over ten years without using a competitive procurement process.<sup>1</sup> The Auditor's report also found that the City Council authorized noncompetitive contracts for community-based organizations and amended service contracts that started below the threshold for Council approval of \$50,000 that increased by an average of \$218,026 per contract without competition. Recommendation 1.2 in the City Auditor's report recommends that Berkeley Municipal Code Chapter 7.18 be amended to explicitly require competition for service contracts.

***City Charter Only Requires Competitive Procurement for the Purchase of Supplies, Equipment or Materials, Not Services.*** Pursuing competitive procurement is considered a best practice in contracting to ensure openness, fairness,

<sup>1</sup> City Auditor Jenny Wong: *City Contracts: Outdated Process Led to Non-Competitive Contracts*, February 19, 2026: [https://berkeleyca.gov/sites/default/files/2026-02/City\\_Contracts\\_-\\_Outdated\\_Process\\_Led\\_to\\_Non-Competitive\\_Contracts.pdf](https://berkeleyca.gov/sites/default/files/2026-02/City_Contracts_-_Outdated_Process_Led_to_Non-Competitive_Contracts.pdf) p. 8.

transparency, and competition in the award and use of public funds. However, neither the Berkeley Municipal Code (BMC) nor the City Charter explicitly requires competitive procurement for professional services and other service contracts, such as recycling services. City Charter Section 67 only explicitly requires competitive solicitation for the purchase of supplies, equipment or materials to the “lowest responsible bidder.” Updating the BMC to require competitive procurement for all service contracts that exceed \$100,000 would ensure that large service contracts would be subject to competitive procurement, as those for construction, equipment, supplies and materials.

***In the Case of Services (Including Professional Services), Competitive Procurement Should Yield A Balanced Consideration of Quality, Experience, and Cost.*** Competitive procurement is the process of acquiring goods, services, or public works by soliciting bids, proposals, or quotes from multiple competing vendors. The primary goal is to ensure that public funds are spent efficiently and transparently, obtaining the “best value”—which is a balance of quality, experience, and cost—while preventing favoritism or corruption. Characteristics of a competitive procurement include the following:

- Openness: The opportunity is publicly advertised (often via a Request for Proposals or Invitation for Bids) so that any qualified vendor can participate.
- Fairness: All bidders are treated equally, receiving the same information and being evaluated against the same predetermined criteria.
- Transparency: The selection process is documented and subject to audit, ensuring the public can see why a specific vendor was chosen.
- Competition: By forcing vendors to compete, the procurement process can drive down costs and encourage innovation or higher-quality service delivery.

Common methods for conducting a competitive procurement include the following:

- Invitation for Bids: Used when requirements are very specific (e.g., office supplies). The contract is typically awarded to the lowest responsive and responsible bidder.
- Request for Proposals: Used for complex projects (e.g., policy analysis or IT systems) where the “how” is as important as the price. Evaluation includes technical expertise, methodology, and cost.
- Request for Qualifications: Focuses strictly on the vendor's experience and “bench strength” before negotiating costs, often used for architectural or engineering services.

***Recommended Amendment to BMC Section 7.18.010 Requires Competitive Procurement for Service Contracts Exceeding \$100,000.*** The amended language below raises the threshold for Council approval to \$100,000 to better reflect costs for services and to explicitly require competitive procurement for service contracts that exceed \$100,000:

Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, for which exceed the initial amount exceeds of \$1050,000, inclusive only of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in



the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

## **BACKGROUND**

***Other Cities Require Competitive Procurement for Services.*** The proposed amendment to BMC Chapter 7.18 brings the City of Berkeley in line with neighboring jurisdictions that already require competition for service contracts. San Francisco's Municipal Code Section 21.1 states: "All City contracts for Commodities and/or Services shall be procured through competitive solicitation, except as otherwise authorized in this Code."<sup>2</sup> Similarly, the Oakland Municipal Code notes: "The City Administrator or the City Administrator's designee shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed fifty thousand dollars (\$50,000.00) and are exempt from bidding under Subsection 2.04.050.1.1. ...The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services."<sup>3</sup>

## **RATIONALE FOR RECOMMENDATION**

As the City Auditor notes in her recent report, "competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value and best fit for Berkeley residents. Open and fair competition for contracts promotes ethical and inclusive purchasing practices."<sup>4</sup> While no evidence of misconduct was found during the audit, contracting corruption cases do exist and promote a lack of trust in local government. A competitive process can guard against waste and fraud and discourage favoritism for specific contractors. Competitive

<sup>2</sup> San Francisco Municipal Code Chapter 21.1:

[https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_admin/0-0-0-13403](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-13403)

<sup>3</sup> Oakland Municipal Code Section 2.04.051:

[https://library.municode.com/ca/oakland/codes/code\\_of\\_ordinances?nodeId=TIT2ADPE\\_CH2.04PUS\\_Y\\_ARTIBICOPU\\_2.04.040COPR](https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.04PUS_Y_ARTIBICOPU_2.04.040COPR)

<sup>4</sup> City Auditor Jenny Wong: City Contracts: Outdated Process Led to Non-Competitive Contracts, February 19, 2026: [https://berkeleyca.gov/sites/default/files/2026-02/City\\_Contracts\\_-\\_Outdated\\_Process\\_Led\\_to\\_Non-Competitive\\_Contracts.pdf](https://berkeleyca.gov/sites/default/files/2026-02/City_Contracts_-_Outdated_Process_Led_to_Non-Competitive_Contracts.pdf) p.2

processes is a good government best practice that highlights transparency and inclusivity while saving taxpayers' money.

**FISCAL IMPACT**

Staff time to amend BMC Chapter 7.18.

**ENVIRONMENTAL SUSTAINABILITY**

Competition among contractors can help the city procure services for the best fit at the most reasonable price for recycling services and other environmentally sustainable services rendered to the city.

**CONTACT PERSON**

Rashi Kesarwani, Councilmember District 1

(510) 981-7110

**Attachments**

- 1) BMC Chapter 7.18 tracked changes
- 2) City Auditor February 19, 2026 Report "City Contracts: Outdated Process Led to Non-Competitive Contracts"
- 3) City of Berkeley Purchasing Manual

## Chapter 7.18

### EXPENDITURE LIMITATIONS

#### Sections:

- 7.18.010**      Expenditures pursuant to **Charter** Article XI, **Sections** 67 and 67.5.
- 7.18.020**      Expenditures pursuant to **Charter** Article XI, **Section** 67.4--Emergencies.

#### **7.18.010**      **Expenditures pursuant to **Charter** Article XI, **Sections** 67 and 67.5.**

A. Except as otherwise provided in this Title, expenditures pursuant to Article **XI**, **Sections** **67** and **67.5** of the **Charter** of the **City** of Berkeley, for which ~~exceed the initial~~ amount ~~exceeds~~ of the amount of \$50,000 ~~\$1050,000~~, inclusive of professional services, other services, supplies, equipment, or materials (excluding leases and real estate agreements), shall require Council approval and shall be procured through competitive solicitation except in the case of emergencies pursuant to Article XI, Section 67.4. The requirement specified in Article XI, Section 67 of the Charter to select the "lowest responsible bidder" only for supplies, equipment, or materials contracts remains. Professional services and other services contracts shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City. This requirement for professional and other services contracts to be selected via competitive procurement applies to all Charter Officers. Pursuant to Article XVI Section 113, the City Attorney retains the authority to enter into contracts without Council approval after competitive procurement of professional services, other services, supplies, equipment or materials (excluding leases and real estate agreements). The City Attorney is authorized to promulgate regulations to implement this section with respect to City Attorney's Office contracts. All departments, excluding the City Attorney's Office, shall follow the City of Berkeley Purchasing Manual guidelines, Section 3, for extensions of contracts and re-bid all contracts under the timeframes specified. The City Attorney's Office shall follow regulations specific to City Attorney's Office contracts.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall require Council approval pursuant to Article **XI**, **Section** **67** of the **Charter** of the **City** of Berkeley.

C. Expenditures for Community Development Block Grant funded Community Facility Improvement Projects which exceed the amount of \$200,000 shall require Council approval pursuant to Article **XI**, **Section** **67** of the **Charter** of the **City** of Berkeley.

D. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of \$100,000 shall require Council approval.

E. Expenditures for the acquisition and renovation of small multifamily rental properties through the Small Sites Program shall not require Council approval, but shall be approved by the **City** Manager. Expenditures will comply with the Small Sites Program guidelines, adopted by Resolution. (Ord. 7630-

NS § 1, 2018; Ord. 7566-NS § 1 (part), 2017; Ord. 7035-NS § 1, 2008; Ord. 6875-NS § 1 (part), 2005; Ord. 6786-NS § 1 (part), 2003; Ord. 6522-NS § 2, 1999; Ord. 6361-NS § 1, 1997; Ord. 6248-NS § 1, 1994; Ord. 5777-NS § 1, 1986; Ord. 4992-NS § 1, 1977)

### **7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4-- Emergencies.**

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of \$100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of \$200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount. (Ord. 7566-NS § 1 (part), 2017; Ord. 6875-NS § 2 (part), 2005; Ord. 6786-NS § 2 (part), 2003; Ord. 6552-NS § 4, 2000; Ord. 4992-NS § 2, 1977)

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**The Berkeley Municipal Code is current through Ordinance 8001-NS, passed February 10, 2026.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by General Code.](#)

Audit Report  
February 19, 2026

# City Contracts: Outdated Process Led to Non-Competitive Contracts



BERKELEY CITY AUDITOR

Jenny Wong, City Auditor

Caitlin Palmer, Audit Manager

Katie Wysong, Auditor I





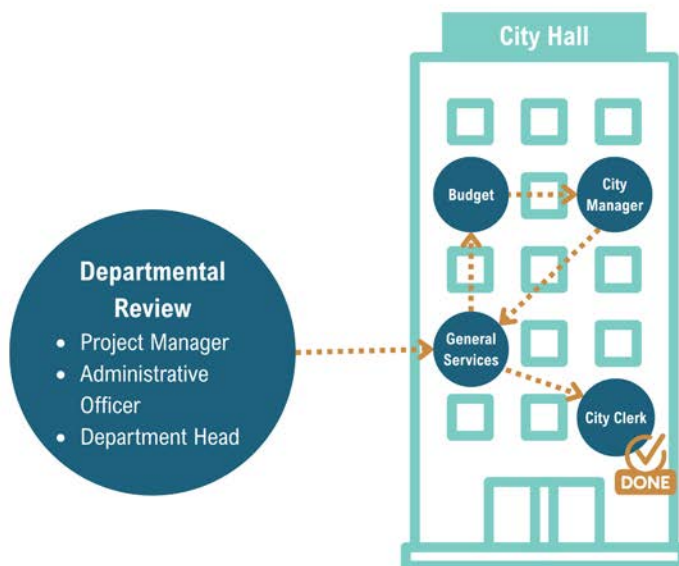
# City Contracts: Outdated Process Led to Non-Competitive Contracts

## Report Highlights

### Findings

1. In fiscal year 2022, the City authorized nearly \$85 million in recycling contracts over 10 years without competition. Inconsistent rules made it difficult for staff to know when to waive competition. Our analysis of fiscal year 2024 waivers found that 38 percent did not clearly meet the Purchasing Manual criteria. City Council authorized additional non-competitive contracts for community-based organizations. Additionally, amended service contracts that started below the threshold for Council approval increased by an average of \$218,026 per contract without competition.
2. Berkeley used paper contracts hand-delivered between departments and lacked a centralized digital system, creating delays and misplaced contracts. Additionally, the Purchasing Manual was missing key guidance, and training for staff was limited. Short staffing and turnover also made it difficult for the City to address these concerns and improve the contracting process.

**Moving paper contracts throughout City Hall created opportunities for delays.**



Source: Auditor analysis of contract review sheet for new expenditure contracts

February 19, 2026

### Objectives

1. How does Berkeley use non-competitive contracts?
2. Why does Berkeley use non-competitive contracts when competition is possible?

### Recommendations

We recommend the City add explicit competition requirements to the Berkeley Municipal Code for service contracts. We also recommend the City update the Purchasing Manual and contract forms for consistency and clarity, as well as expand training for staff. We recommend the City continue pursuing a comprehensive, integrated digital contracting system, as budget allows.

### Why This Audit Is Important

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value and best fit for Berkeley residents. Open and fair competition for contracts promotes ethical and inclusive purchasing practices. However, in fiscal year 2024, Berkeley executed 94 contracts without documented competition for a total value of \$43 million. While it is not practical or possible for every contract to go through competition, it is important that the City uses competition when feasible.



BERKELEY CITY AUDITOR

For the full report, visit [the City Auditor's website.](#)

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## Introduction

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value for Berkeley residents. Best value may include not only lowest price, but also the quality of the good or service and fit with Berkeley's specific needs. However, Berkeley spends millions of dollars on contracts that are not competitive. While it is appropriate, even necessary, for some contracts to be non-competitive, it is important that the City pursues competition when possible. Although we found no evidence of misconduct in Berkeley during our audit, contract corruption cases in neighboring jurisdictions emphasize the importance of having open, competitive contracting processes. A competitive process can discourage favoritism and guard against waste and fraud.

Competition has additional benefits for equity and fairness. According to a consultant report commissioned by the Berkeley City Council, "minority and women-owned business enterprises" lost out on an estimated \$21.7 million in contract dollars with the City of Berkeley between 2016-2019. In general, a fair and open competitive process can encourage additional contractors to seek City contracts, including from historically excluded groups.

This audit focuses on contracts that were not competitive and were subject to the requirements of the Berkeley Municipal Code and the City's Purchasing Manual. We did not evaluate the City's competitive selection processes or staff's compliance with them, nor the management of contracts after execution.

## Objectives

The objectives of this audit are to address the following questions:

1. How does Berkeley use non-competitive contracts?
2. Why does Berkeley use non-competitive contracts when competition is possible?

## Scope and Methodology

We reviewed expenditure contracts executed between July 1, 2023, and June 30, 2024 (fiscal year 2024). We also analyzed subsets of all expenditure contracts active in the City's financial system as of March 6, 2025, including the largest dollar value contracts and service contracts approved at or below the threshold for City Council approval, then later amended to exceed it. Additionally, we reviewed Berkeley's laws, policies and procedures related to contracts, researched best practices and other jurisdictions' policies, and interviewed relevant staff and



leadership. This audit focused on the City's contracting processes, and we did not audit individual contracts or contractors.

## Background

### Berkeley uses formal and informal competition to select contractors depending on the cost and type of purchase.

Depending on the expected cost and type of purchase, the City uses different formal and informal competition to select a contractor (Table 1).

- **Formal competition involves a structured public process.** For supplies, equipment and materials, the City Charter requires the City to select the vendor with the lowest bid that meets the City's criteria after publicly issuing an Invitation for Bids (IFB). For more complex purchases, such as professional services, the City selects the contractor with the best value based on the criteria set in the posted Request for Proposals (RFP).
- **For informal competition,** departments are required to reach out directly to at least three contractors for written quotes and then select the contractor with the lowest cost or best value. Informal competition allows for more flexible timelines and does not require City Council approval.

The General Services Division in the Finance Department reviews and processes all purchases of goods and services for the entire City, but staff in each department have a responsibility in purchasing goods and services for their department. The City uses contracts for most services that are not done by City staff, like public artwork and towing, and for specialized goods like fire trucks. The City typically uses simpler purchase orders rather than contracts to buy goods like office furniture and equipment for parks maintenance.

**Table 1: City Purchasing Requirements by Price and Type<sup>1</sup>**

| Purchase Value             | Competitive Purchasing Process                                                        |
|----------------------------|---------------------------------------------------------------------------------------|
| <b><u>Services</u></b>     |                                                                                       |
| Under \$5,000              | Purchase Order with 3 verbal quotes                                                   |
| \$5,000 - \$25,000         | Purchase Order with informal competition (3 written quotes)                           |
| \$25,000 - \$50,000        | Contract with informal competition (3 written quotes)                                 |
| Over \$50,000              | Contract with formal competition (Request for Proposal or Request for Qualifications) |
| <b><u>Goods</u></b>        |                                                                                       |
| Under \$5,000              | Purchase Order with 3 verbal quotes                                                   |
| \$5,000 - \$100,000        | Purchase Order with informal competition (3 written quotes)                           |
| Over \$100,000             | Purchase Order or contract with formal competition (Invitation for Bid)               |
| <b><u>Construction</u></b> |                                                                                       |
| Under \$5,000              | Purchase Order with 3 verbal quotes                                                   |
| \$5,000 - \$25,000         | Purchase Order with informal competition (3 written quotes)                           |
| \$25,000 - \$200,000       | Contract with informal competition (3 written quotes)                                 |
| Over \$200,000             | Contract with formal competition (Invitation for Bid)                                 |

Source: Auditor analysis of Berkeley's Purchasing Manual as of end of fiscal year 2024

The benefits of competitive contracts are well-established. According to the U.S. Government Accountability Office, competitive contracts can save taxpayers money, improve contractor performance, curb fraud, and promote accountability for results. Competition is a critical tool for achieving the best return on the government's investment. Berkeley's Purchasing Manual requires all purchases to be made through a competitive process unless they meet specific criteria described in the next section.

### **In some cases, the City can select a contractor without competition.**

Competition is not always possible or appropriate, so City policies allow for non-competitive contracts in specific circumstances, such as when emergency maintenance is needed. In these cases, non-competitive contracts give the City flexibility to respond quickly to emergencies or meet a need where competition is not feasible or practical.

During the audit period, the Purchasing Manual allowed the City Manager to waive the competition requirement for contracts under the cost threshold for formal competition in specific circumstances (Figure 1). Departments could request waivers of competition if there was only one contractor that provided a good or service, or competition was otherwise found to be inadequate. Waivers were also allowed in emergencies when competition was not feasible or practical. The Purchasing Manual also required departments to conduct market research to

<sup>1</sup> Solicitation is the process of reaching out to contractors, which ideally results in competition among contractors. We use the term competition to refer to competitive solicitation for simplicity.

justify the business case for the waiver, and whenever possible, avoid requesting items that could only be obtained from a sole or single source.

### Figure 1: Purchasing Manual Criteria for Non-Competitive Contracts

The Purchasing Manual only allows sole or single source contracts when:



Source: Auditor analysis of Berkeley's Purchasing Manual as of end of fiscal year 2024

City Council can also waive competition for specific contracts or broader categories of purchases. Once a contract is in place, the City can use amendments to increase the dollar amount and extensions to extend the duration of a contract without new competition. Even if the contractor offered the best value when selected, years later, a different contractor may be more affordable or better suited for the City's needs.

Though non-competitive contracts are sometimes the most appropriate or practical option, if the City over-relies on non-competitive contracts, it runs the risk of:

- Overpaying for services,
- Not getting the best quality service,
- Having fewer opportunities for new and small businesses, including historically marginalized contractors, and
- Creating more opportunities for bribery or corruption between staff, officials, and contractors.

## Over 40% of the contracts executed in fiscal year 2024 did not clearly go through competition.

Ninety-four of the 218 contracts executed, or formally approved, in fiscal year 2024 did not have documented competition (Figure 2). The total value of these contracts was approximately \$43 million compared to \$102 million in competitive contracts. Competitive contracts include both those with formal and informal competition, as well as contracts that piggybacked on other jurisdictions' contracts.

**Figure 2: Berkeley executed 94 contracts in fiscal year (FY) 2024 without documented competition for a total value of \$43 million.**

Berkeley executed **94** contracts in FY 2024 without documented competition...

94 non-competitive contracts



124 competitive contracts

...for a total value of **\$43 million**.

\$43 million in non-competitive contracts



\$102 million in competitive contracts

Source: Auditor analysis of expenditure contracts executed in fiscal year 2024 from Records Online and Berkeley's financial system

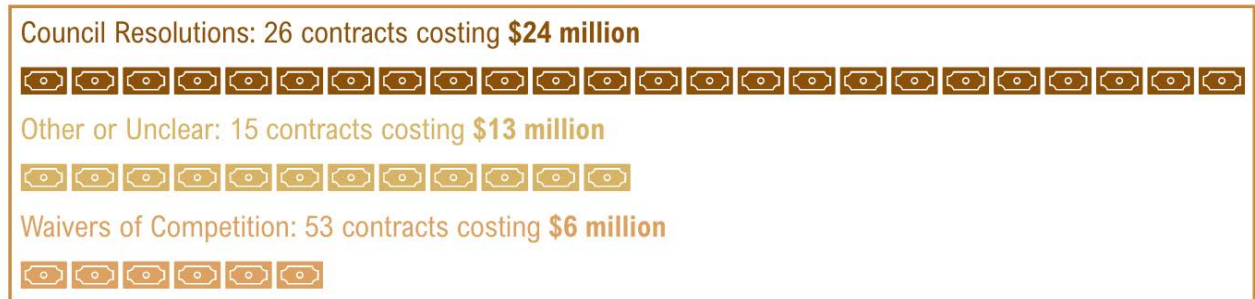
Berkeley awarded 30 percent of contract dollars without competition in fiscal year 2024.

According to a recent benchmarking survey of public procurement entities from NIGP: The Institute of Public Procurement (NIGP), Berkeley was similar to the median responding jurisdiction, which awarded 30 percent of contract dollars without competition.

City Council authorized 26 non-competitive contracts through Council Resolutions, which made up the majority of the cost associated with non-competitive contracts (Figure 3). The group of non-competitive contracts with the second highest total cost were 15 "other or unclear" contracts. These included contracts that were missing in Records Online, the City's electronic document repository, or where competition was marked as "not required" on the contract review

form, such as leases or the City Attorney’s contracts for legal services.<sup>2</sup> Most of the non-competitive contracts executed in fiscal year 2024 had a waiver of competition, but that group had the lowest total cost.

**Figure 3: Breakdown of non-competitive contracts**



Source: Auditor analysis of expenditure contracts executed in fiscal year 2024 from Records Online and Berkeley’s financial system

Note: “Other or unclear” include contracts missing from Records Online, leases, license agreements, contracts with no evidence of competition, or where marked as not required. The dollar amounts for the contracts missing from Records Online are based on data in the City’s financial system.

<sup>2</sup> The City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services. Other jurisdictions, such as the City of Santa Monica, as well as California state agencies, explicitly exempt legal services from competitive process requirements.

## Berkeley spent millions of dollars on non-competitive contracts when competition was likely possible.

We found that most of the City's largest active expenditure contracts had evidence of competition or of meeting the Purchasing Manual criteria for exceptions, but two non-competitive recycling contracts totaling nearly \$85 million did not. Additionally, inconsistent rules may have made it difficult for staff to know when it was appropriate to waive competition. As a result, 38 percent of waivers in fiscal year 2024 did not clearly meet the criteria set in the Purchasing Manual. City Council authorized additional non-competitive contracts with community-based organizations. Furthermore, service contracts that started at or below the \$50,000 formal competition threshold and were later amended increased by an average of \$218,026 per contract. We did not audit individual contracts or contractors.

## The City authorized nearly \$85 million in recycling contracts over 10 years without competition.

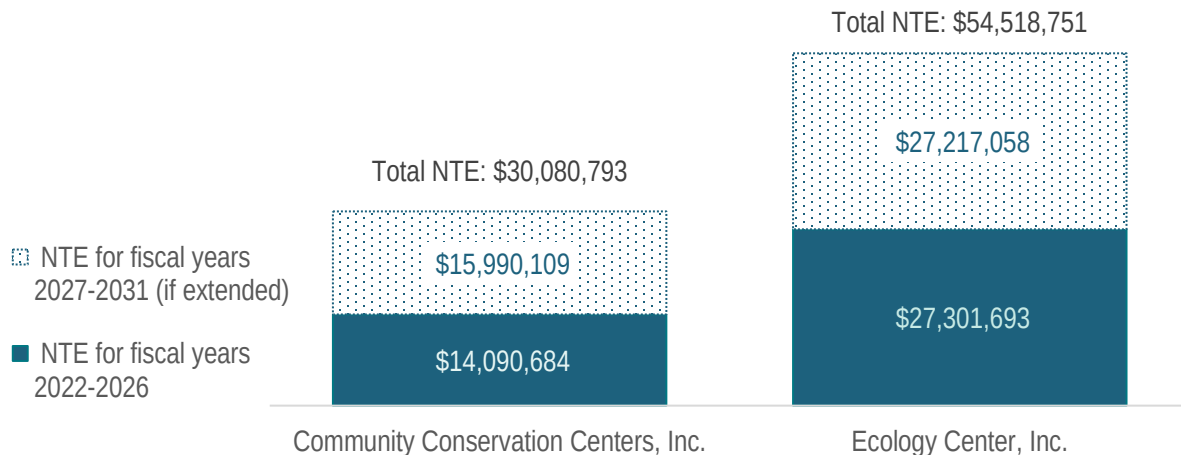
In fiscal year 2022, Berkeley executed recycling contracts with the Ecology Center, Inc. and Community Conservation Centers, Inc. for nearly \$85 million over ten years without seeking bids from other contractors. Together, the contracts have a not-to-exceed amount of \$41,392,377 for fiscal years 2022 through 2026, with optional five-year extensions which would bring to total not-to-exceed amount to \$84,599,544 (Figure 4). We found that most of the City's 100 largest contracts had documented evidence of competition or of meeting the Purchasing Manual criteria for exceptions, but these two recycling contracts did not.<sup>3</sup>

Berkeley has contracted with the Ecology Center and Community Conservation Centers for recycling services since the 1980s (Appendix 1). A review of public City records since the 1980s found no documented evidence of competition. We reviewed the authorizing Council Resolutions to understand the City's process for awarding and amending these contracts, but did not audit these individual contracts or contractors. While these contracts may offer the best value or best fit for Berkeley, it is difficult for the City to determine that without open competition among all potential contractors.

---

<sup>3</sup> We reviewed the 100 largest expenditure contracts in the City's financial system. We found that 22 were likely expired because they had an expiration date before June 30, 2025 in the City's financial system. The remaining 78 contracts also included one legal services contract, one lease, and one settlement agreement that fell outside the City's standard expenditure contract process.

**Figure 4: The recycling contracts will have a total not-to-exceed (NTE) of nearly \$85 million dollars if the City takes the optional five-year extensions.**



Source: Auditor analysis of current recycling contracts

Note: NTE stands for “not-to-exceed.” City Council authorizes the City to spend up to that amount on the contract. We did not assess how much the City has spent on each contract.

Prior to authorizing these non-competitive contracts, there were proposals to pursue competition for the City’s recycling services. In 2011, an outside consultant recommended that the City issue an RFP for the recycling materials processing operations performed by Community Conservation Centers, and end the contract with the Ecology Center to have the City take over recycling pick-up. The Zero Waste Commission disagreed with the report’s recommendations citing incomplete and missing information and cost-benefit analyses, and a lack of an adequate and inclusive process. In 2020, Public Works staff requested that City Council authorize an RFP for the recycling processing operations done by Community Conservation Centers, but City Council voted to remove it from the list of proposed RFPs. According to Public Works staff reports to Council in 2021, third-party reviews found both contractors’ costs reasonable when compared to surrounding communities. The report also stated that both contractors received mostly “satisfied” or “very satisfied” responses to a third-party customer satisfaction survey. Ultimately in 2021, City Council voted to authorize new sole source contracts with both contractors without issuing RFPs.

Although pursuing competition is an established best practice, neither the City Charter nor the Berkeley Municipal Code explicitly required service contracts like these recycling contracts to be competitive (Table 2). The City Charter required purchases of supplies, equipment, and materials above a dollar amount set by the Municipal Code to be awarded to the lowest responsive bidder. It also required City Council to authorize these purchases. The language in the corresponding Municipal Code section only discusses the thresholds for Council approval.



The Purchasing Manual states service contracts above \$50,000 must go through formal competition. However, this policy was not included in the City Charter and Berkeley Municipal Code. In other jurisdictions like Oakland and San Francisco, city codes explicitly require competition for service contracts with some exceptions. During the audit, Berkeley's Purchasing Manual also said only City Council can waive competition for contracts over the Council approval threshold. However, there was no guidance on how City Council should decide and document these decisions.

**Table 2: Neither the City Charter nor the Berkeley Municipal Code explicitly requires service contracts to be competitive.**

| City Charter                                                                                                                                            | Berkeley Municipal Code                                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Discusses purchases of <b>supplies, equipment or materials</b> above BMC threshold but does not specifically require competition for service contracts. | Sets thresholds for Council Approval, but does not discuss competition: <ul style="list-style-type: none"> <li>Public Projects and Facility Improvements - \$200,000</li> <li>Supplies, Equipment and Materials - \$100,000</li> <li>Other Expenditures, which includes services - \$50,000</li> </ul> |

Source: Berkeley City Charter, Article XI and Berkeley Municipal Code 7.18

It may be reasonable for City Council to waive competition in unique circumstances, but the lack of clear standards allows large contracts to be awarded without competition when they could have been opened to competition. Overusing non-competitive contracts may make it difficult to assess if the City is getting the best value or best fit for goods and services. Berkeley may also be perceived as operating on favoritism.

## City management approved some waivers that did not meet the Purchasing Manual criteria.

Thirty-eight percent of waivers City management approved in fiscal year 2024 did not clearly meet the criteria set in the Purchasing Manual at the time, meaning the City could likely have pursued competition under the current policy. For example, Human Resources used six waivers in a month and half, including three for classification and compensation studies. There may have been an urgent need for these services, but the form did not document that this was an emergency. By requesting three waivers for the same service from three different contractors, this indicated that it would have been feasible to request quotes from at least three contractors (Table 3).

In another example, a waiver for drug and alcohol testing cited immediate need because the previous contract had already been expired over two years. However, the long timeframe

indicates that it was not an emergency. The waiver form even states that the lack of advanced planning does not constitute an immediate need.

Finally, a department requested a waiver for legislative services because the contractor previously worked effectively with the City and had knowledge of the region and the City's lobbying. However, the rationale did not explain why another firm would be unable to provide the same or better services. The General Services Manager at the time noted on the waiver that the department should consider competing soon.

There were also many cases when the rationale for waivers did meet the Purchasing Manual's criteria, according to our assessment. For example, the City's labor contracts require the City to provide staff memberships to the YMCA, therefore the City must contract with the YMCA specifically.

We also found cases when departments unnecessarily completed and attached the waiver of competitive solicitation. In several cases, contract packets included both waivers of competition and City Council approval of the sole-source negotiations of contracts. In another example, a department had already done informal competition. In this case, General Services staff explained that the department already had the necessary documentation and did not need to complete a waiver, creating additional work and confusion.

**Table 3: Many waivers met the Purchasing Manual criteria, but 38 percent did not.****Examples that Likely Met the Purchasing Manual Criteria**

| Purchase                                  | Department Rationale                                                                                                                                        | Why Likely Eligible                                                                                                                                            |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hazardous Vegetation Treatments & Removal | The previous RFP only resulted in one response. The City needed three vendors, so awarded two additional single source contracts while preparing a new RFP. | <b>Competition inadequate:</b> The RFP did not attract sufficient interest. The City needed to continue the work while taking steps to attract more responses. |
| Transfer Station Rain/Stream Gauge        | The City needs equipment in place at the transfer station within three months to comply with a legal mandate.                                               | <b>Emergency:</b> The City had a limited time to make the purchase before facing legal consequences.                                                           |
| Employee Fitness Memberships              | Labor contracts require the City to provide staff memberships to the YMCA.                                                                                  | <b>One viable source:</b> There was only one source the City could provide the fitness memberships that complied with the labor contracts.                     |

**Examples that Likely Did NOT Meet the Purchasing Manual Criteria**

| Purchase                                         | Department Rationale                                                                                                                                                                                                                                                  | Why Likely Ineligible                                                                                                                                                                                                                                                                     |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Classification & Compensation Studies            | Human Resources had six waivers in a month and half, including three for classification and compensation studies.<br><br>All cited a “dire situation” and the fact that “an informal or formal RFP process would be further detrimental” to addressing the situation. | There may have been an urgent need for these services, but there was no documented evidence that it was an emergency. By requesting three waivers for the same service from three vendors, they indicate that it would have been feasible to request quotes from at least three vendors.  |
| Drug & Alcohol Testing Services                  | The previous contract expired over two years earlier. Publicly competing these services would create a gap in services and negatively impact multiple operational processes.                                                                                          | Since the contract had already been expired for two years, the long timeframe indicates it was not an emergency.                                                                                                                                                                          |
| Tailored Legislative Funding & Advocacy Strategy | The vendor has previously worked effectively with the City and has knowledge of the region and the City's lobbying.                                                                                                                                                   | This does not explain why another firm would not be able to provide these services. Familiarity is not a sufficient reason for a sole source contract and can be seen as favoritism. Additionally, the General Services Manager noted on the waiver, “Consider competing in near future.” |

Source: Auditor analysis of contracts with waivers of competitive solicitation in fiscal year 2024 from Records Online

A potential cause of the inconsistent use of waivers is the fact that, during the audit period, the City's Purchasing Manual and waiver of competition form had different criteria for when waivers are justified (Table 4). For example, the waiver form had categories for "specialized service" and "immediate need," which were different than the categories specified in the Purchasing Manual. As a result, inconsistent criteria may have made it difficult for staff to understand when it is appropriate to use a waiver of competitive solicitation. According to the Procurement Excellence Network, document consistency can reduce review time.

**Table 4: The categories on the form staff use to request approval for a waiver did not match the criteria in the Purchasing Manual.**

| Purchasing Manual                                                                                                                                                                                                                                                                                                                                                                                               | Waiver of Competition Form                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Sole or single source procurement, or non-competitive solicitation, may only be used following informal or formal solicitation when:</p> <ul style="list-style-type: none"> <li>Only one viable source is found for the needed product or service;</li> <li>Competition is found to be inadequate; or</li> <li>There is an emergency and it is impractical for the City to seek competitive bids.</li> </ul> | <p>Explanation must clearly state why this exception meets the required criteria.</p> <ul style="list-style-type: none"> <li>Service is very specialized;</li> <li>This product or service can only be provided by this contractor (sole source);</li> <li>This service and/or product must be provided immediately; or</li> <li>Other category. <i>Note: The lack of advanced planning does not constitute an immediate need.</i></li> </ul> |

Source: Berkeley's Purchasing Manual and Waiver of Competitive Solicitation form as of the end of fiscal year 2024

## City Council authorized additional non-competitive contracts for community-based organizations.

Beyond waivers of competition approved by the City Manager, City Council also authorized non-competitive contracts for community-based organizations through a separate process. In fiscal year 2024, we found three instances where City Council awarded new contracts totaling \$417,400 to community-based organizations through budget referrals without any competition. According to an April 2025 Council item for Resolution 71,719, community-based organizations seeking one-time financial assistance have historically appealed directly to councilmembers to sponsor a budget referral outside of the City's established procurement process. While it is appropriate for the City to contract with community-based organizations, it is important that the process is open and transparent for all community-based organizations and does not privilege certain organizations above others who may be equally or more deserving of financial support. To help address this issue, City Council passed a resolution to establish a more open

and transparent application process for community-based organizations to apply for emergency funding.

To promote fair and transparent procurement, it is important that decisions about contracts meet ethical standards to prevent conflicts of interest, but Berkeley's process to do that was limited. Berkeley requires certain employees and officials to complete the Form 700 financial interest disclosure form to comply with California state law, which includes disclosure of involvement in non-profit organizations. However, the Form 700 does not collect information about other relationships that may exist, such as friendships, that may bias a decision. In Berkeley, the only contractors required to complete a Form 700 were consultants that make government decisions or act in a staff capacity that would require a Form 700 if that role was held by a City employee. Berkeley's RFP and RFQ boilerplates also required interested contractors to disclose potential conflicts of interest, but these do not apply to non-competitive contracts.

In comparison, a best practice analysis from Atlanta's Ethics Office found that requiring potential contractors, in addition to City officials and employees, to continuously disclose relationships, serves as a checks and balance system between the two groups. It also helps maintain compliance and transparency in the government procurement process. In addition to the Form 700, San Francisco requires City officers and employees to publicly disclose any personal, professional, or business relationships with anyone involved in a government decision they make.

### **Contracts starting below the formal competition threshold were amended by an average of \$218,026 per contract without additional competition.**

As of March 2025, the City had 95 active service contracts that began at or below the formal competition threshold of \$50,000 but were later amended above the threshold. On average, these amendments added \$218,026 in total to each contract. Since these service contracts started below \$50,000, they did not require City Council approval or formal competition. The contracts then increased without meeting the requirements for competition that apply to larger dollar values. We found some contracts which originally had waivers of competitive solicitation and were later amended by large amounts. For example, one contract that started at \$50,000 was amended to \$737,092 over 6 years, nearly 15 times the original cost. All of the service

contract amendments over \$50,000 in our sample received City Council or Board approval,<sup>4</sup> as required by the Finance Department. According to Finance staff, there are circumstances when contract amendments are reasonable. To comply with this, staff need clear guidance to understand when amendments are appropriate or when the contract should be re-competed.

While Berkeley's policy sets dollar thresholds for when a new contract must go through a formal competitive process, there was no documented citywide guidance for when existing contracts should be re-competed rather than amended. According to the U.S. Government Accountability Office, competitive contracts can help save taxpayers money. When Berkeley relies on existing contractors without competition, the City may lose out on the potential financial benefits of competition. In a sample of 23 amended contracts, 16 contracts (or 70 percent) lasted for over five years. According to the Director of Finance, the general rule is for most contracts to go back out to bid every five to seven years. However, this guidance was not written in the City's purchasing policy. In fact, Berkeley did not have any published guidance for staff on contract amendments. Standard guidance on when amendments are appropriate and when contracts need to be re-competed could help address confusion about the amendment process that staff shared. Clear expectations may help reduce use of amendments instead of competition.

We also identified three City Attorney contracts for legal services which grew by over 20 times their original amount, including one which started at \$50,000 in 2018 and grew to \$4,167,000 as of August 2025. Because the City Charter and Berkeley Municipal Code give the City Attorney the authority to enter into legal services contracts,<sup>5</sup> the amendments do not require City Council approval unlike other City contracts above the Council approval threshold. This different process for the City Attorney's Office does not provide the same level of public oversight and transparency compared to new contracts and contract amendments that are reviewed by City Council at public meetings.

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<sup>4</sup> In our sample, contracts from the Library and the Rent Board received authorization from their boards rather than City Council.

<sup>5</sup> The City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services. Other jurisdictions, such as the City of Santa Monica, as well as California state agencies, explicitly exempt legal services from competitive process requirements. We did not evaluate best practices for competition of legal services contracts.

## Recommendations

- 1.1. To ensure Berkeley is getting the best value for recycling services, we recommend that Public Works pursue open competition on the City's recycling contracts.
- 1.2. To ensure large contracts have adequate competition, we recommend City Council work with City management and the City Attorney to propose updates to the Berkeley Municipal Code Chapter 7.18 to require competition for service contracts that City Council approves.
- 1.3. To ensure clear standards for waiving competition, we recommend that the Finance Department update the waiver of competitive solicitation form to be consistent with the Purchasing Manual.
- 1.4. To ensure transparency, we recommend that City management work with the Finance Department, Human Resources, and the City Attorney's office to strengthen the City's existing ethical standards, including guidance for City officials, staff, and contractors regarding disclosing personal, professional, and business relationships.
- 1.5. To ensure City staff have guidance on how to appropriately use amendments, we recommend that the Finance Department develop and distribute written policies and procedures on contract amendments, including when contracts are required to go back out for competition.
- 1.6. To increase transparency of spending on legal services contracts, we recommend that the City Attorney's Office regularly report legal services contracts and amendments to City Council.



## Paper contracts, unclear guidance, and short staffing led to delays and overuse of non-competitive contracts.

During our audit period, Berkeley used paper contracts that needed to be hand-delivered between departments, creating some delays and misplaced contracts. Lack of electronic tracking of waivers or the type of competition used for contracts made it difficult for management to analyze or monitor the use of waivers or analyze competition citywide. Additionally, the Purchasing Manual was missing key guidance, and training for staff was limited. Short staffing and turnover also made it difficult for the City to address these concerns and improve the contract process. Together, these conditions caused delays, errors, and greater reliance on non-competitive contracting to keep City services running.

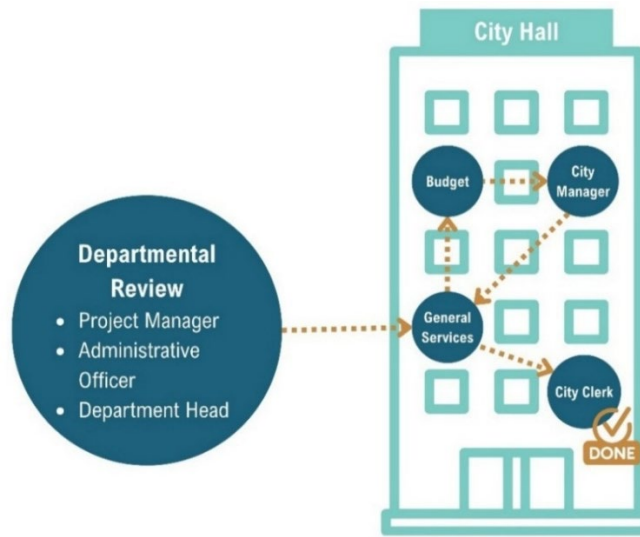
### Berkeley used paper contracts that need to be hand-delivered between departments.

In fiscal year 2024, most of Berkeley's contracts were still reviewed and signed on paper, meaning staff hand-delivered them to different departments for approvals (Figure 5). During the scope of our audit, Berkeley did not have a comprehensive digital contract management system. In fiscal year 2024, it took an average of 37 days between when the contract was dropped off to General Services and when it was given to the City Clerk's office, according to an internal tracking spreadsheet. Departments conducted additional levels of review prior to it arriving at General Services, meaning the entire process took even longer.<sup>6</sup>

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<sup>6</sup> This does not include the City Attorney review, which is only required when not using a pre-approved contract boilerplate, according to the Purchasing Manual and review form. However, the City Attorney has said they should review all contracts.

**Figure 5: Moving paper contracts throughout City Hall created opportunities for delays.**



Source: Auditor analysis of contract review sheet for new expenditure contracts

Some department staff said this outdated process created delays, so they had to use the shorter non-competitive contract process to maintain City services. Some staff stated that they needed to amend a contract or use a waiver of competition for a contract that could have been competed because they needed additional time to complete the full RFP and contract review processes, especially if they were short staffed. One General Services staff member also said that many of the waivers of competition they reviewed came from a lack of planning for future contracts. However, the waiver form specifically notes that the lack of advanced planning does not constitute an immediate need. If the City continuously amends contracts instead of going out to competition, it could potentially miss out on new contractors and savings. According to the Procurement Excellence Network, streamlining the procurement process is essential to freeing up staff time to focus on improving the performance of programs and services and, in turn, results for residents.

Staff also explained that it was hard to track where a contract was in the review process. Figure 6 shows some locations where staff dropped off paper contracts throughout the routing process. Contracts awaiting signatures could sit unsigned at staff members' desks for days while they were out of the office, or could even be misplaced or lost. During our audit, General Services staff found four unsigned contract amendments for \$500,000 each sitting in a box under a desk. The contracts were approved, and the department could spend the money. However, the contracts were not formally amended, so the liability terms of the contract were not finalized.

**Figure 6: Staff had to deliver paper contracts between departments.**

Source: Auditor photos of Finance Department and the City Clerk contract locations

Since the City's financial system did not track the contract review process, General Services staff created a separate spreadsheet to give departments some insight into where the contract was in the approval process. However, at the start of the audit period, any Berkeley staff member could edit the sheet, leading to the potential for intentional or accidental changes to the information. This has since been addressed.

While waivers of competition were available in the individual contract file, the City did not centrally track waivers overall in an electronic format nor the type of competition used for contracts, making it difficult for management to understand the use of waivers across all city departments or identify trends over time. Berkeley's current system makes it very time-consuming to conduct this analysis, especially determining how much money is spent competitively versus non-competitively. For this report, we manually reviewed hundreds of contract PDFs to assess if they were competitive or not. Regular analysis of the City's spending on purchases is important for supporting management decisions and better oversight of contractor relationships.

The City has begun to explore options for digitizing the contracts process. During our audit, Berkeley adopted DocuSign, a more efficient and trackable digital signature software for some parts of the City's contracting process, such as approving waivers of competition and extension letters. However, various General Services staff members explained that the software is not set up to effectively manage the full contract review process. Additionally, a cross-departmental team led by the City Manager's Office is looking into purchasing a digital contract management system to improve the contracting process. However, given the City's current budget limitations, they want to make sure it provides significant value to the City.

## The Purchasing Manual was missing key guidance and training for staff was limited.

Berkeley's Purchasing Manual was missing sixteen of the minimum necessary parts of a procurement policy manual defined as industry best practices during the audit (Table 5). For example, Berkeley's Purchasing Manual did not have a definitions section to help ensure that all staff understand the terms referenced in the manual and how they are used in the City of Berkeley. It also did not include a process for suspending or debarring contractors who violate City law or fail to meet contract obligations.

The Purchasing Manual also had limited or conflicting guidance on key purchasing topics. Information on sole or single-source contracts was separated across three different sections and did not align with the information on the required waiver form itself, making it difficult for staff to know how to use them correctly. There was also no written guidance on amendments or extensions, in the Purchasing Manual or elsewhere, including when they should go back out to competition. There was also very limited guidance on piggybacking or cooperative agreements, which allow staff to use a competitively bid contract from another jurisdiction. Piggybacking could be a way to save staff time while ensuring the best price, but only if staff have appropriate guidance. In our analysis of fiscal year 2024 contracts, departments used different procedures for piggybacked contracts from waivers of competition to authorizing Council Resolutions to no contract at all.

**Table 5: Berkeley's Purchasing Manual was missing key elements, as defined by industry best practices.**

| Element                                                                                                                                                        | Element Aspects that are Missing or Incomplete | Element Aspects that are Included |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-----------------------------------|
| <b>Definitions</b> - Defines key terms                                                                                                                         | <b>1</b>                                       | <b>0</b>                          |
| <b>Organizational Structure</b> - Establishes roles and responsibilities                                                                                       | <b>2</b>                                       | <b>1</b>                          |
| <b>Vendor Selection</b> – Provides guidance for evaluating vendor proposals and developing a contract                                                          | <b>1</b>                                       | <b>5</b>                          |
| <b>Specifications</b> – Provides guidance for drafting specifications to ensure maximum competition                                                            | <b>1</b>                                       | <b>0</b>                          |
| <b>Ethics</b> – Includes guidelines to ensure the procurement process is fair and resolve violations to stated policy                                          | <b>5</b>                                       | <b>2</b>                          |
| <b>Personnel</b> – Outlines required qualifications and training for procurement staff                                                                         | <b>3</b>                                       | <b>0</b>                          |
| <b>Other Initiatives</b> – Provides guidance for procurement-related initiatives, such as prioritizing minority and women-owned businesses or local businesses | <b>3</b>                                       | <b>3</b>                          |
| <b>TOTAL</b>                                                                                                                                                   | <b>16</b>                                      | <b>11</b>                         |

Source: Auditor analysis of NIGP: The Institute for Public Procurement's Principles and Practices of Public Procurement and the City of Berkeley's Purchasing Manual as of the end of fiscal year 2024.

Staff in each City department have responsibilities related to purchasing goods and services for their department, but the City did not have clear policies and procedures so that staff could easily navigate the purchasing process. In a listening session hosted by the City Manager in February 2025, some staff members representing most City departments shared that they did not understand the rules of purchasing. This confusion can end up requiring more General Services staff time to either individually walk staff through the process or correct errors once submitted. According to best practices, the Purchasing Manual should simplify, clarify, and reflect the laws governing purchasing in way that is useable for staff across the City. To fill in the gaps from the citywide Purchasing Manual, some departments have created their own manuals to support their staff.

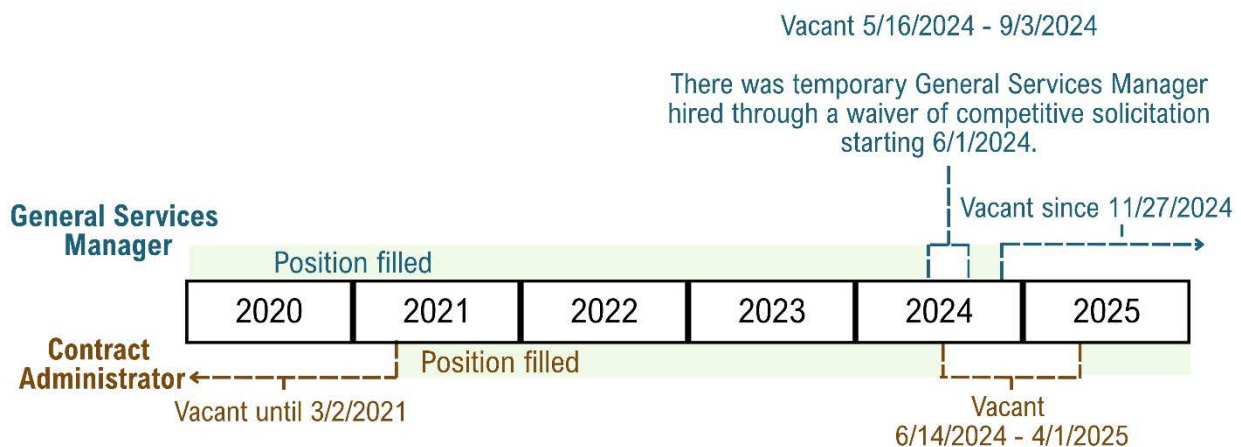
Staff also shared that there were few training opportunities or resources for department staff to learn about the contract process. In addition to a clear Purchasing Manual, it is important that all staff with a role in procurement have a clear and consistent understanding of the rules. Prior to May 2025, contract training was inconsistent. However, between May and July 2025, the Finance Department conducted five contract trainings. The Procurement Excellence Network recommends continuous training and coaching of staff on procurement best practices. Having

clear, documented policies and procedures also increases consistent application of purchasing rules during times of transition or understaffing.

## Short staffing and turnover made it more difficult to improve the contract process.

The General Services Division has had repeated vacancies in key positions in the past five years making it difficult to improve the contract process. The General Services Manager position leading the division has been vacant since November 2024 (Figure 7). The Director of Finance is primarily acting in that role after the previous General Services Manager left the City after less than three months. Previously, the Finance Department used a waiver of competition to contract a consultant to cover the position while they hired a full-time staff member. Another key position, the Contract Administrator, was vacant for almost a year until April 2025, and for substantial time prior to 2021. Government finance departments across the country have also struggled to fill purchasing positions. According to a 2022 report from the Government Finance Officers Association, procurement clerks, buyers and purchasing agents are in high demand and have a high ratio of job postings per filled positions. Positions with a relatively higher ratio will take longer to fill since competition for candidates is higher.

**Figure 7: Key General Services positions have been repeatedly vacant, especially in the last two years.**



Source: Finance Department and auditor review of employee data

These Finance Department vacancies strained General Services staff capacity, and they reported taking on the work of these vacant positions in addition to their own responsibilities. The turnover and understaffing made it difficult for General Services staff to review and provide substantive feedback on contract documents, and delayed contracts during our audit period,

according to staff. Overworked staff may also not be able to appropriately prioritize procurements and focus resources on the highest risk purchases, including non-competitive contracts. Short staffing and turnover made it difficult for the division to make changes to improve the contracting process that could limit non-competitive contracts, such as implementing additional training and updating manuals.

Limited General Services staff capacity also means that while the City has started to collect contractor demographic information, they have not had the capacity to complete a formal analysis of this data. City leadership has not determined responsibility for managing demographic data from potential contractors to facilitate data analytics. The analysis could inform changes to the City's policy to promote fairness and increased competition.

## Recommendations

- 2.1. To increase efficiency and accountability in the contract process, we recommend that City management work with the Finance Department to adopt a comprehensive and integrated electronic contract management system, as funds are available.
- 2.2. To more easily assess the use of non-competitive contracts, we recommend that the Finance Department track what type of competition is used for each contract and maintain documentation in an accessible format as part of the new contract management system.
- 2.3. To ensure consistent application of standards, we recommend the Finance Department update the Purchasing Manual and any additional guidance documents for staff to include complete sections on key topics such as amendments, piggybacking, ethics, and suspension or debarment of contractors who engage in misconduct.
- 2.4. To ensure clarity in the primary guidance on purchasing for all City staff and consistent application of standards, we recommend the Finance Department work with the City Attorney and City management to update the Purchasing Manual with a table of contents, clear definitions, and consistent language and standards across the Purchasing Manual and related forms, boilerplates, templates, and other additional guidance documents.
- 2.5. To ensure that City staff know how to use the contracting process correctly and efficiently, we recommend that the Finance Department offer and publicize a regular procurement training program for staff from other departments.



- 2.6. To ensure adequate resource support for City contracts, we recommend that City management assess Finance Department staff positions needed to provide oversight and prioritize filling these positions when possible.
- 2.7. To ensure the City makes progress towards promoting fairness in contracts, we recommend that City management formally assign responsibility for managing the demographic data from potential contractors to facilitate data analytics and implementing prior recommendations related to contractor outreach and the contracting process.

## Management Response

We provided a draft of this report to the City Manager, the Finance Department, and the City Attorney for review and comment. City management agreed or partially agreed with our findings, conclusions, and recommendations. We generally expect the City to implement audit recommendations within two years of report issuance. City management provided the implementation dates and corrective action plan below. We will be conducting our standard recommendation follow-up process after the audit is issued. We have not yet confirmed to what extent any recommendations may have been implemented prior to the audit release date.

**Recommendation 1.1:** To ensure Berkeley is getting the best value for recycling services, we recommend that Public Works pursue open competition on the City's recycling contracts.

**Management Response:** Agree

**Implementation Date:** To be determined

**Corrective Action Plan:** Will assess and develop timeframe for 2026

**Recommendation 1.2:** To ensure large contracts have adequate competition, we recommend City Council work with City management and the City Attorney to propose updates to the Berkeley Municipal Code Chapter 7.18 to require competition for service contracts that City Council approves.

**Management Response:** To be determined

**Implementation Date:** To be determined

**Corrective Action Plan:** To be determined

**Recommendation 1.3:** To ensure clear standards for waiving competition, we recommend that the Finance Department update the waiver of competitive solicitation form to be consistent with the Purchasing Manual.

**Management Response:** Agree, this was completed in November 2025

**Implementation Date:** November 2025

**Corrective Action Plan:** The language in both the Competitive Solicitation Waiver form and the Purchasing Manual has been updated to be consistent.

**Recommendation 1.4:** To ensure transparency, we recommend that City management work with the Finance Department, Human Resources, and the City Attorney's office to strengthen the City's existing ethical standards, including guidance for City officials, staff, and contractors regarding disclosing personal, professional, and business relationships.

**Management Response:** Partially agree

**Implementation Date:** To be determined

**Corrective Action Plan:** Will incorporate into guidance for staff. Will work on solutions for contractor disclosures but need to determine how best to incorporate given potential enforcement challenges.

**Recommendation 1.5:** To ensure City staff have guidance on how to appropriately use amendments, we recommend that the Finance Department develop and distribute written policies and procedures on contract amendments, including when contracts are required to go back out for competition.

**Management Response:** Agree

**Implementation Date:** November 2025

**Corrective Action Plan:** This information is in the updated purchasing manual and the contract training class.

**Recommendation 1.6:** To increase transparency of spending on legal services contracts, we recommend that the City Attorney's Office regularly report legal services contracts and amendments to City Council.

**Management Response:** Agree

**Implementation Date:** April 30, 2026

**Corrective Action Plan:** The City Attorney's Office will report new legal services contracts and amendments to the City Council on an annual basis beginning with contracts entered into Q1 2026. The reports will not include any confidential or attorney-client privileged information.

**Recommendation 2.1:** To increase efficiency and accountability in the contract process, we recommend that City management work with the Finance Department to adopt a comprehensive and integrated electronic contract management system, as funds are available.

**Management Response:** Agree

**Implementation Date:** Partially implemented July 2025

**Corrective Action Plan:** Several departments have implemented DocuSign for the full contract routing process (about 65% of city contracts). Citywide, DocuSign has been adopted for all extension letters and waivers. There are budget and resource constraints to purchasing software that would integrate with the City's current financial system. However, a multi departmental work group has been working for several months on bringing electronic contracts management system recommendations to the City Manager for a new system.

**Recommendation 2.2:** To more easily assess the use of non-competitive contracts, we recommend that the Finance Department track what type of competition is used for each contract and maintain documentation in an accessible format as part of the new contract management system.

**Management Response:** Partially Agree

**Implementation Date:** July 2025

**Corrective Action Plan:** By implementing DocuSign for all waivers, the process itself has all the necessary information to track quantity, date, and all approvals. This solution will not add additional steps, time or expense which is helpful given limited resources and financial constraints. We continue to assess for use in potential new systems.

**Recommendation 2.3:** To ensure consistent application of standards, we recommend the Finance Department update the Purchasing Manual and any additional guidance documents for staff to include complete sections on key topics such as amendments, piggybacking, ethics, and suspension or debarment of contractors who engage in misconduct.

**Management Response:** Agree

**Implementation Date:** November 2025

**Corrective Action Plan:** The updates have been made.

**Recommendation 2.4:** To ensure clarity in the primary guidance on purchasing for all City staff and consistent application of standards, we recommend the Finance Department work with the City Attorney and City management to update the Purchasing Manual with a table of contents, clear definitions, and consistent language and standards across the Purchasing Manual and related forms, boilerplates, templates, and other additional guidance documents.

**Management Response:** Agree

**Implementation Date:** Partially implemented

**Corrective Action Plan:** Ongoing process to improve guidelines and process flows.

**Recommendation 2.5:** To ensure that City staff know how to use the contracting process correctly and efficiently, we recommend that the Finance Department offer and publicize a regular procurement training program for staff from other departments.

**Management Response:** Agree

**Implementation Date:** May 2025

**Corrective Action Plan:** We have already had several sessions of Contract Training classes and will continue them in 2026.

**Recommendation 2.6:** To ensure adequate resource support for City contracts, we recommend that City management assess Finance Department staff positions needed to provide oversight and prioritize filling these positions when possible.

**Management Response:** Agree

**Implementation Date:** In process

**Corrective Action Plan:** All vacancies in the Finance Department are in the process of being filled including the General Services Manager and Buyer.

**Recommendation 2.7:** To ensure the City makes progress towards promoting fairness in contracts, we recommend that City management formally assign responsibility for managing the demographic data from potential contractors to facilitate data analytics and implementing prior recommendations related to contractor outreach and the contracting process.

**Management Response:** Agree

**Implementation Date:** September 24, 2025

**Corrective Action Plan:** This was assigned to the DEI Officer.

## Methodology and Compliance

To gain an understanding of General Services operations and internal controls, and to achieve our audit objectives, we used the following methodology:

- We reviewed the City Charter, Berkeley Municipal Code, Purchasing Manual, other internal policies and procedures, review forms, and past reports and audits. We also attended one of the contract training sessions offered by the Finance Department.
- We compared Berkeley's practices against published best practices and guidance from organizations such as NIGP: The Institute for Public Procurement, the Procurement Excellence Network, and the U.S. Government Accountability Office. We also reviewed related audits from other jurisdictions and spoke with the auditors.
- We interviewed a range of stakeholders to understand how the contract process works both within General Services and from the perspective of other departments. This included General Services staff and staff from six other city departments regularly involved in the contracts process

Our scope focused on two datasets from the City's financial system: (1) all expenditure contracts marked as posted in the City's financial system as of March 6, 2025 and (2) expenditure contracts executed in fiscal year 2024. Since the City's largest contracts often last years, they likely would not have been captured in our dataset of contracts executed in fiscal year 2024, even though these contracts were active in this year. Therefore, we also reviewed 100 of the City's largest expenditure contracts in the City's financial system. We found that 22 were likely expired because they had an expiration date in the City's financial system before June 30, 2025. We did not verify if there were cases when the contracts were extended, but the expiration date in the City's financial system had not been updated. We included only the remaining 78 active contracts in our analysis. Additionally, we identified the largest contracts based on the revised total in the City's financial system. It is possible the not-to-exceed written in some contracts was greater than what was listed in the financial system depending on variations in how the amount is entered, such as entering only one year's worth of funds at a time for a multi-year contract. We did not include purchase orders in our definition of contracts.

We performed a risk assessment of the City's contract practices and procedures to identify potential internal control weaknesses, including fraud risks, within the context of our audit objectives. This included a review of selected policies and procedures, as well as interviews with internal staff.



The City's financial system does not indicate the type of competition the City used for each contract. Therefore, we used the publicly available contract information in Records Online to determine the competition for all expenditure contracts executed in fiscal year 2024 and the 100 largest active contracts. We reviewed the contract packet for each contract to assess if it was competitive or not, as well as to ensure consistency in contract information between the City's financial system and the contract itself. We validated the determination of the non-competitive contracts with the responsible department. We did not assess the effectiveness of the competition – i.e., if they received multiple bids – only if the department reported using competition.

We did additional testing of a subset of the contracts identified above. For example, among the contracts from fiscal year 2024 that used waivers of competitive solicitation, we also assessed if they met the Purchasing Manual criteria for waivers. We also analyzed the active service contracts that began at or below \$50,000 and were later amended above that threshold. We tested a sample of 25 contracts amended under the City Manager, as well as five additional amended City Attorney contracts, for competition and compliance with policy requirements for review and approval. We also reviewed the Contracts Log spreadsheet managed by the General Services team. For specific contracts, we also reviewed additional documentation from Council Resolutions, Council Items and other documentation.

## Data Reliability

We assessed the reliability of the City's financial system and Records Online data by reviewing it for reasonableness and completeness. We also interviewed staff responsible for managing the systems and inputting the data. We were also able to validate the information across the two systems to ensure the data matched. We identified a few instances of incomplete data, however, we determined that the data is sufficiently reliable to address the audit objectives.

## Independence

According to Article XI of the Berkeley Charter, the City Auditor is responsible for countersigning, numbering and registering all contracts for the City of Berkeley. Given updates in technology, in recent years, this responsibility involved no actual oversight as contracts were already executed by the time they reached the City Auditor's office. The City Auditor's Office assigned the executed contract a number and recorded it. The City Auditor's Office did not have a role in reviewing or approving contracts, or ensuring that contracts followed City policy.

In November 2018, the City began using the ERMA financial system, which automatically numbered all contracts. To reduce redundant steps, the City Auditor officially designated responsibility to countersign contracts as registrant to the Finance Department. In 2024, the City updated the Berkeley Municipal Code (2.24.050.C) to reflect this change.

To reduce the threat to our independence, we limited our work by excluding areas overseen by our office.

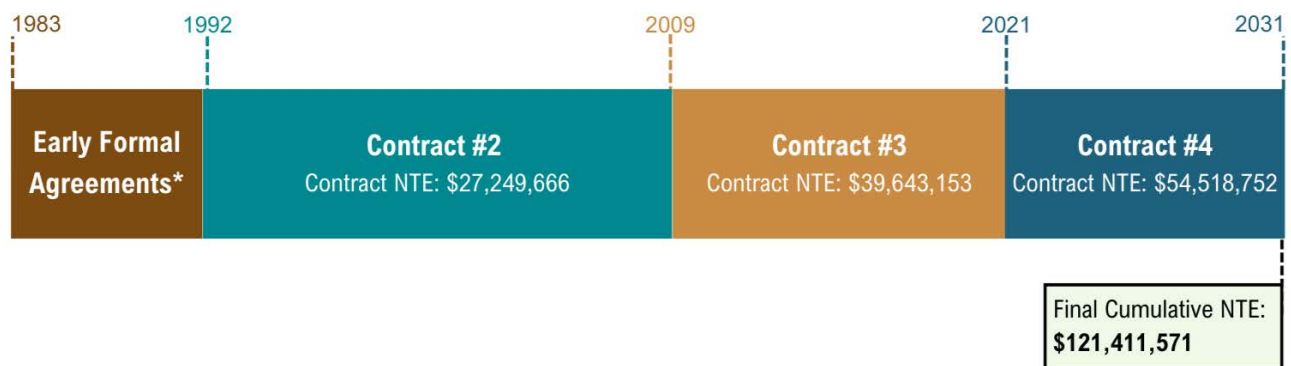
## Statement of Compliance

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

## Appendix 1: Timelines of the City's Recycling Contracts

Figure 8 and Figure 9 show the history of the City's contracts with the Ecology Center and Community Conservation based on review of authorizing Council Resolutions and other related documents. We reviewed the authorizing Council Resolutions to understand the City's process for awarding and amending these contracts, but we did not audit these individual contracts or contractors.

**Figure 8: Berkeley has contracted with the Ecology Center since the 1980s.**



Source: Auditor analysis of Council Resolutions and contract documents on Records Online

\*The resolutions authorizing the early contracts and amendments did not include dollar amounts, so we were unable to assess the not-to-exceed amount for these contracts.

Note: NTE stands for "not-to-exceed." City Council authorizes the City to spend up to that amount on the contract. We did not assess whether the City spent the full amount on each contract.

**Figure 9: Berkeley has contracted with Community Conservation Centers (CCC) since the 1980s.**



Source: Auditor analysis of Council Resolutions and contract documents on Records Online

\*The resolutions authorizing the early contracts and amendments did not include dollar amounts, so we were unable to assess the not-to-exceed (NTE) amount for these contracts.

\*\*We were unable to calculate the contract NTE prior to 2005 due to inconsistent reporting and documentation.

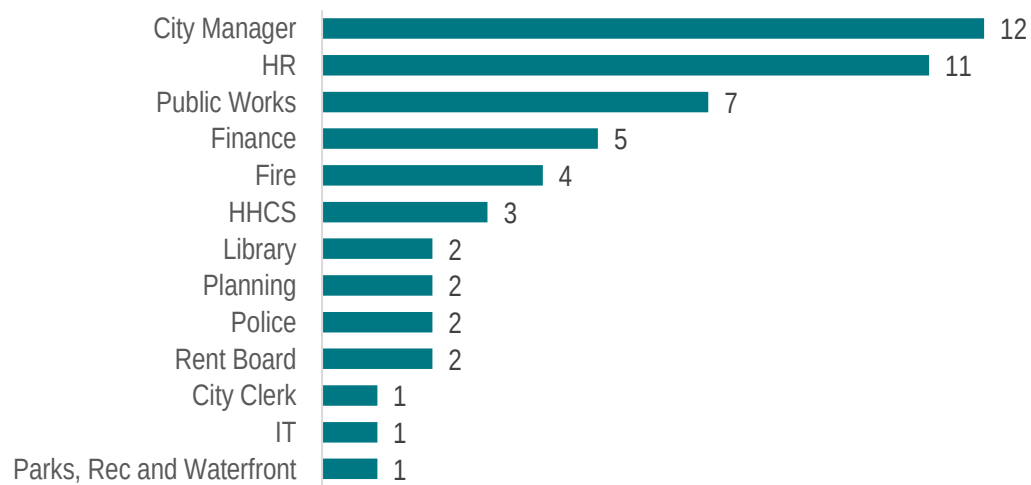
\*\*\*This is an underestimate of the total cost of this contract, as the original not-to-exceed was the total gross receipts resulting from the sale of the City's recyclable materials minus 7.5 percent of those gross receipts which was to be paid to the City annually. Later amendments added additional one-time payments which account for the reported NTE. We did not analyze or calculate the total gross receipts for this report.

Note: City Council authorizes the City to spend up to that amount on the contract. We did not assess whether the City spent the full amount on each contract.

## Appendix 2: Contracts with Waivers Executed in Fiscal Year 2024

Figure 10 shows the total number of contracts executed in fiscal year 2024 that used a waiver of competition, broken down by department.

**Figure 10: Number of non-competitive contracts executed via waiver in fiscal year 2024 by department.**



Source: The City's financial system and auditor assessment of contracts in Records Online

## Appendix 3: Largest Active Non-Competitive Contracts

In Table 6, the term “active” refers to the contract’s status in the City’s financial system. The contractor and description also come from the City’s financial system. The contract length in years is based on the expiration date in the City’s financial system as of September 29, 2025. The total contract amount is based on the contract itself and any subsequent amendments as of September 29, 2025.

**Table 6: List of non-competitive contracts among the City’s 100 largest active contracts, largest to smallest**

| Contractor                                | Description                                   | Total Contract Length (in years) | Total Contract Amount | Met PM Criteria? |
|-------------------------------------------|-----------------------------------------------|----------------------------------|-----------------------|------------------|
| <b>ECOLOGY CENTER, INC</b>                | RESIDENTIAL RECYCLING COLLECTION SERVICES     | 5                                | \$54,518,752          | NO               |
| <b>COMMUNITY CONSERVATION CENTER, INC</b> | RESIDENTIAL & COMMERCIAL RECYCLING OPERATIONS | 5                                | \$30,080,783          | NO               |
| <b>BAY AREA COMMUNITY SERVICES</b>        | PATHWAY STAIR CENTER                          | 8                                | \$15,168,616          | YES              |
| <b>EVICION DEFENSE CENTER</b>             | HOUSING RETENTION PROGRAM                     | 5                                | \$8,294,683           | YES              |
| <b>BERKELEY CONVENTION &amp; VISITOR</b>  | TOURISM BSNSS IMPROV DIST MKTG SVCS           | 8                                | \$7,966,000           | YES              |
| <b>TELEGRAPH PROPERTY &amp; BUSINESS</b>  | TELEGRAPH BUS. IMPROVE DIST.                  | 10                               | \$7,410,024           | YES              |
| <b>INSIGHT HOUSING</b>                    | INTERM HOUSING AT SUPER 8 MOTEL               | 5                                | \$7,295,634           | YES              |
| <b>DOWNTOWN BERKELEY ASSOCIATION</b>      | PROPERTY BASE BID ASSESSMENT (DPBID)          | 5                                | \$7,285,257           | YES              |
| <b>EBMUD</b>                              | EBMUD PW SEWER BILLING SERVICES / COLLECTIONS | 10                               | \$6,100,000           | YES              |
| <b>MOTOROLA SOLUTIONS INC</b>             | MUNICIPAL LEASE - RADIO & EQUIPMENT LEASE     | 7                                | \$5,818,116           | YES              |

City Contracts: Outdated Process Led to Non-Competitive Contracts

| Contractor                         | Description                                    | Total Contract Length (in years) | Total Contract Amount | Met PM Criteria? |
|------------------------------------|------------------------------------------------|----------------------------------|-----------------------|------------------|
| <b>RENNE PUBLIC LAW GROUP</b>      | MISCELLANEOUS SERVICES, NO. 1 - Legal Services | 7                                | \$4,167,000           | N/A*             |
| <b>SENTRY CONTROL SYSTEMS, INC</b> | PARKING ACCESS & REVENUE COLL                  | 9                                | \$2,915,355           | YES              |

Source: The City's financial system and auditor assessment of contracts in Records Online

\* N/A indicates that we did not assess whether this contract met the Purchasing Manual criteria for competition because the City Charter (Section 113) and Berkeley Municipal Code (2.56.040) give the City Attorney independent contracting authority for legal services contracts. The Berkeley Municipal Code does not address competition for service contracts, including legal services.

## Appendix 4: Active Service Contracts Amended Over the Threshold for Competition

The contracts listed in Table 7 are the top 10 active service contracts by total dollar value that began at or below the formal competition threshold of \$50,000 and were later amended to increase the cost of the contracts. The term “active” refers to the contract’s status in the City’s financial system.

The contractor, department, description, and revised total come from the City’s financial system. The original total is based on the contract posted in Records Online. The revised total includes any amendments recorded in the financial system as of March 2025.

We did not review the contract file for every contract nor determine which ones were initially competitive. This list is intended to highlight that the amendment process can lead to increases for contracts with no guidance for when competition may be needed.

**Table 7: List of ten largest service contracts which began at or below \$50,000 and were amended above \$50,000 as of March 2025, largest to smallest**

| Contractor                      | Department                              | Description                                        | Original Total | Revised Total |
|---------------------------------|-----------------------------------------|----------------------------------------------------|----------------|---------------|
| RENNE PUBLIC LAW GROUP          | City Attorney                           | MISCELLANEOUS SERVICES, NO. 1 - Legal Services     | \$50,000       | \$4,167,000   |
| BURKE, WILLIAMS & SORENSEN, LLP | City Attorney                           | EXTERNAL LEGAL COUNSEL                             | \$10,000       | \$1,208,266   |
| L.J. KRUSE CO                   | Library                                 | BPL HVAC Building Maintenance                      | \$16,000       | \$843,020     |
| YOUTH SPIRIT ARTWORKS           | Health, Housing, and Community Services | TAY CASE MANAGEMENT & LINKAGE SVCS.                | \$50,000       | \$737,092     |
| BRISCOE IVESTER & BAZEL LLP     | City Attorney                           | Outside Legal Counsel re: Ruegg & Ellsworth v. COB | \$30,000       | \$725,000     |
| CIVICMAKERS, LLC                | IT                                      | Coaching & Training Svcs                           | \$35,000       | \$529,025     |
| SLOAN SAKAI YEUNG & WONG LLP    | HR                                      | LEGAL SVCS-LABOR NEGOTIATION SUPPORT               | \$45,000       | \$484,587     |
| MSR MECHANICAL, LLC             | Public Works                            | ON-CALL HVAC SVCS                                  | \$50,000       | \$448,515     |
| ATTHOWE FINE ART SERVICES       | City Manager                            | As-Needed Fine Art Services                        | \$49,950       | \$400,000     |



## City Contracts: Outdated Process Led to Non-Competitive Contracts

| Contractor                                    | Department   | Description                     | Original Total | Revised Total |
|-----------------------------------------------|--------------|---------------------------------|----------------|---------------|
| <b>ACCUTITE<br/>ENVIROMENTAL<br/>ENGINEER</b> | Public Works | STORAGE TANK<br>MAINT & TESTING | \$50,000       | \$382,496     |

Source: Records Online and the City's financial system

### **Mission Statement**

Promoting transparency and accountability in Berkeley government.

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[Copies of our audit reports are available on our website.](#)

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BERKELEY CITY AUDITOR

CONSENT CALENDAR

March 10, 2026

**To:** Honorable Mayor and Members of the City Council**From:** Jenny Wong, City Auditor **Subject:** City Contracts: Outdated Process Led to Non-Competitive ContractsRECOMMENDATION

We recommend City Council request that the City Manager report back by Fall 2026, and annually thereafter, regarding the status of our audit recommendations until reported fully implemented by the Finance Department and other relevant departments. The audit includes 13 recommendations to clarify for staff when non-competitive contracts and amendments are appropriate, as well as to improve transparency and efficiency in the contracts process overall. The City management agreed or partially agreed to our findings and recommendations. Please see our report for their complete response.

FISCAL IMPACTS OF RECOMMENDATION

Reducing the use of non-competitive contracts could help the City ensure it is not overpaying for services. As the City faces a budget deficit, it is important that the City gets the best value for the goods and services it purchases. Updating the Purchasing Manual and related training and procedures will likely take an upfront investment of staff time but could reduce the workload for General Services and staff in the long run. Getting a comprehensive and integrated electronic contract management system, as recommended by the audit, would require financial investment, but could address the challenges we identified related to current paper contract process, including delays and lost contracts.

CURRENT SITUATION AND ITS EFFECTS

In fiscal year 2024, 94 of the 218 contracts executed did not have documented evidence of competition. The total value of these contracts was approximately \$43 million compared to \$102 million in competitive contracts. The non-competitive contracts included 26 authorized by Council Resolution, 53 through waivers of competition approved by the City Manager, and 15 through other or unclear means.

Most of the City's largest active contracts had documented evidence of going through competition or meeting the Purchasing Manual criteria for exceptions, but two recycling contracts did not. In fiscal year 2022, Berkeley executed contracts for recycling services for nearly \$85 million over ten years without seeking bids from other contractors. Although pursuing competition is an established best practice and the City's Purchasing Manual states that service contracts above \$50,000 must go through formal competition, neither the City Charter nor the Berkeley Municipal Code explicitly required service contracts like these recycling contracts to be competitive.

Of the 53 approved waivers of competition, 38 percent did not clearly meet the criteria in the Purchasing Manual, meaning the City could likely have pursued competition. For example, while waivers for classification and compensation studies were used, there was no documentation that this was an emergency. By requesting waivers for the same service from different contractors in a similar time period, this indicated that it would have been feasible to request quotes instead.

Once a contract is in place, the City can use amendments to increase the dollar amount. Our audit found the City had 95 active service contracts that began at or below the formal competition threshold of \$50,000 but were later amended above the threshold. On average, these amendments added \$218,026 in total to each contract. According to Finance, there are circumstances when contract amendments are reasonable. To comply with this, staff need clear guidance to understand when amendments are appropriate or when the contract should be re-competed.

Paper contracts, unclear guidance, and short staffing led to delays and the overuse of non-competitive contracts. For example, in a sample of 23 amended service contracts, 16 contracts (or 70 percent) lasted for over five years. According to the Director of Finance, the general rule is for most contracts to go back out to bid every five to seven years. However, this guidance was not written in the City's purchasing policy. In fact, Berkeley did not have any published guidance for staff on contract amendments. Additionally, in fiscal year 2024, most of Berkeley's contracts were still reviewed and signed on paper, meaning staff hand-delivered them to different departments for approvals. During our audit, the City adopted DocuSign for some parts of the contracting process and an interdepartmental team was looking into purchasing a digital contracting system. However, short staffing and turnover in General Services and across the City made it more difficult to improve the contract process.

### BACKGROUND

The City uses contracts for most services that are not done by city staff, like public artwork and towing, and for specialized goods like fire trucks. The City typically uses simpler purchase orders rather than contracts to buy goods, like office furniture and equipment for parks maintenance. The General Services Division in the Finance Department reviews and processes all purchases of goods and services for the entire City, but staff in each department have a responsibility in purchasing goods and services for their department.

Competition among contractors helps ensure that the City is accountable for public funds spent on contracts and can get the best value for Berkeley residents. However, competition is not always possible or appropriate, so City policies allow for non-competitive contracts in specific circumstances, such as when emergency maintenance is needed. This primarily occurs through either Council authorization or a waiver of competition approved by the City Manager.

### ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Implementing our recommendations will decrease reliance on non-competitive contracts. Additionally, they will improve the contracting process overall through clearer, more consistent guidance and improved systems.

CONTACT PERSON

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

Attachments:

1: Audit Report: City Contracts: Outdated Process Led to Non-Competitive Contracts

## City of Berkeley Purchasing Manual

### Section I – General Policy, Responsibilities, and Requirements

#### 1. General Purchasing Policy

All City of Berkeley (the “City”) purchases, unless they qualify for petty cash exceptions (Section II.1) or sole/single-source contracts (Section III.7.E) must be made through a competitive process. Regardless of the value of the purchase, more than one (1) quotation, bid, or proposal is encouraged. The City Council establishes the limits for City Manager authority to approve contracts, the level of expenditure requiring Council approval, and parameters for the documented competitive processes. See Section II for current competitive thresholds, and Council approval requirements.

For **goods**, the City seeks to obtain either:

1. Lowest price or lowest total cost – through quotes or an Invitation for Bid (IFB)
2. Best value – through quotes or IFB with multiple factors

For **services** (non-trades), the City seeks to obtain:

1. Best value – through a Request for Proposals (RFP) process

For **trades**, the City seeks to obtain:

1. Lowest quote for the scope – through multiple quotes or IFB  
From a firm:
  - o with a valid CSLB
  - o registered with CA DIR
  - o bonded/insured *as required*

#### 2. Responsibility for City Purchases

The City maintains a centralized General Services Division in the Department of Finance through which all purchases of goods and services are reviewed and processed. Each department originates Purchase Requisitions (PR) or specification requests to pursue formal bidding procedures. The PRs and specification requests are sent to General Services, where they are reviewed to ensure adequate information is provided, and best practices are followed and PRs are developed, as appropriate, into Purchase Orders (PO). See City Purchasing Procedures (Section III.4) for instructions and information for developing PRs and detailed instructions for developing RFP and IFBs (Section VIII.9).

Departments are responsible for requesting the type and quality of product or service required. In situations where a department or division is submitting a PR for another Department or division (e.g., fleet orders for vehicles and heavy equipment) the department/division submitting the order must have a specification signed off by appropriate personnel from the end user department/division. The requisitioned products or services should be described as completely as possible, without regard to manufacturer (except when applicable), to ensure that as many vendors as possible may respond to the City’s needs. A manufacturer’s part number may be cited by the

requisitioner, to assist the Buyer in sourcing the correct product. Sole/single source contracts should be avoided. The City's financial system maintains lists of vendors, cross-referenced to commodities and services (Section VIII.4). General Services staff is available for advice in the choice and applicability of vendors.

General Services is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases specifically for supplies, equipment or materials are to be awarded to the lowest responsible bidder, but must be of a quality consistent with the ultimate use intended. The Council may reject any and all bids. If all bids are so rejected or if no bids are received, the Council may re-advertise for new bids, or authorize the City Manager to negotiate in the open market. (See Charter [Section 67.](#)) General Services may require up to one (1) week to process a routine PR that is under the formal threshold amount (\$50k-service, \$100k-goods, \$200k-trades), and issue the PO. The time required to process the PR is directly related to the complexity of the item, and to the extent that the end user documents the quotes. Exceptions to the one-week (1) lead time will be at the discretion of the General Services Manager, Finance Director, or the City Manager.

Only the City Manager has authority to enter into a contract/agreement with a vendor. The authority to enter into a PO has been delegated to the General Services Manager. All contracts, agreements and purchase orders are subject to the limits outlined in Section II.

### **3. Non-Competitive Solicitation**

Whenever possible, multiple quotes for goods and services must be obtained and documented using either a *Formal or Informal Solicitation*. Non-competitive solicitations may only be used in the following circumstances:

1. Sole Source
  - Only one (1) viable source is found for the needed product (i.e. through copyright/trademark or single distributor )
  - It is a specialized service that is provided by a single, responsible source. The Project Manager must search for providers beyond the City in order to claim this.
2. Emergency
  - There is an emergency and it is impractical for the City to seek competitive bids (Section I.4, following).
3. Other
  - The City is required by an outside agency to use a product or service (i.e. a specific software being required for reporting taxes to the County)
  - The product or service is deeply embedded in the City's infrastructure and it is impractical to change every 5-7 years (i.e. The City's Enterprise Resource Planning- ERP).

In these circumstances, either a *Waiver of Competitive Solicitation* must be signed by the General Services Manager and the City Manager or prior approval must be received

from the City Council. If there is only a single response after a Formal or Informal Solicitation, no waiver is required since the solicitation process was completed.

Another way to procure goods/services without a solicitation is by piggybacking off an existing, competitively bid contract from another public agency. This saves time and resources by leveraging the original contract's scope of work, pricing and schedule as long as the original contract allows for it. The existing contract/agreement must be vetted to ensure it complies with City of Berkeley purchasing policies and procedures and the new contract must have an identical scope of work. Otherwise, the contract process proceeds like any other contract and requires all the same boilerplates, attestations, insurance and signatures.

Regardless of whether or not a contract qualifies for a waiver of solicitation, most contracts should be re-bid every 5-7 years.

#### **4. Emergency Procedures**

Special procedures must be followed to obtain goods or services in the event of any emergency. [City Charter Section 67\(a\)](#) governs emergency purchases:

The provisions of [Section 67](#) of this Charter shall not apply to work done or purchases made for that which is deemed by the City Manager to be an actual emergency and of urgent necessity for the preservation of life, health or property; provided, that any such expenditure in excess of an amount set by ordinance, as provided for in [Section 67.4\(b\)](#), must be authorized by resolution of the Council.

The City Manager will determine whether a situation constitutes an emergency. The end user department will be responsible for preparing the Information or Consent Report to submit to the City Council at the next available opportunity. In all cases, General Services shall be given a copy of the Council Report on the reasons for the emergency procurement, which will be filed with the PO.

#### **5. Public Assistance from Federal, State or County Funding Sources Including Grant Contracting and Emergency Contracting**

When the City of Berkeley receives outside funding it must use its own procurement procedures which reflect applicable State and local laws and regulations. It must also, however, meet the minimum procurement standards for the funding agency where those standards are more onerous (Federal, State, and County). Failure to follow outside agency's procurement standards could result in a contract being deemed in violation of the funding source's procurement rules, and requests for reimbursement could be denied. All contractual provisions from outside funding sources must be incorporated by reference in contracts using outside public funds.

It is the responsibility of the department requesting outside funding to work with the outside agency and familiarize itself with the requirements before going out to bid, contracting and receiving outside funding.



## **6. Departmental Communication with Vendors**

Whenever a department desires information regarding the use, description, or availability of a specific product or type of product, a written request should be addressed to the General Services Division. Such information should include price quotations, catalogs, samples and/or demonstrations. Whenever vendor catalogs are requested or received by General Services, the interested departments will be sent the information or given notice of their availability for inspection.

General Services should be informed before departments contact any suppliers or their representatives with regard to pricing, product availability or technical information. In addition, General Services must be informed before the contact is made. **No commitment to purchase a product or service offered may be made by anyone other than General Services staff – except when following emergency procedures** (Section I.4). No particular supplier will receive preference for the order under discussion. It should be made clear to all vendors contacted by departments that competition will be required. The end user must retain copies of all correspondence with outside vendors or contractors in case of audit.

City employees must keep themselves free of any obligation to vendors by refusing to accept entertainment or gifts offered by, or on behalf of, suppliers currently or potentially serving Berkeley. See Employee Ethical Standards (Section I.6, following) for details about City employee-vendor contact.

## **7. Employee Ethical Standards**

[City Charter Section 72](#) prohibits certain behavior detrimental to the fair, impartial, and cost-effective procurement of goods and services.

Any officer of the City, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material, or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office.

Inappropriate behavior can be grounds for immediate termination of an employee. It is every employee's responsibility to act in an ethical manner.

## **7. Restrictions on use of Public Funds**

The City does not allow the use of public funds for any items for personal consumption or use, including but not limited to the following:

A. Employee coffee, tea, hot chocolate or related items, such as cups, creamer, sugar,

etc. Only the CMO, as the official City host center, is permitted to purchase these items on a regular basis and charge a City account.

- B. Any type of food/candy for department/division staff. See [AR 3.27](#) for allowable food/beverage purchases.
- C. Catered or other food (such as donuts, sandwiches, pizza, etc.) for employee events, including and not limited to birthdays, going-away parties, etc. [See AR 3.27](#) for allowable food/beverage purchases
- D. Bottled water at any of these sites: Civic Center, 1947 Center Street, Public Safety Building, Permit Service Center, or Main Library. Bottled water may be purchased at outlying locations with the approval of the Director of Public Works, provided there is a finding that the tap water does not meet the same standards as the above-named facilities.
- E. Pens, paper, or other office supplies NOT associated with work performed specifically for the City of Berkeley.
- F. Any items that are **not needed** to perform duties specifically for the City of Berkeley.

In accordance with AR [3.17](#) if the item is not needed to perform work for the City of Berkeley, it should not be purchased with public funds.

## 8. Requirements on Contracting with Certain Entities

Prior to contracting for services or commodities, the following restrictions must be observed. See specific Berkeley Municipal Code and Ordinance sources and citations in Section VI.

- A. [Oppressive States Business Policy](#): Resolutions 60,382-N.S., and 59,853-N.S. – 59,857-N.S. (1999) prohibit City contracts or purchases with companies that do business, or produce commodities, in the listed areas. As of June 1, 2002, the affected areas are the Tibet autonomous region and Provinces of Amdo, Kham, and U-Tsang. All contracts entered into by the City of Berkeley must stipulate that the contractor is subject to this policy.
- B. [Nuclear Free Policy](#): Ordinance 5,784-N.S. (1986) prohibits contracting with any person or business that engages in “work for nuclear weapons” – defined as “work the purpose of which is the development, testing, production, maintenance, or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management, or administration of such work.”
- C. [Living Wage Policy](#): Ordinance 6,548 N.S. (2000) requires specified employers to pay a “living wage” and benefits to qualifying employees, as follows: for-profit contractors that receive more than \$25,000 in City funding in a year, or non-profits receiving more than \$100,000; employers in the Marina Zone that have (6) six or more employees and generate \$350,000 or more in annual gross receipts; and financial aid recipients receiving more than \$100,000 in a 12-month period.

Compliance is required by employers with employees who spend 25% or more of their compensated time on the City for-profit contract or in the Marina Zone. For non-profit contractors, compliance is required by employees who spend 50% or more of their compensated time on the contract.

Living wage rates are adjusted annually and posted on the City of Berkeley website at: <https://berkeleyca.gov/doing-business/operating-berkeley/workforce-standards-and-enforcement>. Additional requirements are 22 days per year of sick leave, vacation, personal necessity (12 of the 22 days must be compensated time).

- D. **Prevailing Wage**: Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq., including decisional authority interpreting these code sections. These labor categories, when employed for any “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” constitute a “Public Work” within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, for all contracted work (including design, construction, certain maintenance activities, or any other contracted services), Contractor is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the applicable prevailing wage. Contractor shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.
- E. **Equal Benefits**: Ordinance 6,623-N.S. (2001) requires that public funds be expended in a manner to prohibit discrimination in the provision of employee benefits by City contractors between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. This policy applies to for-profit entities where the contract exceeds \$25,000; non-profit entities where the contract exceeds \$100,000; and entities that generate \$350,000 or more in annual gross receipts and, by written agreement, have exclusive use or occupancy of City property for a term exceeding 29 days in any calendar year.
- F. **Non-Discrimination**: Ordinance 5,876-N.S. (1988) prohibits City contractors from discriminating against any employee or applicant for employment on any grounds specified in any State, Federal, or municipal law; and to require that any existing discrimination be remedied by appropriate methods including establishment of an approved affirmative action program that is consistent with State and Federal law.
- G. **Disclosure of Historical Commerce in Slavery**: Ordinance 6,855-N.S. (2005) mandates that any contractor providing insurance or financial services (including any bank in which the City deposits public funds) to the City must disclose in writing whether they, directly or through its parent entities, subsidiaries or predecessors in interest, engaged in commerce in slavery, including: bought or sold slaves, used

slaves as collateral, provided loans to purchase slaves, insured such transactions or the slaves, or provided any other services to aid in such transactions.

- H. **Sweatshop-Free Procurement**: Ordinance 7,099-N.S. (2009), and 7,378-N.S. (2014) mandates that vendor that provides apparel to the City of Berkeley must provide an affidavit which discloses the physical address and phone number of the production facility. The production facilities must also adhere to or exceed the practices and policies regarding workers as outlined in the Ordinance. It applies to any procurement of apparel of any dollar value.
- I. **Community Workforce Agreement**: Resolution No. 65,157-N.S. (2011) requires that City construction projects whose value, as estimated by the city, exceeds \$1 million is subject to the Community Workforce Agreement (CWA). All contractors, including subcontractors at any tier, shall sign an Agreement to be Bound. Contractors working on covered projects must utilize and be bound by the registration facilities and referrals systems established or authorized by the Unions who are signatory to the CWA. The agreement contains provisions regarding local hire goals, apprenticeships, prevailing wages, hiring of core workers, monitoring of good faith efforts, implementation fees and certified payrolls.

## **9. Restrictions on Procurements**

The City restricts purchases of the following commodities under the [Environmentally Preferable Preference Policy](#) (see **specific Ordinance and Resolution sources and citations in Section VII**):

- A. **CFC-Processed Food Packaging**: Ordinance 5,867-N.S. (1988) prohibits both the purchase of all CFC-processed food packaging, and the use of such packaging at any City-sponsored event.
- B. **Non-Polystyrene Foam Food Packaging**: Ordinance 5,888-N.S. (1990) prohibits the purchase of all polystyrene foam food packaging.
- C. **Tropical Hardwood**: Resolution 58,291-N.S. (1995) prohibits the purchase or use of tropical hardwoods and products. RFP/IFB responses containing such products are deemed non-responsive.
- D. **Redwood Products**: Resolution 58,704-N.S. (1996) prohibits the purchase of virgin redwood products, and allows the purchase of certified sustainable harvested redwood.
- E. **Arsenic, Pentachlorophenol, and Creosote Treated Wood**: Resolution 61,724-N.S. (2002) prohibits the purchase of all wood treated with arsenic, pentachlorophenol, or creosote.

## **10. Preferences on Procurements**

City procurement has preferences for the following (see **specific Ordinance and Resolution sources and citations in Section VII**):

- A. **Local Business Preference Program:** Resolution 69,890-N.S. (2021) sets forth the City's local business preference program, in which departments must include local Berkeley businesses when seeking vendors for purchases of up to \$100,000 for goods, and up to \$250,000 for non-professional services. The purpose of this program is to provide local businesses with the opportunity to sell goods and non-professional services to the City, and to stimulate the local economy in general. It establishes a 5% differential for local purchases that do not exceed \$100,000 for goods, or \$250,000 for non-professional services. For professional services, local firms may earn additional points in RFP evaluation depending upon the length of time they have been a local business. This program is not applicable to public facility improvement (construction), or purchases over \$100,000 for goods, or for \$250,000 for services.
- B. **Recycled Products:** Resolution 55,286-N.S. (1990) established a preference to use recycled products. The City will cooperate to the greatest extent feasible with neighboring City and County governments in an effort to develop a comprehensive, consistent and effective procurement effort intended to stimulate the market for recycled products, reusable products, and products designed to be recycled.
- C. **Recycled Paper:** Resolution 55,327-N.S. (1990) established a preference to use 100% recycled paper, and to utilize white paper whenever possible.
- D. **Certified Sustainable Wood and Wood Products:** Resolution 59,595-N.S. (1998) established a preference for the City to purchase certified sustainable wood and wood products; to stimulate a market for certified sustainable wood and wood products; and to encourage members of the logging industry to have their practices certified.
- E. **Eliminate Anthropogenic Sources of Dioxin Pollution:** Resolution 60,196-N.S. (1999) established a purchasing practice that promotes the use of less toxic, non-chlorinated, sustainable alternative products and processes, such as chlorine free paper and PVC free plastics.
- F. **Environmental Preferable Purchasing Policy:** Resolution 62,693-N.S. (2004) established an environmental purchasing policy charging the City with protecting the public health and welfare of its residents and workers, as well as the health of the environment, including: minimizing health risks to City staff and residents; minimizing the City's contribution to global climate change; improving air quality; protecting the quality of ground and surface water; and minimizing the City's consumption of resources.
- G. **Fair Trade: Resolution** 64,974 (2010) supports Fair Trade initiatives consistent with all of the City's progressive purchasing policies and that when purchasing goods, the City it will commit to procuring Fair Trade products when those products are readily available, meet applicable City standards, are competitively priced, are of comparable quality, and procured in accordance with all of the City's existing procurement policies and Berkeley City Charter requirements.

### **11. Administrative Regulations**

All Administrative Regulations (AR) must be followed for procurement of goods and services. The following ARs specifically apply to all procurements: AR [3.17](#) Fraud, Abuse, and Misuse of City Resources; AR [3.3](#) Petty Cash and Change Accounts; AR [3.14](#) FN-024 Voucher Processing. AR [1.5](#) Printing Services applies to any requests for outside purchase of reprographic services, which should be brought to the General Services Manager before any action is taken with outside vendors. [AR 3.26](#) for Credit Card Use. [AR 3.27](#) for Food and Beverage Purchases. All ARs are online on the City's intranet.

### **12. Evidence of Insurance**

When determined to be required by the City Attorney, **and prior to commencing any work**, a vendor contracting with the City must furnish evidence of general liability, workers compensation, and, if applicable, professional liability insurance, with liability limits approved by the City Attorney. Insurance is required in most cases where the vendor is performing work on City of Berkeley property or for the City of Berkeley. When insurance is required, the policy must name "City of Berkeley, its Officers, Agents, Employees, and Volunteers" as additional insured.

### **13. Service Providers not City Employees**

In order for the City of Berkeley to comply with Federal, State, and local rules and regulations concerning employment, contracts for services must not create an employer–employee relationship between the City and the service provider: all service providers must be independent contractors. An independent contractor is a service provider who controls where, when, and how he/she works. If the City controls where, when, and how services are provided, the service provider may be considered an employee of the City, and the City would be responsible for compliance with all Federal, State, and local rules and regulations concerning an employment relationship.

Therefore, in order to avoid the possible application of employment rules and regulations to service contracts in contracting for services, the City should generally determine only what the product of the services will be, and when the specific product components must be ready. The independent contractor controls where, when, and how he/she works. All service contracts must contain mandatory language establishing that the contractor is an independent contractor and not an employee of the City of Berkeley. If there is any question about determination in this section, Human Resources should be consulted.

### **14. Business License**

All Contractors doing business with the City must obtain a City of Berkeley business license per B.M.C. sections [9.04.010](#) and [9.04.035](#).

If a Contactor is exempt from the provisions of B.M.C. sections 9.04.010 and 9.04.035, the specific B.M.C. section under which it is exempt must be stated.



## **II – Purchasing Requirements by Price<sup>1</sup>**

### **1. Purchases Not Exceeding \$100**

*Out of pocket, reimbursement, petty cash, departmental p-card, if available.*

Items with a total value (per order) of \$50.00 or less may be procured using petty cash procedures. Generally, minor office supply needs and transportation reimbursements may be initiated and paid within the Department structure using this provision. This is not to be used for reoccurring type purchases. See Administrative Regulation 3.3 Petty Cash and Change Funds (Section I.11).

### **2. Purchases from \$100 to \$5,000**

*Single vendor, local. PO. Possible blue-back requirement.*

The purchase of goods or services costing more than \$1,000 but not exceeding \$5,000 must be initiated and processed by General Services using the Requisition tool on the City's financial system. The Department using the Requisition tool on the City's financial system must enter a PR for items required. If a service could cause the City of Berkeley liability, a blue-backed contract may be required. A written quote for goods or services is to be attached to the PR.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor per the requirements of the Local Business Preference policy (Section VII.6). Quotes are to be documented on the on-line PR in the City's financial system (Section VIII.1).

### **3. Purchases from \$5,000 to \$50,000 (Services)**

*Multiple written proposals, local. PO to \$25k, blue back above \$25k.*

The purchase of a service costing more than \$5,000 but not exceeding \$50,000 requires informal competition. Low-risk services (typically those under \$25,000) will use a PO as contract. High-risk contracts (typically those over \$25,000) require a blue back contract. General Services will advise. A PR will be entered by the Department on the City's financial system. Three (3) written proposals are to be documented on the on-line PR in the City's financial system (Section VIII.1). Proposal should be specifically referenced on the PR by the department and show vendor, contact person, date, and cost.

<sup>1</sup> The value of a purchase is determined by adding the base amount of the purchase and any addition amount that will be paid on the purchase agreement. If together these totals exceed any threshold, then the policies and procedures for the determined amount shall be followed. Sales tax and shipping charges ARE included in this total.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor for non-professional services per the requirements of the Local Business Preference policy (Section VII.6). Quotes must be documented on the on-line PR in the City's financial system (Section VIII.1).

Obtain informal proposal procedures, list of potential bidders, and a proposal template from General Services intranet.

#### **4. Purchases from \$5,000 to \$100,000 (Goods)**

*Multiple written quotes, local.*

The purchase of a good or goods costing more than \$5,000 but not exceeding \$100,000 must be initiated and processed by General Services using the PR tool on the City's financial system. The department using the Requisition tool on the City's financial system must enter a PR for items required. Three (3) written quotes are required and are to be documented on the on-line the City's financial system PR (Section VIII.1). The quotes should be in writing and must be specifically referenced on the PR showing vendor, contact person, date, and cost.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor per the requirements of the Local Business Preference policy (see Section VII.6). Quotes must be documented on the on-line PR in the City's financial system (Section VIII.1).

Obtain informal proposal procedures, list of potential bidders, and a quote template from General Services intranet.

#### **5. Purchases from \$5,000 to \$200,000 (Trades, aka, licensed contractors)**

*Multiple written quotes, local. PO up to \$25k, blue back above \$25k.*

The purchase of trade services costing more than \$5,000 but not exceeding \$200,000 must be initiated and processed by General Services using the PR tool on the City's financial system. The department using the Requisition tool on the City's financial system must enter a PR for items required. Three (3) written quotes are required and are to be documented on the on-line the City's financial system PR (Section VIII.1). The quotes should be in writing and must be specifically referenced on the PR showing vendor, contact person, date, and cost.

Local Berkeley-based vendors are to be contacted for informal quotes and their quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor per the requirements of the Local Business Preference policy (see Section VII.6). Quotes must be documented on the on-line PR in the City's financial system (Section VIII.1).



Obtain informal proposal procedures, list of potential bidders, and a quote template from General Services intranet.

**6. The following purchases require a Formal Request for Proposal (“RFP”), or Invitation for Bid (“IFB”) process:**

- **Services over \$50,000**
- **Goods over \$100,000**
- **Public Construction / Playground (design/build & equip) over \$200,000**

Allow at least 60 days for this process to be completed.

Breaching those thresholds requires approval by Council before the RFP/IFB can be released to vendors for bid, and requires Council to award the resultant contract.

[Berkeley law \(Ordinance 6,875-N.S.\) requires City Council approval](#) of all purchases exceeding the above limits. No waivers are available except by the Council or during an emergency as defined by Section I.4. Section 67(a) of the City Charter requires that:

“Each specific improvement and each purchase of supplies, equipment or materials the expenditure for which exceeds an amount set by ordinance, as provided for in Section 67(b) hereof, shall be done by contract authorized by resolution of the Council and said contract shall be let to the lowest responsible bidder after advertising for sealed proposals for five (5) consecutive days as required by this Charter. “

The Departmental Representative (Project Manager) requiring goods or services over the formal competitive threshold must first complete the designated form (see Section X). The project manager identifies funding within the Department’s budget and sends to the Budget Division. The Budget Division approves specification requests which prompts General Services to assign a Specification number to the project. Once the number is assigned, the Project Manager develops the RFP or IFB from the boilerplate (See Section VIII) and forwards it to General Services for review. For specific instructions on boilerplates, conditions, and required attachments (See Section VIII.9).

Once completed and ready for release General Services will post the RFP/IFB on the City of Berkeley web site and coordinate its distribution to identified vendors. If advertisement in another medium is required the Project Manager will place the advertisement and give that information to the General Services Division to be documented in the file. General Services is designated as the only office authorized to receive all vendor responses to RFP/IFB released by the City.

Opening of bids and proposals occurs on Tuesdays and Thursdays at 2:00 p.m. Bids are opened at 2180 Milvia St., 3rd floor, Finance Department (or other designated room or location at 2180 Milvia), unless exigent circumstances arise. RFPs are opened online by the team. General Services will notify the Project Manager when bids are available after they are documented on a bid abstract and stored in a shared project folder.

It is up to the Department to determine the successful vendor proposal (see Section III.8) and enter a Requisition on the City's financial system (See Section VIII.1) and/or develop a blue-backed contract (using the procedures available on the City's intranet – [Contracts Online](#)).

## **7. Federal Funds Requirement**

It is a requirement that when any federal money has been awarded to the City of Berkeley, the City's policy is not to procure goods or services or make contract purchases from an entity or individual included on the federal debarment list. Any purchase or contract greater than \$50,000-services, \$100,000-goods, \$200,000-trades, shall not be made from or with an entity or individual included on the debarment list.

The project manager must verify vendor status by checking the debarment list before a purchase is made or entering into contract.

To check for debarment, go to the federal government's current web page(s) for listing of debarred firms:

1. <https://sam.gov/content/exclusions>

Include the documentation of this review with your contract when required.

### **III – City Purchasing Procedures**

#### ***1. Introduction***

This section of the manual describes common City of Berkeley Purchasing procedures. All employees who initiate or approve the procurement of goods and services for the City must be familiar with these procedures.

#### ***2. Responsibilities of the General Services Division***

It is the responsibility of General Services to process PRs into POs. GS staff process PRs into POs using the City's financial system. The PO is then sent to the vendor to obtain the needed goods or service. If the order is under \$50k-services, \$100k-goods, \$200k-trades, PRs will be processed from one (1) to five (5) days after approval, depending on the complexity of the order. Purchases exceeding those thresholds must go through the formal bid process. See Section II for Bid and Council requirements. General Services is responsible to ensure all Council directed requirements and Administrative Regulations are followed during the procurement process. Buyers are responsible for following all requirements and are ultimately responsible for the procurements they process.

For blue-backed contracts General Services will require five (5) days for review of contracts.

#### ***3. Responsibilities of the Operating Departments***

It is the responsibility of the operating departments to determine which goods and services are required for the proper operation of their respective departments. The department inputs a PR into the City's financial system after verifying funds are available in the appropriate budget code. Staff should provide a clear, concise, and complete description or specification to General Services on the PR. The operating departments must approve PRs, and ensure funds are being used correctly. The individual approving a PR should not be a relative or near relative as outlined in AR [2.12](#) of the person who entered the PR to ensure an appropriate segregation of duties.

All department staff have a fiduciary duty to spend the public's money in a way that is consistent with the City Charter, Resolutions, Ordinances, and Administrative Regulations. Documentation of all purchases made with City funds are subject to the California Public Records Act.

#### **4. Purchasing Requisitions**

The procurement of all goods should be initiated through the City's financial system on-line PR preparation and submittal process. The department or division making the request must submit and approve the PR. (See Section VIII for instructions on entering and approving PRs on-line).

- **Services less than \$25,000**

For the procurement of low risk **services**, e.g., a performer at a festival, the risk of the service is to be determined by the General Services Manager or Contract Administrator. If the low-risk service is under \$25,000, it can be initiated through the on-line PR preparation and submittal process, and an authorized City PO will govern the transaction. The department or division making the request must submit and approve the PR.

- **Services in excess of \$25,000**

The procurement of **services** over \$25,000 is to be completed through the blue-backed contract (See the intranet for "[Contracts Online](#)") process. A PR for services on a blue-backed contract is a payment mechanism.

Certain engagements under \$25,000 may require a blue back based on risk level as determined by the City Attorney and/or General Services.

The path of procurement for a combination of goods and services is determined by whether the preponderance of what is being provided by the vendor is a good or a service.

When initiating an on-line requisition, staff must provide a specific description of what is needed. A manufacturer and a manufacturer part number when available should be provided on the PR. This allows General Services to ensure the end user gets the product they need. However, General Services may make suggestions for alternate products with the same specifications to an end user if appropriate. General Services staff is available to help in this process or provide additional ideas for finding a needed commodity, service, or potential vendors. As the price of the good or service rises (see Section II requirements), the requirements for the procurement become more restrictive and time consuming.

Applicable freight, shipping, and handling charges should be included on the PR. In general, freight and shipping costs are not taxable (although handling charges are taxable). Consult the General Services division for questions on taxes and shipping. In general, most purchases of goods are subject to current sales tax. However, some purchases (such as prescription drugs bought by the HHS Department) are not taxable.

All items requisitioned should be required to meet the current operating needs of the department.

The following information should be known before beginning a requisition:

1. A description of the good or service needed, or a thorough scope of work;
2. The quantity needed;
3. The business reason for the purchase;
4. Where, when, risk of loss and title transfer for goods;
5. A reasonable delivery period and/or project schedule;
6. The correct budget code; (Look up available in the City's financial system. Funding must be currently available for each item on the requisition. If these requirements are not met, the Purchase Requisition cannot be processed);
7. The commodity and sub commodity code for the item; (Look up available in the City's financial system);
8. Quotes or Proposals from vendors who can provide the required goods or services;
  - a. Quote(s)/Proposal(s) from local Berkeley-based vendors;
  - b. Use of the central bidders list from General Services;
  - c. Application of the 5% local preference to compare quotes; and
9. The preferred vendor; (may be changed by General Services if the Buyer deems the price is not fair and reasonable.)

### ***Approval of Purchase Requisitions***

All Requisitions must be approved within the department (authorized personnel are designated by the department Director) before processing by the General Services Division. The approving personnel cannot be the same person as the requisition's originator, nor can the approver be a near relative as outlined in AR [2.12](#). For step-by-step instructions see the PR Entry and Requisition Approval Procedures in Section VIII. In some cases, other departments must approve certain commodity groups before General Services will issue a PO, e.g., computers, software, and peripherals need to be approved by IT prior to being requisitioned.

### ***Pre-encumbrance/Encumbrance***

Immediately following the approval of a requisition, funds are pre-encumbered against the budget code for the amount of the PR. The amount of the pre-encumbrance does not include tax. Pre-encumbered funds render the budgeted funds unavailable for additional purchases. The pre-encumbered funds remain pre-encumbered until the PR is canceled, or the Buyer prepares the purchase order. If the PR is canceled the funds are released back into the budget code from which they were pre-encumbered. When the Buyer prepares the PO, the pre-encumbrance is liquidated, and the funds are then encumbered. The amount of the encumbrance includes tax. See the Outstanding Pre-Encumbrance Report Procedure in Section IX to track encumbered amounts.

### ***Budget Codes***

The correct budget code must be used on PRs. If you are purchasing office supplies, object code -641110 should be used. There is a look up feature in the City's financial

system to identify the correct budget code. Fixed Assets must use budget codes with object code -66xxxx. Fixed assets are items which have an individual total cost of \$5,000 or more (including tax and shipping) *and* have a useful life greater than one year. There is an exception for fixed assets individual costs if items must be used together and each component is less than \$5,000 but the total cost for the units will be over \$5,000. For example, Herman Miller Office Furniture where each panel is less than \$5,000, but to create a cubical, five (5) panels are required and the cost of five (5) panels is above \$5,000. If you have any questions about what object code to use, please contact General Services.

### ***5. Receipt and Invoice Processing***

All invoices are to be emailed to:

Accounts Payable Dept. at [accountspayable@cityofberkeley.info](mailto:accountspayable@cityofberkeley.info).

For those that cannot be emailed, use **P.O. Box 700, Berkeley, CA 94701**.

Departments are responsible for the timely review and approval of invoices. Invoices that are accurate, complete, and thorough are to be approved and processed so that the City can and will pay within the agreed upon terms. Net 30 is standard, though other terms may be mutually agreed upon.

If an invoice is for a blue-backed contract the invoice should be sent to the address above referencing the name of the project manager. Following delivery of the requisitioned good or service, the originating department/division must formally “receive” it using the City’s financial system. See the Receiving Procedures (See Section VIII.6). When the department/division receives a final invoice from the vendor mark the invoice “FINAL INVOICE” in red pen and Accounts Payable will electronically close the PO.

### ***6. Liquidation of Remaining Funds on a PO***

To liquidate any remaining funds on a PO a “Change Order Request” form must be submitted to General Services. (See Section X). To avoid the need to submit a “Change Order Request,” final invoices should be marked in red ink “Final Invoice” and AP will liquidate any encumbered amount after payment of that invoice.

## **7. Purchases Requiring Special Handling**

Certain types of requests for goods and services either are not made through the PR procedure at all or are made through a modified PR procedure.

- **Petty Cash Procedures.** Items with a total value (per order) of \$100.00 or less may be procured using petty cash procedures. Generally, minor office supply needs and transportation reimbursements may be initiated and paid within the Department structure using this provision. An item that is purchased on a regular basis should not be procured using this procedure. See AR [3.3](#) (See Section I.11), “Petty Cash Revolving Accounts”.
- **Blanket Orders (BPO).** BPOs for goods are used to establish an overall spending limit for goods that will be needed in small amounts through the fiscal year. BPOs are established for one year. A standard PR process is required, and Section II Purchasing limits apply to the entire blanket order (i.e., BPO's in excess of City Manager's expenditure authority (\$100,000) must go to City Council). It is the responsibility of the division to ensure authorized releasers on BPOs are kept current throughout the fiscal year. Additional PRs are required to add monies to BPOs and the BPO number should be noted on the new PR. If the BPO is going to exceed the City Manager's authority, City Council must approve increase. The quote process is not required for BPOs as prices are as billed by the vendor. Discounts are documented by General Services. BPOs where specific prices have been negotiated will remain stable through the term of the BPO. No individual order should exceed \$5,000 and Fixed Assets should not be ordered on a BPO, as the object code is not correct on a BPO and instead needs to be expensed from object code -66xxxx series.
- **Emergencies.** In extreme circumstances, a “Field PO” may be issued by the Purchasing Division with approval of the City Manager. This situation requires the establishment of an “actual emergency and of urgent necessity for the preservation of life, health or property” ([City Charter Section 67.4](#)). Emergency purchases may not exceed the City Manager's authority limits as set by Council ([Ordinance 6875-N.S.](#), 2005). Whenever possible, the Purchasing Division will continue to seek as many quotes or bids as would otherwise be required if the emergency did not exist. If a purchase order will be generated using the City's financial system, purchasing staff will notify the selected vendor of the PO number and provide a department contact or delivery address for the emergency item(s).
- **Warehouse Items.** Certain public works and electrical items are regularly maintained and warehoused by the City. The standard requisition format on the City's financial system is used.



- **Sole/Single-Source Procurements.** Any procurement established by a project manager and approved by the City Manager that is considered Sole/Single-source will be processed without a competitive bid process. When feasible the department should conduct market research to ensure the prices proposed are fair and reasonable, or request assistance from General Services.
- **Formal RFP or IFB.** Purchases expected to exceed \$50,000 for services, \$100,000 for goods, and \$200,000 for construction must follow a strict path to ensure a valid, fair and impartial selection process. Allow at least 60 days for this process to be completed and a vendor selected. Before initiating the standard PR process, an originating Department (through a Project Manager) will send a request for a specification number (on a “Formal Bid Solicitation and RFP/IFB to be issued within 30 Days” form (See Section X) via an email to the Budget Division, with a copy to General Services ([purchasing@cityofberkeley.info](mailto:purchasing@cityofberkeley.info)). The funds must be available in the budget code identified or no number will be issued. If General Services staff has no questions, a Specification Number will be provided to the Project Manager via email. General Services will then submit their report to City Council based on the City Clerk’s Council Meeting Timeline. It takes approximately 35 days from the time the report is submitted until City Council reviews it. The bid *should not* be released to vendors until after City Council has reviewed the General Services report. The Project Manager will develop the elements of an RFP or an IFB. The following information is required before beginning this process:
  - Thorough description of the goods, services, or scope of work required;
  - Approximate bid or proposal opening date (this must be at least 7 days after the item has been on the 30-day report to Council);
  - Intended use of the goods or services;
  - Estimated cost;
  - Confirmation of AB 339 compliance from HR;
  - Budget code (ensure that funds are available); and
  - Project Manager’s contact information (for questions or consultation).

When the purchase is sufficiently described and contract elements are defined (See the “[Contracts Online](#)” Manual), the full RFP/IFB may then be developed using the City of Berkeley boilerplate based on individual departmental processes.

When completed, the completed RFP/IFB is forwarded to General Services for review (if necessary, the City Attorney may be consulted at this time) and when the item has been reviewed by City Council on the “Formal Bid Solicitations and RFP/IFB Scheduled for Possible Issuance within 30 Days” report, it will be released to begin the bid process. In cases where there are very tight time constraints and, through no fault of the end user, a bid needs to be released before approval by Council, the opening date of the bid will be at least one (1) week after review by Council.

General Services staff releases the RFP/IFB to designated vendors, posts the RFP/IFB on the City website and in designated area(s), arranges a location to physically open



the sealed bids or proposals, and invites designated city employees (as needed). This process is to ensure that all vendors who wish to bid have the opportunity to bid in a fair and open environment. As with all detailed procurements, General Services staff is available for consultation in identifying potential vendors.

Any and all questions posed to the Project Manager need to be submitted in writing. The Project Manager then gathers all the questions and answers and submits the information to General Services. General Services then posts the Q&A to the city's website as an addendum to the IFB/RFP. This ensures all vendors receive the exact same information at the same time and no vendor is given an advantage over another.

After receiving vendors' proposals, General Services will open the sealed bids or proposals submitted by vendors. Bids are only opened on Tuesdays and Thursday at 2:00 p.m. Sealed bids are opened at 2180 Milvia Street. RFP responses are opened by General Services staff (in person or online). All IFBs and RFPs must be received prior to 2:00 p.m. or they will be rejected. There is no exception to this time. General Services will fill out a bid abstract at the bid opening. This form documents the vendors who responded in a timely manner to the RFP/IFB. IFB openings are open to the public. RFP openings are not open to the public.

Sealed bid proposals are scanned and stored in the shared project file. RFP responses are stored in the shared project folder. If a contract is required for this type of procurement information to complete this process is provided on "[Contracts Online](#)" (on the City's intranet).

## **8. Competitive Formal Bid Evaluation**

The criteria for selection of a vendor are dependent on the type of solicitation issued. An IFB is awarded to the lowest responsive/responsible bidder. RFP criteria selection needs to be outlined in the RFP. Proposals are evaluated on selection criteria established in the RFP. A selection committee makes the evaluation based on the criteria set forth in the RFP. (For detailed information regarding IFB/RFP, see Section VIII.9). Evaluations can include product demonstrations, a vendor conference, and reference verification. All evaluation committee member should score vendor proposals independently. Committee members then rank vendors according to all evaluation criteria as outlined in the RFP. It is very important that all vendors receive the same information. No vendor can be given an unfair advantage in submitting bids to the City. All vendors must be treated fairly.

Local, Berkeley-based firms, are either provided pricing consideration or the ability to earn extra evaluation points as stated above.

## **9. Contracts – Blue-Backed**

Blue backed contracts are required for services where the expenditure exceeds \$25,000. Unless a pre-approved boilerplate is used, all contracts must be provided to the City Attorney for review and approval. All contracts must go through the City Manager and City Clerk. Exceptions are outlined in Section III.4 (Low-dollar, low-risk types of services.) Instructions for initiating contracts are on the City's intranet under "[Contracts Online](#)." The [Contracts Online Manual](#) outlines the different types of City contracts and summarizes compliance procedures. Contracts are formal written legal agreements between two or more parties, which **must** be written in accordance with established City procedures. These procedures should be followed for all contracts, whether the contractor is selected through the formal bid process, the RFP process or informal solicitation. Purchases of goods or supplies are made through purchase orders.

The most frequently used standard City contract is the Personal Services expenditure contract. "Personal services" primarily refers to "direct services". "Direct services" means services, other than "professional services", which cannot be provided through the Civil Service system, such as maintenance, gardening, linen and security services. "Professional services" means services which are of an advisory or artistic nature, require advanced knowledge and personal expertise in a field of science or learning or originality and creativity in a recognized field or art, and require consistent exercise of personal discretion and independent judgment, including, but not limited to, accounting, legal, architectural, or engineering services, economic, market and systems analysis, program evaluation, operations research, development of unique computer programs, training, medical service, and legal advice or representation. Those engagements utilize a "Professional Services Contract".

Certain engagements under \$25,000 may require a blue back contract based on risk level as determined by the City Attorney and/or General Services.

*Contracts General Services will require five (5) days for review.*

## **10. Piggyback and Cooperative contracts**

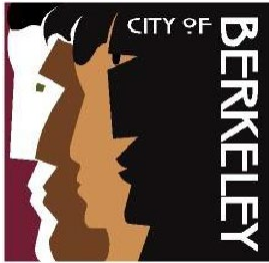
One way to procure goods/services without a solicitation is by piggybacking off an existing, competitively bid contract from another public agency. This saves time and resources by leveraging the original contract's scope of work, pricing and schedule as long as the original contract allows for it. The existing contract/agreement must be vetted to ensure it complies with City of Berkeley purchasing policies and procedures and the new contract must have an identical scope of work. Otherwise, the contract process proceeds like any other contract and requires all the same boilerplates, attestations, insurance and signatures.

## **11. Sole Source and Single Source**

Should a procurement be needed through use of a sole source (only one true provider), or single source (multiple providers, but not amenable for competition), departments should conduct market research to justify the business case for such an action. A waiver is required and should be based upon the market research and reasonable conclusion to only use one source.

## **12. Protest of Award**

Anyone may protest a decision to award a bid. The protesting party must first submit a letter to the Project Manager describing the basis of the protest. The Project Manager then reviews the basis of the protest, sends a copy to the apparent low bidder for comments/rebuttal and then reviews the protest with Legal and General Services before making a determination on the validity of the protest. If necessary and at the City's sole discretion, the Project Manager and/or Department Director may hold an informal hearing with all interested bidders prior to making a decision. If the contract is a City Council approved contract, the matter is then brought before Council as part of the award process along with a recommendation for disposition of the protest.



General Services Division - Purchasing

### **Procurement Ethics Policy**

The Purchasing Staff in the General Services Division subscribe to the following procurement ethics policy as administered by California Association of Public Procurement Officials ([CAPPO](#)):

To regard public service as a sacred trust, giving primary consideration to the interests of the public agency that employs us,  
To purchase without prejudice, seeking to obtain the maximum value for each dollar expended,  
To avoid unfair practices, giving all qualified vendors equal opportunity,  
To honor our obligations and require that obligations to our public agency be honored,  
To accord vendor representatives courteous treatment, remembering that these representatives are important sources of information and assistance in solving our procurement needs,  
To refuse to accept any form of commercial bribery, and prevent any appearance of so doing,  
To be receptive to counsel from our colleagues, and to cooperate with them to promote a spirit of teamwork and unity,  
To conduct ourselves with fairness and dignity, and to demand honesty and truth in the procurement process,  
To strive for greater knowledge of procurement methods and of the materials we purchase,  
To cooperate with all organizations and individuals involved in activities designed to enhance the development of the procurement profession, remembering that our actions reflect on the entire procurement profession.



Darryl Sweet, MSCM, CPSM  
General Services Manager  
City of Berkeley

Revised November 2025

Posted on intranet January 2026

Revisions in this version:

- Section 1.3 – Rewritten for clarity and consistency with waiver form. Added recommended re-bid schedule for contracts
- Section 3.10 – Rewritten for clarity



**BEN BARTLETT**  
CITY COUNCILMEMBER, DISTRICT 3

CONSENT CALENDAR

October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Berkeley Flea Market End-of-the-Season Fall Festival/Halloween Celebration Event:  
Relinquishment of Council Office Budget Funds to General Fund and Grant of Such  
Funds

RECOMMENDATION:

Adopt a Resolution approving the expenditure of funds, including \$600 from Councilmember Ben Bartlett, for the End-of-the-Season Fall Festival / Halloween Celebration of the South Berkeley Flea Market at Ashby BART, organized by Community Services United, a 501(c)3, with funds relinquished to the City's General Fund for this purpose from the discretionary council office budget of Councilmember Bartlett and any other Councilmembers who would like to contribute.

CURRENT SITUATION:

The South Berkeley Flea Market (BFM), organized by Community Services United, is celebrating the Harvest Day on October 24, 2026, as a Fall Festival and on October 31, 2026, as a Halloween Celebration. Celebrating the season while shopping with local vendors and discovering unique finds. The two events also mark the End-of-Season celebration for the Flea Market, as the Flea Market will hold the event of the Season outdoors due to expected cold weather (The Flea Market expects to remain open every weekend year-round except days that have heavy rain and/or wind.)

October 24th, the Fall Event is BFM's first annual food festival! The purpose of this event will be to highlight local growers and farmers' produce with live music and entertainment. Madam President will be serving \$5 healthy meals of succotash and brown rice bowls, fresh-cut fruit bowls, and bottled water. Participants will include Ecology Center's Farmer's Market, The Garden Project, and Soul Flower Farm as local growers. Entertainment will include Carah H, soft line dance instructor, Kazemde's Jazz Band, and International DJ Al.

On October 31st, BFM will host its first annual Halloween Celebration! The purpose of this event will be to distribute candy and wellness snacks for South and West Berkeley community children and families. Participants will include consumer traffic. Entertainment will include International DJ Al. Vendors will have costumes, fashion clothing, and trinkets for your shopping convenience and fun for all!

BACKGROUND:

The Berkeley Flea Market emerged in the early 1970s in Berkeley, California, during a period marked by social activism, cultural expression, and economic experimentation. As the Bay Area Rapid Transit (BART) system expanded, and the land surrounding the Ashby BART Station became an informal gathering place for artists, craftspeople, musicians, and small entrepreneurs. What began as a grassroots vending activity evolved into a recognized community market.

By the 1980s and 1990s, the Berkeley Flea Market had become a major weekend destination in the East Bay. It was known for its diversity of vendors offering handmade goods, vintage items, global foods, and art rooted in African, African American, Caribbean, and diasporic traditions. Live music, spoken words, and cultural exchange were integral to the market, establishing it as both a commercial and cultural institution. In this context, the Berkeley Flea Market became a community-based economic response, offering self-employment and cultural space near transit-adjacent land.

The purpose of the Harvest Day event is to introduce underserved communities to agricultural production. The Halloween Celebration will reward South Berkeley resident households with sweet treats and outdoor entertainment.

#### ENVIRONMENTAL SUSTAINABILITY

No negative impact.

#### FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$600 is available from Councilmember Ben Bartlett's discretionary office budget of Councilmember Ben Bartlett.

#### CONTACT PERSON:

Councilmember Ben Bartlett  
James Chang

[bbartlett@berkeleyca.gov](mailto:bbartlett@berkeleyca.gov)  
[jchang@berkeleyca.gov](mailto:jchang@berkeleyca.gov)

#### ATTACHMENT:

1. Event Flyer
2. Resolution to authorize the expenditure of surplus funds added.



Attachment 1:





Attachment 2:

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

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

WHEREAS, Councilmember Bartlett has surplus funds in his office expenditure account; and

WHEREAS, a California non-profit tax-exempt corporation, Community Services United, will receive the funds; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose: Community Services United promotes greater societal cohesiveness and well-being by educating and involving the community-at-large in historical, family, and cultural activities; and

WHEREAS, Community Services United hosts various activities, including monthly celebrations and seasonal cultural events such as Art Walk, Music at the Market, Job Fair at the Market, and End-of-the-Season Fall Festival / Halloween Celebration; and

WHEREAS, cultural celebrations are critical to the social and spiritual unity of our community, and are integrated into Community Services United events; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their council office budget, of an amount to be determined by each Councilmember, shall be granted to Community Services United.

**BEN BARTLETT**

CITY COUNCILMEMBER, DISTRICT 3

02a.23

CONSENT CALENDAR

October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Harriet Tubman Terrace residents' low-income housing Bay Cruise Lunch event on Thursday, November, 5, 2026 - Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION:

Adopt a Resolution approving the expenditure of funds, including \$500 from the discretionary Council Office Budget of Councilmember Ben Bartlett for the Harriet Tubman Terrace residents' low-income housing Bay Cruise Lunch event on Thursday, November, 5, 2026, to Nonprofit and 501(c)3: Lifesteps, to fund operational resources. The funds will be relinquished to the City's General Fund from the Discretionary Council Office Budget of Councilmember Ben Bartlett and the Discretionary Council Office Budgets of any other Councilmembers who would like to contribute.

BACKGROUND:

On November 5, 2026, Life Steps and Asset Living Management will host a Bay Cruise Lunch event for Harriet Tubman Terrace Residents, home to low-income senior and disabled residents, many of whom have never had the opportunity to ride a ferry, board a cruise ship, or travel beyond Berkeley. This recreational event provides an opportunity for social engagement, joy, and exposure to new experiences that enhance quality of life.

The event will run from 10:00 AM to 2:00 PM at The Berkley Port. The event will strengthen community engagement and boost morale among seniors who travel infrequently. Harriet Tubman Terrace was built in 1970; it started off as a Safe Haven for musicians. It later became a beacon of low-income affordable housing for Seniors and people with disabilities. Harriet Tubman Terrace is named after a human rights activist who helped free slaves. Harriet Tubman Terrace legacy lives on through the residents of Harriet Tubman Terrace and beyond. The program features monthly guest speakers, Jazzy Therapy, and interactive activities.

ENVIRONMENTAL SUSTAINABILITY:

No negative impact.

FISCAL IMPACTS OF RECOMMENDATION

There is no General Fund impact; \$500 is available from the discretionary council office budget of Councilmember Ben Bartlett.

CONTACT PERSON:

2180 Milvia Street, Floor 5, Berkeley, CA 94704 • Tel: (510) 981-7130 • Email: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

Councilmember Ben Bartlett  
James Chang

[bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)

ATTACHMENTS:

1. Draft Resolution
2. Harriet Tubman Terrace Residents' Bay Cruise Lunch Flyer

Attachment 1:

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE  
ACCOUNTS OF THE MAYOR AND COUNCIL MEMBERS FOR A DONATION TO  
LIFESTEPS NONPROFIT FOR HARRIET TUBMAN TERRACE RESIDENTS' LOW-  
INCOME HOUSING BAY CRUISE LUNCH EVENT

WHEREAS, Councilmember Ben Bartlett has funds in his office expenditure account; and

WHEREAS, Lights of Tomorrow, a non-profit organization, will receive funds in the amount of \$500 from Councilmember Ben Bartlett's office expenditure account; and

WHEREAS, the Lifesteps nonprofit and Harriet Tubman supports seniors through educational, community, and volunteer programs that connect them with positive experiences from the community; and

WHEREAS, the provisions of such services would fulfill the municipal public purpose of providing seniors with educational programs and activities to empower them to build a more fulfilling and prosperous future; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their office budgets, of an amount to be determined by each Councilmember, shall be granted to Lifesteps nonprofit for Asset Living Management for a Bay Cruise Lunch event for Harriet Tubman Terrace on November 5, 2026

Attachment 2:





Commission on Disability

02a.25a

ACTION CALENDAR  
October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Kathi Pugh, Chairperson

Subject: Enforcement of Public Right-of-Way Accessibility Guidelines (PROWAG)

RECOMMENDATION

The Berkeley City Council shall refer to the City Attorney the requirement to include, in all City of Berkeley contracts that impact the public right-of-way, a clause that obligates City contractors to comply with the Public Right-of-Way Accessibility Guidelines (PROWAG).

POLICY COMMITTEE RECOMMENDATION

On September 16, 2026, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Lunaparra/Humbert) send the item to Council with a Qualified Positive Recommendation to refer the development of the PROWAG guidelines to the City Manager with the input of the Commission on Disability. Vote: All Ayes

FISCAL IMPACTS OF RECOMMENDATION

Examples of PROWAG contract clauses are readily available to the Office of the City Attorney. Adoption of this recommendation should not require significant time or expense.

The City currently has a staff position assigned to investigate, monitor and enforce PROWAG. The job description of the City's ADA Program Coordinator states that "under general supervision" the position is tasked with "implementation of the City's ADA program which includes...receiving and investigating grievance, reviewing projects plans for accessibility, [and] training city staff."

CURRENT SITUATION AND ITS EFFECTS

Both the ADA Program Coordinator and 311 receive complaints when disabled pedestrians and wheelchair users confront hazardous conditions in the public right-of-way. City staff time, significantly by the ADA Program Coordinator, is already used to, in many cases, successfully secure compliance with PROWAG. In some cases, City contractors refuse to comply with accessibility guidelines—because the requirement to comply is not stipulated in their contract. This is often on large, months-long City projects that significantly alter and disrupt the public right-of-way.

Failure to comply with PROWAG creates serious safety hazards for people with disabilities. At times, wheelchair users are forced into busy streets when PROWAG is not followed. In 2024-2025, this occurred repeatedly at projects on Bancroft/Fulton, University and Shattuck Avenues.

In addition, Audible Information Devices that warn blind and low vision individuals about blocked and alternate routes are rarely used by City contractors or private construction companies. When employed, these warning devices are frequently useless. They are, with regularity, incorrectly placed, not operating and inaudible. The routine failure to address accessibility for blind and low vision pedestrians creates manifestly unsafe conditions.

The City of Berkeley Public Works Department must develop proactive and effective educational, monitoring and enforcement systems to ensure that disruptions in the public right-of-way, whether performed by the City, its contractors, or during private construction projects, conform to PROWAG standards. When the City is informed of potential violations, timely investigation and remediation must bring violations into PROWAG compliance.

With the passage of Measure FF and the significant street redesign projects that will result, complying with PROWAG technical standards—in both design and construction—is imperative. Over many years, significant resources will be devoted to improving the condition and safety of Berkeley streets and sidewalks. Attention to PROWAG must be the rule—and included in City contracts. When envisioning Berkeley's future, Safe Streets must include the safety of people with disabilities.

### BACKGROUND

PROWAG defines aspects of the ADA not specified at the time of the groundbreaking law's passage in 1990. The ADA never specifically addressed accessibility in areas deemed the "public right-of-way." To support implementation of the ADA, the U.S. Access Board, a federal agency charged with promoting "equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards" created PROWAG. These accessibility guidelines were developed over the past two decades.

PROWAG was entered into the Federal Register in 2023 and adopted by the U.S. Department of Transportation in 2024. The City of Berkeley's 2020 Pedestrian Plan, Appendix B: Engineering and Design Guidance references PROWAG numerous times. CalTrans uses its technical standards. It is considered best practice. Yet, it does not hold the force of federally mandated law. Because of this, the City's ADA Program Coordinator has indicated that some City contractors are unwilling to follow PROWAG. This obstacle to securing the rights and safety of people with disabilities can be overcome by including a PROWAG clause in City contracts.

PROWAG will define the access standards expected by the City of Berkeley in the public right-of-way. It will make clear the City's commitment to accessibility guidelines, empower the ADA Program Coordinator to enforce those guidelines and give the City legal recourse should contractors fail to comply with the contract.

Yet a contract clause, without monitoring and enforcement of its obligations, is meaningless. For implementation, this recommendation requires a Public Works Department committed to the principles and technical standards outlined in PROWAG. We expect—and the City should secure—this level of accessibility and safety for the disability community.

The Commission on Disability took the following action at its April 9, 2025 meeting:

Action: Motion(Fischer/Pugh):To approve the recommendation to City Council regarding the enforcement of PROWAG, with the ability to make small edits regarding Caltrans and the City's use of PROWAG.

Votes: Ayes: Walsh, Fischer, Pugh, Sun, Lewkowicz, Mann, and Holloway;.Nays: None  
Abstain: None; Unexcused Absence: None; Leave of Absence: Paz

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### RATIONALE FOR RECOMMENDATION

The PROWAG Contract Clause recommendation is a Strategic Plan Priority Project, advancing the City's goals in multiple areas:

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities;
- create a resilient, safe, connected, and prepared city;
- champion and demonstrate social and racial equity.

#### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions have been considered.

#### CITY MANAGER

The City Manager recommends referring this item to the FITES Committee to better understand the potential costs and time impacts of undertaking the recommendation to streetscape projects.

#### CONTACT PERSON

Thomas Gregory, ADA Program Coordinator, Public Works, 510-981-6418







Open Government Commission

ACTION

CALENDAR

October 27, 2026

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

**From:** Open Government Commission

**Subject:** Public access to supplemental materials and amendments at City Council meetings, including the timing of presentation of such materials by the Mayor or City Council members, such that the public may comment on them

**RECOMMENDATION**

Adopt a policy requiring that prior to the commencement of public comment on each Agenda Item, councilmembers will be asked to present any material they have prepared that is not already included in the packet.

**RATIONALE FOR RECOMMENDATION**

Pursuant to the Open Government Ordinance, the Open Government Commission may “propose additional legislation or procedures that it deems advisable to ensure the City’s compliance with this Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.” (BMC § 2.06.190.A.2.)

**FINANCIAL IMPLICATIONS**

None.

**CURRENT SITUATION AND ITS EFFECTS**

The current Berkeley City Council Rules of Procedure and Order do not address additional materials that are submitted at the time of a City Council meeting. However, BMC 2.06.010.A states, “Democracy in our representative form of government requires that the public have an opportunity to understand the government’s activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner.”

Requiring councilmembers to present their prepared materials before public comment upholds the public's opportunity to communicate concerns to its elected officials prior to elected officials taking action on a given item.

The Open Government Commission approved submission of this recommendation to the City Council at its May 21, 2026 regular meeting.

**Action:** M/S/C (Saginer/Lee) to approve draft agenda item and submit to City Council.  
**Vote:** Ayes: Lee, Ching, Saginer, Sudharsan, Lazarus, Haugh; Noes: None; Absent: Shere.

### **BACKGROUND**

On January 20, 2026, prior to public comment on Item 24, a councilmember reported having "small amendments" to that item which the Mayor invited them to share. Their response was, *"I think we should close the public hearing and then I can discuss my proposed amendments."*

This did not constitute a violation of the Brown Act because the material was shared with the public at the same time it was shared with City Council. However, because these materials were not shared before public comment, the public lost their opportunity to communicate possible concerns with the materials, and our representatives lost their opportunity to act on these concerns.

### **ALTERNATIVE ACTIONS CONSIDERED**

Leaving the current rules in place allows elected officials to withhold prepared materials until after public comment is closed. This weakens the value of public comment and erodes the public trust.

### **CITY MANAGER**

The City Manager takes no position on the content and recommendations of this report.

### **ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

None.

### **CONTACT PERSON**

Kyle Haugh, Chair, Open Government Commission, (510) 981-6998  
Sam Harvey, Secretary, Open Government Commission, (510) 981-6998



Office of the City Manager

02a.27a

ACTION CALENDAR

October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Steven Sherman, Chair, Zero Waste Commission

Subject : Adopt Amendments to Ordinances Governing Special Events: block parties; park events; street events

RECOMMENDATION

Adopt first reading of an ordinance amending BMC 6.46 (Park Events) and BMC 13.44 (Block Parties and Street Events).

SUMMARY

Special events have high visibility within the community, and provide ample opportunity during event planning and during the event to educate organizers, vendors, and attendees about zero waste requirements.

Many special event organizers make a good faith effort to aggregate and arrange for the proper processing of compostables and recyclables material, but too many organizers do not. As a result, too much of this material is collected by the City as trash, and often at City expense. The current code sections discussed herein regarding special events are inadequate to advance the City's zero waste goals. Clearly codified requirements and enforcement mechanisms are needed to ensure that, at special events, single-use packaging and materials are minimized, and diversion of compostable and recyclable materials from the waste stream is maximized.

The Zero Waste Commission reviewed relevant City codes regarding special events, namely BMC 6.46 (Park Events) and BMC 13.44 (Block Parties and Street Events), and is recommending specific amendments to each. Both Codes are attached, with proposed amendments noted in track-changes format.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact to the City of these amendments will be minimal or none. It is possible that they will yield minimal fiscal savings. As one example, as amended, the special events regulations will require special events organizers to aggregate and arrange for the removal of all compostables, recyclables and trash, relieving the City of the potential cost of handling these materials. Relatedly, special events organizers will be instructed not to burden public refuse containers for their events, thus reducing the need for City staff to provide extra service at City expense after such events.

At the administrative level, the amendments may slightly increase City staff time for reviewing more detailed permit application requirements and for outreach regarding zero waste responsibilities, including set-up and reporting. The need for additional staff time is minimized, however, by the requirement that a detailed Zero Waste Plan must be included in the application only for events with more than 300 attendees. Moreover, the time before an event when a permit application must be submitted is increased from 5 days to 30 days for events with 300 or fewer attendees, and from 10 to 45 days for events with more than 300 attendees; these adjustments will help staff to stabilize the amount of time spent in any given week on the review of permit applications. Also, it is anticipated that repeat applicants will need less staff outreach over time, as they incorporate a zero waste ethos into their events.

The cost for complying with the amendments primarily will be on event organizers. This approach aligns with a “polluter pays” principle (i.e., those who cause resource depletion and pollution should bear the costs associated with managing and mitigating their effects). Event organizers and their food service vendors could incur some upfront purchasing costs for switching to recyclables, compostables, and reusables, which could be offset over time by lower costs for discharge management, plus they might garner additional public goodwill from modeling eco-conscious zero waste behavior. If an event organizer violates those requirements, the City has authority to withhold the permit deposit paid by the organizer, and impose other penalties, to help offset City staff expenditures incurred from the violations and to serve as an incentive for compliance.

#### CURRENT SITUATION AND ITS EFFECTS

The special events ordinance 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. As noted above, special event organizers too often fail to aggregate and arrange for the proper processing of compostables and recyclables material; far too much of this material is collected by the City as trash, and often at City expense. While everyone is expected to do their part to achieve zero waste, special events have a particularly beneficial effect on normalizing zero waste values and behavior. They have high visibility within the community and provide ample opportunity during event planning and during the event to model and gently educate organizers, vendors, and attendees about zero waste requirements and practices.

The final draft of the Special Events Amendments was presented to the Zero Waste Commission on November 20, 2025.

The Commission passed a motion as follows:

Agenda Item 5 - Subcommittee Reports Updates (C&D Report, Special Events Report)  
It was Moved/Seconded (Commissioner Steven Sherman/ Commissioner Swasti Johri) that the Zero Waste Commission recommend amendments to the special events ordinance by the Berkeley City Council:

Aye: Dennis Uyat, Philip Monrad, Barun Singh, Sandra Curtis, Swasti Johri, Steven Sherman, Layla Dargahi, Claire Wilson; Nays: None; Abstentions: None; Absent: None.; Motion carried 8-0-0-0

## BACKGROUND

The Zero Waste Commission (ZWC) advises City Council on solid waste policy and goals, including refuse, composting and recycling services, materials reuse and waste reduction, and budgets and other decisions relating to solid waste and materials generation.

The current code sections discussed herein regarding special events are insufficient to advance the City's zero waste goals. More generally, inadequate provisions for enforcement of zero waste and other environmental goals frequently underscore what the Commission sees as the credibility gap between aspirational environmental statements/resolutions/goals/plans/policies, and broad compliance that comes with enforcement.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The recommended zero waste action aligns well with the City's environmental sustainability and climate change mitigation goals. The result will be a reduction in the use of resource-depleting single-use products and packaging, and an increase in the rate of recycling and composting of such items.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed changes are not anticipated to result in a significant environmental change that would trigger CEQA.

## RATIONALE FOR RECOMMENDATION

Special events in the city offer high-visibility opportunities to showcase the commitment of the City, its business and residents to zero waste principles and actions. Current regulations regarding planning, conducting, and cleaning up after special events do not adequately advance the City's zero waste goals, nor do such regulations have an enforcement component that guides special events planners and their vendors toward constructive zero waste behavior.

## ALTERNATIVE ACTIONS CONSIDERED

Except as noted in the next paragraph, the only alternative action that was considered was No Action. This approach was deemed inappropriate and ineffective to address the problem noted above.

Regarding potential administrative improvements that do not rise to the level of codification within municipal code, Zero Waste Division staff suggested to the Commission that a software-based automated workflow process could increase efficiency within the permit review process. One such model is the Accella system (used

for processing construction permits), in which all work units have the opportunity to sign off that their requirements have been met. Besides investing in automation software, staff suggested that potential bottlenecks in the permitting process could be alleviated or avoided by allocating additional staff to permitting or by imposing a limit on permitted special events, such as 300 per year.

The Commission did not consider or make a recommendation about these suggestions, as they fall outside the scope of the Commission's charge to recommend solutions addressing the need to codify requirements and enforcement mechanisms that minimize use of single-use disposables, and maximize diversion of compostable and recyclable material from the waste stream. The Commission wishes, however, to include staff's suggestions in this Report to the City Council.

#### CITY MANAGER

The City Manager concurs with and supports Council adoption of the Zero Waste Commission's recommendations to amend Berkeley Municipal Code Chapters 6.46

(Park Events) and 13.44 (Block Parties and Street Events).

The current code sections governing special events are inadequate to advance the City's diversion and zero waste goals. Clearly codified requirements and enforcement mechanisms are needed to ensure that, at special events, single-use packaging and materials are minimized, and diversion of compostable and recyclable materials from the waste stream is maximized. These amendments will strengthen the City's ability to

uphold its diversion, Zero Waste, and Climate Action goals while improving the consistency and accountability of event permitting and event organizers.

The proposed amendments also reinforce the objectives of the City of Berkeley's Single-Use Foodware and Litter Reduction Ordinance (BMC Chapter 11.64) by extending compliance expectations to event organizers.

The amendments are anticipated to have minimal fiscal impact to the City while advancing sustainable event management practices and reducing the need for post-event waste services. The City Manager's Office will direct staff from the Public Works Department, Zero Waste Division, and Parks, Recreation & Waterfront Department to implement the ordinance amendments and update permit materials, outreach tools, and staff guidance accordingly following Council adoption.

#### CONTACT PERSON

Julia A. Heath, Recycling Program Manager, Public Works Department, (510) 981-6357

Attachments:

1: Berkeley Municipal Code Chapter 6.46 (Park Events), proposed edits in track-change format

2: Berkeley Municipal Code Chapter 13.44 (Permits for Street Events and Block Parties), proposed edits in track-change format.

Berkeley Municipal Code Chapter 6.46 (Park Events)

## **Chapter 6.46 PARK EVENTS**

Sections:

- 6.46.010**    **Applicability--Permit required for park events--Exclusions.**
- 6.46.020**    **Definitions.**
- 6.46.030**    **Park event permits--Application--Information required--Timing.**
- 6.46.040**    **Late applications.**
- 6.46.050**    **Permits--Standards for issuance or denial--Notification--Regulations.**
- 6.46.060**    **Appeal procedure following denial or late filing of application.**
- 6.46.070**    **Park event permit--Content--Restrictions--Limitations.**
- 6.46.080**    **Cancellation and revocation of permits.**
- 6.46.090**    **Indemnification--Security deposits.**
- 6.46.100**    **Insurance--Exemption.**
- 6.46.110**    **Fees.**
- 6.46.120**    **Violation--Penalty.**

### **6.46.010    Applicability--Permit required for park events--Exclusions.**

A. *This chapter regulates park events as defined herein.* No person shall conduct any park event without first obtaining a permit as provided in this chapter.

B. Issuance of a permit under this chapter does not exempt the permittee from, or constitute compliance with:

1. any requirements relating to exclusive use facilities under Section [6.36.020](#);
2. local, state or federal laws regulating service or consumption of food or alcoholic beverages;
3. Chapter [13.40](#) of this code regulating amplified sound;
4. and any park rules or City ordinances applicable to parks; or
5. any other applicable local, state or federal law.

Every permit issued under this chapter is expressly conditioned on compliance with all other applicable laws.

C.

1. No park event may involve the sale, service or consumption of any alcoholic beverage other than beer, wine and champagne. References in this chapter to "alcoholic beverages", "alcohol" or "liquor" include only beer, wine and champagne.
2. No park event in a park which contains a recreation facility or program, or is adjacent to an elementary, middle or high school may involve the sale, service or consumption of alcoholic beverages at any time when the recreational facility or program or school is operating.



D. This chapter does not apply to:

1. events in indoor facilities;
2. spontaneous, unorganized assemblies which are neither sponsored, organized, promoted nor advertised by any person or organization, and do not involve amplified sound.

E. This chapter additionally does not apply to events in Aquatic Park or other parks that are authorized pursuant to any lease to which the City is a party or by a license or permit issued by the City under any other authority, to the extent that its application would be inconsistent with such leases or licenses. However it is the policy of the City that the standards and requirements of this chapter should be used as a guide to any future leases or licenses for property in parks. (Ord. 6579-NS § 2, 2000)

#### **6.46.020 Definitions.**

A. "City Manager" shall mean the City Manager of the City of Berkeley and any designee of the City Manager, except as context dictates otherwise.

B. "Major park event" means park events which:

1. involve pyrotechnics or other hazardous activities;
2. require the closure or partial closure of an arterial or collector street as defined in the City of Berkeley General Plan or the re-routing of public transportation;
3. involve a planned or likely attendance of more than ~~150~~300 persons;
4. require an amplified sound permit, a temporary food vendor permit or a liquor license; or
5. for which admission will be charged.

C. "Park" shall have the meaning set forth in Section [6.42.030.A](#) of this code.

D. "Park event" means any demonstration, assembly, festival, fair, concert, or any other gathering of 50 or more persons over the age of 12 years at the same time and for the same collective purpose within an area circumscribed by a 500 foot radius, in any park other than Cesar Chavez Park or Civic Center Park. In Cesar Chavez Park, Civic Center Park and any other park or part thereof which is regularly used for organized sporting events, "park event" shall mean any demonstration, assembly, festival, fair, concert, or any other gathering of 100 or more persons over the age of 12 years at the same time and for the same purpose within an area circumscribed by a 500 foot radius. (Ord. 6579-NS § 2, 2000)

#### **6.46.030 Park event permits--Application--Information required--Timing.**

A. Application for a permit for a park event shall be made to the City Manager.

B. Application for park events shall be made at least ~~five (5) business~~thirty (30) days prior to the park event. Applications for major park events shall be made at least ~~ten (10) business~~forty-five (45)-days prior to the major park event.

C. The application for such permit shall be made in writing on a form approved by the City Manager. In order that adequate arrangements may be made for the proper policing of the park event the application shall contain the following information, as applicable:

1. The name, address and telephone number of the applicant(s), including photo identification. If the park event will be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the

organization, and of the authorized head of such organization. Where a park event will be conducted for, on behalf of or by an organization, the organization will be considered a co-applicant;

2. The name, address and telephone number of all persons who are or will be responsible for the promotion and conduct of the park event, including a photo identification of each and effective means by which to reach them during the event, such as cell phone and pager numbers and likely location during the park event;

3. A description of the park event, including its purpose and the number of people expected to attend;

4. The date(s) of the park event;

5. The estimated times that the park event will start and terminate, including assembly and disassembly involving the use of public property;

6. The number and kind of vehicles, animals, musical instruments, sound units, and any other equipment that produces sound or noise during the park event that will be involved in the park event, and whether amplified sound is proposed. In the event the applicant seeks or needs an amplified sound permit, a temporary food permit, a facility rental or a temporary liquor license, the application for the park event should, but need not, be accompanied by copies of applications for such permits and/or licenses.

7. A statement whether the park event will occupy all or only a portion of the park;

8. The number and location of portable sanitation facilities and other equipment and services proposed for participants, if applicable;

9. A description of arrangements that have been made for first aid or emergency medical services, or both, if applicable;

10. A description of arrangements that have been made for security, including the name of the security contractor;

11. For events with more than 300 total attendees, applicants must submit a waste reduction, recycling and composting plan ("Zero Waste Plan"). This plan must be submitted to the Zero Waste Division of the Public Works Department and to the permitting agency issuing the permit at least 45 days before the event. The Zero Waste Plan must include the following, and such other components that the City Manager may require:

a. Containers:

I. Zero Waste Stations for Attendees: Plans must include affirmation that reservations have been made for lightweight, collapsible bins (e.g., ClearStream units or similar) that promote source separation;

II. Zero Waste Discard Service for Event: Documented, appropriate use of State of California compliant color-coded bins for zero waste event stations. All recyclables, and only recyclables, are to be placed in the blue recycling bin(s). All compostables, and only compostables, are to be placed in the green organics bin. Trash, and only trash, is to be placed in the black trash bin. Include brief description of services and proper handling for removal of recyclables, compostables and trash;

b. Education: Adequate and appropriate signage regarding proper use of the bins related to the event;

c. Event Greener: If an event greener is used, event greener's name, organization, email, phone number;

d. Recyclable, Compostable or Reusable Foodware: Affirmation that all food vendors will be informed that all foodware must be recyclable, certified compostable, or reusable, in accordance with City and State requirements;

e. Plastic Waste Reduction: Affirmation that all food and beverage vendors will be informed that plastic stirrers, plastic toothpicks, plastic straws, and other plastic-based beverage accessories are prohibited;

f. Waste Reduction: Affirmation that all food vendors will be encouraged to dispense food condiments in bulk containers;

g. Hydration Stations: Description of type and number of water bottle refilling dispensers for attendees;

h. Use of Reusables: Affirmation that all food and beverage vendors will be encouraged to use reusable food and beverage containers, and/or that attendees will be encouraged to bring their own reusable food and beverage containers;

i. Edible Food Rescue: Acknowledgement that if the event has over 2,000 attendees, State law (per CA Senate Bill 1383, also known as the Short-Lived Climate Pollutants Reduction Act of 2016) requires events to donate surplus edible food. If applicable, indicate which organization the applicant will work with to rescue the event's surplus edible food;

j. Non-Foodware Supplies: Affirmation that non-reusable, non-recyclable and/or non-compostable supplies, such as balloons and other decorations, table coverings, signage and party favors, shall not be used to the extent feasible. Include brief description of such items and their usage, along with description of efforts to minimize such usage.

12. For park events with 300 or fewer total attendees, event organizers must comply with the requirements outlined in the previous subsection, Chapter 646.030(C)(11), but need not submit a Zero Waste Plan described above in their permit application.

13. Insurance and surety bond information, if applicable; and

~~12. A fully refundable cleaning deposit in the amount set by resolution of the City Council; and~~

134. Such other information, in conformity with the requirements of this chapter, as the City Manager may reasonably require. (Ord. 6579-NS § 2, 2000)

#### **6.46.040 Late applications.**

A. Any application received after the deadlines established in Section [6.46.030](#) is a late application. The City Manager shall not accept late applications unless they find that:

1. the proposed park event is in response to an occurrence whose timing did not reasonably allow the applicant to file a timely application; or
2. the imposition of the time limitations would place an unreasonable restriction on the free speech rights of the applicant.

B. When the City Manager finds both of the above conditions to exist, they shall accept the application and process it in accordance with this chapter, unless it does not meet

the criteria set forth in Section [6.46.030](#) or there is insufficient time for the City to make necessary preparations for traffic control or other public safety matters prior to the proposed date. (Ord. 6579-NS § 2, 2000)

**6.46.050 Permits--Standards for issuance or denial--Notification--Regulations.**

A. The City Manager shall issue a permit for a park event unless one or more of the following conditions exist:

1. The application is incomplete for failure to provide the information required by Section [6.46.030](#).
2. The information contained in the application, including supplemental information, if any, is found to be false in any material respect, the purpose of the event is contrary to law, and/or the applicant has failed to meet the City requirements for a permit.
3. A prior application for an event to be held at the same time and place has been granted.
4. The park event will unduly interfere with vehicular ingress to, egress from, or travel on a freeway, state designated highway, or major arterial or collector street of the City.
5. The park event will unreasonably interfere with fire or police protection, or public safety, including presenting a substantial or unwarranted traffic or safety hazard.
6. The park event would involve a number of people exceeding the capacity of the park for which it is proposed or would involve amplified sound contrary to regulations promulgated by the City Manager for that park.
7. The security arrangements that have been made are inadequate or the contractor that will be providing security is not qualified.
8. One or more of the applicants or persons whose name is shown on the application was also named on an application for a park event in Berkeley that resulted in a violation of this chapter as described in Section [6.46.120](#).B within the prior twelve (12) months or was responsible for an event in a park in any other jurisdiction that resulted in comparable problems prohibited by local law in that jurisdiction within the last twelve (12) months.

B. The applicant shall be notified in writing of the action of the City Manager in granting or denying the permit at least one day prior to the date of the proposed event, unless the application was made late, in which case notification shall be given as soon as reasonably possible and by any reasonable means.

1. If the permit is denied, the written notice briefly shall set forth reasons explaining the denial.
2. If the permit is denied pursuant to the criteria set forth in this chapter, because the proposed time or assembly and dispersal sites are unacceptable, the denial shall contain a statement of alternative acceptable times and sites.

C. The City Manager may issue regulations detailing the limitations for each park that implement this section, including regulations addressing park capacity, the permissibility and duration of amplified sound and requirements for the maintenance of accessibility during park events. (Ord. 6579-NS § 2, 2000)

**6.46.060 Appeal procedure following denial or late filing of application.**

Any decision by a designee of the City Manager to deny a permit under this chapter or to reject a late application may be appealed to the City Manager by letter within five (5) working days. The City Manager shall render a written decision on the appeal within one (1) working day thereafter, but in no event later than the time of the proposed event. If the initial decision was by the City Manager, it shall be final. (Ord. 6579-NS § 2, 2000)

**6.46.070 Park event permit--Content--Restrictions--Limitations.**

A. A park event permit shall contain the information given in the application and may impose reasonable time, place, and manner restrictions to ensure that the park event will not pose a traffic or safety hazard or unreasonably interfere with fire or police protection services. The restrictions shall be in conformity with the requirements of this chapter and shall provide only for such modification of the proposed park event as is necessary to achieve compliance with this chapter. Such restrictions may include, but are not limited to, requiring the applicant to:

1. Maintain a twelve foot wide emergency access lane at all times;
2. Provide first aid stations and teams within the closed-off area to provide emergency medical aid to participants;
3. Provide portable sanitation facilities and other equipment and services;
4. Provide barricades to close off streets or other areas;
5. Provide sufficient signs and directional arrows to divert traffic and arrange for A.C. Transit and other public transit detours, subject to the approval of the City Traffic Engineer;
6. Provide monitors for crowd control and security at the rate of one unarmed security person per twenty-five (25) attendees and establish liaison with the police department concerning security. Security shall only be required for major park events;
7. Distribute flyers throughout the surrounding areas in advance of the park event, notifying the affected residents and business people of any street closure associated with the park event;

8. Provide well-marked receptacles for recyclable, compostable and trash materials as prescribed in the Zero Waste Plan prescribed in Chapter 6.46.030(C)(11), and monitor their use to ensure that materials are placed in the proper receptacles, and not placed in the City's public refuse containers. For events with more than 300 total attendees, this Zero Waste Plan must be included in the event permit application and permit. Organizers of all park events, regardless of the number of attendees, must comply with the components required for an adequate Zero Waste Plan as specified in Chapter 6.46.030(C)(11);

89. Clean all debris and litter from the park, street and sidewalk area and remove and properly handle recycling/composting/trash within four hours after the conclusion of the event;

910. If an amplified sound permit is granted, provide and utilize a sound level meter to monitor compliance with Chapter 13.40 of the Berkeley Municipal Code;



**110.** If alcoholic beverages are to be sold at the event, obtain the appropriate license from the State Department of Alcoholic Beverage Control, follow responsible beverage service practices and provide security adequate to maintain order, as determined by the Chief of Police.

**121.** Include in all advertisements about the event a notice that parking in the area of the event is limited, encouraging attendees to take public transit, and notifying them of relevant public transit information.

**13.** The City Manager may require event organizers or contracted event greeners to submit documentation confirming that materials in the recycling/composting/trash receptacles have been properly handled, included but not limited to submitting sworn statements describing how these materials were handled, and/or submitting weight tickets and/or photo documentation verifying service levels. Organizers and/or greeners must confirm the amount of material generated by the event, and how much was sent to which transfer station or landfill, recycling facility and/or composting facility. For events with over 2,000 attendees, organizers shall provide documentation to the City per stipulations contained in Senate Bill 1383 (2016).

**14.** Failure to comply with these requirements may result in penalties provided in Chapter 6.46.120(F).

B. Applicants shall carry the permit during the park event and shall show it, upon demand, to any City employee.

C. The City Manager may require as a condition of a permit that park events involving over 100 persons may be monitored by City staff, provided that this condition is not imposed on the basis of any communicative characteristic of the proposed park event.

D. Parks in which park events occur shall remain open to the public during the park event, to the extent consistent with the park's capacity and to the maximum extent feasible given the nature of the park event. No park shall be closed to the public during a park event absent express permission to do so in a permit issued under this chapter.

E. All park events shall end no later than 10:00 p.m.

F. Permittees shall ensure that accessibility for persons with disabilities is not impaired by the park event. (Ord. 6579-NS § 2, 2000)

#### **6.46.080 Cancellation and revocation of permits.**

A. The City Manager may revoke a permit at any time, if they determine that as a result of inclement weather conduct of a park event would unreasonably damage the park for which it is proposed.

B. The City Manager may revoke a permit at any time, if they determine that any provision of this chapter or any condition of the permit has not been met or is being violated, or if a person responsible for the promotion or conduct of the park event was not shown on the application. The applicant may appeal any revocation as provided in Section 13.45.060. (Ord. 6579-NS § 2, 2000)

#### **6.46.090 Indemnification--Security deposits.**

A. The permit holder shall indemnify and hold harmless the City of Berkeley, its officers, agents, employees and volunteers, from any and all claims, causes of action,

penalties, losses, expenses (including reasonable attorneys' fees) and any other liability for injuries or damage to persons or property resulting from the event which were caused by the omissions or authorized acts of the permittee's officers, agents or employees.

B. If City property is destroyed or damaged by reason of a park event, the permittee shall reimburse the City for the cost of those repairs deemed necessary by the City. The City may retain the security deposit as full or partial reimbursement for any such damage. (Ord. 6579-NS § 2, 2000)

**6.46.100 Insurance--Exemption.**

A. For major park events, other than those which are major park events solely because of the number of attendees, the permittee must obtain insurance in the amount of one million dollars (\$1,000,000) for the duration of the major park event, which names the City of Berkeley, its officers, agents, employees and volunteers as additional insured. For all other park events, the City Manager may require insurance in an amount appropriate to the event. The amount of insurance required shall not be based on the existence or content of any expression involved in the event, or on the expected reactions of observers.

B. No permit applicant shall be required to comply with the insurance requirement of this section if the proposed park event is protected by the First Amendment to the United States Constitution and the applicant produces evidence that complying with the insurance provision is impossible or so financially burdensome that it would preclude the proposed event from occurring.

C. If insurance is required pursuant to this section, a certificate of insurance shall be provided to the City and must be approved as to form and sufficiency by the City no later than two days before the event. If the applicant is unable to obtain insurance or does not provide the City with the certificate of insurance, the City Manager may obtain such insurance on behalf of the permit applicant and charge the permit applicant for the cost. (Ord. 6579-NS § 2, 2000)

**6.46.110 Fees and Deposits.**

A. The City Council may establish by resolution the fees that shall be charged for permits issued under this chapter. Said fees may include the cost of monitoring events pursuant to Section [6.46.070.C](#).

B. If a permittee is unable to hold or conduct an event because of inclement weather or due to some other cause not within the permittee's control, and the permittee submits written request for the refund of such fees to the City Manager's office within ten (10) days after the date that the event was to have been held or conducted, the City Manager may authorize the refund of any fees that are not necessary to reimburse the City's expenses of preparation for the park event, except for non-refundable application fees, if any.

C. Any indigent person who cannot apply for a permit because of an inability arising from such indigence to pay the application fee, shall not be required to pay the fee. Applications for indigent status shall be made upon application for the permit and shall be accompanied by such relevant information and documentation as is reasonably necessary to verify indigence. For purposes of this section, an indigent person is one

who is eligible for county relief pursuant to Sections [17000](#) et seq. of the Welfare and Institutions Code. (Ord. 6579-NS § 2, 2000)

D. The City Manager may impose a conditionally refundable deposit for permits issued under this Chapter, and may condition refunding of deposits on event organizer's compliance with the requirements of the permit, as provided in Chapter 6.46.120(F).

**6.46.120 Violation--Penalty.**

A. Violation of this chapter is a misdemeanor punishable as set forth in Chapter [1.20](#) of this code, but may be charged, in the discretion of the prosecutor, as an infraction.

B. In addition to any other remedy, the City Manager or Director of Parks & Waterfront may impose an administrative penalty of up to \$10,000 on any person, whether or not they have obtained a permit under this ordinance:

1. who conducts a park event in such a manner that it results in a disturbance of any kind that requires the assignment of six Berkeley Police Department patrol officers after 11:00 a.m. and before 2:00 a.m., or three Berkeley Police Department patrol officers at any other time, to quell such disturbance.
2. makes any material misrepresentation or omission on their application which bears on security, management or crowd control in such a manner as to contribute to a disturbance described in paragraph [B.1.](#) of this section; or
3. violates any condition of their permit which bears on security, management or crowd control in such a manner as to contribute to a disturbance described in paragraph B.1. of this section.

C. No penalty may be imposed under this section without affording the person or persons on which the penalty is to be imposed reasonable notice and an opportunity to be heard by the City Manager or their designee.

D. 1. Any penalty imposed under this section may be appealed to the City Council within 10 days of the date written notice of that penalty is mailed to or otherwise provided to the person who is the subject of the penalty. An appeal must be in writing and must state all of the reasons for the appeal. Failure to appeal the City Manager's decision to impose a penalty shall be deemed consent to the penalty and a waiver of all rights to challenge it.

2. The appeal shall be placed on the Council agenda at the earliest feasible date. The Council may affirm or reverse the City Manager's decision on the basis of the written record before it, or may set the matter for hearing. If the Council takes no action within 30 days after the appeal first appears on its agenda, the City Manager's decision shall be deemed affirmed.



E. No penalty may be imposed under this section based on the behavior of persons not attending the event or based on the reactions of observers or bystanders to any communicative aspect of the event. (Ord. 6579-NS § 2, 2000)

F. Notwithstanding the preceding subsections of this section, the City Manager may impose administrative penalties for violations of permit requirements, including but not limited to: (i) forfeiture of all or a portion of a permit deposit; (ii) imposition of additional requirements for subsequent permits (such as mandating a third-party greener contractor to perform recycling/composting/trash collection services); (iii) denial of subsequent permits for repeated violations. The City Manager or his/her designee may impose a penalty in his/her discretion, based on the severity and/or frequency of the violation or size of the event. An event organizer may appeal to the City Manager a penalty imposed by a designee of the City Manager. The City Manager shall act upon said appeal promptly. The City Manager's decision shall be final.

## 2. Berkeley Municipal Code Chapter 13.44 (Block Parties and Street Events)

### **Chapter 13.44 PERMITS FOR STREET EVENTS AND BLOCK PARTIES\***

#### Sections:

- [13.44.010](#) [Applicability.](#)
- [13.44.020](#) [Definitions.](#)
- [13.44.030](#) [Block parties--Standards for issuance of permit--City Manager authorized to issue regulations.](#)
- [13.44.040](#) [Street event permits--Application--Information required--Timing--Issuance.](#)
- [13.44.050](#) [Late applications.](#)
- [13.44.060](#) [Permits--Standards for issuance or denial--Notification.](#)
- [13.44.070](#) [Appeals.](#)
- [13.44.080](#) [Street event permit--Content and possession--Rules and regulations.](#)
- [13.44.090](#) [Revocation of permit--Addition of conditions.](#)
- [13.44.100](#) [Indemnification.](#)
- [13.44.110](#) [Insurance--Exemption.](#)

[13.44.120 Fees.](#)

[13.44.130 Violation--Penalty.](#)

[13.44.140 Removal.](#)

[13.44.150 City Manager authority.](#)

\* For vehicles and traffic generally, see Title [14](#) of this code.

#### **13.44.010 Applicability.**

A. No person shall conduct, cause to be conducted, participate in, engage in, hold, manage, employ, permit or allow another to conduct an event which requires street closure or other traffic control measures on any public street, sidewalk or alley within the City, without first obtaining a permit from the City Manager or their designated representative.

B. This Chapter does not apply to park events regulated by Chapter [6.46](#) or filming regulated by Chapter [9.78](#). (Ord. 7062-NS § 1 (part), 2008: Ord. 6647-NS § 2, 2001)

#### **13.44.020 Definitions.**

A. "Block party" means a gathering, sponsored solely by owners, residents or tenants of properties fronting a street, which causes a closure of the entire street, or a portion thereof, to vehicular traffic and use of the street for the gathering.

B. "Certified Farmers' Market" means a market operated in accordance with regulations established by the California Department of Food and Agriculture, Sections 47000-47026, and California Code Title III, Division 3, Chapter 1, Subchapter 4, Article 6.5, Direct Marketing; and those sections of the Health and Safety Code applicable to Certified Farmers' Markets.

C. "City Manager" shall mean the City Manager of the City of Berkeley and any designee of the City Manager, except as context dictates otherwise.

D. "Downtown Berkeley BART Plaza" means the portion of the public right-of-way on the western portion of Shattuck Avenue between Center Street and Allston Way, bounded on its north by the sidewalk curb face on the south side of Center Street, on its east by the sidewalk curb face on the west side of Shattuck Avenue, on its south by the sidewalk curb face on the north side of Allston Way, and on its west by the eastern edge of the parcels fronting the west side of Shattuck Avenue.

E. "High impact event" means an event (1) occupying all or a portion of a major street, collector or scenic route street, or (2) occupying more than two adjacent blocks of a local street, where a detour, including a temporary detour during only part of the event,

is required, and/or (3) where AC Transit, UCB or LBNL buses would need to be re-routed.

F. "Local streets" means those streets defined in the circulation element of the Berkeley General Plan as local streets.

G. "Low impact event" means an event occupying all or a portion of not more than two adjacent blocks of a local street (other than a major, collector or scenic route street) where a formalized detour is not required, and where AC Transit, University of California-Berkeley (UCB) or Lawrence Berkeley National Laboratory (LBNL) buses would not have to be re-routed.

H. "Street event" includes any march, demonstration, assembly, parade, festival, street fair, concert or any other gathering which takes place in the public street or right-of-way, and which is likely to impede, obstruct, or interfere with the normal flow of vehicular or pedestrian traffic. "Street event" does not include "block party". ( Ord. 7594-NS § 2, 2018: Ord. 7062-NS § 2 (part), 2008: Ord. 6871-NS § 1 (part), 2005: Ord. 6647-NS § 2, 2001)

#### **13.44.030 Block parties--Standards for issuance of permit--City Manager authorized to issue regulations.**

A. Local streets not exceeding one City block or one intersection may be temporarily closed for block parties provided that the following requirements are met:

1. At least two-thirds of the area abutting the street or intersection to be closed is residentially zoned and the purpose of the block party is consistent with residential zoning regulations;
2. A valid permit has been obtained from the City Manager;
3. The applicant agrees to indemnify and hold harmless the City of Berkeley, its officers, agents and employees, from any and all claims, damages, or suits that may arise or in any way be occasioned by the willful or negligent acts or omissions of the applicant or the applicant's agents; and
4. The applicant agrees to clean all debris and litter from the street and sidewalk within four hours after the event. The applicant shall either: (i) provide sufficient and well-marked receptacles for collecting trash, recyclable and compostable materials, and arrange for the proper handling of such material after the event, or (ii) ensure that such materials are removed by attendees. The City's public litter containers shall not be used during the event or during clean-up. If the applicant violates the clean up requirement, the City may choose to undertake the clean up and bill the applicant for the cost of the clean up.

B. The City Manager is authorized to issue administrative guidelines to further the purposes of this section, as well as to establish a non-refundable permit application fee. (Ord. 7062-NS § 3 (part), 2008; Ord. 6647-NS § 2, 2001)

**13.44.040 Street event permits--Application--Information required--Timing--Issuance.**

A. Application for a permit for a street event shall be made to the City Manager, or to their designee.

B. Application for (1) high impact events, (2) street events that involve the use of pyrotechnics, (3) Certified Farmers' Markets, or (4) street events that involve the use of the Downtown Berkeley BART Plaza shall be made at least ~~30~~45 business days prior to the street event.

C. Applications for all other street events shall be made at least ~~10~~30 business days prior to the street event.

D. The application for such permit shall be made in writing on a form approved by the City Manager. In order that adequate arrangements may be made for the proper policing of the street event, including the security of participants, and to ensure that the event is conducted in a lawful manner, the application shall contain the following information, as applicable:

1. The name, address and telephone number of the applicant, including photo identification. If the street event will be conducted for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized head of such organization shall also be supplied. Where a street event will be conducted for, on behalf of or by an organization, the organization will be considered a co-applicant;
2. The name, address and telephone number of all persons who are or will be responsible for the conduct of the street event, including a photo identification of each and effective means by which to reach them during the event, such as cell phone and pager numbers and likely location during the street event;
3. A description of the street event, including its purpose. These requirements are intended to allow the City to anticipate and provide for additional police and other services, if necessary, to protect the safety of participants and bystanders;
4. The date(s) of the street event;
5. The estimated times that the street event will start and terminate, including assembly and disassembly involving the use of public property;

6. The route of the street event, if applicable, the maximum length of any parade and whether the street event will occupy all or only a portion of the streets proposed to be traveled, if applicable;
7. The locations, if any, of the assembly area and dispersal areas of any street event;
8. If the dispersal area of a street event is located in another city, the location of such dispersal area, and if the required permit has not been issued by such other city, an alternate route and alternate dispersal area in the City of Berkeley;
9. As far as is reasonably practicable, the approximate number of persons; the number and kind of vehicles, animals, musical instruments, sound units, and any other equipment that produces sound or noise during the street event that will be involved in the street event, and whether amplified sound is proposed. In the event the applicant seeks or needs an amplified sound permit, a temporary food permit or a temporary liquor license, the application for the street event should be accompanied by copies of applications for such permits and/or licenses;
10. The number and location of portable sanitation facilities and other equipment and services necessary to conduct the street event and other equipment and services proposed for participants, if applicable, with due regard for participant and public health and safety;
11. A description of arrangements that have been made for first aid or emergency medical services, or both, if applicable;
12. A description of arrangements that have been made for security, including the name and telephone number of the lead contact person for the security contractor;
13. For events with more than 300 total attendees, applicants must submit a waste reduction, recycling and composting plan ("Zero Waste Plan"). This plan must be submitted to the Zero Waste Division of the Public Works Department and to the permitting agency issuing the permit at least 45 days before the event. The Zero Waste Plan must include the following, and such other components that the City Manager may require:
  - a. Containers:
    - I. Zero Waste Stations for Attendees: Plans must include affirmation that reservations have been made for lightweight, collapsible bins (e.g., ClearStream units or similar) that promote source separation;
    - II. Zero Waste Discard Service for Event: Documented, appropriate use of State of California compliant color-coded bins for zero waste event stations. All recyclables, and only recyclables, are to be placed in the blue recycling bin(s). All

compostables, and only compostables, are to be placed in the green organics bin. All trash, and only trash, is to be placed in the black trash bin. Include brief description of services and proper handling for removal of recyclables, compostables and trash;

b. Education: Adequate and appropriate signage regarding proper use of the bins related to the event;

c. Event Greener: If an event greener is used, event greener's name, organization, email, phone number;

d. Recyclable, Compostable or Reusable Foodware: Affirmation that all food vendors will be informed that all foodware must be recyclable, certified compostable, or reusable, in accordance with City and State requirements;

e. Plastic Waste Reduction: Affirmation that all food and beverage vendors will be informed that plastic stirrers, plastic toothpicks, plastic straws, and other plastic-based beverage accessories are prohibited;

f. Waste Reduction: Affirmation that all food vendors will be encouraged to dispense food condiments in bulk containers;

g. Hydration Stations: Description of type and number of water bottle refilling dispensers for attendees;

h. Use of Reusables: Affirmation that all food and beverage vendors will be encouraged to use reusable food and beverage containers, and/or that attendees will be encouraged to bring their own reusable food and beverage containers;

i. Edible Food Rescue: Acknowledgement that if the event has over 2,000 attendees, State law (per CA Senate Bill 1383, also known as the Short-Lived Climate Pollutants Reduction Act of 2016) requires events to donate surplus edible food. If applicable, indicate which organization the applicant will work with to rescue the event's surplus edible food;

j. Non-Foodware Supplies: Affirmation that non-reusable, non-recyclable and/or non-compostable supplies, such as balloons and other decorations, table coverings, signage and party favors, shall not be used to the extent feasible. Include brief description of such items and their usage, along with description of efforts to minimize such usage.

14. For street events with 300 or fewer total attendees, event organizers must comply with the requirements outlined in the previous subsection, Chapter 13.44.040(D)(13), but need not submit a Zero Waste Plan described above in their permit application.

~~14~~15 Any proposed reasonable rules and regulations necessary for the safe and orderly conduct of the street event and the movement of persons, in furtherance of the goals and purposes of the street event. Such proposed rules may include, but are not limited to, prohibition or other regulation of the use of skates and wheeled vehicles, other than wheelchairs, if necessary for the safety or orderly circulation of persons attending the street event. For purposes of this subdivision, "wheeled vehicles" includes, but is not limited to, bicycles, tricycles, scooters, skateboards or any motorized vehicles of any sort. For purposes of this subdivision, "skates" includes roller skates, roller blades and in-line skates;

~~15~~16 Insurance information, if applicable; and

~~16~~17 Such other information, in conformity with the requirements of this Chapter, as the City Manager may reasonably require. (Ord. 7594-NS § 3, 2018: Ord. 7062-NS § 4 (part), 2008: Ord. 6871-NS § 2 (part), 2005: Ord. 6647-NS § 2, 2001)

#### **13.44.050 Late applications.**

A. Any application received after the deadlines established in Section [13.44.040](#) is a late application. The City Manager shall accept a late application if they find that:

1. The proposed street event is in response to an occurrence whose timing did not reasonably allow the applicant to file a timely application; and
2. The imposition of the time limitations would place an unreasonable restriction on the free speech rights of the applicant.

B. When the City Manager finds both of the above conditions to exist, they shall accept the application and process it in accordance with this chapter, unless it does not meet the criteria set forth in Section [13.44.040](#) or there is insufficient time for the City to make necessary preparations for traffic control or other public safety matters prior to the proposed date. (Ord. 6647-NS § 2, 2001)

#### **13.44.060 Permits--Standards for issuance or denial--Notification.**

A. The City Manager shall issue a permit for a street event unless one or more of the following conditions exist:

1. The application is incomplete for failure to provide the information required by Section [13.44.040](#);



2. The information contained in the application, including supplemental information, if any, is found to be false in any material respect, the purpose of the street event is contrary to law, and/or the applicant has failed to meet the City requirements for a permit;
3. A prior application for a street event to be held at the same time and place has been received or granted;
4. The street event will unduly interfere with pedestrian access or with vehicular ingress to, egress from, or travel on a freeway, state designated highway, public transit stop, or major arterial or collector street of the City;
5. The street event will unreasonably interfere with fire or police protection; or
6. The event applicant, whether an individual or an organization, has substantially failed to comply with the terms and/or conditions of prior events, of any type, permitted by the City, as set forth in Subsection 13.44.130 (Violation—Penalty) below.

B. The applicant shall be notified in writing of the action of the City Manager with respect to the application as early as possible, but no less than two days prior to the date of the proposed event, unless the application was made late, in which case notification shall be given as soon as reasonably possible and by any reasonable means.

C. If a permit is denied, the written notice shall set forth reasons explaining the denial.

D. If a permit is denied pursuant to the criteria set forth in this chapter, because the proposed time, route, or assembly and dispersal sites are unacceptable, the denial shall contain a statement of alternative acceptable times, routes and sites. (Ord. 7594-NS § 4, 2018: Ord. 7439-NS § 1, 2015: Ord. 7062-NS § 5 (part), 2008: Ord. 6647-NS § 2, 2001)

#### **13.44.070 Appeals.**

An applicant may appeal the denial of an application made pursuant to this chapter by a designee of the City Manager to the City Manager. The City Manager shall act upon said appeal promptly. The City Manager's decision shall be final. (Ord. 6647-NS § 2, 2001)

#### **13.44.080 Street event permit--Content and possession--Rules and regulations.**



A. A street event permit shall contain the information given in the application and shall impose reasonable time, place, and manner conditions such that the street event will not pose a traffic or safety hazard or unreasonably interfere with fire or police protection services. The conditions imposed shall be in conformity with the requirements of this chapter and shall provide only for such modification of the application's proposed street event as is necessary to achieve compliance with this chapter. Such conditions may include, but are not limited to the following:

1. Maintain a 20-foot wide emergency access lane at all times.
2. Provide first aid stations and teams within the closed-off area to provide emergency medical aid to participants.
3. Provide barricades of the specified type to close off the involved areas or streets.
4. Provide sufficient signs and directional arrows as specified by the City to divert traffic and arrange for AC Transit and other public transit detours, subject to the approval of the traffic engineer.
5. Provide monitors for crowd control and security and establish liaison with the police department concerning the role of the monitors.
6. Distribute flyers throughout the surrounding areas in advance of the event, notifying the affected residents and business people of the street closure.
7. Provide well-marked receptacles for recyclable, compostable and trash materials as described in the Zero Waste Plan prescribed in Chapter 13.44.040(D)(13), and monitor their use to ensure that materials are placed in the proper receptacles, and not placed in City refuse containers. For events with more than 300 total attendees, this Zero Waste Plan must be included in the event permit application and permit. Organizers of all events, regardless of the number of attendees, must comply with the components required for an adequate Zero Waste Plan as specified in Chapter 13.44.040(D)(13).
8. Clean all debris and litter from the street and sidewalk area and remove and properly handle recycling/composting/trash receptacles within four hours after the conclusion of the event.
9. Obey all applicable local, state and federal laws, including but not limited to the requirement for a sound permit under Chapter [13.40](#) of the Berkeley Municipal Code. However, notwithstanding anything to the contrary in Chapter [13.40](#), a permit issued under this Chapter may extend the hours for a sound amplification permit issued under Chapter [13.40](#) at a street event (a) for more than four hours, and (b) until 10:00 p.m.

10. If alcohol is to be served at the event, responsible beverage service practices shall be followed, and the applicant shall provide security adequate to maintain order, as determined by the Chief of Police.

11. The City Manager may require event organizers or contracted event greeners to submit documentation confirming that materials in the recycling/composting/trash receptacles have been properly handled, included but not limited to submitting sworn statements describing how these materials were handled, and/or submitting weight tickets and/or photo documentation verifying service levels. Organizers and/or greeners must confirm the amount of material generated by the event, and how much was sent to which transfer station or landfill, recycling facility and/or composting facility. For events with over 2,000 attendees, organizers shall provide documentation to the City per stipulations contained in SB1383 (2016).

12. Failure to comply with these requirements may result in penalties provided in Chapter 13.44.130.

B. City staff will assist applicants in meeting the conditions imposed by this section.

C. Applicants shall carry the permit during the street event and shall show it, upon demand, to any City employee.

D. Applicants may not limit the free distribution of literature at the street event by members of the public who have no formal or direct relationship with the applicant with respect to the presentation of the street event. (Ord. 7062-NS § 6 (part), 2008: Ord. 6871-NS § 3 (part), 2005: Ord. 6647-NS § 2, 2001)

#### **13.44.090 Revocation of permit--Addition of conditions.**

A. The City Manager shall have the authority to revoke a permit, in conformity with the criteria articulated in this Chapter, if they determine that any condition of the permit has not been met or is being violated. A decision by the City Manager or their designee to revoke a permit is final.

B. The City Manager may add conditions to a permit for a recurring Street Event if it is necessary or appropriate to do so in order to ensure compliance with subdivision [13.44.060](#).A. (Ord. 7439-NS § 2, 2015: Ord. 7062-NS § 7 (part), 2008: Ord. 6647-NS § 2, 2001)

#### **13.44.100 Indemnification.**

- A. The permit holder shall indemnify and hold harmless the City of Berkeley, its officers, agents and employees, from any and all claims, causes of action, penalties, losses, expenses (including reasonable attorneys' fees) and any other liability for injuries or damage to persons or property which were caused by the willful or negligent acts or omissions of the permittee or the permittee's officers, agents or employees.
- B. If City property is destroyed or damaged by reasons of permittee's use, event or activity, the permittee shall reimburse the City for the actual replacement or repair cost of the destroyed property.
- C. Any damage or injury caused solely by the reaction to the permitted expressive activities is excluded from the indemnity and reimbursement provisions in this Section. (Ord. 7062-NS § 8 (part), 2008: Ord. 6647-NS § 2, 2001)

#### **13.44.110 Insurance--Exemption.**

- A. If a street event involves one of the following conditions, the permittee must obtain insurance in the amount of one million dollars for the duration of the event, which names the City of Berkeley, its officers, agents and employees as additional insured:
  - 1. Closure of a major arterial or collector City street, as defined in the City of Berkeley General Plan;
  - 2. An anticipated crowd in excess of one thousand people;
  - 3. A street closure anticipated to have a major effect on the flow of traffic in the area; i.e., closure of two or more intersections and rerouting of AC Transit or other public transportation; or
  - 4. Use of any part of the Downtown Berkeley BART Plaza.
- B. No permit applicant shall be required to comply with the insurance requirement of this section if the activity proposed is protected by the First Amendment to the United States Constitution and the applicant produces satisfactory evidence that complying with the insurance provision would preclude the proposed street event from occurring.
- C. The amount of insurance required shall not be based on the existence or content of any expression involved in the event, or on the expected reactions of observers.
- D. If insurance is required pursuant to this section, a certificate of insurance shall be provided to the City and must be approved as to form and sufficiency by the City no later than 5 days before the event. If the applicant is unable to obtain insurance or does not provide the City with the certificate of insurance, the City Manager may obtain such insurance on behalf of the permit applicant and charge the permit applicant for the cost. (Ord. 7594-NS § 5, 2018: Ord. 7062-NS § 9 (part), 2008: Ord. 6647-NS § 2, 2001)

**13.44.120 Fees and Deposits.**

A. The City Council may establish by resolution the fees that shall be charged for permits issued under this chapter.

B. If a permittee is unable to hold or conduct a street event because of inclement weather or due to some other cause not within the permittee's control, and the permittee submits written request for the refund of such fees to the City Manager's office within ten days after the date that the event was to have been held or conducted, the City Manager may authorize the refund of the fees, or a pro rata portion thereof, except for non-refundable application fees, if any.

C. Any indigent person who cannot apply for a permit because of an inability arising from such indigence to pay the application fee shall not be required to pay the fee. Applications for indigent status shall be made upon application for the permit and shall be accompanied by such relevant information and documentation as is reasonably necessary to verify indigence. For purposes of this section, an indigent person is one who is eligible for county relief pursuant to Sections [17000](#) et seq. of the Welfare and Institutions Code. (Ord. 6647-NS § 2, 2001)

D. The City Manager may impose a conditionally refundable deposit for permits issued under this Chapter, and may condition refunding of deposits on event organizer's compliance with the requirements of the permit, as provided in Chapter 13.44.130.

**13.44.130 Violation--Penalty.**

A. An intentional violation of this Chapter is a misdemeanor punishable as set forth in Chapter [1.20](#) of this code, but may be charged, in the discretion of the prosecutor, as an infraction. For purposes of this section, violation of a street event rule is not a violation of this Chapter. (Ord. 7062-NS § 10 (part), 2008; Ord. 6647-NS § 2, 2001)

B. The City Manager may impose administrative penalties for violations of permit requirements, including but not limited to: (i) forfeiture of all or a portion of a permit deposit; (ii) imposition of additional requirements for subsequent permits (such as mandating a third-party greener contractor to perform recycling/composting/trash collection services; (iii) denial of subsequent permits for repeated violations. The City Manager or his/her designee may impose a penalty in his/her discretion, based on the severity and/or frequency of the violation or size of the event. An event organizer may appeal to the City Manager a penalty imposed by a designee of the City Manager. The City Manager shall act upon said appeal promptly. The City Manager's decision shall be final.

**13.44.140 Removal.**

Any person who refuses to comply with a street event rule proposed and approved under Section 13.44.040.D.13 may be removed from the street event. (Ord. 6647-NS § 2, 2001)

**13.44.150 City Manager authority.**

The City Manager may adopt regulations for the implementation and administration of this Chapter. (Ord. 7439-NS § 3, 2015)







Zero Waste Commission

02a.28a

ACTION CALENDAR

October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Steven Sherman, Zero Waste Commission Chair

Subject: Enforceable Mechanism for Berkeley Green Code Compliance

RECOMMENDATION

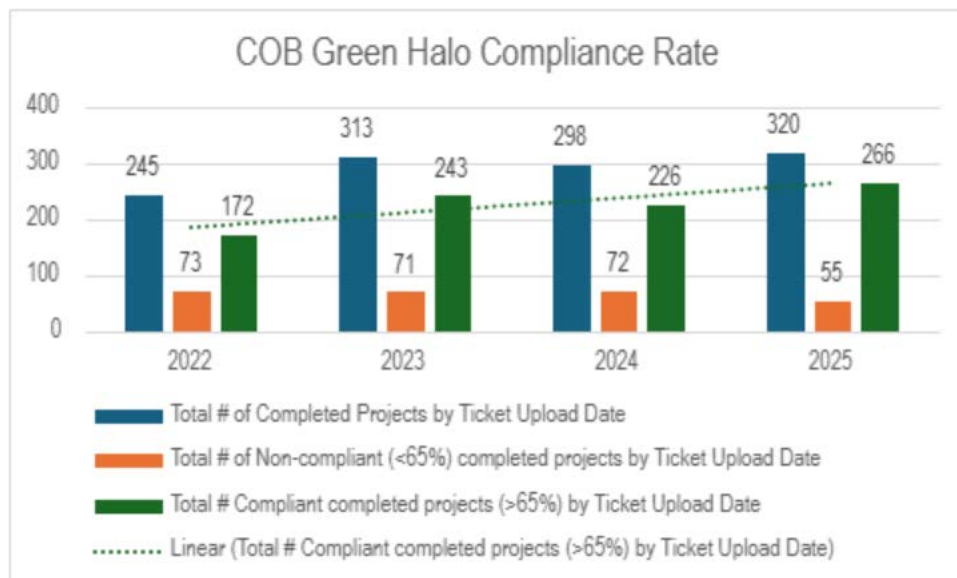
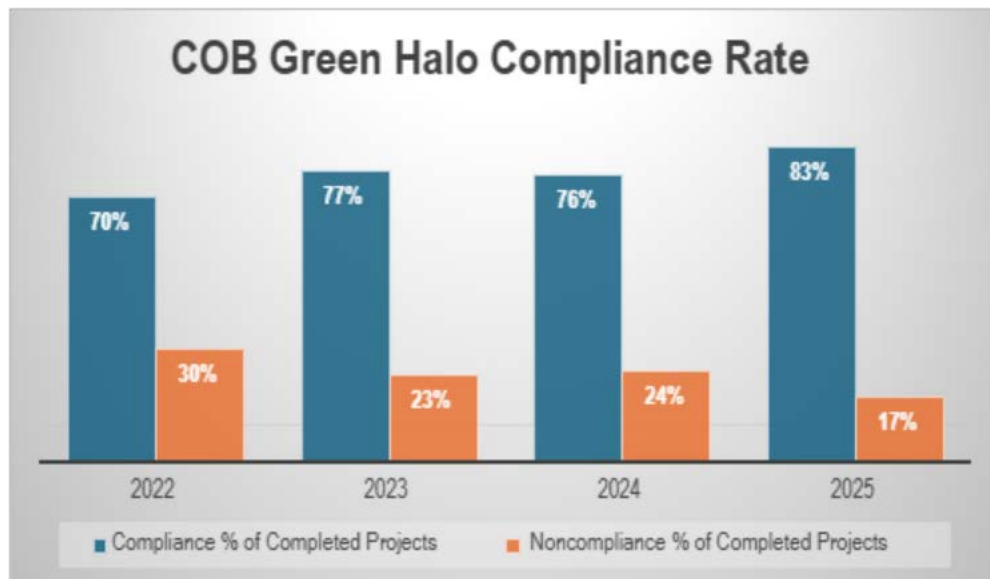
Recommend Council to direct the City Manager to refer Public Works Zero Waste staff and Planning, Safety and Building, Energy and Sustainability and Green Building staff work together to develop recommendations to implement a clear path to enforcement for non-compliance with Berkeley Green Code (BMC 19.37) Construction and Demolition (C&D) waste diversion requirements, including the possibility of fines and citations and other mechanisms to increase compliance.

SUMMARY

Compliance with Berkeley Green Code's more stringent amendment to the California Green Building Standards Code to recycle 100% of asphalt and concrete instead of the States requirement of 65%, relies on self-reporting through Green Halo. Self-reporting has resulted in fraudulent ticket uploads, poor sorting, and repeated noncompliance. As a result, 17% of projects in 2025 failed to meet code requirements but, the property owners, developers or contractors were not penalized.

Staff have diligently worked to educate and build relationships with contractors over the past three years and compliance has increased steadily. However, staff have identified approximately 40 offenders who have repeatedly been non-compliant for the past decade. With no clear path for penalization, staff are unable to simply encourage those bad actors into compliance.





C&D debris is one of the largest sources of material self-hauled to the Transfer Station, and a significant driver of greenhouse gas emissions and local pollution, particularly affecting low-income and minority communities. Strong enforcement is essential to advancing Berkeley's climate and equity goals. Researching and implementing an effective path to enforcement will streamline the process of meeting diversion requirements and make it easier for staff to hold contractors and haulers accountable.

### FISCAL IMPACTS OF RECOMMENDATION

Staff in the Zero Waste Division of the Public Works Department, in conjunction with the Planning Department will research the fiscal impacts for the implementation of a menu of potential enforcement options and develop an associated cost model for each option. Assessment of these Fiscal Impacts will require minimal staff time.

### CURRENT SITUATION AND ITS EFFECTS

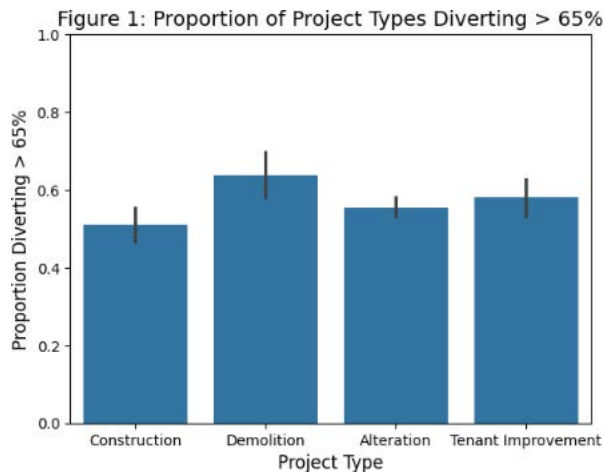
This C&D enforcement referral is a Zero Waste Strategic Plan Priority Project, advancing the City's goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

Construction waste diversion is the process of redirecting waste materials generated from C&D debris away from landfills, toward salvage, recycling, and composting.

Berkeley Green Code diversion requirements were adopted in the Berkeley Municipal Code as Chapter 19.37 in 2025. Chapter 19.37 requires that 65% of construction and demolition (C&D) material be diverted from landfill, and 100% of excavated soil, concrete, and asphalt. Reducing the amount of C&D material that goes to landfill is essential to reducing associated GHG emissions, decreasing land use needed for landfills, and reducing environmental degradation.

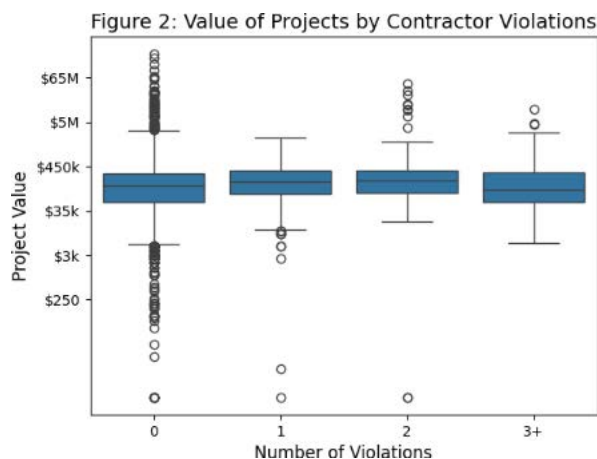
Because there is no consequential mechanism outlined in the Berkeley Municipal Code to provide guidance in regard to penalizing non-compliant contractors, staff have difficulty when it comes to ensuring contractors and haulers comply with diversion requirements. To understand diversion levels in Berkeley, staff rely on self-reporting from contractors on Green Halo, a C&D debris diversion tracking platform. Common issues surrounding compliance include:

1. Improper source separation to the extent that it impedes meeting C&D debris diversion requirements.
2. Uploading fraudulent weight tickets to the Green Halo platform.
3. Uploading weight tickets in an untimely manner.
4. Repeated non-compliance beyond three violations.



As a result, 17% of projects in 2025 failed to meet Berkeley Green Code (BMC 19.37) requirements. Figure 1 displays the rates by project type for all registered projects in the database since 2012. Construction projects tend to divert the least amount of debris, while stand-alone demolition projects tend to divert the most.

Proper sorting and bagging ensure that C&D debris remains uncontaminated. Source separation is particularly important for materials like cement and asphalt so that these waste streams can achieve their required 100% diversion requirement. Many contractors transport C&D debris, mixed with residential waste, in black plastic bags—leading to recyclable debris being coded as landfill, leading to projects failing to achieve the 65% C&D diversion requirement. Miscoded tickets also prevent staff from verifying data, leading to unreliable documentation surrounding C&D debris diversion and potential missed opportunities to increase diversion.



The biggest area where diversion could improve is by penalizing repeat offenders. Over 40 contractors, who have repeatedly been out of compliance annually for over a decade, have been identified by staff. Contractors often attempt to reuse or tamper with weight tickets, causing staff to spend extra time scrutinizing each weight ticket. Some claim to have no weight tickets because the amount hauled to a transfer station was too minimal to be measured, leading to the improper disposal of C&D material that could have been diverted from landfill. Projects taken on by repeat offenders vary in size, illustrated by Figure 2, but the most problematic repeat offenders are those with high-value projects that produce a significant amount of C&D material.

### BACKGROUND

The City requires that all construction, demolition, and some remodel projects submit a Construction Waste Management Plan (CWMP) that complies with its zero-waste requirements (Berkeley Green Code BMC 19.37 and California Green Building Standards Code Sections 4.408.2 and 5.408.1.1). Besides CWMP, all contractors are required to upload C&D debris weight tickets to the Green Halo platform. These weight tickets include information on the tons debris diverted from landfill and quantify project materials which have been recycled or reused. Staff also host office hours at the Permit Service Center on Tuesdays and Thursdays, allowing any contractors who are having issues with Green Halo to consult with Zero Waste staff first-hand and address their issues.

Zero Waste staff have been working on launching educational awareness campaigns to further assist contractors lacking experience with the Green Halo platform, and to encourage onboarding onto the Green Halo platform. Staff also conduct random site inspections, to ensure that projects comply with state requirements, allowing for interventions and flexibility when necessary. Additionally, Zero Waste staff participate in Design-Stage Round Table reviews, and Field Inspection Project Kickoff meetings, to provide notice of projects' Berkeley Green Code (BMC 19.37) requirements.

Penalizing repeat offenders for non-compliance will level the playing field and encourage development by contractors acting in good faith. The 65% diversion requirement is already embedded in the Berkeley Green Code and applies to most permitted construction and demolition projects in the City. Therefore, enforcing the requirement should not materially slow development or reduce project feasibility.

On June 19, 2025, the Zero Waste Commission authorized its Green Building Subcommittee to write and submit this referral to the City Council to request the City Manager refer the Zero Waste Division of the Public Works Department, and the Building and Safety Division, Energy and Sustainability and Green Building Program Management staff from the Planning Department to research and recommend best practices to codify enforcement mechanisms for improving compliance with state and city-mandated C&D debris diversion requirements.

Action Taken: M/S (Chrise/Barun) to approve the Green Building Ordinance. Ayes: Unanimous; Abstain: None; Absent: Layla Dargahi

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Lack of effective diversion can be damaging to local communities. The construction industry is considered to be the primary contributor to landfill material; in the United States, 67% of all solid waste is generated by the C&D industry alone (Chen et al., 2021). C&D debris is also the primary cause of environmental pollution; debris that ends up in landfill contains inorganics, heavy metals, organics, pesticides, and oils that leach into the landscape and contaminate soil and groundwater (Chen et al., 2021). Improper C&D debris salvaging also leads to indirect environmental damage, such as consumption of usable land, energy and non-energy resource consumption, resource depletion, air pollution, noise pollution, water pollution, and more (Chen et al., 2021).

Inadequate diversion introduces health-harming pollutants to the environment, as wind carries particles from landfills into neighboring communities. As landfills expand, substances like silica, asbestos, heavy metals, and volatile organic compounds can become airborne, and expose particularly low-income populations to respiratory irritants, allergens, and carcinogens (Dorevitch et al., 2006). This is especially alarming, as studies show that higher percentages of Black and Hispanic residents, as well as households with lower socioeconomic status, are in close proximity to landfills (Joseph and Kamanmalek, 2025).

Successful C&D diversion can yield results that are beneficial to surrounding communities. A study by the EPA found that diverting 70-90% of debris can reduce 250-400 kg of CO<sub>2</sub> per ton of material, improving air quality in the area (Shajidha, and Mortula, 2025). In India, the recycling of C&D debris was found to improve *all* 15 impact categories of the recycling life cycle assessment, with observations like decreased leachate improving soil and groundwater, lower contamination from heavy metals, and reduced habitat disruption (Ram et al., 2020). Effective enforcement of C&D diversion is necessary if Berkeley is to sustain healthy communities and mitigate the harmful effects of climate change.

### RATIONALE FOR RECOMMENDATION

Establishing an effective enforcement mechanism will support staff in bringing repeat offenders into compliance, levelling the playing field for all contractors and encouraging contractors who work in good faith. Beyond informing contractors of their responsibilities to meet the 65% diversion minimum, staff currently have little power to hold contractors accountable, especially those that are repeatedly out of compliance, and repeatedly act in bad faith.

### ALTERNATIVE ACTIONS CONSIDERED

The alternative is no action as it relates to enforcement. Staff continue increasing outreach and education measures which only address part of the non-compliance issue

and do not target those bad actors who have repeatedly been out of compliance for the past decade with no consequence.

CITY MANAGER

See companion report.

CONTACT PERSON

Julia A. Heath, Zero Waste Commission Secretary, Recycling Program Manager, (510) 981-6357





Zero Waste Commission

02a.29a

ACTION CALENDAR

October 27, 2026

To: Honorable Mayor and Members of the City Council

From: Zero Waste Commission

Submitted by: Steven Sherman, Zero Waste Commission Chair

Subject: Research on Proper Space Allocation for Standardizing Compliance  
with Source Separated Refuse Collection Procedures

RECOMMENDATION

Recommend that Council refer the matter to the City Manager with direction to:

1. Instruct the Zero Waste Division, in collaboration with the Planning Department and Fire Department, to study, research, and recommend policies that standardize requirements for:
  - a. Tenant-facing materials collection rooms for refuse, dual-stream recycling, and composting
  - b. Central collection rooms or enclosures
  - c. Curbside collection staging areas for all new construction
2. Develop minimum per-unit service requirements, design parameters, and enforcement mechanisms; pursuant to Chapter 12.32.030 and 12.35 of the Berkeley Municipal Code.

SUMMARY

While the Berkeley Municipal Code mandates accessible waste storage, it fails to outline efficient refuse, dual-stream recycling and compost collection areas for tenants and employees, central collection locations or safe curbside staging areas for collection and enforce proper space allocation for said collection processes in the design phase of project lifecycles. Improper space allocation for refuse, dual-stream recycling and compost carts and bins in new commercial construction blueprints increases construction costs while compromising Zero Waste collection services and the safety of City workers.

There is an opportunity to codify refuse collection procedures and facilitate compliance by enforcing proper space allocation across all new commercial developments. In this effort, areas for focused research include, but are not limited to, the development of:



1. Minimum service requirements. Minimum service requirements create a baseline expectancy for refuse volume across all new commercial construction, allowing for the development of baseline design guidelines and a standardization of space allocation in refuse collection procedures.
2. Design parameters. In order to streamline refuse, dual-stream recycling and compost collection in new construction projects, design guidelines that allocate sufficient space to accommodate required collection services in every stage of the collection process are necessary.
3. Enforcement mechanisms. Ensuring adherence to a standardized refuse collection procedure ensures the safety, health, and cleanliness of the city.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff in the Zero Waste Division of the Public Works Department, in conjunction with the Planning Department, will research the fiscal impacts of the implementation of proposed policies, including the potential for cost-recovery through bill back for staff time and enforcement mechanisms. Assessment of these fiscal impacts will require minimal staff time.

#### CURRENT SITUATION AND ITS EFFECTS

Under Chapter 12.32.030 of the Berkeley Municipal Code, the City of Berkeley requires “[every] person owning any premises, where garbage or rubbish is produced or accumulated [is to] provide and maintain...in a suitable place readily accessible to personnel of the solid waste and environmental health divisions, containers of sufficient capacity and number to store the accumulations of garbage or rubbish during the intervals between collections or disposal”. Under Chapter 12.35.010 of the Berkeley Municipal Code, the City of Berkeley adopted and codified the Short-Lived Climate Pollutants Organic Waste Reduction Strategy “The purpose of this Ordinance is to comply with certain state laws requiring cities, counties, and special districts providing solid waste collection services to adopt ordinances and take other measures to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators, more specifically the Short-Lived Climate Pollutants Organic Waste Reduction regulations adopted pursuant to Senate Bill 1383 (Statutes of 2016) set forth in the California Code of Regulations (the “SB 1383 Regulations”). Notably, the requirements not only emphasize the importance of establishing sufficient space for waste collection, but also mandate that containers of collected refuse are “readily accessible to personnel”.

The City of Berkeley operates municipal refuse collection in two ways:

1. Curbside Service. Building owners are responsible for placing refuse, dual stream recycling, and compost carts or bins at the appropriate staging locations along the street prior to collection day, and returning them to their enclosures within 24 hours.

2. Push-and-Pull Service: Building owners pay the City an additional fee to transport carts and bins from a central collection area to a curbside collection area and back.

The mandated collection process consists of the following three stages:

1. Occupant Refuse, Dual-Stream Recycling and Compost Collection. The first stage covers occupant access to material collection containers, at either a central collection location or in the case of large multi-family buildings, material collection rooms on each floor. In accordance with the BMC, equal access to all waste streams must be ensured across all building levels.
2. Staging. This stage covers the process of transporting collected materials to their proper staging area for collection. Important technicalities in this stage include, but are not limited to: doorway dimensions, alley widths, and slope gradients.
3. Municipal Refuse Collection. The final stage covers the municipal collection of the material from curbside staging areas for transportation to the Transfer Station. Important technicalities in this stage include, but are not limited to: curb cuts, red or yellow zones for ease of collection truck parking, considerations to avoid bike lanes and staging areas on busy thoroughfares, driveway, approach, and slope gradient.

Although the Zero Waste Division has published *New Construction: Adequate Space Guidelines for Waste Containers* and provides developers with a copy of these guidelines, the City's refuse, dual-stream recycling and compost collection process, as well as the aforementioned space guidelines, are not codified in the Berkeley Municipal Code, rendering enforcement impossible for City staff.

Unfortunately, the consequence of a lack of formalized specifications for new construction design and no enforceable mechanisms for ensuring space is properly allocated for tenant facing trash rooms, central collection rooms or enclosures and proper staging areas that take into account driver and pedestrian safety, staff encounter completed new construction that has failed to accommodate at least one stage of refuse collection, including but not limited to:

- o Doors to refuse enclosures with insufficient clearance to accommodate bin collection services requested by the property, necessitating design modifications
- o Dumpsters are placed in narrow alleyways. Enclosures and storage areas must have enough space for dumpsters. If moving a dumpster, ensure a curb cut is installed for push-pull service.
- o Steeply sloped driveways from enclosures to the street, resulting in staff injuries during push-and-pull service provision;

- o Alleyways with insufficient vertical clearance for refuse truck entrance;
- o Trash chutes with no collocated chutes for recycling or compost;
- o Staging locations that impede biker and pedestrian right-of-way;
- o Negligent staging that leads to increased street litter from upended bins.

These issues not only compromise proper waste separation but can result in costly post-construction design modifications. Furthermore, inefficiencies place unnecessary administrative burden on staff, while endangering Zero Waste materials collection workers. In order to streamline refuse collection procedures and prevent aforementioned issues, important design elements that will be considered, categorized under each stage, include but will not be limited to:

1. Occupant Refuse Collection: equal access to all waste streams across all building levels, in accordance with BMC 12.35.
2. Staging: Maintain a minimum 18-inch clearance between dumpsters staged side by side. This required clearance would greatly reduce pinch hazards and prevent hand injuries during handling.
3. Doorway Dimensions: Entrances must provide enough width for containers plus 6 inches on either side to pass through freely without hitting frames. This prevents property damage and ensures smooth transitions between spaces.
4. Alley Widths: Driveways and alleys must be wide enough to allow for safe maneuvering of both containers and collection vehicles. Adequate space is essential to avoid scraping walls or damaging property.
5. Gradients: Gradients of staging areas will be considered and addressed to ensure reduce runaway dumpster hazard does not occur. Steep inclines are prohibited as they significantly increase the risk of injuries and property damage.
6. Surface & Obstructions: Containers must be kept on a smooth, level surface free of any debris or obstacles to reduce physical strain to our staff and reduce tipping accidents or injuries.
7. Public Right-of-Way: Containers and equipment must be positioned so they do not obstruct the public right-of-way or traffic lanes to increase safety of both the collection crew and the general public.

Proper space allocation for refuse collection, which includes instituting minimum service requirements and creating pre-construction design guidelines, is a crucial next step for streamlining compliance with materials collection and waste disposal requirements.

Staff expect that codifying the space allocation requirement will not materially slow development or reduce project feasibility. The guidelines are already informally required and codifying them will offer the opportunity to include an enforcement mechanism and increase compliance with BMC 12.35.

### BACKGROUND

All commercial and multi-family (5+ units) properties within the City of Berkeley are subject to State Law SB 1383 and corresponding local Alameda County Organics Reduction and Recycling Ordinance (2021-02). In order to be in compliance with SB 1383, the City of Berkeley must accommodate four waste streams through materials collection procedures:

1. Landfill,
2. Recycling for Glass, Metals, and Plastics,
3. Recycling for Cardboard, Mixed Paper, and
4. Organics collection for Food Waste, Compostable Paper, and Plant Debris.

From 2019 to 2023, the Telegraph Business Improvement District and Downtown Berkeley Association piloted trash corrals— structures designed to contain businesses' waste bins on the street— in order to “make trash collection easier, and provide a more pleasing streetscape<sup>1</sup>.” Part of an early effort to introduce trash enclosures by commercial districts, this pilot project exemplifies the need for allocating space for waste receptacles, given the implications of uncorralled receptacles in the public right of way.

At its meeting September 18, 2025, the Zero Waste Commission authorized its Green Building Subcommittee to write and submit this referral to the City Council to authorize the City Manager to refer the Public Works Zero Waste Division, to work in conjunction with the Planning Department to study, research and recommend procedures and enforcement mechanisms to increase proper waste sorting compliance by ensuring all new commercial construction includes the proper allocation of space to accommodate state and city-mandated waste collection requirements.

September 18, 2025 Zero Waste Commission Meeting- Item 7: Voting on Moving the Space Allocation Referral to Council

Action Taken: M/S (Dargahi/Singh) to move Space Allocation Ordinance Referral to Council.

Aye: Dennis Uyat, Philip Monrad, Barun Singh, Sandra Curtis, Swasti Johri, Steven Sherman, Layla Dargahi, Claire Wilson; Nays: none; Abstentions: none; Absent: none;

Motion carried 8-0-0-0

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Compromised refuse collection processes frequently expose waste to the environment and its natural processes, adversely impacting environmental health. Improperly staged

refuse bins are subject to being knocked over or left uncovered, and rainwater runoff from unenclosed waste creates leachate containing microplastics such as polyethylene, polystyrene, and polypropylene<sup>2</sup>. As leachate enters Berkeley's stormwater drainage systems, these microplastics inevitably contaminate the Bay. Clogged drainpipes are a consequential causative factor of water logging in urban areas<sup>3</sup>, thus unenclosed waste and litter that result in clogged storm drains increase flood risks amidst already intensifying storms. Furthermore, 80% of global marine litter originates from land<sup>4</sup>. The City of Berkeley's contribution to this number could be significantly reduced by establishing effective refuse collection policies and processes. Beyond these impacts, inadequate materials collection infrastructure in multifamily developments significantly limits resident and business participation in proper refuse, recycling, and composting. When collection areas are inconvenient or poorly designed, participation declines, contamination increases, and diversion goals are undermined. Improving access and usability of tenant-facing collection spaces is therefore critical to increasing participation and achieving environmental outcomes.

Successful allocation of waste receptacles can benefit all local communities. Proper management is projected to conserve resources, reduce greenhouse gas emissions, save energy, and decrease pollutants<sup>5</sup>. Studies have shown that proper programs for waste management not only reduce environmental harm but improve the physical and mental health of citizens<sup>6</sup>.

#### RATIONALE FOR RECOMMENDATION

The absence of code requirements on space allocation for efficient material collection and enforcement of minimum service requirements in the City of Berkeley, has restricted staff's ability to enforce compliance with our recommendations for proper space allocation in the pre-design and construction phases of the project lifecycle. This has led to development of properties that complicate the material collection process, elevating health and environmental risks. Problems at all levels of the refuse collection process occur without explicit standards for appropriate space allocation, and a lack of enforcement allows for these conditions to persist.

#### ALTERNATIVE ACTIONS CONSIDERED

The alternative action to the proposed recommendation would be taking no action.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Julia A. Heath, Zero Waste Commission Secretary, Recycling Program Manager, (510) 981-6357

<sup>1</sup> As written in former Councilmembers Rigel Robinson and Kate Harrison's letter to the Mayor and Berkeley City Council requesting fee waivers for the referenced trash corral pilot project in 2019. <https://records.cityofberkeley.info/PublicAccess/api/Document/AZTt6TtX96Uhgjoldp0qAorvaUCTpo4EUlf%C3%8934BX%C3%81YDKAnTLsKgSiZ5K40mqKqaWXIfSWV0GlxDleBQy6w%C3%89DNQ%3D/>

<sup>2</sup> Kabir, M. S., Wang, H., Luster-Teasley, S., Zhang, L., & Zhao, R. (2023). Microplastics in landfill leachate: Sources, detection, occurrence, and removal. *Environmental Science and Ecotechnology*, 16, 100256. <https://doi.org/10.1016/j.esse.2023.100256>

<sup>3</sup> Wang, X., Xia, J., Feng, J., & Dong, B. (2025). Numerical modelling of the impact of drainage system clogging on urban flood processes. *Journal of Environmental Management*, 388, 125969. <https://doi.org/10.1016/j.jenvman.2025.125969>

<sup>4</sup> Rossi, A., Wu, M., Wolde, B. T., Zerbe, K. W., David Hsu, T.-T., Giudicelli, A., & Da Silva, R. (2023). Understanding the factors affecting the quantity and composition of street litter: Implication for management practices. *Heliyon*, 9(3), e14245. <https://doi.org/10.1016/j.heliyon.2023.e14245>

<sup>5</sup> United States Environmental Protection Agency. (2025, May 14). Recycling Basics and Benefits. [www.epa.gov](https://www.epa.gov/recycle/recycling-basics-and-benefits); EPA. <https://www.epa.gov/recycle/recycling-basics-and-benefits>

<sup>6</sup> Wilson, C. (2024). Down in the Dumps: Exploring San Francisco's Approach to Illegal Dumping and Recommendations for Optimization. City and County of San Francisco's Office of Refuse Rate Administration. [https://media.api.sf.gov/documents/Illegal\\_Dumping\\_Final\\_Report.pdf](https://media.api.sf.gov/documents/Illegal_Dumping_Final_Report.pdf)





Rashi Kesarwani  
Councilmember, District 1

## ACTION CALENDAR

October 27, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Brent Blackaby (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor)

SUBJECT: Amending Resolution No. 71,513-N.S. Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods to Include Prohibitions Against Encampments in Close Proximity to Preschools and In-Home Daycare Facilities

### **RECOMMENDATION**

Approve an amendment to Resolution No. 71,512-N.S., Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods, that adds proximity to licensed preschools and/or in-home early childhood daycare facilities to the list of circumstances in which the City Manager is authorized to close an encampment with an offer of shelter whenever practicable.

Specifically, it is recommended to add a 600 foot buffer zone<sup>1</sup> prohibiting encampments around preschools and in-home daycare facilities in order to safeguard the health and welfare of young children. Preschool-aged children are particularly vulnerable to a range of public health concerns because they are more likely to play closer to the ground, touching potentially infected objects and then putting their hands in their mouth. A buffer zone around these institutions should be adopted to minimize public health and safety risks. Resolution No. 71,513-N.S should add to the list of enforcement circumstances:

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<sup>1</sup> This measurement was chosen to be aligned with the City's Tobacco Ordinance that similarly aims to protect youth who are vulnerable by virtue of their age.



- The encampment is located within 600 feet of any licensed preschool and/or in-home daycare facility as measured by a straight line from the nearest point of the property line of the parcel on which the preschool/in-home daycare facility is located to the nearest point of the encampment, including its associated belongings.

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

***US District Court Ruling Confirms City's Ability to Close Harrison Encampment While Requiring ADA Accommodations for Encampments on Sidewalks.*** On April 3, 2026 US District Judge Edward Chen issued what became a final ruling in the *Berkeley Homeless Union (BHU) v. City of Berkeley* lawsuit. While Judge Chen has granted the City permission to close the Harrison encampment and opined that "the City is not required to designate, create or identify enforcement-free relocation zones or City-sanctioned campsites,"<sup>2</sup> he also granted BHU members exemption from the categorical enforcement of our sidewalk rule (Administrative Regulation 10.2, attached) regulating the amount of personal belongings an unhoused person can keep on the sidewalk. Regarding encampment residents with disabilities, Judge Chen noted:

"The City must conduct an individualized assessment for each claimant that accounts for the claimant's specific disability-related shelter needs; the actual dimensions and physical characteristics of the sidewalk or right-of-way in question; and the public interest in maintaining a regulatorily-mandated path of travel. In this regard, the ordinance's prescribed six-foot minimum path for most sidewalks is presumptively reasonable and sufficient."<sup>3</sup>

Judge Chen similarly ordered that the City must provide relocation assistance, including physical packing and moving assistance to those Harrison encampment residents requesting ADA-related accommodations. For encampment residents without disabilities, the Judge ruled the City may not enforce space limitations in ways that prevent them from maintaining a tent, provided it does not unreasonably interfere with public passage.

In both cases, the Judge ordered continued engagement and communication between the two parties regarding encampment residents' needs for replacement survival property, such as tents and storage bins, and city storage capacity of personal belongings.

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<sup>2</sup> US District Judge Chen April 3, 2026 Order Granting in Part and Denying in Part Cross-Motions for Summary Judgement, Document 288, Case No. 25-cv-01414-EMC, attached

<sup>3</sup> Judge Chen April 3, 2026 Order, Document 288, cited above

***Despite Repeated Attempted Temporary Restraining Orders, The Court Maintains City's Ability to Close Encampment and Orders BHU to Find Suitable Relocation Sites on City's Sidewalks.*** On July 27, 2026, the City posted a public notice of encampment closure for the Harrison Corridor noting a compliance deadline of August 3. That process was temporarily halted due to BHU's successful filing for a Temporary Restraining Order (TRO) on July 29. The court additionally set a hearing date for August 13th and ordered the two sides to submit a status report in advance of the hearing date. During the hearing, the Judge denied BHU's request for a preliminary injunction to halt the City's abatement and closure of the encampment, upholding the City's ability to close the encampment. However, he additionally ordered BHU to provide the City a list of the 23 encampment residents still seeking disability accommodations, along with their requested tent size. He also ordered the City and BHU representatives to travel throughout Berkeley together to identify appropriately wide sidewalks to accommodate new tent relocation sites – that is, identify sidewalks wide enough to allow a tent and a path of travel - and set another hearing date for August 28.

***BHU Identifies Two Relocation Sites in Close Proximity to Preschools: Ninth and Camelia and Fourth and Camelia and the City has Limited Capacity to Deny Them.*** In advance of the August 28 hearing, BHU submitted one criteria-conforming tent relocation site for one Harrison encampment resident: the northwest corner of Ninth and Camelia Street. BHU also submitted a status report just prior to the hearing listing an additional location for two BHU members: the northwest blockface of Fourth and Camelia. Due to the Judge's April 3 ruling, the City has limited capacity to deny certain Harrison encampment individuals requesting ADA-related accommodations who seek to relocate tents elsewhere on City sidewalks. The City is legally restricted to analyzing only two factors once a tent is situated at a particular location: whether the sidewalk allows for a six-foot path of travel and whether there is sufficient emergency access. The Judge has similarly made clear that the City cannot reject a site based on potential future health and safety concerns.

***Ninth and Camelia Encampments Less than 300 Feet from Two Childcare Centers.*** Currently, a Harrison encampment resident has relocated to the Ninth and Camelia site with a tent and associated belongings measuring roughly 10x20 feet. Due to the width of the sidewalk, this shelter *does* comply with the Judge's criteria. Shortly after that encampment got established, it was joined by another single tent owned by someone not involved with the Harrison encampment lawsuit. These encampments are less than 300 feet from two childcare centers on the same block on the south side of Camelia Street: Centro Vida Children's Center, serving children ages two to five years old; and Chairez Montessori Preschool, an in-home daycare facility serving children 6 months to five years in age.

***Fourth and Camelia Potential Encampment Relocation Site Less than 400 Feet from One Preschool.***

Two Harrison encampment residents requested relocation sites at Fourth and Camelia and tents measuring 11 x 20 feet (10 person tents). In mid-August of this year, these individuals moved belongings to that location though they were later removed due to encroachment into the street. At present, these individuals are still residing in the Harrison corridor as they have a court ordered ADA-related exemption from the current September 15 abatement effort while their relocation site is under consideration. The City's Deputy Fire Marshall investigated this proposed accommodation location and determined that while the requested tent sizes exceed the allowable tent width, the sidewalk could accommodate one tent with a width of 6.25 feet in one location; and another tent with a width of 4.5 feet in another location on the block - both with an allowable length greater than 20 feet.<sup>4</sup> As there are several four-person tents on the market that fit these measurements, this location remains a potential for future encampments. This location is less than 400 feet from Duck's Nest preschool serving children ages 18 months to five years of age. The proposed accommodation location in the public right of way is commonly used by preschool families when parking to pick up and drop off children at the facility.

***Preschool Families and Residents Express Fears and Concerns About Encampment Locations in Close Proximity to Childcare Facilities.*** Almost as soon as the encampments at Fourth and Camelia and Ninth and Camelia were established, preschool directors, preschool families, nearby residents and businesses began reaching out to the District 1 and Mayor's office, often including the City Manager, the entire City Council and at times Judge Edward Chen. Correspondences voiced a range of concerns regarding encampments at these locations, including:

- Reduction of the path of travel on the sidewalk for families with strollers;
- Public health risks posed by used needles and other sharp objects on the ground and within small children's reach and range of vision;
- Safety risks associated with large dogs often found at encampments and at eye level with small children;
- Increased vector activity and concerns about leptospirosis found in areas less than a mile away;
- City's enforcement capabilities and its ability to prohibit expansion of encampments;
- Sanitation as well as human and animal waste concerns; and
- Exposure to loud profanity, confrontations, threatening behaviors and escalating violence.

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<sup>4</sup> Supplemental Declaration of Thomas Gregory in Support of Defendant City of Berkeley's Status Update, Document 380-1, filed on September 18, 2026, Case No. 3:25-CV-01414-EMC, attached

***City Enforcement Staff are Stretched Thin as They Attempt to Proceed with the Harrison Encampment Abatement, Address Encampments Relocating Close to Vulnerable Populations, While Managing Safety Concerns Throughout the Rest of the City.***

On September 15, 2026, the City began abatement of the Harrison encampment save seven individuals the court exempted from this process as their relocation requests and tent sizes had not yet been settled and leaving the clearing of RVs to a later date. The City worked over two days to clear Harrison Street between Sixth through Eighth Street, the areas along Codornices Creek, and the remaining encampments on Eighth Street, north of Harrison to the Albany border. The effort was punctuated by another emergency motion for a TRO which was again denied by the judge. Due to the volume of work the City was unable to finish the abatement effort and intends to complete the work at a later date. Since that time, several Harrison encampment residents have attempted to return to the area and those who were not protected have simply moved to areas on the corridor not yet addressed. City staff have limited capacity to monitor and help maintain areas throughout the City that are being impacted by this homeless crisis. Creating a buffer zone around facilities serving our youngest residents will help ensure their safety and limit their exposure to public health risks.

***The City Appeals Judge Chen's Rulings to the Ninth Circuit Court of Appeals.*** The City strongly disagrees with the Court's interpretation of the Americans with Disabilities Act (ADA) in this and other lawsuits and has officially appealed these rulings to the Ninth Circuit Court of Appeals. On September 24, 2026, our City Attorney's Office filed an emergency motion to the Ninth Circuit for an administrative stay of Judge Chen's August 28th ruling that would extend his orders regarding ADA accommodations for Harrison encampment residents to the rest of the City.

## **BACKGROUND**

***Martin v. Boise Shapes the City's Approach to Addressing Homelessness.***

The District 1 office has had a long history of dealing with homeless-related issues particularly in West Berkeley located in and around the Gilman District. In 2018 the Ninth Circuit Court of Appeals ruled in the *Martin v. City of Boise* lawsuit<sup>5</sup> that cities cannot criminalize unhoused individuals for sleeping outside on public property when no alternative shelter is available. Berkeley's response to that judgement was to operationalize transitional housing and develop permanent supportive housing to meet the growing homeless related needs. Thanks to Measures O, P and U1, and several state Encampment Resolution Fund grants,

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<sup>5</sup> United States Court of Appeals for the Ninth Circuit, Robert Martin et. al. v. City of Boise, No. 15-35845, D.C. No. 1:09-cv-00540-REB: <https://cdn.ca9.uscourts.gov/datastore/opinions/2019/04/01/15-35845.pdf>

Berkeley has been able to open hundreds of interim housing and permanent supportive housing beds serving thousands of residents over the last number of years.<sup>6</sup> These efforts have, for the most part, successfully decreased the numbers of homeless individuals we see on our street<sup>7</sup> and has helped improve several areas within West Berkeley. However, several hundred homeless individuals remain on Berkeley streets on any given night.

***Supreme Court's Grants Pass Ruling Grants the City Greater Flexibility to Close Harrison Encampment.*** The Supreme Court's June, 2024 Grants Pass Ruling<sup>8</sup> overturned *Martin v. Boise* ruling that enforcing local anti-camping and public sleeping laws does not violate the Eighth Amendment's ban on cruel and unusual punishment; this allows cities the authority to enforce local laws pertaining to homeless individuals encamped in the public rights of way. That was quickly followed up by Councilmember Kesarwani's Encampment Policy Resolution<sup>9</sup> that affirmed the City's Housing First approach while also listing circumstances in which the City Manager is authorized to enforce encampment closures and deter re-encampment in the event that shelter offers are not practicable. These circumstances include:

- The Fire Department has determined that an encampment poses a fire hazard or emergency condition as referenced in the Berkeley Fire Code, Berkeley Municipal Code (BMC) Chapter 19.48; or The Environmental Health Division of the Health, Housing and Com
- munity Services Department has determined that the encampment poses an imminent health hazard as defined in BMC section 11.36.030; or
- The City has determined that a situation constitutes a public nuisance as defined in the BMC and is subject to an abatement pursuant to the BMC; or
- The encampment is located on a City street median, in the roadway, or otherwise in dangerous proximity to traffic pursuant to BMC section 14.32.040; or
- The encampment is located in an area where the City has authorized work (such as for construction, major or minor encroachments, etc.) pursuant to BMC section 13.36.045; or

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<sup>6</sup> See City Manager's Comprehensive Summary of Berkeley's Homeless Response presented during a July 29, 2025 worksession: [https://berkeleyca.gov/sites/default/files/documents/2025-07-29 Special Item 02a Comprehensive Summary of Berkeley's Homeless Response.pdf](https://berkeleyca.gov/sites/default/files/documents/2025-07-29%20Special%20Item%20a%20Comprehensive%20Summary%20of%20Berkeley's%20Homeless%20Response.pdf)

<sup>7</sup> 2024 saw a 45% decrease of unsheltered homelessness, slightly countered by a 4% increased seen in 2026.

<sup>8</sup> Supreme Court of the United States: *City of Grants Pass, Oregon v. Johnson*: [https://www.supremecourt.gov/opinions/23pdf/23-175\\_19m2.pdf](https://www.supremecourt.gov/opinions/23pdf/23-175_19m2.pdf)

<sup>9</sup> Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods and Related First Reading of Ordinance Amending Chapter 14.48 of the Berkeley Municipal Code, passed on September 10, 2024: <https://berkeleyca.gov/sites/default/files/documents/2024-09-10%20Item%2037%20Encampment%20Policy%20Resolution.pdf>

- The encampment interferes with or impedes city or utility companies' construction or maintenance activities in the public right-of-way, street lighting installation or repair, street tree maintenance, or utilities maintenance or repair.

***Encampment Closures Proceed Despite Legal Challenges.*** In January of 2025, pursuant to the Encampment Policy Resolution No. 71,513-N.S. that directed the City to prioritize closing the large encampments along the Harrison Corridor and Second Street, the city began the abatement process for the two encampments.<sup>10</sup> Shortly thereafter the Berkeley Homeless Union (BHU) filed a lawsuit in United States District Court to halt the clearing based on the City's failure to accommodate the encampment residents' disability needs under the Americans with Disabilities Act (ADA). This is the same lawsuit that continues to legally entangle the City and has led to Judge Edward Chen's April 3, 2026 ruling. The City has now attempted to abate the Harrison encampment on several different occasions over the last year and a half. Despite the known presence of leptospirosis, a bacterial disease spread by rats and identified in January 2026, these attempts have largely been successful in pausing the encampment closure until recently with the September 15 abatement effort.

While the Harrison corridor is already greatly improved now that most of the encampments and associated belongings have been removed, the city continues to struggle with the remaining encampments and the court ordered encampment relocation efforts elsewhere in the city.

## **RATIONALE**

Homeless encampments situated near preschools raise numerous concerns. Most notably, they expose young children to unsanitary conditions, discarded hazardous materials, and unpredictable public behaviors. Used and potentially infected needles are sometimes found near encampments and are more accessible to children; human waste and trash more quickly accumulate near encampments and unsanitary conditions, and improper food storage attracts rats and other pests that can spread diseases, such as leptospirosis. Unsecured animals can sometimes act aggressively toward children traveling to and from the school facilities, and individuals struggling with severe mental health crises leading to erratic actions can be threatening and disturbing to witness.

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<sup>10</sup> The City's efforts to close the Second Street encampment that largely consisted of RV's was remarkably successful, no doubt a result of the Pilot RV buy-back program that offered cash value per square footage of the vehicle in exchange for encampment residents moving into transitional shelter. See Dr. Margot Kushel's Interim Evaluation of the Berkeley Encampment Resolution/RV Buyback Program, Benioff Homeless and Housing Initiative, UCSF, March 2026: <https://homelessness.ucsf.edu/sites/default/files/2026-03/Berkeley RV Interim Evaluation Final 3.31.pdf>

Because of these concerns, many other cities within the state have already enacted encampment bans near schools and other sensitive areas:

- Los Angeles adopted Municipal Code Section 41.18 that allows city leaders to establish zones where unhoused people cannot sit, lie down, sleep, or store personal property in certain public spaces and near specific sensitive locations, banning encampments within 500 feet of schools, July 2021;<sup>11</sup>
- City of Sacramento approved banning homeless encampments within 500 feet of K-12 schools, adding them to the list of the city's existing Critical Infrastructure Ordinance, October 2022;<sup>12</sup>
- City of Oakland reclassified specific geographic areas as Highest Priority Zones for purposes of enforcement and intervention, including proximity to schools, creating a 150-foot buffer for elementary, middle, pre-school or childcare centers, and a 100-foot buffer from high schools;<sup>13</sup> and
- City of San Jose established School Clearance Zones banning all homeless encampments within 150 feet of k-12 schools citywide, January 2024.<sup>14</sup>

## **FISCAL IMPACTS**

The fiscal impacts of implementing a buffer zone around preschools and in-home daycare facilities is limited to staff time to enforce this policy.

## **ENVIRONMENTAL IMPACTS**

Encampments often are coupled with hazardous materials such as human waste and contaminated needles and increased vector activity. Prohibiting encampments in certain sensitive areas of the city will eliminate public health and safety concerns and improve the conditions of those areas for all users.

## **CONTACT**

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<sup>11</sup> Parts of LA Municipal Code 41.18 were recently selectively repealed in August, 2026 though none of the repealed sites were near schools. LA Municipal Code Section 41.18:

[https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-128514](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128514)

<sup>12</sup> City of Sacramento City Council Report August 1, 2023, Critical Infrastructure List Resolution:

[https://sacramento.granicus.com/Viewer.php?view\\_id=22&clip\\_id=5631&meta\\_id=741121](https://sacramento.granicus.com/Viewer.php?view_id=22&clip_id=5631&meta_id=741121)

<sup>13</sup> City of Oakland Resolution NO. 91102, amended April 2026:

<https://acrobat.adobe.com/id/urn:aaid:sc:va6c2:12773cfc-642c-4c26-89be-d03f74bee7b9?viewer%21megaVerb=group-discover>

<sup>14</sup> San Jose Spotlight, January 2024 City Council Agenda Item 8.2: Addressing Encampments and oversized Vehicles Around Schools: [https://sanjosespotlight.com/wp-content/uploads/2024/01/mini-packet\\_City-Council\\_20240130202315564.pdf](https://sanjosespotlight.com/wp-content/uploads/2024/01/mini-packet_City-Council_20240130202315564.pdf)

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

**ATTACHMENTS**

- 1) Resolution No. 71,513-N.S., amended
- 2) Administrative Regulation 10.2 Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120
- 3) April 3, 2026 Order Granting in Part and Denying in Part Cross-Motions for Summary Judgement
- 4) September 18, 2026 Supplemental Declaration of Thomas Gregory in Support of Defendant City of Berkeley's Status Update



RESOLUTION NO. 71,513-N.S.

ENCAMPMENT POLICY RESOLUTION TO PROMOTE HEALTHY AND SAFE  
NEIGHBORHOODS

WHEREAS, offering shelter and housing to homeless individuals is considered a best practice, according to the United States Interagency Council on Addressing Homelessness; and

WHEREAS, the City of Berkeley expresses its continued commitment to a Housing First approach, in which we recognize that people experiencing homelessness must first be able to access a decent, safe place to live before stabilizing, improving health, reducing harmful behaviors, or increasing income; and

WHEREAS, in 2018, Berkeley voters approved an increase in the real estate transfer tax for the top third of real estate transactions to augment General Fund resources available for homeless services, known as Measure P, which has helped to fund transitional housing motels Berkeley Inn and Campus Hotel (formerly Super 8) and permanent supportive housing sites Golden Bear Homes, The Rodeway Inn, and Step-Up Housing (under construction), and will be considered by the voters for extension in November 2024 as Measure W; and

WHEREAS, from 2022 to 2024, the City saw a dramatic 45 percent reduction in street homelessness corresponding with a 54 percent increase in sheltered homelessness, and an overall 21 percent reduction in homelessness, illustrating that the provision of transitional and permanent supportive housing can successfully reduce overall homelessness; and

WHEREAS, in 2018, the Ninth Circuit Court of Appeals ruled in *Martin v. City of Boise* that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property,” which required the City of Berkeley to make a shelter offer in all circumstances; and

WHEREAS, the recent Supreme Court decision in *Grants Pass v. Johnson* overturns the *Martin* standard, thus giving cities like Berkeley the authority to set a more nuanced encampment policy that considers exigent circumstances of fire, health, and nuisance abatement pursuant to the Berkeley Municipal Code; and

WHEREAS, certain encampments have persisted, such as the encampments in the Harrison Corridor (between Ninth and Seventh Streets and Eighth Street north of

Harrison), and the Second and Cedar Area (Cedar between Eastshore and Fourth, and Second between Page and Cedar and on Page and Jones west of Fourth), despite documented fire, environmental health, and nuisance hazards as defined in the Berkeley Municipal Code and ongoing exhaustive City staff efforts to offer shelter when available and abate hazards; and

WHEREAS, City staff have provided extensive services for individuals sheltering in the Harrison Corridor area, including reserving the 23 rooms at the Campus Hotel (formerly Super 8) for residents of the Harrison corridor. City staff have also provided case management and engagement, abatement of rodent harborage conditions, deep cleaning and trash removal four times per week, and basic sanitation services including portapotties, a handwashing station, weekly showers, and laundry services; and

WHEREAS, calls for Berkeley Police and Fire service are exceedingly high at both encampment areas with Berkeley Police calls for service at the Harrison encampment during 12 months (August 1, 2023 - July 31, 2024) totaling 252 and at Cedar and Second Streets encampment totaling 369—on average one call every day to day-and-a-half—and calls for Berkeley Fire service totaling 78 and 81, for each encampment respectively, during that same timeframe, with safety impacts for nearby residents, workers, and visitors and detrimental impacts on business operations.

WHEREAS, young children ages zero to five years are particularly vulnerable and at risk of picking up objects that could be dangerous or contaminated.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley will continue to offer interim housing (generally a shelter offer, with a preference for non-congregate options) when closing encampments, whenever practicable, in accordance with the City's existing "Housing First" approach and best practices guidance from the federal government;

BE IT FURTHER RESOLVED, in the event that the City Manager determines that a shelter offer is not practicable, then the City Manager is nonetheless authorized to enforce state and local laws to address the following specific circumstances:

- The Fire Department has determined that an encampment poses a fire hazard or emergency condition as referenced in the Berkeley Fire Code, BMC Chapter 19.48; or
- The Environmental Health Division of the Health, Housing and Community Services Department has determined that the encampment poses an imminent health hazard as defined in BMC section 11.36.030; or
- The City has determined that a situation constitutes a public nuisance as defined in the BMC and is subject to an abatement pursuant to the BMC; or

- The encampment is located on a City street median, in the roadway, or otherwise in dangerous proximity to traffic pursuant to BMC section 14.32.040; or
- The encampment is located in an area where the City has authorized work (such as for construction, major or minor encroachments, etc.) pursuant to BMC section 13.36.045; or
- The encampment interferes with or impedes city or utility companies' construction or maintenance activities in the public right-of-way, street lighting installation or repair, street tree maintenance, or utilities maintenance or repair.
- The encampment is located within 600 feet of any licensed preschool and/or in-home daycare facility as measured by a straight line from the nearest point of the property line of the parcel on which the pre-school/in-home daycare facility is located to the nearest point of the encampment, including its associated belongings.

BE IT FURTHER RESOLVED, the City Manager is authorized to take actions to deter re-encampment (after clearing an encampment involving any of the six instances enumerated above) through such means as hardscaping; signage that references state Penal Code Section 647(e); and/or enforcement through applicable state and local laws, even if a shelter offer is not practicable.

BE IT FURTHER RESOLVED, that the City Council determines that the Harrison Corridor (Harrison Street between Ninth and Seventh Streets, including Eighth Street north of Harrison) and the Second and Cedar area (Second Street between Cedar and Page, Cedar from Eastshore Highway to Fourth, and on Page and Jones Streets west of Fourth) meet all six health and safety exceptions as proscribed by the above-stated policy and should therefore be prioritized for enforcement.

|                     |             |
|---------------------|-------------|
| <b>A.R. NUMBER:</b> | <b>10.2</b> |
| ORIGINAL DATE:      | 11/13/18    |
| POSTED DATE:        |             |
| PAGE 1 OF 5         | PAGES       |

# CITY OF BERKELEY

## ADMINISTRATIVE REGULATION

**Subject: Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120**

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### PURPOSE

This Regulation is intended to protect the City's substantial interests in access and safety on Sidewalks and Parklets for pedestrians and for persons with disabilities, aesthetically pleasing streetscapes, and vital commercial areas, all of which are critical to the City's economic and social well-being, in a manner consistent with the United States and California Constitutions, including the First, Fourth, Eighth, and Fourteenth Amendments.

This Regulation provides policy and procedures regarding placing Temporary Noncommercial (TNC) Objects on Sidewalks and Parklets, pursuant to Berkeley Municipal Code (BMC) § 14.48.120.

### DEFINITIONS

"BART Access Corridor" is a Sidewalk, including a wide plaza area, on the same side of the street as a BART Station entrance, within 25 feet of such entrance. In the downtown area, the BART Access Corridor includes all sidewalk and plaza areas on the west side of Shattuck Avenue from Addison Street to Allston Way.

"Parklet" is defined as provided in BMC § 14.48.190.

"Path of Travel" is defined as:

- For Sidewalks which measure less than fourteen (14) feet in width, the Path of Travel is six (6) feet wide; this 6-foot wide strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.
- For Sidewalks which measure 14 feet or greater in width, the Path of Travel is ten (10) feet wide; This 10-foot strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.

"Sidewalk" is defined as provided in BMC § 1.04.010(18) as that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

The dirt planting strip that sometimes exists within the sidewalk along the edge of the curb is part of the sidewalk because it is intended to be used by pedestrians walking to and from a roadway, e.g. to a parked car.

“Street” is defined as provided in BMC § 1.04.010(20) as all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state. For the purposes of this Administrative Regulation, “street” encompasses any median therein.

“TNC Objects” are defined as provided in BMC § 14.48.120 as personal belongings:

1. In the immediate custody and control of a person or persons at substantially all times;
2. Not offered for sale or exchange or involved in the solicitation of money for immediate payment;
3. Not otherwise prohibited and of a size, weight and quantity that can be easily moved by the owner.
4. Not furniture. Furniture is only allowed pursuant to BMC Chapter 9.48 or pursuant to BMC § 14.48.030 for Objects in Transit or BMC § 14.48.150 for Sidewalk Café permits and City-installed furniture.

“TNC Prohibited Area” is a public location where notices have been posted in reasonably visible locations delineating a geographic area where TNC Objects are prohibited.

## **POLICY**

### **A. Objects Subject to this Regulation**

This Regulation applies to all Temporary Noncommercial (TNC) Objects. It does not apply to leafleting, hawking, peddling and similar activities to the extent those activities do not involve the placement of physical objects on the Sidewalk, or to TNC or other objects expressly permitted by the Berkeley Municipal Code.

TNCs that create major health and safety impacts for encampment residents or the general public are not allowed on City streets, sidewalk, or other public rights-of-way under any circumstances and are subject to removal pursuant to Administrative Regulation 10.1.

**B. TNC Objects Exempt from this Regulation**

1. Mobility devices used by pedestrians or individuals are exempt from this regulation.
2. The following TNC Objects are exempt from this Regulation, except in TNC Prohibited Areas: Blankets, cushions, mats, or other material providing cushioning ("Cushioning Material") while an individual is seated on such an item, which does not expand beyond 2' x 2' in size and is outside of the Path of Travel.

**C. Time and Location Requirements for TNC Objects**

1. TNC Objects - Residential Districts

TNC Objects are prohibited on Sidewalks in Residential Districts, except Objects in Transit pursuant to BMC § 14.48.030 or as otherwise specifically authorized by the BMC.

2. TNC Objects - Commercial and Manufacturing Districts

- a. TNC Objects shall not be left unattended for more than 2 hours.
- b. TNC Objects may not be placed in Parklets or on any portion of a street that is not a Sidewalk.
- c. TNC Objects must not interfere with access to and use of driveways, crosswalks, bus benches, bus stops, transit stops, bicycle racks, fire hydrants, faucet bibs, utility boxes, public art installations, mailboxes, ATM machines, embedded trap doors, parking meters, parking payment machines, refuse or recycling cans, or pursuant to a City permit, construction materials, newspaper racks, or sidewalk café seating.
- d. TNC Objects may not be placed in a location that interferes with access for individuals with disabilities such as curb and wheelchair ramps, or other features for disability access.
- e. TNC Objects may not be placed in a location where they would obstruct, restrict, or hinder visibility of traffic devices or signs.

- f. TNC Objects may not be placed at or adjacent to any blue or white curb.
- g. TNC Objects may not be placed on a Sidewalk directly in front of or within three feet of either side of a building entrance, from the building face to the curb edge of the Sidewalk.
- h. TNC Objects may not be placed within a BART Access Corridor, except objects in transit per 14.48.030 and other objects expressly allowed by the BMC.
- i. TNC objects must occupy a space of no more than 9 square feet and may not exceed 5 feet in height.
- j. TNC Objects may not be placed in TNC Prohibited Areas.

#### **D. ENFORCEMENT PROCEDURES**

To the extent possible, given resources, the initial outreach may be made by homeless outreach staff; management and/or enforcement of TNC Objects may be initiated by Neighborhood Services Homeless Response Team, Code Enforcement, Berkeley Police Department, and/or Public Works staff.

To further implement BMC §§ 14.48.120(C) and (D), the City hereby adopts the following procedures:

1. If TNC Objects or Cushioning Material are located within the Path of Travel or in a BART Access Corridor, they must be immediately moved out of the Path of Travel or BART Access Corridor by their owner upon request of the enforcement officer. Should TNC objects not be immediately moved, such objects shall be subject to removal and storage by the City pursuant to BMC § 14.48.160 and consistent with Administrative Regulation 10.1, and/or a citation may be issued.
2. For TNC Objects or accumulations of TNC Objects, enforcement of this Regulation shall be a low priority, except when:
  - TNC Objects have been in the same approximate location for 24 hours or more,
  - TNC Objects are located in a TNC Prohibited Area,
  - More than two accumulations of TNC Objects occupy a single blockface, or
  - TNC Objects pose a significant impact to health, safety, or city operations.

Enforcement officers may:

- Request that TNC Objects be reduced to a 9-square-foot footprint (measured as 3' x 3', 4' x 2.25', 9' x 1', etc.) and/or less than 5 feet in height,
- Request that TNC Objects be moved to another location,
- Subject to the notice requirements below, remove TNC Objects pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, or
- Issue an administrative citation or infraction.

3. Except in the case of a significant health or safety risk or in TNC Prohibited Areas:

Prior to removal of TNC Objects, 48 hour written notice of intent to remove TNC Objects shall be provided, either by attaching such notice to, or directly adjacent to, such TNC Objects, or by providing notice to the owner.

## INTERPRETATION

This Regulation is intended to be consistent with the United States and California constitutions, and in the event a patent or latent ambiguity in this Chapter requires interpretation by the City or a Court, such interpretation shall, to the extent permissible, be consistent with relevant constitutional provisions.

|                                                |                         |
|------------------------------------------------|-------------------------|
| <b>RESPONSIBLE DEPARTMENT:</b><br>City Manager | Approved by:            |
| <b>TO BE REVISED:</b><br>As needed             | <i>Paul Buddenhagen</i> |
|                                                | _____<br>City Manager   |



# AR 10.2 - Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets

Final Audit Report

2025-01-02

|                 |                                              |
|-----------------|----------------------------------------------|
| Created:        | 2025-01-02                                   |
| By:             | Ramonda Clarke (RClarke@berkeleyca.gov)      |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAyX8L-vfHCTDHuz-aSqPXGtNIHHXtYZSz |

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HOMELESS UNION, et al.,

Plaintiffs,

v.

CITY OF BERKELEY, et al.,

Defendants.

Case No. 25-cv-01414-EMC

**ORDER GRANTING IN PART AND  
DENYING IN PART CROSS-MOTIONS  
FOR SUMMARY JUDGMENT**

Docket Nos. 219, 247, 255, 256, 278

**I. INTRODUCTION**

This case concerns Defendant City of Berkeley's efforts to close the encampment of unhoused residents located around Harrison Street & 8th Street in Berkeley, California ("Harrison Encampment" or "Encampment"). Plaintiffs are Frank Moore, an allegedly disabled individual who resides in the Encampment, and Berkeley Homeless Union ("BHU"), an organization that "provides direct support, organizes community defense efforts, and advocates for policy changes to protect unhoused individuals from displacement and discrimination."<sup>1</sup> First Amended Complaint ("FAC") (Dkt. 62) ¶¶ 40–41. BHU sued the City for injunctive relief, claiming that the City is discriminating against persons with disabilities in violation of the Americans with Disabilities Act ("ADA"), unlawfully seizing property in violation of the Fourth Amendment and Fourteenth Amendments, and violating the state-created danger doctrine. FAC ¶¶ 98–145.

Defendants are the City of Berkeley, as well as several City officials, including Paul Buddenhagen (the City Manager), Thomas Gregory (the City's ADA Program Coordinator), Peter

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<sup>1</sup> Individual Plaintiff Frank Moore is hereby **DISMISSED** from the action for failure to prosecute as he has neither filed with, nor appeared before the Court since the filing of the Complaint and application for a TRO. See Fed. R. Civ. P. 41(b). Moreover, Mr. Moore is not one of the seven individuals whose requested relief is at issue in these cross-motions for summary judgment.

1 Radu (the Assistant to the City Manager for Neighborhood Services), and Okeya Vance-Dozier  
2 (field supervisor for the Berkeley Homeless Response Team). *Id.* ¶¶ 42–46. Defendants have  
3 taken action to abate the Encampment, citing, *inter alia*, a documented outbreak of leptospirosis  
4 bacteria within the Encampment. Doohan Declaration (Dkts. 194-3; 207-2).

5 This matter comes before the Court on parties’ cross-motions for summary judgment.  
6 Defendants’ SJ Motion (Dkt. 219); BHU’s SJ Motion (Dkt. 247). The cross-motions concern the  
7 merits of: (1) seven BHU members’ disability discrimination claims under the ADA, and (2) the  
8 constitutional property seizure and state-created danger claims asserted on behalf of all BHU  
9 members residing in the Encampment. For the reasons set forth below, the Court finds that the  
10 City failed as a matter of law to provide reasonable accommodations to certain disabled  
11 Encampment residents in connection with its planned abatement operations in violation of Title II  
12 of the ADA. In addition, the City’s proposed abatement of certain vehicles used as primary shelter  
13 and enforcement of sidewalk space limitations would, absent compliance with the framework or  
14 protections set forth in this order, violate the Fourth and Fourteenth Amendment rights of BHU  
15 members. The Court otherwise rejects BHU’s remaining claims.

16 Accordingly, BHU’s motion for summary judgment is **GRANTED IN PART AND**  
17 **DENIED IN PART**, and Defendants’ motion for summary judgment is **GRANTED IN PART**  
18 **AND DENIED IN PART**.

## 19 II. BACKGROUND

### 20 A. Factual & Procedural Background

21 The following facts are undisputed except where otherwise noted.

22 The Harrison Encampment has been a fixture of Berkeley’s urban environment for years,  
23 but the facts giving rise to this dispute appear to crystallize around 2023, when Berkeley’s  
24 Environmental Health Division documented escalating hazards in the Harrison Encampment,  
25 including used syringes, raw sewage, and extensive rat burrows. Torres Declaration (Dkt. 56-4)  
26 ¶¶ 6–8. An April 22, 2025 inspection confirmed that the same conditions persisted and  
27 “constitute[d] an imminent hazard” to City workers and residents. *Id.* ¶ 8. In addition to these  
28 findings, Mr. Radu documented significant difficulties in maintaining the Encampment’s

1     hospitality: “Put simply, no single encampment area has received more time and attention from  
2     the City than the Harrison Corridor.” Radu Declaration, Ex. A (Dkt. 15). Defendants note that the  
3     City spent roughly five million dollars to fund a master lease of the Campus Motel to operate as a  
4     low-barrier non-congregate shelter for residents of the Harrison Corridor, that the Harrison  
5     Corridor was responsible for one in five total shelter offers to encampment residents throughout  
6     Berkeley, and that the Encampment was the source of hundreds of calls to the Berkeley Police and  
7     Fire Departments.<sup>2</sup> *Id.*; Defendants’ Opposition to Motion for Preliminary Injunction (Dkt. 56) at  
8     18.<sup>3</sup> Over the course of this litigation, the Court has received numerous declarations from  
9     surrounding community members and businesses complaining about hazardous conditions at the  
10    Harrison Encampment, including aggressive behavior and fights, thefts, uncontained fires, blocked  
11    roads and public rights of way, unleashed dogs, gun discharges, hazardous waste and debris  
12    including drug paraphernalia, and break-ins.<sup>4</sup> *See e.g.*, Dkts. 194, 198, 201.

13           On December 18, 2024, City Manager Paul Buddenhagen ordered a full closure of the  
14    Harrison Encampment. Radu Decl. (Dkt. 15) ¶ 6. The City posted notices around the  
15    Encampment in January 2025 directing all residents to leave within about one month, warning that  
16    the Encampment would be permanently closed, and that vehicles left behind “may be subject to  
17    tow and impounding” under California Vehicle Code §§ 22651 and 22669. City’s January 7, 2025  
18    Public Notice (Dkt. 13-1). A second identical notice was posted on January 31, 2025. City’s  
19    Second Public Notice (Dkt. 13-3).

20           BHU subsequently sued Defendants to halt the City’s scheduled abatement actions.  
21    Complaint (Dkt. 1). On February 14, 2025, Judge Gilliam granted a temporary restraining order  
22    (“TRO”) enjoining Defendants from clearing and evicting the Encampment. Order Granting TRO

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23           \_\_\_\_\_  
24    <sup>2</sup> The City represents that all Plaintiffs in this action were offered a unit at the Campus Motel and  
25    declined. Plaintiffs do not dispute this characterization.

26    <sup>3</sup> The City has, at various times, supplied dumpsters and trash pickup, portable toilets, and mobile  
27    shower and laundry services to the Encampment. Radu Decl., Ex. A at 3.

28    <sup>4</sup> Plaintiffs respond that the Encampment conditions were exacerbated by the City’s “own  
deliberate actions and refusal to cooperate,” including the removal of a dumpster and the reduction  
of weekly garbage pickups to “random, unscheduled pickups once or twice a month.” BHU Status  
Report (Dkt. 200) at 46–47.

(Dkt. 18). BHU later moved for a preliminary injunction to block the abatement, which was initially set for hearing on June 10, 2025. Order re Motion to Shorten Time (Dkt. 80).

On the morning of June 4, 2025, without notice or warning to BHU members or the Court, and just six days before the scheduled hearing on the preliminary injunction motion, the City began its abatement of the Harrison Encampment. Order Ceasing Abatement (Dkt. 89). BHU filed an *ex parte* application for an order to halt abatement, which the Court granted after an emergency hearing on the matter. *Id.* The Court emphasized the City's failure to provide adequate notice prior to commencing abatement operations against residents. Explanatory Order (Dkt. 90). And on June 10, 2025, the Court granted in part and denied in part BHU's motion for a preliminary injunction. Minute Entry, June 10, 2025 (Dkt. 104).

In so ruling, the Court found that BHU had associational standing. *Id.* at 2. It also found that BHU was "unlikely to succeed on its Fourteenth Amendment claim because it fails to demonstrate that the City's action will place its members residing in the Harrison Corridor in a state-created danger related to a loss of 1) 'bathrooms,' 2) 'access to food and water' such as from the 'Dorothy Day House,' 3) 'mutual protection' from 'community watch groups and buddy systems,' and 4) medical and case management services' from 'Lifelong Medical and Bay Area Community Services.'" *Id.* (citing Prado Declaration (Dkt. 72-2) ¶ 7). With respect to BHU's ADA claim, the Court held that BHU was "likely to succeed on its ADA claim that the City has not completed the interactive process to identify a reasonable accommodation for its members living in the Harrison Corridor for whom BHU has submitted accommodation requests." *Id.* The Court noted that "BHU's argument that the City has failed to provide a reasonable accommodation by refusing to allow BHU members to continue residing in the Harrison Corridor indefinitely or by failing to obtain interim permanent housing for these individuals is less certain because such accommodations could well constitute a fundamental alteration of the city's program to abate and close the encampment or place a burden on the City which cannot be met (there currently is limited housing availability)." *Id.*

The Court granted limited injunctive relief for residents on whose behalf BHU had submitted ADA accommodation requests. *Id.* Specifically, the Court provided the parties with

1 “60 days” to complete the interactive process for those BHU members residing in the Harrison  
2 Encampment who had submitted accommodation requests. *Id.* The Court ordered the parties to  
3 file a joint status report on the ADA interactive process within 60 days of the order. *Id.* No other  
4 residents were afforded such protection under the preliminary injunction. *Id.*; *see also* Order  
5 Reaffirming Preliminary Injunction (Dkt. 210). With respect to individuals falling outside the  
6 scope of the preliminary injunction, the Court ordered the City to provide “at least one week’s  
7 notice before moving on [those residents] property.” Minute Entry (Dkt. 104).

8 The interactive process was not completed within the 60-day timeline ordered by the  
9 Court. The parties have since engaged in bilateral discussions, including written correspondence  
10 and remote or in-person meetings. BHU does not dispute that the interactive process took place,  
11 but it argues that the process was not conducted in good faith, and that the City failed to  
12 adequately accommodate Plaintiffs. BHU’s SJ Motion at 18–19.

13 After the June 10, 2025 preliminary injunction order, the City identified the existence and  
14 spread of leptospirosis around the Harrison Encampment. Leptospirosis is a bacterial disease  
15 generally spread by rat urine, which can diffuse through soil, mud, or standing water to  
16 contaminate the wider environment. Doohan Declaration (Dkt. 194-3) ¶ 4. It can cause high  
17 fever, headache, and, without treatment, kidney damage, meningitis, liver failure, trouble  
18 breathing, and death. *Id.* ¶ 5. It is particularly dangerous for pregnant persons and fetuses, and  
19 there have been several confirmed and suspected cases of leptospirosis in dogs in and around the  
20 Harrison Encampment, with one dog “strongly suspected to have died from” leptospirosis. *Id.* ¶¶  
21 6, 14. Tests on rats have proven the overwhelming prevalence of leptospirosis within the  
22 Encampment. *Id.* ¶¶ 12, 15. The presence of leptospirosis in the Encampment is a significant  
23 threat to the health and safety of Encampment residents and surrounding community members,  
24 including nearby businesses, an urban community farm, restaurants, and residential properties like  
25 the University Village which serves U.C. Berkeley students with families. 17, 22. Due to the  
26 Encampment’s proximity to a creek, the risk is even more widespread. *Id.* Even prior to the  
27 discovery of leptospirosis in the Encampment, the Court noted in relation to the preliminary  
28 injunction order that as “health and safety hazards persist, the government’s interest in closure

1 increases.” Minute Entry (Dkt. 104).

2 This order resolves the cross-motions for summary judgment filed by BHU and the City.  
3 See Dkt. Nos. 219, 247. The Court’s analysis is limited to the claims raised in the cross-motions,  
4 which concern the accommodation requests of the seven disabled individuals falling under the  
5 scope of the June 2025 preliminary injunction and the Court-ordered interactive process.<sup>5</sup> To the  
6 extent the Court’s rulings extend to non-disabled BHU members in the Harrison Encampment, the  
7 order so specifies.

8 B. ADA Interactive Process

9 The City received ADA accommodation requests from seven Harrison Encampment  
10 residents prior to the Court’s June 4, 2025 preliminary injunction order. The requests laid out  
11 specific disabilities experienced by each plaintiff, and their requested accommodations. The  
12 requests were submitted in early 2025, and they triggered the initiation of the interactive process  
13 with the City which, because of interruptions and impasses, has persisted for nearly 14 months.  
14 See Dkt. 253, Exs. A–K; Thomas Gregory Declaration (Dkt. 219-3), Ex. A. The City sent its final  
15 determinations on accommodation requests in early-January, 2026, denying almost all  
16 accommodation requests. Dkt. 253, Ex. I. The claimants’ accommodation requests and City’s  
17 responses to each are summarized below.

18  
19  
20 <sup>5</sup> These individuals are: Merced Dominguez, Eric Keiser, Shareef Muwakkil, Lewanda Parnell,  
Yesica Prado, Erin Spencer, and Austin White.

21 At the March 6, 2026 hearing in the related case *Prado v. City of Berkeley*, No. 23-cv-04537-  
22 EMC, Plaintiffs informed the Court that 16 additional Harrison Encampment residents had  
23 submitted ADA accommodation requests related to the abatement. Dkt. 187. The Court declines  
24 to resolve the ADA accommodation claims of the 16 additional claimants as part of this ruling on  
summary judgment, as their claims were not briefed by the parties in relation to the cross-motions  
for summary judgment.

25 The 16 additional claimants are: Alice Barbee, Erik Alexander Johnson Coon, Hector Navarro,  
26 Jacob Clakley, Jason Charette, Jonny Ruel Holder, Kevin Martinez, Lisa Saechao-y-chain,  
Monique Williams, Quinton Cocklereese, Robbie Peddycoart, Robert Pearce, “Shawman,”  
27 Thomas Barnett, Brenda Bolares, and Jermaine Lee White. Prado Declaration (Dkt. 272), Exs. A-  
C.

28 As noted elsewhere, the rights of these 16 individuals and other similarly situated will be informed  
by the analysis herein.

1. Merced Dominguez

Merced Dominguez lives with degenerative spondylosis, which causes pain and limits mobility. Dkt. 253, Ex. A at 10. She relies on her RV as a form of shelter. *Id.* Because of her disability-related needs, Ms. Dominguez requested: (1) permission for her RV to stay at the Encampment and an exemption from towing despite her expired registration, because she has been unable to renew it “due to financial hardships”; (2) exemption from parking citations; (3) an exemption allowing her to keep garbage cans outside the RV on roadways or sidewalks; and (4) assistance in identifying programs through which she could access housing navigators without needing to enter shelter or transitional housing.

On January 6, 2026, the City Manager, Paul Buddenhagen, communicated the City’s final determination regarding Ms. Dominguez’s accommodation requests. Dkt. 253, Ex. I at 13. Mr. Buddenhagen noted that an in-person meeting had taken place in December 2025 with individuals representing Ms. Dominguez. *Id.*

With respect to the accommodation requests, the City denied her request for an exemption from towing because the request was based on financial limitations rather than disability-related needs. *Id.* The City also noted that the request was not for a reasonable accommodation because it would entail a fundamental alteration of the City’s parking enforcement program, which was designed to promote public safety, access to public on-street parking, street maintenance, and the mitigation of impacts arising from long-term vehicle storage. *Id.* The City also denied her request for an exemption from citation for similar reasons, noting that the request is based on financial hardship rather than disability, and that individualized exemptions would constitute a fundamental alteration to the City’s parking enforcement program which is designed to promote roadway safety, environmental compliance, and equitable parking access. *Id.*

Third, the City denied Ms. Dominguez’s request for an exemption permitting her to store garbage cans outside her RV in violation of regulations limiting the placement of personal property on public rights-of-way. *Id.* at 14. The City explained that the limited footprint is a “fundamental operational feature[] of the City’s sidewalk management policies” and that granting an exemption would constitute a fundamental alteration by authorizing use of a public right-of-



1 way inconsistent with the nature of the policy. *Id.* The City also explained that the leptospirosis  
2 outbreak makes the continued placement of garbage containers on the sidewalk a health hazard  
3 that interferes with City and County abatement efforts to mitigate rodent harborages. As part of  
4 this litigation, the City’s Public Health Officer has explained that idle vehicles may act as rodent  
5 burrows, thereby exacerbating the leptospirosis outbreak, and the City represents that Ms.  
6 Dominguez’s RV has not moved from its location for at least four years. Doohan Declaration  
7 (Dkt. 194) ¶ 21; Vance-Dozier Declaration (Dkt. 219-6) ¶¶ 3–4.

8 Finally, in response to her request for assistance with accessing a housing navigator, the  
9 City responded that it already “attempted to identify housing navigation programs for which Ms.  
10 Dominguez may be eligible” and that “[t]he City has been advised that Ms. Dominguez already  
11 has a housing navigator through Abode Services,” but that her housing navigator has expressed  
12 that Ms. Dominguez insists on remaining in the Harrison Encampment “where she has lived for  
13 the past 10 years, which significantly narrows available housing options.” *Id.*

14 2. Eric Keiser

15 Eric Keiser lives with schizophrenia, disorganized thinking, and chronic pain from a leg  
16 deformity that limits his mobility. BHU’s SJ Motion at 7. Mr. Keiser requested (1) a stable, non-  
17 congregate ADA-compliant relocation option; (2) temporary permission to stay in the  
18 Encampment and an exemption from sidewalk space limitations; (3) a map identifying  
19 enforcement-free locations in the City; (4) physical assistance with lifting and moving his  
20 belongings; and (5) a single point of contact in the City. On January 6, 2026, the City Manager,  
21 Paul Buddenhagen, communicated the City’s final determination regarding Mr. Keiser’s  
22 accommodation requests. Dkt. 253, Ex. I at 2. According to the City’s final determination email,  
23 he requested accommodations in April 2025, but BHU did not respond to the City’s requests to  
24 meet until late-December 2025. *Id.*

25 The City determined that a guarantee of non-congregate shelter was not a reasonable  
26 accommodation, because such housing is distributed subject to availability, eligibility criteria, and  
27 prioritization of limited resources. *Id.* The City directed Mr. Keiser to work with the City’s  
28 Homeless Response Team (“HRT”) to discuss available shelter options. *Id.* The City also

1 specified that it could not pause abatement until non-congregate shelter became available, because  
2 doing so would constitute a fundamental alteration to the City's encampment management  
3 program, which balances access to services along with the City's obligations to maintain public  
4 health, safety, and accessibility of publicly shared spaces. *Id.* The City similarly denied Mr.  
5 Keiser's request for temporary exemption from abatement, because its encampment abatement  
6 decisions are based on public health conditions, hazard severity, and community impacts, rather  
7 than availability of alternative shelter placements. *Id.* The City explained that a pause of  
8 enforcement pending the allocation of housing would constitute a fundamental alteration to the  
9 encampment management program, which is "designed to enable prompt intervention when  
10 encampments pose imminent risks to public health and safety." *Id.*

11 With respect to Mr. Keiser's request to stay in place without enforcement of sidewalk  
12 space regulations, the City explained that the municipal code, administrative regulations, City  
13 Council resolutions, public health and safety conditions, and legal requirements generally prohibit  
14 oversized structures along sidewalks. *Id.* While individuals may, under "limited circumstances"  
15 remain on sidewalks, they are not permitted to obstruct pedestrian access and may be subject to  
16 enforcement of health and safety regulations. *Id.* at 2–3. The City also explained that it could not  
17 pause enforcement at the Encampment, because such a pause would be a fundamental alteration to  
18 the City's response to the leptospirosis outbreak or other health and safety hazards. *See id.* at 3.

19 In response to Mr. Keiser's request for a map of enforcement-free zones, the City  
20 explained that "no map identifying enforcement-free locations exists in City records," and that  
21 creation of such a map would be an undue administrative burden requiring "extensive staff time,  
22 site-specific analysis, and physical measurement of sidewalks and public spaces throughout the  
23 City." *Id.* at 3. As an alternative, the City provided a summary of applicable regulations "to assist  
24 in understanding how enforcement decisions are made" but admitted that it could not provide any  
25 individualized guarantees regarding future enforcement actions. *Id.*

26 In response to Mr. Keiser's request for physical assistance with lifting and moving  
27 personal belongings, the City explained that it would ordinarily offer such assistance, but that the  
28 leptospirosis outbreak would render any such aid an undue administrative or financial burden,

1 because of the additional resources and risk borne by City departments and staff to keep personnel  
2 safe. The City also explained that the City does not require the provision of personalized or  
3 individualized assistance as a reasonable modification, and that such services would  
4 fundamentally alter the City's encampment management programs. *Id.* In other words, any such  
5 assistance provided in the past was voluntary and not mandatory under the ADA.

6 Finally, the City acknowledged that it could not "guarantee that a single, consistent staff  
7 member will always be available to communicate" and that such a guarantee would impose an  
8 undue administrative burden, but that the Homeless Response Team could "document that Mr.  
9 Keiser may become overwhelmed during enforcement encounters and may benefit from slower,  
10 repetitive communication when feasible. The City noted, however, that this approach cannot  
11 always be accommodated when conditions require prompt action to address public health or safety  
12 risks or when law enforcement must act to enforce the law." *Id.* at 3. The City's ADA  
13 Coordinator, Thomas Gregory, offered to meet with Mr. Keiser to discuss his requests in a low-  
14 stimulation setting, and stated that it "intends to provide notice prior to abatement and encourages  
15 Mr. Keiser to coordinate in advance with HRT regarding packing and storage. The City cannot  
16 guarantee that any enforcement related interaction in an outdoor encampment setting will be low  
17 stimulation due to the inherent nature of those environments." *Id.* at 4.

18 3. Shareef Muwakkil

19 Shareef Muwakkil lives with PTSD, chronic pain, and a history of heart attacks that impair  
20 his mobility. DeBree Declaration (Dkt. 120) ¶ 15–16. He benefits from "having a stable location  
21 to store survival items and maintain contact with his service providers." *Id.* ¶ 16.

22 In April 2025, Mr. Muwakkil requested (1) a pause on abatement until shelter or housing  
23 could be secured, (2) a map or list of locations to relocate to without risk of citation or abatement,  
24 (3) exemption from the nine-square-foot sidewalk limitation to allow a 10x12 foot tent due to his  
25 need for privacy and bicycle storage, (4) a consistent HRT point of contact trained in trauma-  
26 informed communication who would accompany any law enforcement encounter, and (5)  
27 exemptions from rules in any future shelter placement, including exemptions from curfews and  
28 restrictions on visitor access. Gregory Declaration (Dkt. 219-3), Ex. A.

On January 2, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Mr. Muwakkil's accommodation requests. Dkt. 253, Ex. I at 21. Regarding a pause on enforcement, the City stated that the accommodation would pose both an undue administrative burden and cause a fundamental alteration to City programs, because the requested indefinite pause would hamstring the City's handling of the public health hazard. *Id.* The City denied Mr. Muwakkil's request for a map for the same reasons discussed in the above summary of Mr. Keiser's accommodations. *Id.* With respect to the sidewalk size limits, the City explained that City rules generally prohibit oversized structures, and that an exemption would constitute a fundamental alteration to the City's "regulatory framework governing the public right-of-way" which aim to facilitate pedestrian travel, emergency access, and general health and safety. *Id.* at 22. The City explained that the rules apply to the general public equally regardless of housing status, that there is no discretionary permit system for sidewalk structures, and that Mr. Muwakkil's specific request for a 10x12 foot structure would "occupy a substantial portion of the sidewalk and, on the majority of sidewalks throughout the City, would necessarily extend into the roadway," thereby impairing both access and ADA accessibility for pedestrians, but also public and emergency vehicle access and parking. *Id.*

The City committed to using "patient and respectful communication consistent with best practices and staff training," and to documenting Mr. Muwakkil's request for consistency in staff communications, but acknowledged that it could not "guarantee that a specific outreach worker, . . . will always be available." *Id.* Finally, the City determined that it could not ensure non-enforcement of shelter policies in future accommodations because shelter programs "have differing rules and operational constraints, and no specific placement is currently available," and "the City cannot pre-approve accommodations in the abstract." *Id.* The email stated that HRT would document the request however, which would be evaluated once shelter placement was offered. *Id.*

4. Lewanda Parnell

Lewanda Parnell experiences vertigo and uses a stroller as a mobility device to prevent falls. BHU's SJ Motion at 7. Because of her increased risk of falling, she requires assistance

1 packing and relocating her belongings. *Id.* Ms. Parnell requested the following accommodations:  
2 (1) permission to keep her customized tents without risk of removal; (2) the ability to remain in  
3 place, where she has access to community support and stability; (3) a designated ADA-compliant  
4 encampment area or indoor non-congregate living space; (4) temporary suspension of  
5 enforcement; and (5) physical assistance with relocation. Dkt. 253, Ex. A at 2; Gregory  
6 Declaration (Dkt. 219-3), Ex. A.

7 On January 2, 2026, the City Manager, Paul Buddenhagen, communicated the City's final  
8 determination regarding Mr. Keiser's accommodation requests. Dkt. 253, Ex. I at 5. With respect  
9 to the first accommodation request, the City explained that it had "consistently stated that it is  
10 willing to work with Ms. Parnell to retain her customized tents during an abatement action,  
11 provided that a mutually agreed upon relocation plan and timeline are established," but that the  
12 City had not received a proposed relocation timeline. *Id.* The City stated that it could not  
13 indefinitely delay abatement activities due to "the absence of logistical agreement," but that HRT  
14 "remains willing to coordinate packing and storage of the tents once a relocation date is proposed,  
15 provided the tents do not present the health and safety hazards previously identified." *Id.*

16 The City denied Ms. Parnell's request to stay in place because such an exemption would  
17 impede public health management efforts and fundamentally alter the City's "encampment  
18 management and public health response programs," which rely on timely interventions against  
19 emerging risks. *Id.* at 6.

20 The City denied the request for an ADA-compliant encampment area because the City  
21 does not maintain a sanctioned encampment area and is not obligated to do so under the ADA. *Id.*  
22 The City stated that its encampment-related rules reflect balanced considerations of local rules and  
23 laws, public health conditions, and safety concerns. The City reiterated that Ms. Parnell could  
24 relocate, so long as she complied with sidewalk space limits and other rules concerning health and  
25 safety and nuisance conditions. *Id.* With respect to her request for an indoor non-congregate  
26 space, the City concluded that the provision of housing is not a reasonable accommodation under  
27 the ADA, but that the City would — as it must — consider reasonable accommodation requests  
28 once a shelter space for Ms. Parnell was made available. *Id.*

1 The City denied Ms. Parnell's request for a suspension of enforcement or abatement  
2 operations for the same reasons described above with respect to Mr. Muwakkil. *Id.* at 6–7.  
3 Finally, the City stated that it could offer some physical relocation or storage assistance to Ms.  
4 Parnell, but that the City's ability to assist was contingent on the public health situation and the  
5 relative safety of Ms. Parnell's specific items. *Id.* at 7. The City, however, reiterated that it was  
6 not required to provide personal relocation assistance "to an undetermined location that is not  
7 connected to a City program or service. *Id.*

8 5. Yesica Prado

9 Yesica Prado lives with ADHD and PTSD which both impact her executive functioning,  
10 emotional regulation, sensory processing, and the ability to handle sudden changes, including  
11 relocation. Dkt. 253, Ex. A at 17. As accommodations, Ms. Prado requested (1) permission to  
12 remain in her RV in its current location at the Encampment; (2) designation of an ADA parking  
13 zone for her RV; (3) access to a disability advocate to assist with executive dysfunction and  
14 logistics planning; and (4) exemption from citation and arrest due to disability-related limitations.  
15 *Id.*

16 On July 23, 2025, the City denied Ms. Prado's request for a disability advocate, stating that  
17 the City does not have "trained 'disability advocate' staff," referring her instead to the Center for  
18 Independent Living or the City's HRT staff to assist with the relocation process. Dkt. 253, Ex. D  
19 at 8. The City also denied Ms. Prado's request for exemption from law enforcement, stating that  
20 the RV must comply with California Vehicle Code requirements, local parking rules, and other  
21 regulations about storing personal items on sidewalks. *Id.* On January 5, 2026, the City Manager,  
22 Paul Buddenhagen, communicated the City's final determination regarding Ms. Prado's other  
23 accommodation requests. The City stated that exemption from parking enforcement rules would  
24 pose an undue administrative burden because the City's parking enforcement program relies on  
25 automated license plate recognition technology, and an individualized exemption requiring manual  
26 parking tracking for Ms. Prado would be a significant departure from norms and expense of  
27 resources: "Specifically, parking enforcement staff would be required to rely on manual and labor-  
28 intensive methods, such as maintaining paper logs of protected vehicles, physically marking

1 vehicles, returning to inspect those markings, and resolving disputes regarding whether a vehicle  
2 has moved. These manual methods lack the permanence, reliability, and data integrity of  
3 [automation-based] enforcement and in other contexts have led to increased disputes with  
4 members of the public regarding compliance.” Dkt. 253, Ex. I at 19. The City also explained that  
5 the exemption would fundamentally alter the City’s public right-of-way and parking management  
6 programs, turning a uniform, generally administrable set of standards into one focused on  
7 “individualized administration” focused on “authorizing prolonged use of the public right-of-way  
8 tied to personal circumstances. That shift would impair the City’s ability to manage curbside  
9 access consistently, respond to changing conditions, and maintain fair and predictable access to  
10 limited public parking.” *Id.* The City explained that the 72-hour parking limit is a “core  
11 component” of that program designed to enhance parking availability, emergency access, public  
12 health and safety, neighborhood impacts, and the City’s ability to perform routine street  
13 maintenance. *Id.* at 20. The program is also intended to promote vehicle turnover, and “is not  
14 designed to accommodate extended or semi-permanent vehicle placement, even on an  
15 individualized basis, because doing so would undermine space turnover and the City’s ability to  
16 address cumulative neighborhood, safety, and operational impacts.” *Id.*

17 6. Erin Spencer

18 Erin Spencer experiences mobility impairments, PTSD, and ADHD, making compliance  
19 with abatement policies “impossible without direct assistance,” in part due to his difficulties  
20 moving independently and with executive functioning, planning, and completing tasks. Dkt. 253,  
21 Ex. A at 13. Mr. Spencer requested the following accommodations: (1) City-identified relocation  
22 areas immune from abatement or law enforcement; (2) an exemption to the nine-square-foot  
23 sidewalk limit to allow his 20x30 tent for community gathering needs; (3) requests for physical  
24 assistance relocating, trash disposal, and portable toilets; (4) a three-step notice process, with  
25 notice given 30 days, 15, days, and three days before any law enforcement action; (5) a City-  
26 purchased or repurposed flatbed trailer; (6) trauma-informed law enforcement interactions; and (7)  
27 solar panels, charging access, and infrastructure modifications. *See id.*; Gregory Declaration, Ex.  
28 A. Mr. Spencer met with City staff in December 2025 as part of the interactive process. Dkt. 253,



1 Ex. I at 16.

2 On January 5, 2026, the City Manager, Paul Buddenhagen, sent the City's final  
3 determination regarding Mr. Spencer's other accommodation requests. *Id.* With respect to the  
4 first request, the City explained that during the interactive process meeting, Mr. Spencer  
5 "explained that he does not want to access any City shelters because he does not believe any  
6 would accommodate his needs, even though the City explained that accommodations can be made  
7 in City shelters to address disabilities." *Id.* The City then reiterated its basis for not providing  
8 maps of areas immune from enforcement, as described above in relation to Mr. Keiser. *Id.*

9 The City denied Mr. Spencer's request for an exemption from sidewalk space limits,  
10 explaining that the City had considered whether a smaller space could serve as a feasible  
11 alternative, but that "even a modest increase would still occupy a substantial portion of the  
12 sidewalk," impairing pedestrian access and ADA compliance, emergency access, vehicle travel  
13 and parking, and the City's ability to manage public health and safety risks. The City stated that a  
14 20x30 space would require "a sidewalk at least 24 feet wide to prevent obstruction of the  
15 pedestrian path of travel, which is not available in most areas." *Id.* at 17. The City described the  
16 accommodation as a fundamental alteration to sidewalk management programs, and described the  
17 accommodation as a conversion of public streets and sidewalks into private, individualized spaces.  
18 *Id.* The City also explained that it imposes uniform citywide standards governing sidewalk use  
19 based on a balancing of various considerations, and that the City would not operate a  
20 "discretionary permitting system for sidewalk structures." *Id.*

21 The City neither granted nor denied Mr. Spencer's request for physical relocation  
22 assistance and storage, stating that it ordinarily provides such services but that the public health  
23 situation may result in limited assistance in moving and storing certain items. *Id.* The City  
24 explained that it is Mr. Spencer's responsibility to schedule any such assistance in advance  
25 through HRT. *Id.*

26 The City denied the request for trash collection or installation of portable restrooms,  
27 stating that such accommodations would constitute "a personal service rather than a reasonable  
28 accommodation," and that the services would be an undue administrative and financial burden



1 because the City would be required to dedicate staff to continuous, individualized support. *Id.*

2 The City denied Mr. Spencer's three-step notice request, stating that the ADA requires  
3 non-discrimination rather than extended or customized notice periods beyond what is necessary to  
4 allow a person to respond to enforcement. *Id.* The City explained that the proposal would  
5 constitute a fundamental alteration of enforcement procedures. *Id.* The City, however, explained  
6 that it would provide notice consistent with legal requirements, but that it could not guarantee  
7 multi-stage notice reminders as requested.

8 The City denied Mr. Spencer's request for a flatbed trailer, stating that this would require  
9 the creation of a new service or program, which is not required under the ADA. *Id.* The City  
10 instead stated that it "may offer access to existing shelter or storage programs, but is not obligated  
11 to provide new vehicles, trailers, or other personal items for encampment residents." *Id.*

12 The City stated that it could not guarantee trauma-informed interactions with law  
13 enforcement, and that the City was not required to restructure programs or assign personnel in a  
14 way that "fundamentally changes how the program operates." The City, however, committed to  
15 using patient and respectful communication consistent with training, and that HRT would  
16 document the request and known triggers to guide future interactions. *Id.* at 18. The City also  
17 stated that it could not guarantee that certain HRT staff or police officers would always be present,  
18 and that it could not prohibit certain staff from interacting with individuals, as that request "would  
19 mandate individualized staffing, scheduling, and resource allocation that the City cannot sustain  
20 without altering the core operation of its encampment management and law enforcement  
21 programs. . . . interfere[ing] with the City's ability to deploy staff where they are most needed."  
22 *Id.*

23 Finally, the City denied Mr. Spencer's request for solar panels, charging access, and other  
24 infrastructure, stating that this would be a fundamental alteration of City programs which do not  
25 guarantee any such resources. The City explained that granting this request would require the  
26 creation of new services, reallocation of staff and resources, and public redesign operations that  
27 extend beyond the scope of a reasonable accommodation. *Id.*

7. Austin White

Austin White experiences esophageal varices and is medically restricted from lifting more than 20 pounds. BHU's SJ Motion at 7. Plaintiffs explain that abatement and relocation without assistance would risk a life-threatening hemorrhage. *Id.* Mr. White appears to have only requested one accommodation: exemption from sidewalk space limitations to allow occupation of a 10x12 foot space. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Ex. I at 11. It appears the request was premised on the need to accommodate his two service dogs. *See* Dkt. 253, Ex. I at 11.

The parties held an in-person meeting in July 2025, and the City responded to the request that month stating that it could provide physical assistance with packing, lifting, and storing Mr. White's belongings. Dkt. 253, Ex. D at 2. This offer does not appear to have been accepted or rejected by BHU or Mr. White. *See id.* Mr. White also met with City staff in December 2025 as part of the interactive process.

On January 2, 2026, the City Manager, Paul Buddenhagen, communicated the City's final determination regarding Mr. White's other accommodation requests. *Id.* The City denied Mr. White's request, stating that it considered whether an alternative, "modestly larger than nine square feet" could be feasible, but that any increase would be a fundamental alteration for the same reasons stated above, with respect to Mr. Keiser.

**III. LEGAL STANDARD**

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[W]hen parties submit cross-motions for summary judgment, each motion must be considered on its own merits." *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (alteration and internal quotation marks omitted). Thus, "[t]he court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." *Id.* (quoting Wright, et al., Federal Practice and Procedure § 2720, at 335–36 (3d ed. 1998)). However, the court must consider the evidence proffered by both sets of motions before ruling on either one. *Riverside Two*, 249 F.3d at 1135–36;

1 *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 960 (9th Cir. 2011) (“Because the parties filed  
2 cross-motions for summary judgment, we consider each party's evidence to evaluate whether  
3 summary judgment was appropriate.”).

4 As a general matter, where the party moving for summary judgment would bear the burden  
5 of proof at trial, that moving party bears the initial burden of proof at summary judgment as to  
6 each material fact to be established in the complaint and must show that no reasonable jury could  
7 find other than for the moving party. *See S. California Gas Co. v. City of Santa Ana*, 336 F.3d 885,  
8 888 (9th Cir. 2003) (citing William W Schwarzer, et al., *California Practice Guide: Federal Civil*  
9 *Procedure Before Trial* (Rutter Group) § 14:124–127 (2001)). Where the moving party would not  
10 bear the burden at trial, the motion need only specify the basis for summary judgment and identify  
11 those portions of the record, if any, which it believes demonstrate the absence of a genuine issue  
12 of material fact on some essential element of the claims. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
13 323 (1986). The burden then shifts to the opposing party to establish the existence of material  
14 disputes of fact that may affect the outcome of the case under the governing substantive law.  
15 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

#### 16 IV. DISCUSSION

##### 17 A. Associational Standing

18 Defendants argue that BHU lacks Article III standing. Defendants’ SJ Motion (Dkt. 219)  
19 at 7–11. The Court previously held that BHU has associational standing:

20 As an initial matter, regarding associational standing, BHU easily  
21 satisfies the first two prongs of the *Hunt* associational standing test.  
22 *See Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 344–  
23 45 (1977). Because BHU’s Americans with Disabilities Act  
24 (“ADA”) claim requires substantial individualized evidence, BHU  
25 does not clearly satisfy the third prong of the *Hunt* test. However,  
26 because the third prong is prudential, the Court allows BHU to bring  
27 its claims on behalf of its members.

28 Minute Entry, June 10, 2025 (Dkt. 104) at 2.

The Court sees no reason to revisit that holding, particularly as the issue of standing is on  
appeal before the Ninth Circuit, and the City has not requested an indicative ruling under Federal  
Rule of Civil Procedure (“FRCP”) 62.1. *See* Defendant’s SJ Motion; Defendant’s Opposition

Brief; *see also* No. 26-842, DE 10 (City’s Opening Brief).<sup>6</sup>

Accordingly, the Court maintains its prior ruling that claimants seeking relief are BHU members and that BHU has associational standing to bring legal claims on behalf of its members. Minute Entry, June 10, 2025 at 2.

B. ADA Legal Standard

BHU brings ADA claims on behalf of seven of its disabled members, and constitutional claims under the Fourth and Fourteenth Amendments on behalf of all of its members residing in the Harrison Encampment. The Court addresses each of the asserted claims organized by category of requested relief. First, the Court summarizes the applicable legal standards.

1. ADA Interactive Process

Under the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. To prove that a public entity violated the ADA, a plaintiff must show “(1) he is a ‘qualified individual with a disability’; (2) he was either excluded from participation in or denied the benefits of a public entity’s services, programs, or activities or was otherwise discriminated against by the public entity; [and] (3) such exclusion, denial of benefits, or discrimination was by reason of his disability.” *Townsend v. Quasim*, 328 F.3d 511, 516 (9th Cir. 2003). Importantly, where there is a threatened exclusion or denial by reason of disability, a public entity must make “reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination based on disability.” 28 C.F.R. § 35.130(b)(7); *see Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 859–60 (9th Cir. 2022); *Ind. Living Ctr. Of*

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<sup>6</sup> The Court notes that BHU alleges that each claimant is a member of BHU. *See* BHU SJ Motion at 3, 16–17; *see also* BHU Status Report (Dkt. 200) at 1–4, 11–35; Dkt. 253, Ex. C at 3 (City referring to “the eight BHU members who the City had identified as falling under the ambit of Judge Chen’s preliminary injunction order.”). The City has not submitted evidence contesting that the claimants in this action are BHU members, nor has the City filed an affidavit or declaration under FRCP 56(d) showing that it cannot present facts essential to justify its opposition on that point. *See* Defendants’ SJ Motion (Dkt. 219); Defendants’ Opposition Brief (Dkt. 256).

1 *S. Cal. v. City of L.A.*, 973 F. Supp. 2d 1139, 1149 (C.D. Cal. 2013) (stating that public entities  
2 have “the affirmative duty” to ‘make reasonable modifications . . . necessary to avoid  
3 discrimination on the basis of disability”).

4 To trigger the City’s obligation to accommodate, a person must first satisfy the prima facie  
5 requirements: they must be a qualified individual with a disability, excluded from participation in  
6 or denied the benefits of a City program or service, by reason of that disability. *Where Do We Go*  
7 *Berkeley*, 32 F.4th at 860. As to the second element, the exclusion from participation need not be  
8 complete; a partial exclusion from participating in a part of the program may suffice. *See, e.g.*,  
9 *Alexander v. Choate*, 469 U.S. 287, 300–01 (1985) (recognizing in Rehabilitation Act context that  
10 a benefit cannot be defined in a way that effectively denies otherwise qualified handicapped  
11 individuals the “meaningful access to which they are entitled,” and that reasonable  
12 accommodations within a program may be required to assure such access); *Payan v. L.A. Cmty.*  
13 *Coll. Dist.*, 11 F.4th 729, 738 (9th Cir. 2021) (recognizing Title II claims based on inaccessibility  
14 of specific components of a college’s educational program, including textbooks and education  
15 technology); *Cal. Found. For Ind. Living Ctrs. v. Cnty. of Sac.*, 142 F. Supp. 3d 1035, 1058,  
16 1063–64 (E.D. Cal. 2015) (holding that exclusion from certain aspects of airport services,  
17 including inadequate gate counter accommodations and emergency evacuation procedures  
18 constituted violations of the ADA); *Lieber v. Macy’s West, Inc.*, 80 F. Supp. 2d 1065, 1075, 1080  
19 (N.D. Cal. 1999) (holding that failure to maintain sufficiently wide pathways for fitting rooms and  
20 checkout areas violated Title III of the ADA); *Cohen v. City of Culver City*, 754 F.3d 690, 698–99  
21 (reversing summary judgment for city and finding genuine dispute of material fact as to Title II  
22 violation where city permitted a vendor to block a curb ramp, preventing a disabled individual  
23 from accessing a sidewalk).<sup>7</sup>

24 Once those threshold elements are met, the City must engage in a fact-specific,

25  
26 <sup>7</sup> That a complete exclusion from a program is not necessary is obvious from the conventional  
27 ADA jurisprudence. An ADA discrimination claim applies where, *e.g.*, only some areas of a store  
28 are not accessible because of lack of a compliant counter height or where there are steps without  
an accessible ramp to some portion of the store. A claim may lie where some but not all rooms in  
an office or courthouse are inaccessible.

1 individualized assessment to determine what accommodation, if any, is reasonable in order to  
2 ensure non-exclusion or denial of benefits. *McGary v. City of Portland*, 386 F.3d 1259, 1265–66  
3 (9th Cir. 2004). This process requires the City to gather sufficient information from the individual  
4 requesting accommodations, as well as relevant City personnel, experts, or other sources of  
5 information sufficient to determine whether the requested accommodation would be reasonable.  
6 *See Wong v. Regents of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999). In assessing the  
7 reasonableness of a requested accommodation, the City must consider the particular needs of the  
8 person making the request. *See Duvall v. Kitsap*, 260 F.3d 1124, 1139–40 (9th Cir. 2001). The  
9 City may not summarily conclude that a requested accommodation is unreasonable without  
10 undergoing this investigative process.<sup>8</sup> *See id.* The assessment of the legal sufficiency of the  
11 entity’s response to a request for accommodation under the ADA is discussed in greater detail  
12 below.

13 Before addressing the merits of the accommodation requests, the Court addresses BHU’s  
14 threshold argument that the interactive process was procedurally deficient and the City failed to  
15 fulfill its obligations under the ADA. BHU’s SJ Motion at 3–5, 18–19; BHU’s Opposition Brief  
16 at 4–9. BHU raises three principal arguments: (1) the interactive process was not conducted in  
17 good faith, (2) final determinations were not rendered by an authorized official, and (3) the City’s  
18 assessments were not sufficiently individualized. None of these arguments is ultimately availing.  
19 The Court then turns to the key substantive matters central to evaluating the merits of ADA  
20 accommodation requests.

21 a. Good Faith

22 The Court’s June 10, 2025 preliminary injunction order directed the parties to complete the  
23 interactive process within sixty days. Minute Entry (Dkt. 104). That deadline was not met,  
24 though the record reflects that both parties bear some responsibility for the delay.

25 In any event, the Court has reviewed the correspondence between the parties and, although

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26  
27 <sup>8</sup> Because the Plaintiffs all submitted requests for accommodations in specific and direct terms, the  
28 Court does not need to determine whether claimants’ disabilities were sufficiently open, obvious,  
and apparent that the City would be on notice of the need for reasonable accommodations even in  
the absence of concrete requests.

1 there are instances in which the City’s conduct and written responses should have been more  
2 forthcoming and patient, the record as a whole reflects that the City engaged in written exchanges,  
3 conducted or offered live meetings (either in person or by telephone or video conference),  
4 solicited information from multiple City departments, and issued formal written determinations  
5 signed by the City Manager. See Dkt. 253, Exs. A–F, I–P. Although the interactive process was  
6 imperfect, the Court finds the interactive process was sufficiently complete.

7 Furthermore, as a legal matter, BHU’s arguments as to bad faith cannot themselves sustain  
8 an ADA claim absent a showing that a reasonable accommodation was available and denied. The  
9 Ninth Circuit has held that failure to engage in the interactive process in good faith does not, by  
10 itself, give rise to liability — rather, the Court must first determine whether the public entity failed  
11 to provide a reasonable accommodation. *Snapp v. United Transp. Union*, 889 F.3d 1088, 1095  
12 (9th Cir. 2018). The Court is aware that *Snapp* arose under Title I of the ADA, and that Title II’s  
13 regulatory framework does not perfectly mirror Title I’s interactive process requirements, but the  
14 central principle applies with equal force here: process deficiencies do not independently supply a  
15 basis for liability where no reasonable accommodation was improperly denied. See *id.*; see also  
16 *Howard v. HMK Holdings, LLC*, 2018 WL 3642131, at \*9 (C.D. Cal. June 11, 2018) (Gee, J.)  
17 (holding in the FHAA context that “failure to engage in the interactive process is not an  
18 independent basis for liability under the FHAA, although such failure may be considered when  
19 determining whether the landlord denied a reasonable accommodation request in the first place”);  
20 *McClure v. Nat’l R.R. Passenger Corp.*, 2021 WL 4395812, at \*9 (C.D. Cal. June 10, 2021)  
21 (ruling in the FEHA context that “FEHA does not impose liability for failure to engage in the  
22 interactive process when no reasonable accommodation is available”).

23 Thus, the critical question for the Court is whether any reasonable accommodation  
24 requests were denied by the City. The Court addresses that question below, in its discussion of the  
25 merits of the ADA accommodation requests. Any process deficiencies are likewise resolved in  
26 conjunction with the merits of the accommodation requests.

27 b. Authority to Issue Final Determinations

28 BHU argues that some accommodation denials issued by Thomas Gregory, the City’s



1 ADA Program Coordinator, were beyond the scope of his authority because 28 C.F.R. § 35.164  
2 requires final decisions to be “made by the head of the public entity or his or her designee.”  
3 BHU’s SJ Motion at 3, BHU’s Opposition Brief at 7. BHU is correct about the regulatory  
4 requirement, but not in its application to the facts here.

5 The final, operative determinations challenged in this action were each issued by Paul  
6 Buddenhagen, the City Manager. Dkt. 253, Ex. I. BHU appears to concede that Mr.  
7 Buddenhagen is the head of the public entity or a proper designee. See BHU’s Opposition Brief at  
8 7. And although earlier responses to some requests were sent by Mr. Gregory, he has declared  
9 under penalty of perjury that he regularly evaluates ADA accommodation requests and is  
10 “authorized by the City of Berkeley to make determinations as to whether requests for  
11 accommodations are reasonable under the ADA.” Gregory Declaration (Dkt. 261) ¶ 4. As an  
12 official authorized to evaluate and decide ADA accommodation requests, Mr. Gregory is an  
13 appropriate “designee” for purposes of 28 C.F.R. § 35.164. Even assuming that determinations by  
14 Mr. Gregory were procedurally deficient, any such deficiency appears to have been cured by the  
15 issuance of final determinations by the Mr. Buddenhagen. Dkt. 253, Ex. I. BHU does not  
16 adequately explain why a subsequent, final determination by the undisputed proper official fails to  
17 satisfy applicable requirements.

18 c. The Individualized Assessments

19 BHU’s final procedural argument is that the City’s determinations were not sufficiently  
20 individualized. In other words, that the City applied uniform “boilerplate” denial reasoning and  
21 language regardless of the claimant’s specific disabilities or needs in relation to the Encampment  
22 and the City’s abatement. BHU’s SJ Motion at 18–19. BHU’s reasoning is that the City  
23 frequently relied on vague “fundamental alteration” or “undue administrative burden” rationales  
24 for denying accommodation requests, and Mr. Gregory stated that “impacts to the City are the  
25 same, regardless of the individual’s disability or the nexus” in response to requests. See *id.*;  
26 BHU’s Opposition Brief at 4–5.

27 The Court takes BHU’s argument seriously, because an individualized inquiry is required  
28 under the ADA. *Weldeyohannes v. Wash.*, 162 F.4th 972, 976 (9th Cir. 2025). The record,



1 however, does not show anything akin to BHU's implication that the City mechanistically denied  
2 each request without review of the requester's individual circumstances. The City's final  
3 determinations identify the specific claimant's disabilities and accommodation requests, and  
4 explain in sufficient detail why each denied request would fundamentally alter or unduly burden a  
5 particular city program. Dkt. 253, Ex. I. The determinations are not identical – they address the  
6 various disabilities, programs impacted, and the specific requested modifications. For certain  
7 accommodations, like exemptions from sidewalk space limits, the City explained why a 10x20  
8 foot or 20x30 foot space would impede pedestrian access, spill into the roadway, and pose a  
9 fundamental alteration to city programs. *Id.* With respect to accommodations concerning  
10 housing, shelter, designated staff persons, and related requests, the City referred to specific  
11 interactions with each requester, agreed to document each request to guide future interactions, and  
12 committed to future consideration of accommodation requests. *Id.*

13 Nor are the determinations improperly identical. The fact that several denials invoke the  
14 same legal defense, such as fundamental alteration of sidewalk management programs, is not  
15 dispositive in this context. Because multiple individuals requested the same type of  
16 accommodation (a pause on abatement or a map of enforcement-free zones), and because those  
17 requests would produce the same consequences for City programs regardless the identity of the  
18 requester or their disabilities, it is not improper or surprising that the City's fundamental alteration  
19 analysis reaches the same conclusion across the array of claimants and requests.

20 The Court finds that the City's determinations were, generally, sufficiently individualized.  
21 Where the same denial rationale applies across multiple claimants, that is not evidence of  
22 boilerplate reasoning, but rather a reflection of the fact that the same requested accommodation  
23 would produce the same programmatic consequences regardless of the identity of the person  
24 asking for it. The Court, however, evaluates each denied request on the merits below, and where  
25 the City's stated rationale is found to lack a sufficient basis as applied to a particular claimant's  
26 circumstances, the Court so notes.

27 2. Assessment of the Merits of ADA Accommodation Requests

28 Having now concluded that the interactive process was procedurally completed as a matter

1 of law, the Court turns to the legal standard governing the assessment of whether the City  
2 improperly denied requests for reasonable accommodations.

3 Plaintiffs must demonstrate that they have a disability, that the City is excluding them from  
4 participating in or denying benefits of a program as a result of their disability, and that they have  
5 requested an accommodation. *See Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1047 (9th Cir.  
6 1999) (holding in the Title II context that the plaintiff “bears the initial burden of producing  
7 evidence that she is otherwise qualified. . . . The burden then shifts to the educational institution to  
8 produce evidence that the requested accommodation would require a fundamental or substantial  
9 modification of its program or standards. The school may also meet its burden by producing  
10 evidence that the requested accommodations, regardless of whether they are reasonable, would not  
11 enable the student to meet its academic standards”); *Sheehan v. City & Cnty. of S.F.*, 743 F.3d  
12 1211, 1232–33 (9th Cir. 2014). The burden then shifts to the City to prove that the requested  
13 accommodation is unreasonable, or if reasonable, that the accommodation would nonetheless  
14 constitute a fundamental alteration to relevant programs or impose an undue administrative  
15 burden. *See, e.g.*, 28 C.F.R. § 35.164; *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 673 (2001); *Pierce*  
16 *v. Cnty. of Orange*, 526 F.3d 1190, 1217 (9th Cir. 2008).

17 A plaintiff’s requests for accommodations must be reasonable and must allow the plaintiff  
18 meaningful access to City services and programs. *See Updike v. Multnomah Cnty.*, 870 F.3d 939,  
19 954 (9th Cir. 2017). If a requested modification is unreasonable the requested accommodation  
20 may be denied; if the request is reasonable the governmental entity may nonetheless deny the  
21 request if granting the request would fundamentally alter the nature of a given program, or pose an  
22 undue administrative or financial burden. Public entities need not “create new programs that  
23 provide heretofore unprovided services to assist disabled persons.” *Townsend*, 328 F.3d at 518.  
24 The inquiries into reasonableness and fundamental alteration are distinct. *See* 28 C.F.R. §§  
25 35.130(b)(7) & 35.164 (stating that a public entity must “make reasonable modifications in  
26 policies, practices, or procedures when the modifications are necessary to avoid discrimination on  
27 the basis of disability” unless the public entity can demonstrate that the modification would  
28 fundamentally alter the nature of the service, program, or activity, or post an undue financial or

administrative burden); *Tenn. v. Lane*, 541 U.S. 509, 532 (2004); (“[I]n no event is the entity required to undertake measures that would impose an undue financial or administrative burden . . . or effect a fundamental alteration in the nature of the service.”); *PGA Tour*, 532 U.S. 661, 673 (2001) (distinguishing between reasonableness inquiry and fundamental alteration analysis).

Evaluating the merits of a requested accommodation is a generally fact-intensive inquiry. See *Mayfield v. Mesa*, 131 F.4th 1100, 1110 (9th Cir. 2025); *Stephenson v. United Airlines*, 9 F. App’x 760, 763 (9th Cir. 2001) (mem.). The Court evaluates the claimants’ needs and requests in light of the City’s information-gathering efforts and coordination among experts and City departments to determine whether requests were reasonable and unlawfully denied. See *Updike*, 870 F.3d at 954.

Critical to the summary judgment motions herein are: (1) the correct definition of the City’s relevant “program,” (2) the analysis of the reasonableness of particular accommodation requests, and (3) the parameters of a “fundamental alteration” to that City program. Here, the Court provides clarity as to these disputed questions.

a. Relevant “Program”

A threshold issue must be resolved before addressing the merits of each request: what is the relevant City “program” against which the reasonableness of a proposed modification must be measured? See *Where Do We Go Berkeley*, 32 F.4th at 862. A stated program must be tethered to the actual activities the public entity performs. *Id.* at 861. Relatedly, the Court must assess whether the denial of a requested accommodation threatens to exclude a qualified individual with a disability from participation in, or the benefits of, that program. See 42 U.S.C. § 12132; 28 C.F.R. § 35.130.

The City proposes to define “program” narrowly on a program-by-program approach, with “encampment management” or abatement as separate programs from discrete City services like the specific tasks of providing parking enforcement, sidewalk management, law enforcement, parking management, and housing and shelter provision. See Defendants’ SJ Motion at 11–12; Gregory Declaration (Dkt. 219-3) ¶¶ 12, 16, 19–20 (defining the encampment management program as “intended to mitigate hazards efficiently and equitably for the public, not to provide

1 continuous personal services or enable indefinite use of public land,” and distinguishing the  
2 encampment management program from the “sidewalk management program,” parking  
3 enforcement programs shelter programs, and parking enforcement programs).

4 BHU and the *Prado* putative class, as amici, frame the relevant program broadly as the  
5 City’s general response to and services for unhoused persons, and argue that under that broader  
6 program, the City’s fundamental alteration defense is ineffectual. See BHU’s SJ Motion at 25  
7 (describing the City’s Homeless Encampment Program as including the provision of shelter and  
8 permanent housing); Amicus Brief of *Prado* Plaintiffs (Dkt. 255) at 3–7 (describing the relevant  
9 program as the City’s “homeless response program,” which includes shelter and other services and  
10 benefits). Under this framing, accommodations for disabled unhoused individuals would only  
11 modestly modify the City’s existing programs, rather than forcing additional services that would  
12 fundamentally alter them.

13 In a case such as this, the definition of “program” for purposes of the ADA turns in large  
14 part upon the actual uses and activities of the governmental agency’s properties in question over  
15 time and the nature of the agency’s mission. Thus, for instance, in *Where Do We Go Berkeley*, the  
16 Ninth Circuit defined Caltrans’s relevant program narrowly, and in direct proportion to the limits  
17 of Caltrans’s institutional mandate. 32 F.4th at 861–62. California law charges Caltrans with  
18 “full possession and control” of state highways and property acquired for state highway purposes,  
19 Cal. Sts. & High. Code § 90, and authorizes it to do “any act necessary, convenient or proper for  
20 the . . . maintenance or use of all highways.” *Id.* § 92; *Where Do We Go Berkeley*, 32 F.4th at 855.  
21 Its properties are owned and maintained for transportation purposes, not for the provision of  
22 housing or social services. See *Where Do We Go Berkeley*, 32 F.4th at 855, 861 Consistent with  
23 that mission, the Ninth Circuit defined Caltrans’s program for level 1 encampments as providing  
24 “72 hours’ notice before clearing and possible coordination with local partners.” *Id.* at 862.  
25 Critically, the court drew a firm outer limit — while Caltrans “collaborates with local partners to  
26 help people at the encampments connect with critical services and housing solutions,” Caltrans  
27 itself “does not provide those services; it ‘is not the appropriate entity to provide social services or  
28 relocation assistance.’” *Id.* at 861. Because those social and housing services fell outside

1 Caltrans's mission and the historic use of its properties, imposing a six-month delay in clearing  
2 high-risk encampments, while effectively requiring Caltrans to house people on its freeway-  
3 adjacent land until they found alternative housing, was construed as "creat[ing] new programs that  
4 provide heretofore unprovided services" and therefore constituted a fundamental alteration. *Id.* at  
5 862 (quoting *Townsend*, 328 F.3d at 518).

6 In contrast to *Where Do We Go Berkeley*, the Ninth Circuit in *L.A. Alliance for Human*  
7 *Rights v. County of L.A.* which dealt with the unhoused, defined the applicable municipal  
8 programs more broadly: "Skid Row area sidewalks are a service, program, or activity of the City  
9 within the meaning of Title II of the ADA." 14 F.4th 947, 959 (9th Cir. 2021). This broader  
10 framework makes sense in the context of a city, as opposed to an agency singularly charged with  
11 providing transportation. In the context of a municipality, the Court focuses its inquiry on the  
12 range of services traditionally offered by the public entity: "The focus of the inquiry . . . is not so  
13 much on whether a particular public function can technically be characterized as a service,  
14 program, or activity, but whether it is a normal function of a governmental entity." *Where Do We*  
15 *Go Berkeley*, 32 F.4th at 861. The municipality's mission is a broad one.

16 The case at bar is more akin to *L.A. Alliance* than *Where Do We Go Berkeley*. The City of  
17 Berkeley is not an agency with a singular mission such as Caltrans, but a municipality that  
18 provides wide-ranging services to the public, including provision of housing, social services, and  
19 the maintenance of public property, streets, and sidewalks which have long functioned to serve  
20 numerous purposes (*e.g.*, facilitating transit and movement, permitting speech and protests,  
21 enhancing urban aesthetics, serving as places of abode for the unhoused, etc.).

22 The Court thus adopts a formulation which reflects the City's broad ranging activities and  
23 mission and which encompasses the concerns fairly raised by both parties herein. The relevant  
24 program is: **the City's maintenance of public roadways and sidewalks to ensure their**  
25 **functionality, orderly, use, and public health and safety. This includes use of roadways and**  
26 **sidewalks which serve as locations of abode for the unhoused.** The parameters of this program,  
27 so defined, account for the City's interest in abatement — including the provision of publicly  
28 accessible rights-of-way (one basic function of sidewalks and streets) and, *e.g.*, the mitigation of

1 the leptospirosis outbreak in the interest of maintaining health and safety on the streets and  
2 sidewalks. The definition also encompasses the fact that City streets and sidewalks have long  
3 been used as places of abode for the unhoused. The City's management of the program thus must  
4 consider, *inter alia*, not only the need for abatement to protect public health and allowing for  
5 transit and passage, but also the effects on unhoused disabled residents who, lacking access to  
6 available or accessible housing or shelter, seek to occupy portions of the public right-of-way.

7 The Court evaluates the requested accommodations against this broader definition of the  
8 City's roadway and sidewalk management program. The Court assesses the merits of each request  
9 in light of this program framework, with the City bearing the burden of demonstrating, with  
10 specificity, that the requested modification is unreasonable or would fundamentally alter or unduly  
11 burden that specific program.

12 b. Reasonable Accommodation

13 A reasonable accommodation is one that meaningfully resolves the disabled person's  
14 inability to access a program or service without undue practical difficulty for the entity providing  
15 the program or service. *See, e.g., Choate*, 469 U.S. at 301 (“[T]o assure meaningful access,  
16 reasonable accommodations in the grantee's program or benefit may have to be made.”); *Clark v.*  
17 *Cal.*, 739 F. Supp. 2d 1168, 1177 (N.D. Cal. 2010) (Breyer, J.) (holding in the state prison and  
18 Title II context that “[t]o be ‘reasonable’ the accommodation or modification must give disabled  
19 prisoners ‘meaningful access’ to the service, program, or activity in question.”). Weighed against  
20 the efficacy of the requested accommodation is the cost and burden of providing that  
21 accommodation. *See Martin v. PGA Tour, Inc.*, 204 F.3d 994, 999 (9th Cir. 2000) (holding in the  
22 Title III context that a reasonable accommodation “solves the problem of [plaintiff's] access to the  
23 competition . . . and is not a difficult practical matter”); *Fortune v. Am. Multi-Cinema, Inc.*, 364  
24 F.3d 1075, 1084 (9th Cir. 2004) (accommodation is reasonable under Title III where it does not  
25 impose “excessive financial costs nor an extensive administrative burden”); “‘Reasonable’ is a  
26 relational term: it evaluates the desirability of a particular accommodation according to the  
27 consequences that the accommodation will produce. This requires an inquiry not only into the  
28 benefits of the accommodation but into its costs as well.” *Borkowski v. Valley Cent. Sch. Dist.*, 63

1 F.3d 131, 138 (2d Cir. 1995)

2 Critically, there must be a sufficient nexus between the claimant’s disability and the  
3 accommodation sought: an accommodation that does not meaningfully address the disability-  
4 related limitation does not satisfy that standard. *See* 28 C.F.R. § 35.130(b)(7) (requiring  
5 accommodations “necessary to avoid discrimination on the basis of disability”); *Wisc. Cmty.*  
6 *Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 748 (7th Cir. 2006) (“Rehabilitation Act helps  
7 disabled individuals obtain access to benefits only when they would have difficulty obtaining  
8 those benefits ‘by reason of’ their disabilities, and not because of some quality that they share  
9 generally with the public.”). A reasonable accommodation is one that meaningfully resolves the  
10 disabled person’s inability to access a program or service without undue practical difficulty for the  
11 entity providing the program or service. *Martin*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084.

12 A qualified individual with a disability need not show that an accommodation would be the  
13 most effective accommodation, but merely that the accommodation would be effective. *See Mont.*  
14 *Med. Ass’n v. Knudsen*, 119 F.4th 618, 626 (9th Cir. 2024) (“We find instructive the Fifth  
15 Circuit’s decision . . . ‘plaintiffs are not entitled to their preferred accommodation, but only a  
16 reasonable accommodation.’”); *Wade v. Solis*, 2009 WL 1186638, at \*17 (N.D. Cal. May 4, 2009)  
17 (“Wade is not entitled to the accommodation of his choice, but rather, one that is reasonable.”).

18 In sum, where the requested accommodation does not meaningfully resolve the  
19 impediment to accessing a program or service, or where the practical or financial costs of a  
20 requested accommodation outweigh the benefits of increased access, the requested  
21 accommodation is unreasonable. *See PGA Tour*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084; *see*  
22 *also Borkowski*, 63 F.3d at 138.

23 Reasonableness is analytically distinct from the question of fundamental alteration, which  
24 the Court addresses next. *See PGA Tour*, 532 U.S. at 673 (noting first that there was no dispute  
25 that the requested accommodation was reasonable, then proceeding to determine whether the  
26 accommodation “would ‘fundamentally alter’ the nature of” the competition); *Pierce*, 526 F.3d at  
27 1217 (holding that after the plaintiff establishes “the existence of a reasonable accommodation,”  
28 the burden shifts to the public entity to “show that the requested accommodation would require a



fundamental alteration . . .”).

Even if a request is reasonable, where the defendant asserts that the accommodation would nonetheless constitute a fundamental alteration of the program or undue burden, the Court proceeds to the inquiry of whether the requested accommodation would in fact fundamentally alter the City’s program or impose an undue burden.

c. Elements of a Fundamental Alteration

Another threshold matter that must be resolved before addressing the merits of the particular accommodation requests and the City’s responses herein is the determination of when requested accommodations would fundamentally alter the City’s program. The Court thus turns to the factors that must be evaluated in determining whether an accommodation in fact would pose a fundamental alteration to a program.

The central inquiry of the fundamental alteration analysis is whether the requested accommodation would “compromise[] the essential nature” of the program. *Choate*, 469 U.S. at 300; *see also PGA Tour*, 532 U.S. at 683 (defining an accommodation as a fundamental alteration if it “alter[s] such an essential aspect of the game of golf that it would be unacceptable even if it affected all competitors equally”); *Reed v. City of Emeryville*, 568 F. Supp.3d 1029, 1043 (N.D. Cal. 2021) (Orrick, J.) (“An alteration is fundamental if it would alter ‘the essential nature’ of the program.”); *Smith v. City of Oakland*, 612 F. Supp. 3d 951, 962 (N.D. Cal. 2020) (Tigar, J.) (same). The question is not whether *any* disruption would result, but whether the accommodation would genuinely and substantially obstruct an entity’s ability to deliver the program at issue. *See id.* The following five factor framework, derived from ADA precedent, guides the Court’s analysis.

**First**, the analysis evaluates whether the proposed accommodation implicates a core or merely peripheral aspect of the challenged program. An accommodation that is “at best peripheral to the nature” of a program “might be waived in individual cases without working a fundamental alteration,” while waiver of a truly essential rule, service, or function risks altering the essential nature of a program. *See PGA Tour*, 532 U.S. 661, 689 (2001) (holding that the PGA Tour was required to permit a disabled golfer to use a cart during competition because walking the course,



1 though a condition of tournament play, was peripheral to the essential nature of golf and its waiver  
2 therefore did not fundamentally alter the character of the competition). If an accommodation  
3 implicates only a peripheral aspect of the public entity’s program, the accommodation cannot be  
4 deemed a fundamental alteration.

5 **Second**, the inquiry assesses the realistic impact of the specific claimant’s individual  
6 request on the program, rather than the theoretical cumulative effect of the accommodation if it  
7 were applied generally. *See Martin*, 204 F.3d at 1001 (“The issue here is not whether use of carts  
8 generally would fundamentally alter the competition, but whether the use of a cart *by Martin*  
9 would do so. The evidence must ‘focus [ ] on the *specifics* of the plaintiff’s or defendant’s  
10 circumstances and not on the general nature of the accommodation.”) (emphases added); *see also*  
11 *Birdwell v. Avalon*, 742 F. Supp. 3d 1024, 1041-42 (N.D. Cal. 2024) (Tigar, J.) (ruling in the ADA  
12 and FHAA context that a \$150 rent waiver for a disabled resident would not constitute a  
13 fundamental burden in part because “receiving approximately \$150 less in rent per month due to  
14 the accommodation would not interfere with AvalonBay’s ability to turn a profit”).

15 **Third**, the Court must examine how realistic the purported impact on the public entity’s  
16 program would be. The Court will not entertain purely theoretical impacts without an adequate  
17 basis in concrete evidence. *See Crowder v. Kitagawa*, 81 F.3d 1480, 1486 n.2 (9th Cir. 1996)  
18 (stating in a case concerning alleged disability discrimination from a Hawai’i dog quarantine law  
19 that, in addition to the existence of reasonable alternatives to quarantining, “there is evidence that  
20 the risk of rabies being imported by guide dogs is low” and “the quarantine has not once in over  
21 75 years detected a single case of rabies among imported dogs”); *see also Where Do We Go*  
22 *Berkeley*, 32 F.4th at 862 (ruling in the context of a program designed to “address risks to the  
23 public” that the fundamental alteration analysis also considers “the *probability* of worsening the  
24 risk if the agency is forced to alter its program”) (emphasis added).

25 **Fourth**, as a related inquiry, a public entity must determine how substantial the impact of  
26 the accommodation would be. In other words, it must be clear that the requested accommodation  
27 would be significant enough to obstruct the entity’s ability to carry out the program. *See Crowder*,  
28 81 F.3d at 1486 n.2; *Choate*, 469 U.S. at 300 (the central inquiry of the fundamental alteration

analysis is whether the accommodation would “compromise[] the essential nature” of a program”); *Where Do We Go Berkeley*, 32 F.4th at 862.

**Fifth**, relatedly, the public entity must consider the availability of alternatives, and the likelihood that such alternatives could reasonably mitigate the obstructive impact of the accommodation while still serving the disabled individual. *See Crowder*, 81 F.3d at 1486 n.2 (stating that, in addition to the low risk of rabies being imported by guide dogs, “vaccine-based alternatives may be equally or more effective in preventing the importation of rabies”); *Duvall*, 260 F.3d at 1136 (“Mere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement; the [ADA] creates a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.”).

With a clear definition of the relevant City program and a framework against which to weigh the City’s assertions of “fundamental alteration” in mind, the Court may proceed to evaluate the merits of each requested accommodation.

Because BHU asserts constitutional claims in addition to ADA claims, the Court addresses the applicable legal standards therefor.

C. Property Seizure Constitutional Standard

Plaintiffs assert that the City’s abatement operations constitute an unlawful seizure and destruction of personal property in violation of the Fourth Amendment and the Fourteenth Amendment’s Due Process Clause. The Fourth Amendment “protects two types of expectations, one involving ‘searches,’ the other ‘seizures,’” with a seizure of property occurring when there is “some meaningful interference with an individual’s possessory interests in that property.” *Lavan v. City of L.A.*, 693 F.3d 1022, 1027 (9th Cir. 2012). At issue in the case at bar are seizures of property raised by the proposed abatement action.

The Ninth Circuit has held that even property temporarily left unattended on a public sidewalk is entitled to Fourth Amendment protection, and that a city may not seize and summarily destroy such property without first demonstrating an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or constitutes evidence of a

1 crime. *See id.* at 1024, 1030–31. The lawfulness of a seizure is also informed by the manner of  
2 execution, including whether the government summarily destroys property that could have instead  
3 been returned or whether intermediate measures could have been taken other than seizure and  
4 destruction. *See Lavan*, 693 F.3d at 1031 (concluding that even if seizure of unabandoned  
5 property would have been reasonable, summary destruction of that property would not be  
6 reasonable under the Fourth Amendment); *U.S. v. Jacobsen*, 466 U.S. 109, 124–25 (1984) (“[A]  
7 seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner  
8 of execution unreasonably infringes possessory interests protected by the Fourth Amendment’s  
9 prohibition on ‘unreasonable seizures.’”); *U.S. v. James Daniel Good Real Prop.*, 510 U.S. 43, 62  
10 (1993) (holding that the government must demonstrate that less restrictive measures, including a  
11 *lis pendens*, restraining order, or bond, would be inadequate to protect its interests before seizing  
12 real property without prior notice and a hearing); *U.S. v. Hyde*, 287 F. Supp. 2d 1095, 1099 (N.D.  
13 Cal. 2003) (Chen, J.) (holding that where a less drastic alternative would fully preserve the  
14 government’s stated interest, due process principles counsel in favor of pursuing the alternative  
15 over a more burdensome restraint).

16 The Fourteenth Amendment further affords procedural protections: the government “may  
17 not take property like a thief in the night; rather, it must announce its intentions and give the  
18 property owner a chance to argue against the taking.” *Id.* at 1032 (quoting *Clement v. City of*  
19 *Glendale*, 518 F.3d 1090, 1093 (9th Cir. 2008)).

20 D. State-Created Danger Constitutional Standard

21 Plaintiffs argue that abatement of the Harrison Encampment will expose them to dangers  
22 they do not currently face by, *inter alia*, depriving them of access to restrooms, food, water, and  
23 basic sanitation services; dismantling the mutual protection and community support of the  
24 Encampment; removing medical and case management access; and displacing residents into  
25 unfamiliar environments without community support structures. BHU’s SJ Motion at 19–22; FAC  
26 at 25–29.

27 The state-created danger doctrine, affording constitutional protection under the Due  
28 Process Clause of the Fourteenth Amendment, applies when a public entity engages in affirmative

1 conduct in placing the plaintiff in danger, and acts with deliberate indifference to a known or  
2 obvious danger. *Murguia v. Langdon*, 61 F.4th 1096, 1111 (9th Cir. 2023) (quoting *Patel v. Kent*  
3 *Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011)). Plaintiffs must also show that they face a  
4 particularized and foreseeable danger that they would not have otherwise faced. *Sinclair v. City of*  
5 *Seattle*, 61 F.4th 674, 680 (9th Cir. 2023).

6 The state-created danger doctrine applies narrowly to encampment abatements. Courts in  
7 this district have consistently held that the generalized dangers of homelessness preexist the state's  
8 actions in abating an encampment, and the state thus cannot be liable for "creating" dangers that it  
9 merely fails to resolve. *See, e.g., Cobine v. City of Eureka*, 250 F. Supp. 3d 423, 433 (N.D. Cal.  
10 2017) (White, J.) ("In the absence of particular allegations that the state action put the Plaintiffs in  
11 an inherently dangerous situation, the Court is bound to find that the generalized dangers of living  
12 on the street preexisted Plaintiffs' relocation . . . . Without allegations of intentional eviction  
13 during precarious weather or other facts indicating deliberate indifference to the safety and welfare  
14 of the population, the Court must dismiss the claim."); *Jensen v. Johnson*, 2025 WL 2443218, at  
15 \*6 (N.D. Cal. July 28, 2025) (Thompson, J.) (holding that dangers preexisted state actions);  
16 *Swarcz v. Town of Fairfax*, 2025 WL 2410522, at \*2–3 (N.D. Cal. Aug. 19, 2025) (Seeborg, J.)  
17 ("Plaintiffs fail to show actual, particularized dangers that they would not otherwise confront. The  
18 risks of camping outside and having little to no access to clean bathroom and vital services are  
19 certainly severe, but the state's action to abate the campsite in one particular location is not  
20 creating those risks."). The Ninth Circuit has, in recent non-binding statements, similarly been  
21 reluctant to apply state-created danger in the encampment context post-*Grants Pass*. *See*  
22 *Sacramento Homeless Union v. City of Sacramento*, 115 F.4th 1149, 1151–52 (9th Cir. 2024)  
23 (mem.) (Nelson, J., joined by Bumatay and VanDyke, JJ., respecting the denial of rehearing en  
24 banc) (stating that district court erred in finding state-created danger arising from sweeps during  
25 extreme heat); *cf. Penilla v. City of Huntington Park*, 115 F.3d 707, 708 (9th Cir. 1997) (officers  
26 finding decedent in emergency situation, canceling the request for paramedics to appear on the  
27 scene, and moving decedent into locked home); *DeShaney v. Winnebago Cnty. Dep't of Social*  
28 *Servs.*, 489 U.S. 189, 191 (1989) (social workers failing to remove boy from abusive father's

custody); *Wood v. Ostrander*, 879 F.2d 583, 586 (9th Cir. 1989) (officers arresting intoxicated husband but leaving wife stranded in unfamiliar location without keys to the car).

On the other hand, affirmative state conduct which places unhoused individuals in a worse condition in their unhoused state, such as removal of their protective belongings and shelters or placing them in locations which increase their exposure to the elements can constitute state-created dangers. *See, e.g., Janosko v. City of Oakland*, 2023 WL 187499, at \*3 (N.D. Cal. Jan. 13, 2023) (holding that removal of shelter “affirmatively expose[s] [unhoused plaintiffs] to harsher, more dangerous conditions”); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50 (“When Plaintiffs’ shelter and personal belongings are destroyed, and they have no safe shelter alternative nor means to protect themselves from the elements, the state has made plaintiffs’ conditions worse.”); *Alfred v. City of Vallejo*, 2025 WL 435900, at \*9 (E.D. Cal. Feb. 7, 2025) (“Removing Plaintiff’s shelter while knowing Plaintiff has no alternatives is likely to expose her to more dangerous conditions than she currently faces by depriving her of protection from the elements, . . . creating a known and particularized danger to Plaintiff’s safety and welfare.”).

The Court now turns to evaluating the merits of each category of relief sought by BHU members. The Court examines each request for relief under the ADA, property seizure, and state-created danger claims where appropriate. The facts relied upon herein are not genuinely disputed except as noted otherwise.

E. Merits of BHU’s Claims for Accommodations/Relief

1. Relief Category #1: Indefinite Pause on Abatement, Right to Remain in Place, and Guarantee of Non-Congregate Housing or Specific Shelter Placements

a. Merits of ADA Accommodation Requests

Eric Keiser, Shareef Muwakkil, Lewanda Parnell, and Erin Spencer each request either that abatement be suspended until non-congregate shelter placements become available, or a guarantee from the City of non-congregate housing or specific shelter placements. Dkt. 253, Exs. A–B, I; Gregory Declaration (Dkt. 217-3), Ex. A; BHU Status Report (Dkt. 200).

Mr. Keiser cites mobility limitations and chronic pain from a car collision, and

1 schizophrenia impacting his executive functioning and ability to navigate the relocation process.  
2 See Dkt. 200 at 12. Mr. Muwakkil experiences mobility limitations from leg swelling and an  
3 ankle injury, and psychosis that contributes to executive functioning challenges limiting his ability  
4 to relocate without exacerbating symptoms. See *id.* Ms. Parnell cites physical limitations  
5 including vertigo and mental health impediments requiring community support to support her  
6 request. *Id.*, Ex. A at 2. And Mr. Spencer cites cognitive and mobility challenges, including  
7 sciatica and a displaced left hip, and PTSD and ADHD as necessitating this accommodation. *Id.*  
8 at 13.

9 The claimants' requests are both unreasonable and would pose a fundamental alteration to  
10 the relevant City program. Accordingly, for the reasons stated below, the Court **GRANTS**  
11 summary judgment in favor of the City with respect to this category of accommodations and  
12 **DENIES** BHU's cross-motion for summary judgment with respect to the same category of  
13 accommodations.

14 **First**, regarding the requests for an indefinite pause on abatement, the Court finds such an  
15 accommodation unreasonable. The reasonableness of a requested accommodation is assessed, in  
16 part, by weighing its practical costs against its expected benefits. See *Martin*, 204 F.3d at 999;  
17 *Fortune*, 364 F.3d at 1084; *Borkowski*, 63 F.3d at 138. The costs of the requested  
18 accommodation are concrete, immediate, and severe. The City's Public Health Officer has  
19 documented confirmed instances of leptospirosis in the Encampment, multiple suspected and  
20 confirmed cases in dogs, and contamination risks in surrounding soil and water, with proximity to  
21 a creek amplifying the potential range of exposure. Doohan Declaration (Dkt. 194-3). The Court  
22 noted in the June 2025 preliminary injunction order that "as health and safety hazards persist, the  
23 government's interest in closure increases." Minute Entry (Dkt. 104) at 2. Although BHU  
24 responds that the leptospirosis justification is largely pretextual, as no human has been confirmed  
25 to have contracted leptospirosis at the Encampment, BHU's SJ Motion at 14, BHU's attorneys at  
26 the hearing on BHU's motion did not appear to dispute the seriousness of the public health threat.  
27 The documented conditions — the prevalence of rats, contaminated soil, instances of standing  
28 water, creek drainage, and rodent harborage sites — establish a plausible and serious human health

1 risk exacerbated by encampment conditions. The finding of leptospirosis infections in rats and  
2 dogs is highly unusual and indicative of a serious health problem. *See* Doohan Declaration (Dkt.  
3 194-3) ¶¶ 9, 16 (describing leptospirosis as a “neglected tropical disease” and explaining that “the  
4 presence of Lepto[spiro]sis in dogs at the encampment demonstrates the imminent risk to human  
5 health because the method of transmission from infected rats to humans is essentially the same as  
6 for dogs”). The City is justified in addressing this public health concern with urgency.

7 BHU argues that targeted rat abatement and partial clearance could address the  
8 leptospirosis outbreak without displacing residents. *Id.* at 14–16. The Court requested briefing  
9 and the production of evidence on this very question. *See* Order Setting Briefing Schedule (Dkt.  
10 202). While the availability of alternatives is one factor which informs the analysis, the ADA  
11 does not categorically require the City to adopt the *least restrictive* encampment management  
12 approach possible, and the City has submitted declarations from competent experts explaining that  
13 total abatement of the Encampment is necessary in order to effectuate eradication of the contagion.  
14 Doohan Declaration (Dkt. 194-3) ¶¶ 22, 24 (stating that eradication is necessary to mitigate the  
15 risk to Encampment residents and that alternatives short of total eradication “cannot adequately  
16 address the risks to human health posed by the presence of Lepto[spiro]sis in the Harrison Street  
17 encampment”); Doohan Declaration (Dkt. 207-2) ¶¶ 6–7 (stating that “even successful partial  
18 measures . . . cannot adequately address the risks to human and dog health posed by the presence  
19 of Leptospirosis in the Harrison Street encampment” and that “even if it were theoretically  
20 possible to effectively abate the Leptospirosis contagion in the encampment while allowing some  
21 encampment residents to remain in place, it would not be safe or responsible to do so. This is  
22 because eradication usually involves laying poison bait for the rats. The poison itself is a potential  
23 hazard to humans and their pets, as are the rat carcasses after they have eaten the poison.  
24 Additionally, infected rat carcasses can spread Leptospirosis if not properly collected and disposed  
25 of”); Torres Declaration (Dkt. 219-7) ¶¶ 5–13. BHU has not countered this public health evidence  
26 sufficiently to create a factual doubt about the need for widespread abatement.

27 In sum, the City has made a substantial and competent public health judgment that full  
28 Encampment closure is well-advised if not absolutely required as a public health measure; BHU



1 has offered no expert evidence to the contrary sufficient to raise a genuine issue of fact. Where  
2 the costs of the accommodation include direct, documented risk of harm to public health, the  
3 balance tips in favor of the City's abatement. A proposed accommodation of an indefinite pause  
4 on abatement realistically threatens the health and safety of not only the individual claimants  
5 herein, but the surrounding community as well. The proposed accommodation is not a reasonable  
6 one.

7 **Second**, the requests for non-congregate housing or guaranteed shelter placement as a  
8 precondition to abatement are both a fundamental alteration to the City's program and an  
9 unreasonable accommodation.

10 The accommodation request would constitute a fundamental alteration of the City's  
11 program and would require the city to create a new program. First, the request implicates a core,  
12 rather than peripheral, aspect of the City's program. Requiring that the City guarantee non-  
13 congregate placements before proceeding with abatement could delay abatement indefinitely and  
14 for a long period, and this strikes at the heart of the how the program of maintaining the streets  
15 operates, by effectively enjoining its ability to maintain streets and sidewalks consistent with  
16 public health until it can provide a kind of housing which is currently in scarce supply. An order  
17 postponing the needed abatement would work a substantial non-speculative obstruction of the  
18 City's effort to maintain public health and safety in this case. And the record facts establish  
19 beyond genuine dispute that such postponement would leave the City little or no effective  
20 alternative courses of action to address the health and safety problem posed by the leptospirosis  
21 outbreak. *See, e.g.*, Doohan Declaration (Dkts. 194-3; 207-2); Torres Declaration (Dkt. 219-7).

22 Moreover, requiring the City to allocate funds to provide new and additional non-  
23 congregate housing, while ideal, would effectively require the City to fund a new or different  
24 housing program. *Townsend*, 328 F.3d at 518 ("[P]ublic entities are not required to create new  
25 programs that provide heretofore unprovided services to assist disabled persons."). The  
26 declarations of City personnel confirm that shelter placements are governed by eligibility,  
27 availability, prioritization criteria, and operational considerations, and that the City already makes  
28 shelter and housing programs available to BHU members on the same terms as other unhoused



1 Berkeley residents. Radu Declaration (Dkt. 219-4) ¶ 13; Defendants’ SJ Motion at 15–16.  
2 Granting guaranteed placements to Encampment residents would necessarily displace other  
3 individuals awaiting shelter through the same system, would impose preferential treatment of  
4 some over others not in line with the City’s priority process, thus interfering with the City’s  
5 provision of housing as part of its relevant program. See Defendants’ Opposition Brief at 2–3  
6 (describing the requested accommodation as “a pass to jump ahead in line and receive non-  
7 congregate shelter placement at the City’s expense, outside the Coordinated Entry System  
8 administered by Alameda County and governed by federal Housing and Urban Development  
9 Department regulations”).

10 The record also establishes that non-congregate shelter is presently unavailable in  
11 sufficient quantity to satisfy the requests, and that the City is operating under a \$32 million budget  
12 deficit and hiring freeze. Radu Declaration (Dkt. 219-4) ¶ 11; Radu Declaration (Dkt. 56-3) ¶ 5.  
13 Fiscal constraints are a serious factor that the Court must consider when evaluating the merits of a  
14 requested accommodation. See *Fortyune*, 364 F.3d at 1084. The City’s prior expenditure of \$5  
15 million to fund a master lease of the Campus Motel, dedicated exclusively to Harrison  
16 Encampment residents, illustrates that scale of investment that even a single housing-adjacent  
17 accommodation would necessitate. See Radu Declaration, Ex. A (Dkt. 15-1) at 1. The ADA does  
18 not compel a public entity to guarantee a benefit it lacks the capacity to provide. See *Townsend*,  
19 328 F.3d at 518; *Scwarz*, 2025 WL 2410522, at \*4 (“[P]roviding new housing or the full slate of  
20 services Plaintiffs request would be an entirely new program.”).

21 Even if not a fundamental alteration, these requests for accommodation are unreasonable.  
22 See *Fortyune*, 364 F.3d at 1084 (accommodation unreasonable where it imposes costs  
23 disproportionate to the access benefit it delivers); *Borkowski*, 63 F.3d at 138 (“‘Reasonable’ is a  
24 relational term: it evaluates the desirability of a particular accommodation according to the  
25 consequences that the accommodation will produce. This requires an inquiry not only into the  
26 benefits of the accommodation but into its costs as well.”). The City is operating under a  
27 significant budget deficit, and the ADA does not require a financially constrained public entity to  
28 undertake an open-ended expenditure in pursuit of a benefit which may or may not actually benefit

1 particular individual claimants. *See id.*

2 For the foregoing reasons, given the facts not genuinely in dispute, the Court **GRANTS**  
3 summary judgment for the City on all claims seeking as an accommodation an indefinite pause on  
4 abatement or guarantees of housing or shelter placement. The Court **DENIES** BHU's cross-  
5 motion with respect to the same relief.

6 b. State-Created Danger Claim

7 BHU argues that repeated displacement constitutes state-created danger actionable under  
8 the Fourteenth Amendment.

9 In the June 10, 2025 minute entry on the preliminary injunction, the Court found that BHU  
10 was "unlikely to succeed on its Fourteenth Amendment [state-created danger] claim because it  
11 fails to demonstrate that the City's action will place its members residing in the Harrison Corridor  
12 in a state-created danger related to a loss of 1) "bathrooms," 2) "access to food and water" such as  
13 from the "Dorothy Day House," 3) "mutual protection" from "community watch groups and  
14 buddy systems," and 4) "medical and case management services" from "Lifelong Medical and Bay  
15 Area Community Services." Minute Entry (Dkt. 104) at 2. The factual record has not materially  
16 changed with respect to these theories. The summary judgment record reinforces the Court's prior  
17 assessment instead.

18 The fundamental problem with BHU's argument on state-created danger arising from  
19 abatement is that it conflates dangers inherent in living without shelter with dangers created by the  
20 City. The residents of the Harrison Encampment were unsheltered and thus subject to exposure,  
21 instability, lack of privacy, inadequate sanitation services, and distance from essential services —  
22 all before the City even announced its closure. The abatement does not transform housed  
23 individuals into unhoused ones; it displaces individuals who are already unsheltered from one  
24 location to others. *See Schwarz*, 2025 WL 2410522, at \*3. The loss of a particular community  
25 arrangement could constitute a genuine hardship and is undeniably traumatic for many members  
26 of the Encampment. But it is not a danger for which the City can be held liable under the  
27 Fourteenth Amendment. Unlike situations where unhoused individuals have been displaced and  
28 stripped of their belongings during inclement weather, the abatement here was delayed due to

rainy weather, and Plaintiffs do not identify a particular risk of injury deliberately imposed by the defendants that would otherwise be absent but for the abatement options. *See* Defendants’ Opposition to Second Ex Parte Application (Dkt. 273) at 4; *c.f. Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1102 (E.D. Cal. 2012) (city endangering unhoused residents by planning to demolish a shelter during “the winter months that would bring cold and freezing temperatures, rain, and other difficult physical conditions”); *Alfred v. City of Vallejo*, 2025 WL 435900, at \*9 (E.D. Cal. Feb. 7, 2025) (“Removal of Plaintiff’s shelter at this time also imposes an especially increased risk in light of the winter season when the temperature drops and rainfall increases.”).

For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the City on all claims related to an indefinite pause on abatement, right to remain in place, and a guarantee of non-congregate housing or specific shelter placements. The Court **DENIES** BHU’s cross-motion for such relief.

2. Relief Category #2: Enforcement-Free Zones, City-Sanctioned or City-Owned Campsite, and Map or List of Enforcement-Free Areas

a. Merits of ADA Accommodation Requests

Eric Keiser, Shareef Muwakkil, Lewanda Parnell, and Erin Spencer request that the City (1) identify certain enforcement-free locations where they may relocate following abatement, (2) designate City-owned or City-sanctioned campsites for use after abatement, or (3) provide a map or list of areas within Berkeley where displaced Encampment residents may lawfully reside without fear of enforcement. *See* Dkt. 253, Exs. A–B, I; Gregory Declaration (Dkt. 219-3), Ex. A; BHU Status Report (Dkt. 200).

The claimants articulate the following disability-related bases for these requests. Mr. Keiser suffers from mobility impairments and schizophrenia which require predictability. BHU Status Report (Dkt. 200) at 21. “[S]udden displacement fractures his fragile sense of safety, flooding him with stress that worsens hallucinations . . . . The looming threat of citation, arrest or property destruction would keep him in a state of hypervigilance.” *Id.* With respect to Mr. Muwakkil, his physical and mental disabilities make it a challenge to exist in “hazardous environments — such as uneven ground, longer distances from services and unsafe structures —

1 that would worsen his chronic leg swelling, risk re-injury to his unhealed ankle, and impose  
2 physical strain that could lead to a heart attack. Mentally, the lack of a stable, predictable place  
3 would induce severe anxiety and decision paralysis.” *Id.* at 23. He also requires clear visual  
4 guidance and an enforcement-free zone because “he cannot navigate complex rules due to  
5 executive dysfunction.” *Id.* at 24. Ms. Parnell lives with vertigo and difficulty balancing, as well  
6 as mental disabilities that impact her ability to complete tasks. *Id.* at 14. She requests a City-  
7 sanctioned camp and visual aid of permissible encampment sites because she relies on community  
8 for safety and is at risk of vertigo episodes or anxiety from repeated displacement. Finally, Mr.  
9 Spencer cites his mobility impairments, PTSD, and ADHD as reasons why he cannot  
10 independently relocate or comply with City laws in any future relocation site. Dkt. 253, Ex. A at  
11 13.

12 These requests fail because claimants have not demonstrated a sufficient nexus between  
13 their asserted disabilities and the specific accommodations requested. To establish entitlement to a  
14 reasonable accommodation under Title II, a claimant must demonstrate not only that they are a  
15 qualified individual with a disability, but that the requested modification would meaningfully  
16 provide access to City services or programs otherwise unattainable. *See, e.g., Choate*, 469 U.S. at  
17 301 (a “reasonable accommodation” is one that gives a qualified plaintiff with disabilities  
18 “meaningful access” to the program or service); *Martin*, 204 F.3d at 999 (“Here, it is clear that  
19 permitting Martin to use a golf-cart is ‘reasonable’ in the sense that it solves the problem of  
20 *Martin’s access to the competition.*”) (emphasis added).

21 The Court does not take lightly the claimants’ need for stability and predictability. Those  
22 needs are understandable. The disabilities at issue here may well bear on a person’s capacity to  
23 navigate uncertainty, comply with regulatory requirements, and manage the logistics of relocation.  
24 The problem here is that the nexus between these disabilities and a pre-commitment to non-  
25 enforcement is not readily apparent. The risk of future enforcement against these individuals who  
26 move to a new location is speculative at this juncture. The City’s enforcement criteria, which by  
27 the City’s own account, are activated only by hazardous or obstructive conditions rather than the  
28 mere presence of unhoused campers. *See Radu Declaration* (Dkt. 219-4) ¶¶ 6–12. The City does

1 not categorically prohibit camping outdoors; it manages the public right-of-way by assessing  
2 specific risks posed to pedestrian access, public health, fire safety, and community welfare. *Id.*  
3 Compliance with those standards is not beyond reach solely by virtue of the disabilities described  
4 in the record. This is particularly so in view of the City’s imposition of enforcement of overly  
5 restrictive limits on space occupied by unhoused individuals discussed below.

6 The Court acknowledges BHU’s additional assertion that community proximity is itself a  
7 disability-related need — *i.e.*, that individuals with disabilities may depend on established mutual  
8 support networks for their day-to-day stability and safety. But the abatement order does not  
9 prohibit Encampment residents from relocating in proximity to one another or from reconstituting  
10 certain community arrangements elsewhere, in compliance with the City’s balancing framework  
11 for enforcement. The City is not mandating isolation. *Cf. Boyd v. City of San Rafael*, 2023 WL  
12 6960368 (N.D. Cal. Oct. 19, 2023) (municipal ordinance prohibiting clustering of unhoused  
13 residents). On this record, the need for community proximity does not translate into a disability-  
14 related necessity for advance designation of enforcement-free zones or City-sanctioned  
15 encampments at this juncture.

16 The request for a map or list of permissible relocation fares no better, for many of the same  
17 reasons. The City’s enforcement program does not operate by categorizing locations as  
18 universally permissible or impermissible — it operates by assessing conditions on the ground and  
19 responding to hazardous or obstructive conditions as they arise. Radu Declaration (Dkt. 219-4) ¶¶  
20 6–12. And the Court takes the City at its word regarding enforcement — there is no city-wide ban  
21 on unhoused individuals, as many such individuals have been left to sleep on City sidewalks  
22 without disruption.

23 Given the City’s stated policy that it does not have a City-wide ban on camping by the  
24 unhoused, the need for a map of “safe zones” is not substantially tied to the asserted disabilities.  
25 This is particularly so in light of the Court’s holding, as noted, that the City may not enforce  
26 overly-restrictive space limitations on its sidewalks. To be sure, should the City engage in serial  
27 evictions after residents move from the Encampment, that could, at some point, give rise to a legal  
28 claim. But at this juncture, as noted below, such a claim is not ripe.

Accordingly, the Court **GRANTS** summary judgment in favor of the City on ADA claims related to non-enforcement, City-sanctioned or City-owned campsites, and a map of enforcement-free zones. The Court **DENIES** BHU's motion for such relief.

b. State-Created Danger Claim

BHU argues that failure to designate enforcement-free zones and consequent displacement of BHU members from the areas to which they relocate constitutes state-created danger actionable under the Fourteenth Amendment.

Again, much like the above analysis of BHU's state-created danger claim, the fundamental flaw with this argument is that it conflates dangers inherent in living without shelter with dangers created by the City.

However, at the March 11, 2026 hearing on BHU's request for a TRO, BHU argued that the City's *repeated* displacement of unhoused individuals constitutes a state-created danger by preventing the formation of stable community arrangements and forcing residents into recurring cycles of disruption. BHU's position, drawing on the minority's dissent in *Grants Pass*, is that the Due Process Clause may constrain cities from enacting anti-homelessness ordinances even after *Grants Pass* foreclosed Eighth Amendment challenges. *See Grants Pass*, 603 U.S. 520, 589 (Sotomayor, J., dissenting) ("Finally, the Court does not decide whether the Ordinances violate the Due Process Clause. . . . The Due Process Clause may well place constitutional limits on anti-homelessness ordinances."). The Court agrees with Justice Sotomayor's dissent that due process is a valid basis for future challenges to municipal anti-homelessness ordinances. However, in the case at bar, closing the Harrison Encampment because of the urgency of the leptospirosis outbreak does not necessarily foreclose residents from moving to other parts of the City where some degree of congregation may occur. While the City refuses to establish a sanctioned encampment elsewhere, as noted, it represents that it does not have a general policy barring residents from sleeping in public places, and there is no apparent policy limiting the number of unhoused persons from sleeping in any given area. *Cf. Boyd*, 2024 WL 3748334, at \*4–5 (N.D. Cal. Aug. 7, 2024) ("The amended ordinance allows for clustering of individuals and campsites in a manner which mitigates the dangers potentially facing isolated unhoused individuals. . . . This addresses the due

process concerns identified by the Court.”). Thus, this particular constitutional claim is not ripe at this juncture.

For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the City on BHU’s state-created danger claim related to enforcement-free relocation areas, City-sanctioned or City-owned campsites, and maps or lists of permissible relocation zones as a fundamental alteration to the City’s existing program. The Court **DENIES** BHU’s cross-motion for such relief. Again, the Court reserves judgment on whether a pattern of repeated displacement of unhoused disabled individuals across multiple locations could, on a more developed record, give rise to a viable ADA or constitutional claim. Nothing in this ruling necessarily forecloses future claims under different circumstances.

3. Relief Category #3: Safe Location to Relocate Vehicles, Towing Exemption, and Parking Relief

a. Merits of ADA Accommodation Requests

Merced Dominguez and Yesica Prado request certain ADA accommodations with respect to City enforcement of laws and regulations governing vehicle registration, operability, timed parking limits, and cleanliness standards. Eight of the fifteen total vehicles at the Encampment appear to be at risk of imminent enforcement action.<sup>9</sup> The Court first evaluates the merits of the ADA accommodation requests; the constitutional property seizure and state-created danger implications are subsequently addressed.

The Court first acknowledges the significant risk attached to the loss of a physical, movable shelter for persons with disabilities. “Those individuals face disproportionate harm if they are forced to move into public shelters or if they are too far from their medical providers and

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<sup>9</sup> Six of the eight vehicles at risk of enforcement action are listed by license plates: (1) 202JYV, (2) 393967, (3) 6HML454, (4) 7PDU606, (5) BMJ499, (6) 9DVV381. *See Prado v. City of Berkeley*, No. 23-cv-04537-EMC, Radu Declaration (Dkt. 193); Response to Radu Declaration (Dkt. 199); Nicoletti Declaration (Dkt. 200); City Reply Brief (Dkt. 205). The remaining two are a gray station wagon and silver four-door vehicle unidentified by a license plate number. *Id.* The remaining vehicles were either not determined to be a public safety threat or were not subject to removal because they are parked outside the designated “No Parking” zone. *Id.* Accordingly, the Court does not issue a ruling with regard to the vehicles not at risk of imminent enforcement action because summary judgment would be premature.



1 social support networks. Individuals with mental health disabilities also risk serious exacerbation  
 2 of their conditions if they lose their private, safe spaces.” *Navarro v. City of Mountain View*, 2021  
 3 WL 5205598, at \*2 (N.D. Cal. Nov. 9, 2021). In response, the City identifies potential public  
 4 health and safety concerns associated with specific vehicles. *Prado*, No. 23-cv-04537-EMC, Radu  
 5 Declaration (Dkt. 193); City Reply Brief (Dkt. 205). For example, rodent droppings and rodent  
 6 burrows found near vehicles, vehicles serving as potential rodent harborage sites, and  
 7 accumulation of sewage or personal property around vehicles. *Id.*

8 As a threshold matter, Ms. Prado’s ADA claim is not viable. The Court previously  
 9 dismissed Ms. Prado’s challenge to the 72-hour parking enforcement rule in the related *Prado*  
 10 action. No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 139) at 14–16 (holding that Ms.  
 11 Prado did not demonstrate a sufficient nexus between her disabilities and the requested  
 12 accommodation). Although Plaintiffs in that case subsequently filed a Third Amended Complaint,  
 13 that complaint did not re-allege disability discrimination with respect to enforcement against Ms.  
 14 Prado’s RV. *See* No. 23-cv-04537-EMC, Third Amended Complaint (Dkt. 150). Any such claim  
 15 is therefore waived, and the Court declines to revisit its prior holding.

16 The Court now proceeds to evaluate the merits of the accommodation request made by Ms.  
 17 Dominguez.<sup>10</sup> Ms. Dominguez establishes a sufficient nexus between her respective disabilities  
 18 and the inability to comply with the vehicle-related requirements at issue. Ms. Dominguez’s  
 19 degenerative spondylosis causes chronic pain and limits her mobility and ability to relocate her  
 20 RV. Dkt. 253, Ex. A at 10. Further, the record reflects that Ms. Dominguez relies on her RV as  
 21 shelter to “manage her chronic pain in a stable, accessible environment,” and that the fear of

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22  
 23 <sup>10</sup> The City partially denied Ms. Dominguez’s accommodation request on the grounds that she  
 24 advanced financial needs for accommodation, rather than disability-related bases. Dkt. 253, Ex. I  
 25 at 13; Prado Declaration (Dkt. 272), Ex. G at 5. The Court does not find this rationale convincing.  
 26 Ms. Dominguez’s accommodation request explained how her disabilities impact her ability to  
 27 comply with rules and regulations governing their vehicles. Dkt. 253, Ex. I at 10; Prado  
 28 Declaration (Dkt. 272), Ex. G at 2–4. In any event, her disabilities are sufficiently open, obvious,  
 and apparent as a result of her requests and the interactive process. *See, e.g., Rimes v. Claire’s  
 Stores, Inc.*, 2024 WL 1461355, at \*1 (9th Cir. Apr. 4, 2024) (mem.); *Carter v. Shreveport*, 144  
 F.4th 809, 814 (5th Cir. 2025) (knowledge of disability is satisfied where “the disability, resulting  
 limitation[s], and necessary reasonable accommodation were open, obvious, and apparent to the  
 entity’s relevant agents”) (brackets in original) (internal quotation marks omitted); *Martinez v.  
 Cnty. of Alameda*, 2025 WL 1556410, at \*10 (N.D. Cal. June 2, 2025).



1 parking enforcement and loss of her vehicle “keeps her in a state of perpetual insecurity of fear,”  
2 exacerbating symptoms because she is incapable of walking long distances. BHU Status Report  
3 (Dkt. 200) at 11, 17–18. Ms. Dominguez’s RV serves as her sole source of shelter, and being  
4 required to “relocate her RV, [and] repeatedly travel in search of alternative places to park” would  
5 “place significant strain on her spine” and exacerbate her pain and mobility limitations. *Id.* at 11;  
6 Brizzolara Declaration (Dkt. 279) ¶ 6. Ms. Dominguez requests an exemption from parking  
7 enforcement and towing, temporary stability in her current location, relocation to an ADA-  
8 compliant parking location, and a parking permit system allowing her to remain in a designated  
9 area.

10 There is a clear nexus between Ms. Dominguez’s disabilities and the requested  
11 accommodations. Ms. Dominguez has stressed the centrality of her RV to her physical and mental  
12 wellbeing, and has expressed willingness to cooperate with the City by voluntarily relocating to a  
13 “legal parking area without risk of citation and towing.” *Id.* at 17. Having established a nexus  
14 between Ms. Dominguez’s disabilities and the threatened exclusion from a portion of the City’s  
15 program (the streets), the burden shifts to the City to demonstrate that the requested modifications  
16 are unreasonable, would constitute a fundamental alteration of the relevant program, or would  
17 impose an undue burden. The City has not made that showing.

18 The requested accommodations, including temporary parking exemptions or renewable  
19 permits and assistance with vehicle relocation, may indeed implicate core aspects of the City’s  
20 relevant program of maintaining public health and safety on public roadways. However, the  
21 City’s submissions do not demonstrate that temporary, individualized exemptions and  
22 accommodations for an individual — or even a handful of disabled claimants — would  
23 substantially obstruct the City’s management of the program. Again, the fundamental alteration  
24 inquiry must focus on the specific impact of accommodation the particular individuals seeking the  
25 accommodation, not the theoretical effect of granting such exemptions on a broader basis or city-  
26 wide. *Martin*, 204 F.3d at 1001; *see also Birdwell*, 742 F. Supp. 3d at 1041. The City has not  
27 established on this record a real and substantial obstruction of the City’s program would result  
28 from granting the individual accommodations request of Ms. Dominguez.

1 The City's principal objection to exempting Ms. Dominguez from parking regulations is  
2 that doing so would undermine vehicle turnover, emergency access, and equitable curb use, and  
3 thus constitute a fundamental alteration. White Declaration (Dkt. 219-5) ¶¶ 14–19; Defendants'  
4 SJ Motion at 18–19. That concern is unpersuasive as applied to Ms. Dominguez's specific  
5 circumstances. The fundamental alteration inquiry must focus on the actual, concrete impact of  
6 accommodating Ms. Dominguez. *Martin*, 204 F.3d at 1001; *Birdwell*, 742 F. Supp. 3d at 1041.  
7 The record does not support a finding that Ms. Dominguez's stationary RV meaningfully disrupts  
8 parking turnover or emergency access. The City's own submissions acknowledge that the RV has  
9 remained in its current location for several years, without any accompanying showing of  
10 interference with traffic flow or emergency vehicle access. See Vance-Dozier Declaration (Dkt.  
11 219-6) ¶¶ 3–6. The City enforces parking in a balanced, priority-based manner and concedes that  
12 not every violation triggers enforcement. Defendants' SJ Motion at 18 n.5. The City offers no  
13 evidence that Ms. Dominguez's continued presence at her current location has, in practice,  
14 impeded access. The fact that parking regulations serve important purposes does not mean that  
15 deviation from it for a handful of disabled individuals constitutes a fundamental alteration. See  
16 *Crowder*, 81 F.3d at 1486 n.2.

17 The City also opposes the accommodation request on operational grounds. The City  
18 contends that: "Parking enforcement relies on automated systems; manual tracking would be  
19 labor-intensive, less reliable, and increase disputes. Staff would need to manually monitor  
20 vehicles and make repeated, case-specific determinations, diverting personnel from broader police  
21 and public safety responsibilities, resulting [in] an undue administrative burden under Title II."  
22 Defendants' SJ Motion at 18. But, as noted above, in that same motion, the City states that it  
23 enforces parking in a measured, priority-based manner and concedes that not every violation  
24 triggers enforcement. *Id.* at 18 n.5. Moreover, the City points to nothing in the record which  
25 explains why it would not be feasible to input Ms. Dominguez's license plate into its existing  
26 automated system to flag her for exemption. See *Crowder*, 81 F.3d at 1486 n.2 (requiring a  
27 realistic, not merely theoretical showing of harm and consideration of alternatives); *Duvall*, 260  
28 F.3d at 1139 (duty to consider claimant's specific needs in light of their disability). The City's

1 factual submissions fall short of the specificity required to sustain a fundamental alteration or  
2 undue burden defense.

3 Because the City has not, as a matter of law, demonstrated that the requested  
4 accommodations are unreasonable or would constitute a fundamental alteration or undue burden,  
5 the City's motion for summary judgment on Ms. Dominguez's vehicle-related disability  
6 accommodations is **DENIED** with respect to vehicle-related disability accommodations. BHU's  
7 cross-motion for summary judgment is **GRANTED** with respect to Ms. Dominguez's request for  
8 accommodations related to her vehicle.

9 b. Property Seizure Claim

10 Ms. Dominguez and Ms. Prado use their vehicles as shelter, dkt. 253, Ex. A at 10, 17, and  
11 as such their vehicles occupy a distinct status by virtue of this Court's prior holding in *Prado* that  
12 the City must concretely demonstrate that a vehicle obstructs traffic or presents a concrete threat to  
13 public health or safety before invoking the community caretaker doctrine. No. 23-cv-04537-EMC,  
14 Order re Motion to Dismiss (Dkt. 87) at 23–27. Mere noncompliance with parking or operability  
15 requirements do not suffice to justify seizure or destruction of vehicles. *Id.* at 27; *see also Lavan*,  
16 693 F.3d at 1025, 1029 (“Violation of a City ordinance does not vitiate the Fourth Amendment’s  
17 protection of one’s property. Were it otherwise, the government could seize and destroy any  
18 illegally parked car or unlawfully unattended dog without implicating the Fourth Amendment.”).  
19 The Court’s prior ruling remains controlling here and bears emphasis, as the City now appears  
20 poised to tow, impound, and destroy a large number of cars within a wide “No Parking” zone in  
21 and around the Harrison Encampment. *See* No. 23-cv-04537-EMC, Radu Declaration (Dkt. 193);  
22 City Reply Brief (Dkt. 205).

23 To be sure, the City does have a substantial and legitimate interest and right to move,  
24 impound, and possibly destroy (under certain circumstances) vehicles which pose a demonstrable  
25 threat to public health. But the City’s burden is to demonstrate such on an individual vehicle-by-  
26 vehicle basis. *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 26 (“The  
27 City has the burden to establish that the taking was warranted on a fact-specific basis.”) (citing  
28 *U.S. v. Cervantes*, 703 F.3d 1135, 1144 (9th Cir. 2012)). Although the City has documented the

1 surrounding circumstances of individual vehicles which appear to pose a risk of harboring rats and  
2 the Leptospirosis bacteria, it has not demonstrated impoundment is warranted. Specifically, it has  
3 not demonstrated the health risk concerns as to each vehicle cannot be addressed by readily  
4 available less intrusive alternatives, such as: issuing nuisance abatement orders with compliance  
5 deadlines, prescribing specific remediation requirements such as targeted rodent treatments,  
6 sealing open engine compartments or other potential rodent harborage sites, removing debris or  
7 vegetation surrounding vehicles, permitting and facilitating voluntary relocation of vehicles out of  
8 the abatement zone, and assisting occupants with other means of bringing vehicles into  
9 compliance with health and safety standards.

10 The failure to consider available alternatives before taking the drastic step of impounding  
11 vehicles that serve as shelter is problematic. Numerous courts have considered the availability of  
12 less onerous alternatives in their constitutional analysis of this question. In *United States v. James*  
13 *Daniel Good Real Property*, the Supreme Court held that to establish the exigent circumstances  
14 necessary to justify seizure of real property without notice and an opportunity to be heard, the  
15 government must demonstrate that less restrictive measures — such as a lis pendens, restraining  
16 order, or bond — would not suffice to protect its interests in preventing the sale, destruction, or  
17 continued unlawful use of real property. 510 U.S. 43, 62 (1993). In *United States v. Hyde*, this  
18 district applied similar reasoning in ordering the substitution of one property subject to a  
19 government lis pendens for another, holding that where a less drastic alternative would fully  
20 preserve the government’s stated interest, due process concerns counsel in favor of that alternative  
21 over a more burdensome restraint. 287 F. Supp. 2d 1095, 1099 (N.D. Cal. 2003) (Chen, J.).

22 In *Douglas v. Kriegsfeld Corp.*, the D.C. Court of Appeals held that under the Fair  
23 Housing Act, the “direct threat to health and safety” exception permitting denial of  
24 accommodations “does not come into play until after the trial court has evaluated the landlord’s  
25 response to a requested accommodation and has determined, after a factual inquiry, that no  
26 reasonable accommodation could ameliorate the situation sufficiently to protect the health, safety,  
27 and property of others.” 884 A.2d 1109, 1125 (D.C. 2005). The court there emphasized that a  
28 tenant asking for an accommodation to address a public health concern “seeks only time to clean

1 the apartment and show that she can keep it clean with government help — and thus to show that  
2 she can protect, no longer threat, the ‘health’ and ‘safety’ of others.” *Id.* at 1127–28. Though  
3 *Douglas* rises in a different legal context, its structural logic applies to the immediate context too:  
4 property seized for threatening the health and safety of others. The mere existence of such  
5 concerns does not automatically authorize the most severe enforcement action available — the  
6 City must first determine whether intermediate remediation efforts could adequately address the  
7 identified hazards and, if not, explain why, before resorting to outright seizure and destruction.  
8 And in a prior order concerning abatement of the same Encampment, this Court denied BHU’s  
9 motion for preliminary injunction but clarified that a resident’s RV “shall not be moved or  
10 destroyed but may be cleaned and/or treated for pests.” *Prado v. City of Berkeley*, No. 23-cv-  
11 04537-EMC, Order Denying Preliminary Injunction (Dkt. 26) at 17.

12 Residents here have expressed willingness to cooperate and assist the City in remediating  
13 health and safety risks. *See* BHU Status Report (Dkt. 200) at 17, 27 (Ms. Dominguez and Ms.  
14 Prado expressing willingness to relocate to an alternative parking location). It is incumbent on the  
15 City to explore these intermediate alternatives before defaulting to the most extreme option of  
16 impoundment and potential destruction.

17 The foregoing framework rests on the Fourth and Fourteenth Amendment’s protection of  
18 property interests against unreasonable seizure; it does not depend on a disability-specific statute  
19 or accommodation doctrine thereunder. The constitutional requirement that the City make a  
20 specific, fact-based determination of a concrete threat to public health or safety and pursue  
21 reasonable, less restrictive alternatives before seizing a vehicle used as shelter applies to all BHU  
22 members residing in vehicles in the Harrison Encampment; the constitutional principle is not  
23 limited to those with documented disabilities.

24 Accordingly, the Court **GRANTS** BHU’s motion for summary judgment on property  
25 seizure claims insofar as they relate to seizure, impoundment, and/or destruction of Ms.  
26 Dominguez or Ms. Prado’s vehicles. The Court **DENIES** the City’s motion with respect to the  
27 same claims. Before proceeding to impound or destroy any BHU member’s vehicle without  
28 consent, the City must: (1) make a specific, fact-based determination — beyond mere parking

1 violations, inoperability, or expired registration — that the particular vehicle obstructs traffic or  
2 poses a concrete, individualized public health or safety threat; (2) provide the vehicle’s owner with  
3 written notice of the specific findings, an opportunity to respond, and a reasonable opportunity to  
4 remediate the identified condition or voluntarily relocate the vehicle; (3) consider and pursue  
5 reasonable, less restrictive alternatives, including targeted cleaning, pest treatment, containment  
6 orders, and assisted relocation, or demonstrate with particularity why such alternatives are  
7 ineffective for the given vehicle and occupant. Only upon satisfaction of all three requirements  
8 may the City proceed to more drastic measures such as impoundment. Moreover, prior to the  
9 destruction of any vehicle, the City must further demonstrate that no alternative remedy can  
10 adequately mitigate the health or safety risk presented by the vehicle. The Court retains  
11 jurisdiction to evaluate whether the City has satisfied this framework on a vehicle-by-vehicle basis  
12 if a dispute arises.

13 c. State-Created Danger Claim

14 The Court has already explained that most of BHU’s state-created danger arguments  
15 conflate dangers inherent in living without shelter with dangers created by the City, and thus the  
16 doctrine of state-created danger does not lie. The calculus materially shifts, however, for  
17 unhoused individuals who rely on their vehicles as primary shelter. For these individuals —  
18 including Ms. Dominguez, Ms. Prado, and other BHU members in the Harrison Encampment —  
19 the City’s impoundment or destruction of their vehicles would not merely displace them from one  
20 outdoor location to another. It would transform them from persons who are *unhoused but*  
21 *sheltered* into persons who are *unhoused and unsheltered*, exposing them to the elements, the cold,  
22 and the absence of any private, secure space. That distinction is substantial and legally significant.  
23 *See Navarro*, 2021 WL 5205598, at \*2 (recognizing significant harms to unhoused disabled  
24 individuals from seizure of vehicles). The affirmative act of seizing or destroying a vehicle that  
25 serves as a person’s shelter is precisely the kind of specific, particularized government action that  
26 is subject to the state-created danger doctrine. *See Sinclair v. City of Seattle*, 61 F.4th 674, 682–83  
27 (9th Cir. 2023) (distinguishing generalized from particularized dangers). And unlike the  
28 generalized dangers of displacement that pre-exist general Encampment abatement, the loss of

vehicular shelter is a foreseeable and concrete danger that would not exist but for the City's abatement action. *See, e.g., Janosko v. City of Oakland*, 2023 WL 187499, at \*3 (N.D. Cal. Jan. 13, 2023) (holding that removal of shelter "affirmatively expose[s] [unhoused plaintiffs] to harsher, more dangerous conditions"); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50 ("When Plaintiffs' shelter and personal belongings are destroyed, and they have no safe shelter alternative nor means to protect themselves from the elements, the state has made plaintiffs' conditions worse."); *Alfred v. City of Vallejo*, 2025 WL 435900, at \*9 (E.D. Cal. Feb. 7, 2025).

The state-created danger analysis reinforces the graduated framework this Court adopts with respect to the seizure of vehicles under the Fourth Amendment and procedural due process. The Court has outlined a path through this dilemma: the City may address the public health hazards associated with vehicles through intermediate remediation steps: nuisance abatement orders, pest treatment, debris and vegetation, and assisted relocation, among many other options as noted above. If a claimant refuses to cooperate with those intermediate measures despite adequate notice and opportunity to do so, the analysis shifts. At that point, the City's interest in abating a genuine, persistent public health hazard — including the risks to the plaintiffs themselves of continuing to live in a contaminated environment — may outweigh the state-created danger arising from displacement. *See Penilla*, 115 F.3d at 710 (finding state-created danger where officers' conduct "placed [plaintiff] in a more dangerous position than the one in which they found him"). But absent such non-compliance following good-faith remediation efforts, the City may not proceed to the extreme step of vehicle seizure and destruction under the Fourth and Fourteenth Amendments.

Accordingly, the City's motion for summary judgment is **DENIED** on this claim and BHU's cross-motion for summary judgment is **GRANTED** as to the vehicular state-created danger claim.

#### 4. Relief Category #4: Exemptions from Sidewalk and Street Space Limitations

##### a. Merits of ADA Accommodation Requests

Merced Dominguez, Shareef Muwakkil, Erin Spencer, Lewanda Parnell, and Austin White



request accommodations from the City’s enforcement of Administrative Regulation 10.2 (“AR 10.2”) and other code provisions that limit personal property on City rights-of-way to no more than a nine square feet area (the “3x3 rule”) and require a path of travel of at least six feet on sidewalks under 14 feet wide, and a path of travel of 10 feet on wider sidewalks.<sup>11</sup> Dkt. 253, Exs. A–B; Gregory Declaration (Dkt. 219-3), Ex. A; White Declaration (Dkt. 219-5), Ex. A; BHU Status Report (Dkt. 200) at 36–39 (listing Ordinance 7,935-N.S., Municipal Code 14.48.020, and Municipal Code 14.48.160 as additional authorities limiting use of the sidewalk by Plaintiffs). For the reasons set forth below, the Court finds that the City has failed to carry its burden of demonstrating that reasonable modifications to the 3x3 rule is an unreasonable accommodation, would constitute a fundamental alteration to the relevant program, or would pose an undue burden. Accordingly, the Court **GRANTS** summary judgment in favor of Plaintiffs and **DENIES** Defendants’ summary judgment motion insofar as it relates to exemptions from the 3x3 rule, subject to the parameters described below.

BHU submitted evidence establishing that most of the above claimants require a tent to manage their disability-related needs. See Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Exs. A–B, I; BHU Status Report (Dkt. 200); BHU SJ Motion at 12. These individualized needs vary in degree, and the record does not support a blanket entitlement to any particular tent dimension. Mr. White relies on two service and emotional support dogs to manage his mental health conditions, and BHU submits without contradiction that the 3x3 rule does not allow sufficient space for Mr. White to accommodate his dogs, medical equipment, and supplies necessary for his health. BHU’s SJ Motion at 12; Brizzolara Declaration (Dkt. 279) ¶ 34. Ms. Parnell relies on a stroller as a mobility device to reduce her risk of falls arising from vertigo, and BHU submits that the 3x3 rule is insufficient to accommodate her necessary mobility device and allow her to maneuver safely. *Id.*; Brizzolara Declaration (Dkt. 279) ¶ 20. Mr. Muwakkil lives

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<sup>11</sup> Ms. Dominguez requests an increase of sidewalk storage space of 21 square feet to keep garbage cans outside her RV. See Dkt. 253, Ex. I at 14; BHU Status Update (Dkt. 200) at 18. The record does not establish a nexus between her spondylosis and a need for additional sidewalk or road space. See *id.*, Exs. A–B, I; Gregory Declaration (Dkt. 219-3); deBree Declaration (Dkt. 120); Brizzolara Declaration (Dkt. 279); BHU Status Update (Dkt. 200). Accordingly, the request was properly denied.



1 with PTSD, psychosis, and chronic physical conditions that require a stable and enclosed  
2 environment. BHU's SJ Motion at 12; Brizzolara Declaration (Dkt. 279) ¶¶ 17–19. According to  
3 BHU, the 3x3 rule forces Mr. Muwakkil to be exposed to surrounding conditions that trigger  
4 symptoms and impair his ability to function. *Id.* Finally, Mr. Spencer lives with mobility  
5 impairments, PTSD, and ADHD, all of which require a stable and predictable environment to  
6 maintain daily functioning.<sup>12</sup> Brizzolara Declaration (Dkt. 279) ¶¶ 29–30.

7 BHU represents that no tent can fit within a 3x3 feet space, and the City does not dispute  
8 this characterization. Accordingly, blanket enforcement of the 3x3 rule would compromise BHU  
9 members' ability to use tents in a fashion that accounts for their disabilities. *See* BHU's SJ  
10 Motion at 6 (stating that 3x3 feet living area is not feasible and that no tent can fit within a nine-  
11 square-foot area).

12 AR 10.2 is the City's universally applicable framework for managing personal property  
13 placed on public sidewalks and parklets. White Declaration (Dkt. 219-5), Ex. A. Its stated  
14 purpose is to protect pedestrian access, disability access, and aesthetically pleasing streetscapes.  
15 *Id.* The regulation applies citywide to all users of the public right-of-way. *See id.* As the Court  
16 has defined it, the relevant program is the City's maintenance of public roadways and sidewalks to  
17 ensure functionality, orderly use, and public health and safety — a program that accounts both for  
18 the City's interest in maintaining accessible rights-of-way and for the effects of abatement on  
19 unhoused disabled residents who, lacking access to available or accessible housing or shelter, seek  
20 to occupy portions of that public right-of-way.

21 As an initial matter, the Court finds that the request for an accommodation in the form of a  
22 reasonable modification to the 3x3 rule to accommodate individual claimants' shelter is reasonable  
23 and not an undue burden. The accommodations sought required the City to engage in one of  
24 several options, including case-by-case review with medical documentation or modified placement  
25

26 <sup>12</sup> Mr. Spencer also maintains that he requires a 20x30 foot tent for "community support." As  
27 noted in this order, the record does not establish entitlement to any particular tent size, and the  
28 City must instead undergo an individualized analysis to determine a reasonable occupation of  
space.

1 on wider sidewalks to avoid blocking access. *See* BHU SJ Motion at 12; Dkt. 253, Exs. A–B;  
2 Gregory Declaration (Dkt. 219-3), BHU Status Report (Dkt. 200). Each option could have  
3 conceivably resolved the access problem faced by claimants (namely, the inability of disabled  
4 individuals to occupy a livable space on a public right-of-way) without undue practical difficulty.  
5 *See Martin*, 204 F.3d at 999; *Fortyune*, 364 F.3d at 1084. The request is modest and reasonable.  
6 As BHU represents, it is virtually impossible for a person to sleep within a 3x3 foot square.  
7 BHU’s SJ Motion at 6. And there is no evidence that any tent providing shelter can fit within such  
8 a 3x3 space. *See id.* The City could have provided some modification of allowable space and still  
9 allow for safe passage on at least some sidewalks. But the City has refused to make any such  
10 accommodation, even though it has not demonstrated that such an accommodation would  
11 constitute a fundamental alteration or impose an undue burden on the City.

12 Providing for some flexibility in enforcing the rigid adherence to an unfeasible size limit in  
13 order to accommodate the needs of these individuals would not have required new infrastructure,  
14 dedicated staffing, or systemic change to operations. The City does not point to any concrete  
15 financial cost associated with this requested accommodation, and its undue burden arguments are  
16 limited to generalized assertions of administrative complexity, including individualized  
17 monitoring, repeated assessments, and location-specific exemptions. *See* Defendants’ SJ Motion  
18 at 16; Defendants’ Opposition Brief at 12–13; Gregory Declaration (Dkt. 219-3) ¶¶ 14–17. These  
19 are the same operations that the City already performs in managing public rights-of-way. Radu  
20 Declaration (Dkt. 219-4) ¶ 6. As to the fundamental alteration analysis, the City has not shown  
21 that the purported impacts, where relief is afforded to the individuals at issue, are realistic and  
22 substantial. *See Crowder*, 81 F.3d at 1486 n.2; *Martin*, 204 F.3d at 1001.

23 The City’s fundamental alteration defense rests principally on a theoretical fear rather than  
24 a demonstrated operational reality. When pressed at the hearing on the cross-motions, the City  
25 was unable to represent definitively whether a reasonable modification of the 3x3 rule would  
26 necessarily obstruct passage on the sidewalks. Given that most sidewalks are 12 feet or more in  
27 width, the City does not demonstrate that a modest increase to 3x3 feet cannot be accommodated  
28 without obstructing reasonably safe passage on sidewalks (*e.g.*, the six-foot path that the City’s

ordinance now provides for most sidewalks). *See* White Declaration (Dkt. 219-5) ¶¶ 3–13, Ex. A; *cf. Crowder*, 81 F.3d at 1486 n.2 (declining to accept theoretical impacts unsupported by concrete evidence); *Martin*, 204 F.3d at 1001 (the inquiry must focus on specific circumstances, not generalized concerns.).

Specific record evidence highlights the deficiencies in the City’s reasoning. The White Declaration asserts that a 10x12 foot tent would occupy the full six-foot walkway on a typical 12-foot residential sidewalk, leaving only two feet of clearance (assuming a four-foot offset). White Declaration (Dkt. 219-5) ¶¶ 8, 10. A 10x12 foot tent is a legitimate concern on a 12-foot sidewalk. But the White Declaration also acknowledges that commercial district sidewalks sometimes exceed 12 feet in width. *Id.* ¶ 11. The City’s response to this fact — that commercial sidewalks contain trees, waste receptacles, bicycle racks, and other infrastructure at higher density — is asserted without supporting data on actual available clearances on specific sidewalks. *See id.* The Gregory Declaration likewise offers only a conclusory statement that no feasible alternatives exist, without any documented analysis of whether certain sidewalk segments in the City could accommodate tents larger than three feet in width, while maintaining the required path of travel (*e.g.*, six feet). Gregory Declaration (Dkt. 219-3) ¶¶ 14–17. Generalized assertions of infeasibility, unaccompanied by analysis of particular locations or modest size increases fall short of the concrete, realistic showing required to sustain a fundamental alteration defense.

The record does not establish that a modification would genuinely obstruct the City’s ability to carry out its right-of-way management program. The City already employs a balanced, priority-based enforcement framework that permits it to assess conditions on a case-by-case basis. Radu Declaration (Dkt. 219-4) ¶ 6. Applying that same flexible framework to accommodate disabled individuals (by allowing tents wider than three feet) asks the City to do nothing more than what it already does. *Cf. Townsend*, 328 F.3d at 518 (holding that public entity need not create *new* programs as a disability accommodation).

Hence, the Court concludes that the City has failed to comply with the ADA in denying the reasonable accommodation needed by the individuals involved herein. The Court’s ruling does not require the City categorically to allow all 10x12 or 20x30 foot tents. The ADA does require

1 an effective and reasonable accommodation based on specific individual needs and circumstances.  
2 The City may choose to proceed with the interactive process and identify sidewalk segments  
3 within the City where existing widths permit a larger tent footprint while maintaining a reasonably  
4 required path of travel (*e.g.*, six feet). Alternatively, the City may choose to provide compliant  
5 tents that meet the claimants' disability-related needs. The City retains authority, of course, to  
6 enforce AR 10.2 and other rules governing use of sidewalks where an individual's belongings  
7 actually obstruct pedestrian passage or emergency access, or present a concrete public health or  
8 safety hazard. But the City's categoric refusal, as it has done here, to grant variances from, and  
9 modifications of, the 3x3 rule without regard to individual needs related to discrete disabilities  
10 constitutes a denial of reasonable accommodation in violation of the ADA.

11 For the foregoing reasons, the Court **GRANTS** BHU's motion for summary judgment with  
12 respect to sidewalk space accommodation requests, and **DENIES** the City's motion for summary  
13 judgment on the same issue. The Court's ruling on the 3x3 rule does not, however, relieve BHU  
14 members of all space-related constraints, nor does it necessarily displace the path of travel  
15 requirements set forth in A.R. 10.2. Those requirements serve legitimate purposes, including  
16 pedestrian safety and accessibility. The Court concludes that the path of travel requirements under  
17 A.R. 10.2 are part of the individualized assessment that the City must conduct for each claimant.  
18 When evaluating what modified space allocation is reasonable for a given claimant at a given  
19 location, the City must account for the claimant's disability-related needs, the actual width and  
20 physical characteristics of the sidewalk in question, and the public interest in maintaining a  
21 reasonable path of travel. The City retains authority to deny a proposed placement that, on the  
22 specific facts of a given location, would obstruct pedestrian passage or emergency access — but it  
23 may not invoke those concerns categorically and without individualized analysis.

24 b. State-Created Danger

25 The state-created danger doctrine also has force to the extent the City removes tents from  
26 unhoused individuals by operation of the 3x3 rule. Where the net effect of the abatement and  
27 application of other City laws, rules, or policy, through no fault of the resident, is the removal of  
28 shelter, the City through its affirmative conduct, would be placing residents in a greater position of

1 danger than they had previously faced. *See, e.g., Janosko v. City of Oakland*, 2023 WL 187499, at  
 2 \*3 (N.D. Cal. Jan. 13, 2023); *Prado*, No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt.  
 3 87) at 50; *Alfred v. City of Vallejo*, 2025 WL 435900, at \*9 (E.D. Cal. Feb. 7, 2025). Thus,  
 4 enforcement of the 3x3 rule, by effectively prohibiting tents, would place those residents currently  
 5 enjoying shelter of a tent in a position of increased danger. Hence, under this constitutional  
 6 doctrine, the City is restrained from enforcing the space limitation in a manner that prevents BHU  
 7 members from maintaining a tent so long as the tent does not unreasonably interfere with sidewalk  
 8 passage. This ruling concerns a constitutional minimum governing abatement and therefore  
 9 applies to all BHU members who reside in the Harrison Encampment, regardless of disability  
 10 status.

11 For the foregoing reasons, the Court **GRANTS** BHU’s motion for summary judgment with  
 12 respect to the state-created danger as it relates to enforcement of the 3x3 rule, and **DENIES** the  
 13 City’s cross-motion as to the same claim.

14 5. Relief Category #5: Physical Relocation Assistance, Storage, and Non-Destruction  
 15 of Property

16 a. Merits of ADA Accommodation Requests

17 Erin Spencer, Lewanda Parnell, Shareef Muwakkil, Eric Keiser, and Austin White —  
 18 claimants with physical disabilities impairing mobility, or cognitive and psychiatric disabilities  
 19 impairing executive functioning — request that the City provide physical assistance in packing  
 20 and moving their belongings and store their personal property. *See* Gregory Declaration (Dkt.  
 21 219-3), Ex. A; Dkt. 253, Exs. A–B; BHU Status Update (Dkt. 200); BHU SJ Motion at 7.

22 All five claimants live with physical disabilities that limit mobility and/or the ability to lift,  
 23 carry, or move their personal belongings. *Id.* Mr. Keiser has permanent mobility limitations and  
 24 chronic pain from a vehicle collision, as well as schizophrenia which limits his executive  
 25 functioning and ability to plan and organize, all of which make it unlikely that he could “safely  
 26 transport essential items such as medications, personal documents, and survival equipment  
 27 necessary for his health and safety.” Brizzolara Declaration (Dkt. 279) ¶¶ 13–16. Mr. Muwakkil  
 28 experiences swelling in his legs, a heart valve condition restricting his ability to lift and carry

1 objects safely, and mental conditions that impact his executive functioning and ability to plan,  
2 organize, or manage tasks including relocation. *Id.* ¶¶ 17–18. Without physical assistance, he is at  
3 risk of “cardiac strain, falls, and worsening mobility impairments, as well as significant  
4 psychological stress, intensified by bipolar disorder and psychosis. *Id.* ¶ 19. Ms. Parnell lives  
5 with vertigo and loss of balance, impacting her ability to lift or carry heavy objects without  
6 assistance and putting her at increased “risk of falls and injury.” *Id.* ¶ 22. Mr. Spencer has several  
7 physical injuries limiting his ability to walk or carry objects. *Id.* ¶ 30. Thus, being forced to move  
8 his belongings alone would create “a substantial likelihood of intensified pain, falls, and other  
9 injury.” *Id.* ¶ 31. Finally, Mr. White lives with esophageal varices and the risk of a life-  
10 threatening hemorrhage, as well as a wrist injury that all limit his ability to lift and move personal  
11 belongings. *Id.* ¶¶ 33–34. He is “medically restricted from lifting objects heavier than  
12 approximately twenty pounds.” *Id.*

13 As a result of their disabilities, all the claimants request similar accommodations: Mr.  
14 Keiser, Mr. Spencer, and Mr. White request physical assistance with lifting and moving to a new  
15 location. *Id.* Mr. Muwakkil requests assistance with lifting and transporting personal belongings  
16 in a manner scheduled in advance to avoid “last-minute hardship.” *Id.* And Ms. Parnell requests  
17 physical assistance with packing and transportation assistance to a new location. Mr. Spencer,  
18 Ms. Parnell, and Mr. Keiser also request storage of their personal belongings. Dkt. 253, Exs. A–  
19 B, I.

20 The City represents that it already offers limited moving assistance and 90-day storage as  
21 an accommodation, conditioned on public health guidance. Gregory Declaration (Dkt. 219-3) ¶  
22 10–12; Radu Declaration (Dkt. 219-4) ¶ 4. But the City further states that, in light of the  
23 leptospirosis outbreak and risk that items are contaminated with rat urine or mud, it cannot assist  
24 with physical relocation or storage of personal property. Defendants’ SJ Motion at 13 (“[M]oving  
25 or sorting items that constitute rodent harborage present an undue risk to City staff.”); Torres  
26 Declaration (Dkt. 219-7) ¶ 14. For the reasons set forth below, the Court finds that certain  
27 accommodations are reasonable, do not constitute a fundamental alteration to the relevant City  
28 program, and do not impose an undue burden — subject to public health guidance. Accordingly,

1 the Court **GRANTS** summary judgment in favor of Plaintiffs and **DENIES** Defendants' cross-  
2 motion with respect to this category of accommodation requests.

3 The accommodations requested here are modest. Claimants are not asking for ongoing  
4 personal services, but rather assistance in the context of a one-time abatement action. Claimants  
5 have submitted evidence documenting how their specific physical and mental disabilities bear  
6 directly on their inability to comply with standard abatement notices and procedures. These are  
7 not generalized disability allegations, but specific, medically grounded claims establishing that a  
8 standard order for Encampment residents to self-pack and self-relocate within a defined temporal  
9 window is simply not achievable by particular individuals without accommodation. The nexus to  
10 disability is clear, and the following claimants have satisfied their initial burden of identifying a  
11 reasonable accommodation.

12 The City already provides limited moving assistance, including packing, lifting, and  
13 transport, as part of standard abatement operations, and stores non-hazardous property. *See*  
14 Defendants' SJ Motion at 23–24; Gregory Declaration (Dkt. 219-3) ¶¶ 8–11. Extending those  
15 same services to a small number of claimants whose disabilities have been specifically  
16 documented through the interactive process is reasonable because it would allow those individuals  
17 to access City services and programs. 28 C.F.R. § 35.130(b)(7). The services would involve no  
18 new programs or infrastructure, as such services have been offered in the past. Indeed, the City  
19 offered exactly this assistance to Mr. White in 2025, and represented to Ms. Parnell that it was  
20 willing to coordinate packing and storage once a relocation timeline was proposed. Dkt. 253, Ex.  
21 D at 2; Ex. I at 5, 7. The fact that the City already provides this service as a matter of standard  
22 practice diminishes any argument that extending it to a small number of specifically identified  
23 disabled claimants would constitute a fundamental alteration. And extending an existing service to  
24 additional eligible individuals is a modification of a program, not the creation of a new one. *Cf.*  
25 *Townsend*, 328 F.3d at 518.

26 The Court acknowledges that the leptospirosis outbreak imposes real constraints on both  
27 the moving assistance and storage options. The Torres Declaration explains that personal items  
28 contaminated with rat urine may harbor dangerous bacteria for up to 30 days, and that sorting or



1 storing such items creates contamination risks for City personnel and facilities that standard PPE  
2 is not designed to address. Torres Declaration (Dkt. 219-7) ¶¶ 7, 14. The Gregory Declaration  
3 likewise notes that wet or muddy items may be hazardous. Gregory Declaration (Dkt. 219-3) ¶ 11.  
4 The Court accepts this argument and agrees that the City is not required to put its own staff at  
5 unreasonable risk. See 28 C.F.R. § 35.139(a) (“This part does not require a public entity to permit  
6 an individual to participate in any benefit from the services, programs, or activities of that public  
7 entity when that individual poses a direct threat to the health or safety of others.”). While the  
8 leptospirosis outbreak complicates the situation, it does not eliminate the City’s obligation in full.  
9 Accordingly, the City is not required to physically handle or store items that are observably wet,  
10 waterlogged, muddy, or porous in a manner that could render them likely carriers of biological  
11 contamination. Dry and intact items that are not observably contaminated shall be moved with  
12 assistance and/or stored. Generalized assertions that the Encampment as a whole presents  
13 leptospirosis risks do not satisfy the City’s burden of demonstrating, as a matter of law, that all  
14 physical assistance is impossible for any of these individuals.

15 With respect to storage, the City’s administrative regulations already provide a framework  
16 for storage of personal property: property removed during encampment operations must be held  
17 for at least 14 days; items with a resale value of \$100 or more must be held for 90 days; and items  
18 used for shelter must be retained for 45 days regardless of value. Radu Declaration (Dkt. 219-4),  
19 Ex. A (Administrative Regulation 10.1). The City further represents that it sorts and inventories  
20 non-hazardous property and provides residents with notice and contact information for retrieval.  
21 Radu Declaration (Dkt. 219-4) ¶ 14 (“Residents are given notice of what property the City is able  
22 to store prior to or at the time of an abatement. . . . Non-hazardous and storable property (e.g. not  
23 wet or moldy) is sorted and stored, and staff complete Property Inventory Forms detailing what  
24 has been stored or discarded, including photographs. If property is stored, City staff leave a  
25 Notice of Stored Belongings where property was removed and stored. The City only discards  
26 property that is comingled with hazards such as feces, rodents, and needles, or otherwise cannot be  
27 stored under our policy (e.g. wet or moldy items).”); see also Dkt. 253, Ex. A at 15 (City offering  
28 storage services to Mr. Spencer before leptospirosis outbreak). Like packing assistance, storage is



1 therefore an existing service, not a new program.

2 Of course, the leptospirosis constraints apply here as well. The City does not need to store  
3 items that are observably at risk of contamination. But the City has not demonstrated that the  
4 entirety of each claimant's property — such as medical equipment and mobility devices which are  
5 not wet or soggy — is likely contaminated, and the record reflects that the City has in the past  
6 been able to sort, document, and store non-hazardous items during abatement operations, even  
7 when it is intermingled with potentially hazardous materials. *Id.* On this record, the City has not  
8 shown as a matter of law that storage of non-contaminated personal property is infeasible for these  
9 particular claimants.

10 With respect to property that appears to be at risk of leptospirosis contamination and thus  
11 cannot be moved or stored by City workers, such property will be destroyed under the City's  
12 abatement program. However, a reasonable accommodation under those circumstances would be  
13 to replace destroyed property that is essential to survival: *i.e.* tents, sleeping gear (such as sleeping  
14 bags), and basic clothing. Providing such minimal but essential property would permit disabled  
15 residents to move in compliance with the abatement order while preserving their basic health and  
16 safety. This substantial benefit easily outweighs the relatively modest cost of providing a few  
17 basic necessities to those residents who need them and thus would not be an unreasonable  
18 administrative burden. Nor given the relatively modest cost, would such fundamental alter the  
19 City's program of administering safe and healthy streets in their use by the unhoused. It would be  
20 a far cry from, *e.g.*, having to establish a large city-sanctioned encampment or providing non-  
21 aggregate shelter.

22 Accordingly, the City is required to replace essential survival equipment — including  
23 tents, sleeping gear, and clothing — belonging to a qualified claimant and destroyed pursuant to  
24 an abatement.

25 The City argued at the March 20, 2026 hearing that providing replacement tents or  
26 sleeping bags is the equivalent of sanctioning camping on public property. This position is not  
27 persuasive. A tent furnished individually as a replacement for destroyed or unrecoverable  
28 essential gear does not establish or inevitably lead to the establishment of a large encampment.

1 This accommodation is merely a replacement for property lost as a practical consequence of a  
2 disability-related inability to comply with the abatement process.

3 Accordingly, the Court **GRANTS** summary judgment in favor of BHU with respect to  
4 physical assistance and storage claims and **DENIES** Defendants' cross-motion for the same. This  
5 ruling applies only to claimants who have established, through the interactive process, an inability  
6 to independently pack and relocate their belongings during abatement due to physical or cognitive  
7 disabilities. For such individuals, the City must (1) provide physical packing and moving  
8 assistance to the extent permissible under public health guidance and (2) store non-contaminated  
9 personal property for 90 days. The City retains full discretion to decline to handle or store items  
10 that are observably wet, muddy, or plausibly contaminated with leptospirosis, and to fashion  
11 safety mechanisms to ensure the health and wellness of its personnel. But any essential survival  
12 property not moved or stored subject to destruction must be replaced.

13 b. Property Seizure Claim

14 The Court's ADA analysis above largely resolves the property seizure claims of the  
15 claimants who have established disability-related disabilities to independently pack and relocate  
16 their belongings. The constitutional analysis tracks the ADA analysis: the City may not  
17 summarily destroy property that a disabled claimant was unable to self-remove by reason of their  
18 disability without first providing moving assistance and storage for non-contaminated items, or  
19 replacement of essential survival property destroyed as a result of the abatement. The framework  
20 and requirements set forth above in the Court's ADA ruling govern this claim as well, and the  
21 Court incorporates that analysis by reference here.

22 For the general population of Encampment residents who have not submitted disability  
23 accommodation requests, the Court finds that the City's procedures generally satisfy constitutional  
24 requirements. This is not a case of abatement without warning. The City posted public notices of  
25 encampment closure throughout the Harrison Encampment beginning in January 2025, directing  
26 residents to vacate within one month, specifying the consequences for property left behind, and  
27 providing contact information, storage retrieval procedures, disability accommodation processes,  
28 and appeal procedures. City's First Public Notice (Dkt. 13-1) (posted on January 7, 2025 and

1 notifying residents of compliance deadline of February 10); City's Second Public Notice (Dkt. 13-  
2 3) (reminder of compliance deadline posted on January 31, 2025). The more recent February 2026  
3 notices similarly provided more than one month of advance warning with similar information,  
4 though the abatement notices state that property storage is not possible due to public health  
5 concerns. Ex Parte Application for Emergency Hearing (Dkt. 248), Ex. A. From this record, it is  
6 clear that this is not a case of abatement without warning. *Cf. Sullivan v. City of Berkeley*, 383 F.  
7 Supp. 3d 976, 982 (N.D. Cal. 2019) (Alsup, J.) (holding that 72-hour notice, and even less notice  
8 when health and safety was at stake, was adequate).

9 The leptospirosis outbreak creates a legitimate basis for the City to treat certain  
10 contaminated items as posing an immediate threat to public health and the health of City  
11 personnel, which *Lavan* recognized as valid grounds for destruction without extended storage. *See*  
12 *Lavan*, 693 F.3d at 1027, 1033; Doohan Declaration (Dkt. 194-3) ¶¶ 4–5, 21; Doohan Declaration  
13 (Dkt. 207-2) ¶ 3; Torres Declaration (Dkt. 219-7) ¶ 14. And for those individuals who do not have  
14 a disability preventing them from moving their supplies, they do not suffer the same risk as those  
15 with disabilities of having their survival property destroyed because of their inability to move it.

16 Accordingly, for the remainder of the Encampment's residents, BHU's motion for  
17 summary judgment on the property seizure claim is **DENIED** and the City's cross-motion on the  
18 same claim is **GRANTED**.

19 c. State-Created Danger Claim

20 For the reasons set forth above, in section IV(B)(7)(b), the state-created danger doctrine  
21 also has force as applied to the City forcing residents to move because of the abatement and  
22 refusing them the ability to take their tents to another site within the City because of the 3x3 rule.  
23 *See, e.g., Janosko v. City of Oakland*, 2023 WL 187499, at \*3 (N.D. Cal. Jan. 13, 2023); *Prado*,  
24 No. 23-cv-04537-EMC, Order re Motion to Dismiss (Dkt. 87) at 50; *Alfred v. City of Vallejo*, 2025  
25 WL 435900, at \*9 (E.D. Cal. Feb. 7, 2025). Unless the City allows for the retention of existing  
26 tents or shelter, considers reasonable accommodations allowing for continued shelter, or provides  
27 a replacement tent or shelter that allows for shelter while maintaining sufficient sidewalk passage  
28 (*e.g.*, six feet), the City would violate that BHU members' due process right under the state-

1 created danger doctrine.

2 6. Relief Category #6: Requests for Sanitation Services and Infrastructure

3 a. Merits of ADA Accommodation Requests

4 Erin Spencer and Austin White request that the City provide ongoing individualized  
5 services as a disability accommodation, including access to portable restrooms, trash receptacles,  
6 regular waste collection, clean water, solar panels, and battery packs or public USB charging ports  
7 wherever they relocate. See Gregory Declaration (Dkt. 219-3), Ex. A; BHU Status Report (Dkt.  
8 200); Dkt. 253, Exs. A–B, I. The Court finds that these requests are unreasonable and accordingly  
9 **GRANTS** summary judgment in favor of the City on this category of accommodation requests.

10 The principal problem is that of nexus: Mr. Spencer’s mobility impairments, PTSD, and  
11 ADHD, and Mr. White’s esophageal varices and wrist injury bear directly on their ability to lift,  
12 carry, and navigate the logistics of relocation. But neither disability has a clear relationship to an  
13 ongoing need for the City to install and maintain infrastructure for their individualized use. The  
14 ADA requires accommodations that are necessary to avoid discrimination on the basis of  
15 disability, 28 C.F.R. § 35.130(b)(7), and the connection between these claimants’ specific  
16 disabilities and the requested infrastructure is too attenuated to satisfy the standard. Moreover,  
17 even if a nexus could be adequately established, the practical burden of the accommodation would  
18 substantially outweigh any access benefit it delivers. Providing ongoing, individualized sanitation  
19 and utility infrastructure at an undetermined future location — wherever the claimant may relocate  
20 — would require the City to dedicate significant staff and material resources on a continuous and  
21 open-ended basis.

22 Accordingly, the requested accommodation is unreasonable and summary judgment is  
23 **GRANTED** for the City on these claims and **DENIED** with respect to BHU’s cross-motion for  
24 the same relief.

25 b. State-Created Danger Claim

26 BHU raises the distinct argument that the City’s removal of dumpsters and reduction of  
27 sanitation services at the Encampment affirmatively worsened conditions. BHU’s SJ Motion at  
28 20–22. The Court rejects this theory. Any prior provision of sanitation services to the Harrison

1 Encampment was voluntary and is not part of the status quo for purposes of applying the state-  
2 created danger doctrine. *See Sampson v. Fresno Police Officers*, 2021 WL 1060506, at \*7 (E.D.  
3 Cal. Mar. 19, 2021) (“[A] state actor cannot be held liable for failing to mitigate an already  
4 existing dangerous situation *not instigated by state action.*”) (emphasis added).

5 7. Relief Category # 7: Cognitive and Communication Accommodations and  
6 Navigation Services

7 a. Merits of ADA Accommodation Requests

8 Eric Keiser, Shareef Muwakkil, and Austin White request accommodations related to  
9 cognitive and communication needs arising from psychiatric and cognitive disabilities. The  
10 specific requests include assignment of a designated staff person, step-by-step relocation  
11 instructions, and low-stimulation meetings. *See* Gregory Declaration (Dkt. 219-3), Ex. A; Dkt.  
12 253, Exs. A–B, I; BHU Status Report (Dkt. 200).

13 The Court finds that the City has reasonably accommodated these claimants through the  
14 interactive process and accordingly **GRANTS** summary judgment in favor of the City on this  
15 category of accommodation requests and **DENIES** BHU’s cross-motion.

16 Most of these accommodations involve modifications to how the City communicates with  
17 individuals, rather than to substantive program outcomes. With respect to communication  
18 accommodations, including written instructions, low-stimulation meeting formats, and consistency  
19 in City staff points of contact, the City’s final determinations represent meaningful engagement.  
20 The City committed to documenting each claimant’s communication needs and known triggers in  
21 HRT records and to use patient and respectful communication consistent with best practices and  
22 staff training. Dkt. 253, Ex. I. For claimants whose psychiatric conditions are demonstrably  
23 affected by unfamiliar or high-stimulation official interactions, the documentation and  
24 commitment to proceed accordingly is a reasonable accommodation, as it addresses the disability-  
25 related barrier. The denial of *guaranteed* assignment of specific staff members is also reasonable  
26 — requiring the City to ensure a designated individual is always available for a given claimant’s  
27 interactions would require individualized staffing that field operations cannot reasonably  
28 accommodate. Moreover, such an accommodation would prevent deployment of staff where

needed in exigent circumstances. Dkt. 253, Ex. I at 18. Given the steps to which the City already committed, comparing the incremental benefit of this request against the cost and burden of providing individually dedicated staff, the Court concludes that the City has demonstrated an undue administrative burden.

Finally, Ms. Dominguez requested connection to a housing navigator. The City represents, without contradiction from BHU, that she is already served by a housing navigator through Abode Services. Dkt. 253, Ex. I at 14. Thus, this claim is moot.

For the foregoing reasons, summary judgment is **GRANTED** for the City and **DENIED** for Plaintiffs on communication accommodation claims, subject to the expectation that documented commitments to certain communication accommodations and protocols are honored.

8. Relief Category #8: Advance Written Notice Before Abatement

Erin Spencer requests a multi-step notice process, including notice thirty, fifteen, and then three days before any enforcement action is taken against him. See Gregory Declaration (Dkt. 219-3), Ex. A; Dkt. 253, Exs. A–B, I; BHU Status Report (Dkt. 200). BHU explains that due to his PTSD and ADHD, his executive functioning and ability to organize, plan, and complete tasks independently is impaired. Brizzolara Declaration (Dkt. 279) ¶ 30.

The Court finds that the proposed phased notice requirement is unreasonable. The City has already provided over a month’s notice of abatement. Given the legitimate and urgent health concerns of the City and the process already afforded residents by way of advance notice, the request is not reasonable. The leptospirosis outbreak at the Harrison Encampment requires an urgent public health response, as do subsequent health and safety risks that arise after abatement. See Doohan Declaration (Dkts. 194-3; 207-2). The essential nature of the City’s program is the ability to respond flexibly and with appropriate speed to evolving hazards.

The foregoing does not relieve the City of its existing constitutional obligations with respect to notice and opportunity to be heard. Courts in this circuit have applied a minimum 72-hour written advance notice requirement and meaningful opportunity to be heard before their possessions may be taken or destroyed. See, e.g., *Lavan*, 693 F.3d at 1032; *Sullivan v. City of Berkeley*, 383 F. Supp. 3d 976, 981–83 (N.D. Cal. 2019).

For the foregoing reasons, the Court **GRANTS** summary judgment in favor of the City on BHU's request for a mandatory 30-day or multi-step advance notice requirement as an ADA accommodation, and **DENIES** BHU's cross-motion with respect to that request. The City's constitutional obligations remain fully in effect and are not disturbed by this ruling.

9. Relief Category #9: Permission to Retain Emotional Support and Service Animals

Austin White requests permission for his two "emotional support and service dogs" to remain with him during and after relocation. BHU Status Report (Dkt. 200). Mr. White has mental health conditions that "impair executive functioning, including difficulties . . . maintaining trust in institutional interactions. . . . Mr. White relies on the companionship of his two emotional support and service dogs, which are critical to managing his mental health symptoms and maintaining emotional stability. The presence of these animals provides essential psychological support and helps him regulate anxiety and stress." Brizzolara Declaration (Dkt. 279) ¶ 34.

The record does not reflect whether the City granted or denied this accommodation request. And there is no indication that the City plans to separate Mr. White from his emotional support or service dogs.

Accordingly, this matter is not ripe for resolution and the Court does not rule on the cross-motions for summary judgment with respect to this claim.

F. Qualified Immunity of Individual Defendants

The City contends that individual defendants are entitled to qualified immunity with respect to the property seizure and state-created danger claims. Defendants' SJ Motion at 24–25. Specifically, the City argues that qualified immunity is available because no individual defendants' conduct violated a "clearly established right." *Id.*

BHU's complaint seeks only injunctive relief, and not damages. *See* FAC. Accordingly, individual Defendants are not entitled to qualified immunity in this action. *See, e.g., Hydrick v. Hunter*, 669 F.3d 937, 939–40 (9th Cir. 2012) ("Qualified immunity is only an immunity from a suit for money damages, and does not provide immunity from a suit seeking declaratory or injunctive relief."); *Ctr. For Bio-Ethical Reform, Inc. v. L.A. Cnty. Sheriff Dep't*, 533 F.3d 780, 794 (9th Cir. 2008) ("The individual defendants, however, have qualified immunity from a



damages action. As this immunity does not extend to injunctive relief, we remand for the district court to consider Plaintiffs' request for injunctive relief . . . .") (internal citation omitted).

Accordingly, the doctrine of qualified immunity does not apply to the case at bar.

## V. CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment is **GRANTED IN PART AND DENIED IN PART** and BHU's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART** consistent with the above analysis. The Court directs the parties as follows, with respect to each category of requested relief:

1. **Indefinite pause on abatement, right to remain in place, and guarantee of non-congregate housing or specific shelter placements**

Summary judgment is **GRANTED** for the City and **DENIED** for BHU on the ADA and state-created danger claims. The City may proceed with abatement without first securing non-congregate housing or shelter placements for BHU members. BHU members are not entitled to remain in place pending housing availability.

2. **Enforcement-free zones, city-sanctioned or city-owned campsites, and maps or lists of permissible relocation areas**

Summary judgment is **GRANTED** for the City and **DENIED** for BHU on the ADA and state-created danger claims. The City is not required to designate, create, or identify, enforcement-free relocation zones or City-sanctioned campsites. BHU members may relocate to permissible locations of their choosing subject to the City's existing conditions-based enforcement framework. This ruling is without prejudice to any future legal challenge, should the City engage in a pattern of serial enforcement actions against relocated residents in a manner that effectively denies them any lawful location to seek shelter. The Court reserves judgment on whether a pattern of such displacement across multiple locations could, on a more developed record, give rise to a viable ADA or constitutional claim.

3. **Safe location to relocate vehicles, towing exemptions, and parking relief**

Summary judgment is **GRANTED** for BHU with respect to Ms. Dominguez's requested accommodation and **DENIED** for the City for the same relief. The City may not tow, impound, or



1 destroy Ms. Dominguez's RV without first re-engaging her through the interactive process and  
2 providing reasonable accommodations with respect to her RV.

3 Summary judgment is also **GRANTED** for BHU and **DENIED** for the City with respect to  
4 the property seizure and state-created danger claims as they relate to BHU members' vehicles.  
5 Before impounding or destroying any vehicle used by a BHU member as primary shelter in the  
6 Harrison Encampment, the City must make a specific, fact-based determination that a particular  
7 vehicle obstructs traffic or poses a concrete, individualized health or safety threat; provide that  
8 vehicle's owner with written notice of those findings and provide a reasonable opportunity to  
9 remediate the identified condition or voluntarily relocate the vehicle; and consider and pursue less  
10 restrictive alternatives, including targeted cleaning, pest treatment, assisted relocation of the  
11 vehicle, or other reasonably available mitigating measures. Outright destruction requires the  
12 additional showing that no reasonable alternative remedies other than destruction could mitigate  
13 the identified hazard. Should the City pursue mitigating measures in compliance with this order,  
14 but encounter demonstrated non-compliance by a vehicle resident which prevents the pursuit of  
15 less intrusive alternatives, the City may be found to have met its obligations hereunder. The Court  
16 retains jurisdiction to evaluate compliance with this framework on a vehicle-by-vehicle basis.

17 **4. Exemptions from sidewalk and street space limitations**

18 Summary judgment is **GRANTED** for BHU and **DENIED** for the City with respect to the  
19 categorical enforcement of the 3x3 rule as applied to Mr. Muwakkil, Mr. Spencer, Ms. Parnell,  
20 and Mr. White. The City must conduct an individualized assessment for each claimant that  
21 accounts for the claimant's specific disability-related shelter needs; the actual dimensions and  
22 physical characteristics of the sidewalk or right-of-way in question; and the public interest in  
23 maintaining a regulatorily-mandated path of travel. In this regard, the ordinance's prescribed six-  
24 foot minimum path for most sidewalks is presumptively reasonable and sufficient. The City may  
25 deny a proposed tent placement that would, on the specific facts, obstruct pedestrian passage or  
26 emergency access, but may not invoke such concerns categorically and without individualized  
27 analysis of the disabled claimant's needs. This ruling does not entitle any claimant to any  
28 particular tent dimension.

1 With respect to non-disabled BHU members in the Harrison Encampment, where the net  
2 effect of abatement and application of other City laws, rules, or policies — through no fault of the  
3 resident — results in the loss of shelter (*e.g.*, loss of their tent), the City's acts constitute a state-  
4 created danger unless the City allows for the retention of existing tents or shelter, considers  
5 reasonable accommodations allowing for continued shelter, or provides a replacement tent or  
6 shelter that does not obstruct reasonable sidewalk passage (*e.g.*, six feet).

7 **5. Physical relocation assistance, storage, and non-destruction of property**

8 Summary judgment is **GRANTED** for BHU and **DENIED** for the City with respect to the  
9 ADA claims of Mr. Keiser, Mr. Muwakkil, Ms. Parnell, Mr. Spencer, and Mr. White. For each  
10 disabled claimant, the City must provide physical packing and moving assistance to the extent  
11 permissible under applicable public health guidance; sort and store non-contaminated property for  
12 a minimum of 90 days consistent with the City's existing regulations; and replace any essential  
13 survival property (*e.g.*, tent, sleeping equipment, and basic clothing) that is destroyed pursuant to  
14 abatement because such property could not be safely moved or stored. The City retains full  
15 discretion to decline to handle or store items that are observably wet, muddy, or plausibly  
16 contaminated with leptospirosis, and to implement appropriate safety protocols to protect City  
17 personnel.

18 Summary judgment is also **DENIED** for BHU and **GRANTED** for the City with respect to  
19 constitutional property seizure claims of non-disabled BHU members except as otherwise  
20 provided herein. BHU has not established as a matter of law that the City's notice and storage  
21 procedures are constitutionally deficient for residents capable of self-relocating and that their  
22 property is subject to unconstitutional destruction given their ability to move it except as provided  
23 herein with respect to, *e.g.*, the destruction of tents required by the abatement.

24 With respect to non-disabled residents, the City may not enforce the 3x3 rule in a manner  
25 that prevents BHU members from maintaining a tent, so long as the tent does not unreasonably  
26 interfere with sidewalk passage (*e.g.*, less than six feet).

27 **6. Requests for sanitation services and infrastructure**

28 Summary judgment is **GRANTED** for the City and **DENIED** for BHU on both the ADA

and state-created danger claims. The City is not required to install or maintain any individualized sanitation or utility infrastructure.

7. **Cognitive and communication accommodations and navigation services**

Summary judgment is **GRANTED** for the City and **DENIED** for BHU. The City must honor its documented commitments made during the interactive process: documenting each claimant's communication needs and known triggers and employing patient, low-stimulation communication consistent with staff training. The City is not required to take further action with respect to these requests. Ms. Dominguez's request for a housing navigator is moot.

8. **Advance written notice before abatement**

Summary judgment is **GRANTED** for the City and **DENIED** for BHU with respect to Mr. Spencer's request for a phased notice requirement as an ADA accommodation. The City has already provided extensive advance notice. The City must, however, comply with existing constitutional minimums governing abatement.

9. **Permission to retain emotional support and service animals**

The claim is not yet ripe. There is no indication that the City intends to separate Mr. White from his animals. The Court reserves jurisdiction to address this claim if a ripe dispute arises.

**IT IS SO ORDERED.**

Dated: April 3, 2026



EDWARD M. CHEN  
United States District Judge

Farimah Faiz Brown, City Attorney (State Bar No. 201227)  
Katrina Eiland, Assistant City Attorney (State Bar No. 275701)  
Laura Iris Mattes, Deputy City Attorney (State Bar No. 310594)  
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Attorneys for Defendant  
CITY OF BERKELEY

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HOMELESS UNION, et al.  
  
Plaintiffs,  
  
v.  
  
CITY OF BERKELEY, THOMAS  
GREGORY, PAUL BUDDENHAGEN,  
PETER RADU, OKEYA VANCE, RASHI  
KESERWANI, DOES 1-10,  
  
Defendant.

Case No. 3:25-CV-01414-EMC  
  
**SUPPLEMENTAL DECLARATION OF  
THOMAS GREGORY IN SUPPORT OF  
DEFENDANT CITY OF BERKELEY’S  
STATUS UPDATE**

I, Thomas Gregory, declare as follows:

1. I have personal knowledge of the facts described herein. If called as a witness, I could and would testify competently and truthfully to the facts set forth in this declaration.
2. I am the City’s ADA Program Coordinator and work within the City’s Public Works Department. I have a Juris Doctor degree from the University of California, Davis—School of Law. I am also a Certified ADA Coordinator through the Americans with Disabilities Act (“ADA”) Coordinator Training Certification Program (“ACTCP”) at the Great Plains ADA Center. This certification verifies that I have completed training in ADA regulations and

1 guidelines.

2 3. In response to the Court's September 14, 2026 order, I worked with colleagues in  
3 the Public Works Department to prepare the diagram of the two proposed accommodation  
4 locations at Fourth and Camelia Street.

5 4. The diagram is based on an overhead image from Google Maps and has been  
6 marked and annotated to depict the information requested by the Court, including the dimensions  
7 of the sidewalks; proposed emergency and pedestrian access areas; adjacent vehicle parking and  
8 applicable ingress and egress setbacks; relevant construction, fire, utility, emergency, and  
9 pedestrian access areas; the distance from the proposed accommodation locations to Duck's Nest  
10 Preschool; the drop-off and pick-up zones used by the preschool; and the dead-end vehicle  
11 turning radius in relation to the proposed locations.

12 5. I worked with Public Works colleagues to identify and depict the relevant  
13 measurements, locations, and other information reflected in the diagram. The annotations and  
14 measurements shown on the diagram reflect information available to the City and information  
15 obtained during the City's assessment of the proposed accommodation locations. To the extent  
16 the diagram identifies Duck's Nest Preschool's drop-off and pick-up zones, that information was  
17 provided by the preschool, as described in the accompanying declaration of Deputy City Manager  
18 David White.

19 6. A true and correct copy of the diagram prepared in response to the Court's  
20 September 14, 2026 order is attached hereto as Exhibit A.

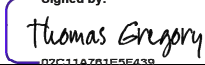
21 7. I also consulted with the Deputy Fire Marshal regarding the dead-end vehicle  
22 turning radius identified in paragraph 1(g) of the Court's order. The Deputy Fire Marshal advised  
23 that a turning radius is not required for fire apparatus at this location because fire apparatus would  
24 back out of the dead-end roadway. She further advised that large delivery trucks travel to and  
25 from Trumer Brewery and, because the roadway is closed to through traffic, may use the open  
26 roadway area to turn around. She stated that the Fire Department's concern is that no items  
27 obstruct the roadway.

28 8. A true and correct copy of the email in which the Deputy Fire Marshal provided

1 this information is attached hereto as Exhibit B.

2 9. Based on measurements I helped to take during this Court's previously ordered  
3 walkthroughs with BHU, the City previously informed Berkeley Homeless Union representatives  
4 that the allowable footprints for the two sites assessed at this location were: 32 feet in length and  
5 75 inches (6.25 feet) in width for the first location closest to the railroad fence and next to a red  
6 curb, to allow for both emergency access and pedestrian access; and 161 feet in length and 4.5  
7 feet in width in the area of the curb that is not red, to allow for both pedestrian access and vehicle  
8 ingress and egress.

9 I declare under penalty of perjury that the foregoing is true and correct, and that this  
10 declaration was executed on September 18, 2026, in Berkeley, California.  
11

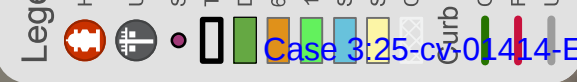
12 Signed by:  
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14 THOMAS GREGORY  
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# EXHIBIT

## A



Case 3:25-cv-01414-E





# EXHIBIT B

**From:** [Shaffer-Killey, Shannon](#)  
**To:** [Gregory, Thomas](#); [Tan, Zhong](#)  
**Cc:** [Amiri, Wahid](#); [Scott, Nubyaan](#); [Stephens, Sara](#); [Helmbrecht, Mark](#)  
**Subject:** RE: URGENT: Advance staging & unpermitted encampment expansion at 4th & Camelia / 9th & Camelia  
(Case No. 3:25-cv-01414-EMC)  
**Date:** Wednesday, September 16, 2026 1:52:32 PM

---

*Shannon Shaffer-Killey*

*Deputy Fire Marshal*

City of Berkeley Fire Department

Direct Line: 510-981-5587

Cell Phone: 510-774-1380

1250 9<sup>th</sup> Street

Berkeley, CA 94710

---

**From:** Gregory, Thomas <TGregory@berkeleyca.gov>  
**Sent:** Wednesday, September 16, 2026 10:06 AM  
**To:** Shaffer-Killey, Shannon <SShaffer-Killey@berkeleyca.gov>; Tan, Zhong <ZTan@berkeleyca.gov>  
**Cc:** Amiri, Wahid <WAmiri@berkeleyca.gov>; Scott, Nubyaan <NScott@berkeleyca.gov>; Stephens, Sara <sstephens@berkeleyca.gov>; Helmbrecht, Mark <MHelmbrecht@berkeleyca.gov> **Subject:** URGENT: Advance staging & unpermitted encampment expansion at 4th & Camelia / 9th & Camelia (Case No. 3:25-cv-01414-EMC)

**Thomas Gregory / ADA Program Coordinator**

City of Berkeley, Public Works Department

1947 Center Street, 5<sup>th</sup> Floor

Berkeley, CA 94704

(510) 981-6418

---

| Upcoming Worksessions and Special Meetings |                                                                |
|--------------------------------------------|----------------------------------------------------------------|
| Scheduled Dates                            |                                                                |
| October 27 (5:45pm)                        | Joint Powers Financing Authority Meeting                       |
| November 12 (6pm)                          | Land Use Appeals: 2700 Shattuck (ZAB) & Elmwood District (LPC) |

| Unscheduled Presentations and Special Meetings |
|------------------------------------------------|
| 1. None                                        |

| Future Information Reports                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. Affordable Housing Fee Feasibility Study</li> <li>2. Berkeley Fire Department Annual Report</li> </ol> |

|  |                                                                                                          |
|--|----------------------------------------------------------------------------------------------------------|
|  | <b>City Council Referrals to the Agenda &amp; Rules Committee and Unfinished Business for Scheduling</b> |
|  | None                                                                                                     |

| CITY CLERK DEPARTMENT                                                       |                      |                       |                   |
|-----------------------------------------------------------------------------|----------------------|-----------------------|-------------------|
| WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS<br>BEFORE THE CITY COUNCIL |                      |                       |                   |
| Address                                                                     | Board/<br>Commission | Appeal Period<br>Ends | Public<br>Hearing |
| <b>NOD – Notices of Decision</b>                                            |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Public Hearings Scheduled</b>                                            |                      |                       |                   |
| Elmwood Commercial Historic District                                        | LPC                  |                       | 11/12/2026        |
| 2700 Shattuck Avenue (construct mixed-use residential development)          | ZAB                  |                       | 11/12/2026        |
| 2955 Shattuck Avenue (construct 8-story mixed-use building)                 | ZAB                  |                       | TBD               |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Remanded to ZAB or LPC</b>                                               |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
|                                                                             |                      |                       |                   |
| <b>Notes</b>                                                                |                      |                       |                   |
|                                                                             |                      |                       |                   |
| ZAB: Zoning Adjustments Board                                               |                      |                       |                   |
| LPC: Landmarks Preservation Commission                                      |                      |                       |                   |

10/7/2026





At the September 15, 2026 City Council meeting, Council referred Recommendation 3 to the Agenda and Rules Committee for consideration of whether to pursue adoption of nepotism and cronyism provisions in the Berkeley Municipal Code.



BERKELEY CITY AUDITOR

CONSENT CALENDAR  
September 15, 2026

**To:** Honorable Mayor and Members of the City Council  
**From:** Jenny Wong, City Auditor *zw*  
**Subject:** Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies

#### RECOMMENDATION

We recommend that City Council receive this report and direct the City Manager to implement Recommendations 1 and 2 consistent with Management's Response. We further recommend that City Council refer Recommendation 3 to the Agenda and Rules Committee for consideration of whether to pursue adoption of nepotism and cronyism provisions in the Berkeley Municipal Code.

#### FISCAL IMPACTS OF RECOMMENDATION

There is no direct fiscal impact associated with receiving this report or referring Recommendation 3 to the Agenda and Rules Committee. Implementation may involve staff time for policy development, meet-and-confer obligations, training, legal review, and administrative process updates.

#### CURRENT SITUATION AND ITS EFFECTS

The City Auditor's Office conducted a policy review following a whistleblower report raising concerns about a workplace relationship involving a supervisor and an employee and the potential for perceived favoritism. While the conduct described was not prohibited under current City policy and the allegation could not be substantiated, the report identified a gap in the City's policy framework.

The review found that current City policies do not address romantic, dating, or cohabiting relationships when those relationships intersect with hiring, supervision, or other employment decisions. As a result, employees are not required to disclose these relationships, and the City does not have a consistent process to manage potential conflicts of interest when they arise.

The review also found that the City's definition of family relationships is narrower than those used in peer jurisdictions, limiting the City's ability to identify and address potential or perceived conflicts of interest. These gaps create a risk of actual or perceived favoritism and may undermine confidence in the fairness and objectivity of employment decisions.

Management reviewed the report and agreed with its findings and recommendations. Management's response commits to reviewing and updating Administrative Regulation 2.12 through the City's policy development and labor relations process and providing guidance and training following implementation. Recommendation 3 concerns whether broader nepotism and cronyism standards should be established in the Berkeley Municipal Code for elected



officials, Charter Officers, appointed officials, boards, commissions, and employees. Because these standards would extend beyond the City Manager's administrative authority, Council consideration is needed.

### BACKGROUND

This review was initiated after the City Auditor's Office received a whistleblower report through the Whistleblower Program raising concerns about workplace relationships and potential favoritism. Because the conduct described was not addressed under current City policy, the Auditor's Office did not open an investigation and instead conducted a policy-focused review.

The review included analysis of Administrative Regulation 2.12 (Employment of Near Relatives) and other relevant City policies, as well as comparison with policies from peer jurisdictions and state-level guidance. This report is issued as part of the City Auditor's Whistleblower Program to identify and address risks related to fraud, waste, and abuse, including gaps in policy that may allow such risks to occur.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental sustainability or climate impacts associated with this report.

### RATIONALE FOR RECOMMENDATION

Management has agreed to implement Recommendations 1 and 2 by reviewing Administrative Regulation 2.12 through the City's policy development and labor relations process and providing guidance and training following implementation. These actions will strengthen the City's conflict-of-interest framework related to workplace relationships by addressing a broader range of personal relationships, establishing clear disclosure and recusal expectations, and implementing a consistent conflict-management process.

Recommendation 3 presents a broader governance question regarding whether the City should establish nepotism and cronyism standards in the Berkeley Municipal Code that apply consistently to City employees, elected officials, Charter Officers, appointed officials, boards, and commissions. Referring this recommendation to the Agenda and Rules Committee would allow the Council to consider the appropriate legislative path forward before determining whether amendments to the Municipal Code should be pursued.

### CONTACT PERSON

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

### Attachments:

- 1: Berkeley City Auditor Whistleblower Program Special Report: Evaluation of Workplace Relationship Policies April 2026



BERKELEY CITY AUDITOR

Special Report

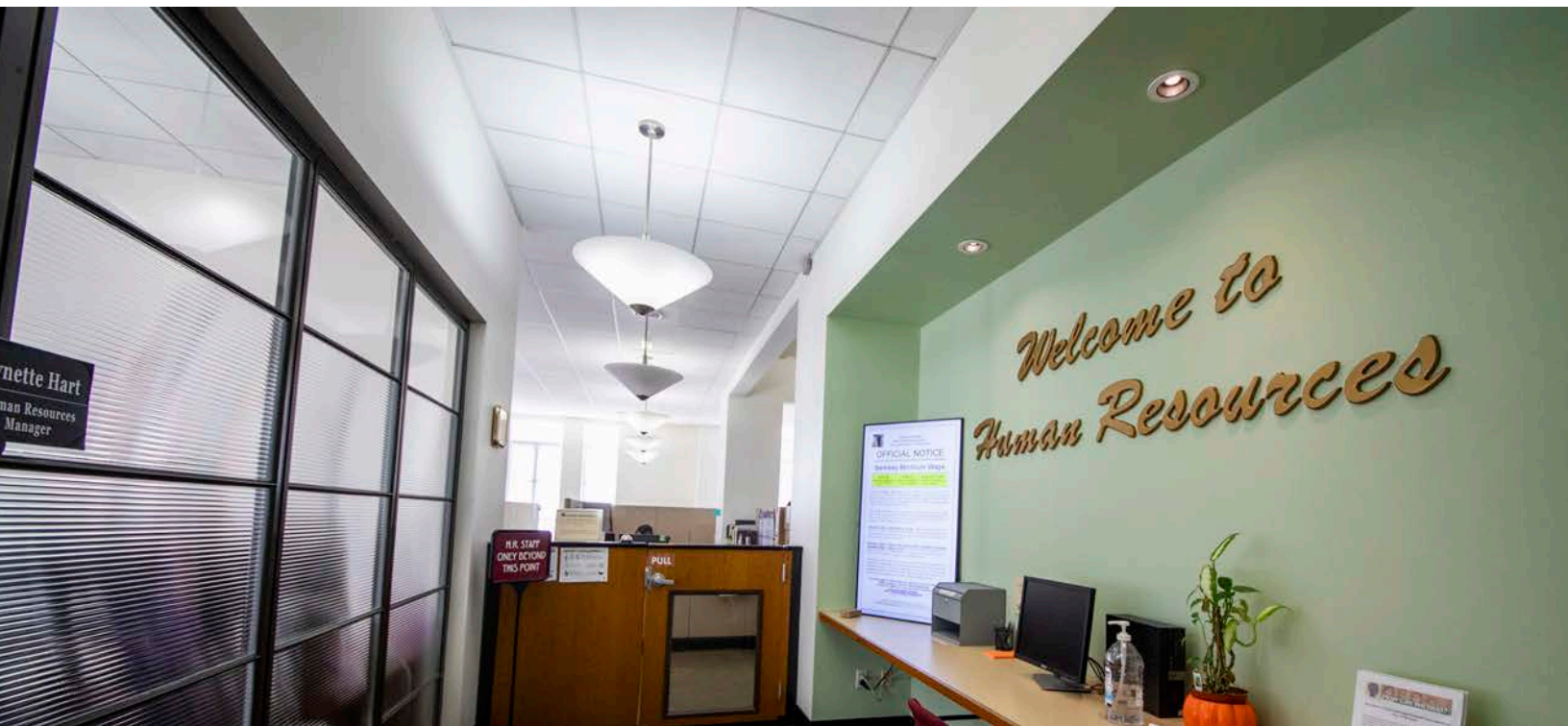
# Whistleblower Program: Evaluation of Workplace Relationship Policies

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August 2026

Jenny Wong, City Auditor

Erin Mullin, Whistleblower Program Manager



Berkeley's current policies do not address romantic, cohabitating, or extended family relationships, creating potential conflicts of interest and undermining fairness in employment decisions. Expanding and updating these policies would align Berkeley with peer jurisdictions and improve transparency.

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## Purpose

A whistleblower report raised concerns about a workplace relationship that intersected with City employment and the potential for perceived favoritism. We reviewed the complaint and found that City policy did not address the conduct described and therefore could not substantiate the allegation. However, the report prompted a review of the City's policies regarding workplace relationships.

Berkeley's primary policy governing workplace relationships is Administrative Regulation 2.12 (Employment of Near Relatives), which is intended to prevent nepotism by requiring disclosure and restricting supervision among certain family members. This report examines whether that framework, together with other related policies adequately address romantic, cohabiting, and related family relationships that may affect, or appear to affect, employment decisions, such as decisions regarding hiring, promotion, transfer, discipline, or termination.

## **Allegation History**

The Berkeley City Auditor's Whistleblower Program received a report concerning a romantic relationship involving a manager and an employee within the same work unit, and the potential for perceived favoritism connected to supervisory influence. The allegation highlighted a category of workplace relationships that is not currently addressed by City policy. The information was used solely to inform a policy review. The Whistleblower Program has also received other reports raising similar concerns involving close personal relationships in the workplace that fall outside current policy coverage, indicating the issue is not isolated and reinforcing the need for policy review.

## **Conclusions**

We found that Berkeley's current policies do not address romantic, dating, or cohabiting relationships in the workplace, leaving the City without a way to identify or manage situations where such personal relationships overlap with hiring, supervision, or other employment decisions. As a result, employees are not required to disclose these relationships, managers may participate in personnel decisions involving a romantic or cohabitating partner, and no formal recusal or conflict-management process applies when supervisory or decision authority is involved. These conditions create a risk of actual or perceived favoritism and can undermine employee confidence in the fairness and objectivity of employment decisions.

We also found that Berkeley's Employment of Near Relatives policy defines family relationships more narrowly than comparable policies in peer jurisdictions. While Berkeley covers core family members, it does not include certain extended family relationships that San Francisco and Oakland address, even though these relationships can present similar conflict-of-interest concerns. This narrower definition creates additional gaps in the City's ability to manage potential or perceived conflicts arising from workplace relationships.

Taken together, these findings indicate that Berkeley's current policies do not fully address the range of personal relationships that may affect, or appear to affect, employment decisions. Updating the City's policy framework to address romantic and cohabiting relationships and to reassess the scope of covered family relationships would strengthen conflict-of-interest controls, align Berkeley with peer jurisdictions, and support transparency and fairness in the City's employment practices.

## Findings

### Current City policy does not address disclosure of romantic or cohabiting relationships in the workplace.

Berkeley's current policies do not address romantic, dating, or cohabiting relationships when those relationships intersect with hiring, supervision, or other employment decisions. As a result, the City lacks a framework to identify or manage conflicts of interest that may arise from these relationships. While the City has policies governing harassment, discrimination, retaliation, financial conflicts of interest, and the employment of near relatives, none require disclosure of romantic or cohabiting relationships, restrict supervisors from participating in employment decisions involving a partner, or provide a mechanism for managing related conflicts of interest.

The table below summarizes how Berkeley's policies compare with peer jurisdictions and state-level guidance with respect to coverage, disclosure requirements, and conflict-management tools related to romantic and cohabiting workplace relationships.

**Table 1: Comparison of Policies Addressing Romantic and Cohabiting Workplace Relationships**

| Key Feature                                                    | Oakland                                    | San Francisco                                     | California State Guidance        | Berkeley                                                                       |
|----------------------------------------------------------------|--------------------------------------------|---------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------|
| Who is covered                                                 | Broad (officers, officials, and employees) | Broad (officials, employees, interns, volunteers) | Agencies determine               | Employees only                                                                 |
| Romantic relationships covered                                 | Yes                                        | Yes                                               | Only if cohabitating             | No                                                                             |
| Cohabiting relationships covered                               | Yes (romantic and non-romantic)            | Romantic only                                     | Romantic only                    | No                                                                             |
| Disclosure required                                            | Yes                                        | Yes                                               | Yes (department policy required) | Yes (near relatives only; not romantic or cohabiting relationships)            |
| Restrictions on hiring or supervision of covered relationships | Yes (direct and indirect)                  | Yes (direct and indirect)                         | Yes (agency-defined)             | Yes (applies only to near relatives; not romantic or cohabiting relationships) |

Note: California state guidance provides recommended practices for state agencies and does not impose requirements on local governments.

Source: Auditor analysis of City of Oakland Municipal Code Chapter 2.40; San Francisco Civil Service Commission Family and Romantic Relationships at Work Policy; California CalHR Nepotism Guidance; and City of Berkeley AR 2.12

Peer jurisdictions, including Oakland and San Francisco, have adopted more comprehensive approaches. These cities require disclosure and active management of romantic and cohabitating relationships when such relationships intersect with employment decisions. State-level guidance for California public agencies similarly recommends managing conflicts of interest arising from romantic, cohabitating relationships through disclosure, recusal, and mitigation to address both actual and perceived conflicts.

Berkeley's existing policy framework focuses on compliance-based risks, such as harassment, discrimination, financial conflicts of interest, and nepotism. Romantic and cohabitating relationships fall outside the scope of these policies and have not been explicitly addressed through an administrative regulation or standalone policy.

Without a policy framework, employees are not required to disclose such relationships, and managers may participate in employment decisions involving a partner without a recusal or conflict-management process. These gaps create a risk of actual or perceived favoritism and can undermine employee trust and confidence in the fairness and objectivity of personnel decisions, even when no misconduct occurs. In the absence of clear disclosure and recusal requirements, the City also lacks a consistent basis for responding to complaints or concerns involving personal relationships that intersect with employment decisions.

### **Berkeley's definition of family relationships is narrower than peer jurisdictions and creates additional coverage gaps.**

In addition to the absence of policies covering romantic or cohabitating relationships, Berkeley's Employment of Near Relatives policy reflects a more limited definition of family relationships than those used by peer jurisdictions like San Francisco and Oakland. While all three cities include core family relationships such as spouses, parents, and siblings, Berkeley does not include certain extended family categories that peer jurisdictions address.

The table below compares how Berkeley and peer jurisdictions define family relationships in employment policies, with emphasis on extended and non-traditional relationships that may present similar conflict-of-interest concerns but are not included in Berkeley's current definition.

**Table 2. Comparison of Family Relationships Definitions**

| Relationship Category                                          | Included in Berkeley | Included in San Francisco | Included in Oakland  |
|----------------------------------------------------------------|----------------------|---------------------------|----------------------|
| <i>Cousin</i>                                                  | X                    | ✓ (First)                 | ✓ (First and Second) |
| <i>In-laws, Step Relations</i>                                 | ✓ (Specific)         | ✓ (Broad)                 | ✓ (Broad)            |
| <i>Foster Relations</i>                                        | X                    | ✓                         | ✓                    |
| <i>Great-grandparent / great-grandchild</i>                    | X                    | X                         | ✓                    |
| <i>Cohabitants (Non-Domestic Partner)</i>                      | X                    | X                         | ✓                    |
| <i>Spouses, domestic partner of any relative or cohabitant</i> | X                    | X                         | ✓                    |

Source: Auditor analysis of City of Oakland Municipal Code Chapter 2.40; San Francisco Civil Service Commission Family and Romantic Relationships at Work Policy; and City of Berkeley AR 2.12

Berkeley does not include certain extended family categories like cousins or foster relationships that San Francisco and Oakland include. These relationships can raise similar conflict-of-interest concerns in hiring and supervisory contexts. While Berkeley includes some in-law and step relationships, it does so through a fixed list rather than a broader categorical definition. As a result, certain relationships, such as a step-grandparent, step-aunt or uncle, or aunt- or uncle-in-law, are not explicitly covered, even though they may present similar risks. By contrast, Oakland defines covered family relationships more expansively by category, extending beyond immediate family to include multiple degrees of relatives, foster relationships, cohabitants, and the spouses or domestic partners of covered individuals. A broader approach allows jurisdictions to identify and manage conflicts of interest across a wider range of familial and household relationships. Berkeley's narrower definition, by comparison, creates gaps in coverage and limits the City's ability to proactively identify and manage potential or perceived conflicts of interest arising from personal relationships.



## Peer jurisdictions have adopted broader policy frameworks to manage conflicts arising from personal relationships.

Berkeley's Employment of Near Relatives policy establishes a framework for managing conflicts of interest arising from specified familial relationships. However, the structure and authority of Berkeley's policy limit its reach. The policy applies only to employees and does not apply to elected officials, appointed officers, or other non-employee City officials. It is established through an administrative regulation issued by the City Manager and is confined to the specific relationships listed in the definition of "near relative." As a result, the City has limited authority to address conflicts of interest arising from other personal relationships or to apply consistent standards across elected officials, officers, and other individuals working for the City.

Berkeley's current policy relies primarily on transfer or reassignment authority when a prohibited near-relative supervisory relationship exists. While the City Manager may grant written exceptions to supervisory-relationship prohibitions, the policy does not establish a structured conflict-management plan process for how supervisory conflicts or approved exceptions must be mitigated. In some operational settings, such as small divisions, specialized technical teams, or public safety departments with limited supervisory layers, reassignment alone may not fully remove indirect supervisory relationships. By contrast, San Francisco requires a formal written conflict-management plan when supervisory conflicts cannot be fully removed, and Oakland mandates documented alternate arrangements and mitigation controls through its Personnel Director and City Attorney process.

San Francisco's policy, adopted by its Civil Service Commission, and Oakland's policy, codified in its municipal code, apply to a wider range of individuals, including elected officials and City officers. Oakland also requires annual disclosure of specified personal relationships by City officials and supervisors, reinforcing ongoing accountability rather than one-time reporting.

In addition to disclosure requirements, Oakland's policy explicitly defines and prohibits cronyism, meaning participation in employment decisions involving close personal, professional, political, or commercial relationships that could result in preferential treatment or compromise the appearance of fairness. While this prohibition does not expand disclosure requirements, it establishes broader expectations for individuals covered by the policy to avoid conflicts of interest arising from relationships beyond those specifically identified for disclosure. This approach recognizes that conflicts of interest and the potential for favoritism are not limited to predefined familial relationships.

As a result, the policy provides a clear basis for reviewing and addressing employment decisions influenced by personal relationships that fall outside narrowly defined categories. Oakland's policy also requires the Director of Personnel to provide an annual report to the City Council describing the nature and number of prohibited relationships disclosed and the alternate arrangements implemented. Together, these features provide broader authority, clearer oversight, and more flexible mitigation tools than those currently available under Berkeley's policy framework.

## **Recommendations**

1. To ensure comprehensive conflict-of-interest controls within employment and supervisory contexts, we recommend that the Human Resources Department update AR 2.12 to:
  - require disclosure of romantic, dating, and cohabiting relationships, in addition to near-relative relationships.
  - extend supervisory and decision-making restrictions to romantic and cohabiting relationships that create actual or perceived conflicts of interest.
  - update the definition of "near relative" to better align with peer jurisdictions.
  - incorporate a clear definition and prohibition of cronyism in supervision and employment decisions.
  - establish a documented conflict-management process that clearly defines responsibilities for reviewing relationship disclosures, implementing mitigation measures, maintaining records of all actions taken, and alternate decision authority where needed.

2. To support effective implementation, we recommend the Human Resources Department provide training to supervisors and managers on the updated relationship conflict-of-interest policy.
3. To extend relationship conflict safeguards beyond employees, we recommend the City consider adopting both nepotism and cronyism provisions in the Berkeley Municipal Code. These provisions should apply to all City employees, elected officials, charter offices, appointed officials, boards and commissions, ensuring consistent citywide standard.

## **Implementation Considerations**

Implementation of the recommended policy updates will require coordination among Human Resources, the City Attorney's Office, and City leadership. Relationship disclosures should be limited to information necessary for conflict management and treated as confidential. Clear guidance and documentation standards will be important to ensure consistent application of recusal, conflict-management measures, and exceptions. The City may also wish to consider how updates to AR 2.12 align with existing ethics and conflict-of-interest policies to support clarity and effective administration. Currently, Human Resources maintains relationship disclosures within individual paper-based personnel files, which may present challenges for consistently tracking and managing disclosures as policy coverage expands.

## **Management Response**

Management agrees that the City should review and update its framework for identifying and managing actual or perceived conflicts of interest arising from workplace relationships. Human Resources will work with City leadership to evaluate potential revisions to AR 2.12, including appropriate disclosure requirements, supervisory and decision-making restrictions, definitions of covered relationships, confidentiality safeguards, and conflict-management procedures.

The specific policy provisions recommended in this report should not, however, be understood as predetermined outcomes. Changes of this nature would affect represented employees and may implicate matters within the scope of representation. Accordingly, any proposed policy changes will require extensive notice, consultation, and meet-and-confer with the City's labor organizations. The final scope, definitions, disclosure obligations, mitigation procedures, and implementation requirements will be developed and refined through that process. The City must also carefully consider employee privacy, consistent application across departments, operational feasibility, records management, and compliance with applicable law.

Following completion of the policy-development and labor-relations process, Human Resources will provide appropriate guidance and training to managers and supervisors regarding the final requirements and their responsibilities.

Management also agrees that the City should evaluate whether broader nepotism or cronyism standards are appropriate for elected officials, charter officers, appointed officials, boards, and commissions. Because those individuals may fall outside the scope of an administrative regulation issued by the City Manager, any such expansion would require separate legal and governance review, coordination with affected offices, and possible action by the City Council.

## **Scope and Methodology**

We conducted a policy-focused review to assess whether the City's current policies address romantic and cohabiting relationships that intersect with hiring, supervision, or other employment decisions, and whether the City's definition of family relationships provides sufficient coverage to manage related conflicts of interest.

Specifically, we analyzed Berkeley's relevant policies, including:

- AR 2.12 – Employment of Near Relatives
- AR 1.2 – Conflicts of Interest
- Harassment Prevention Policy
- Equal Employment Opportunity Policy

Reviewed workplace-relationship and conflict of interest policies from peer jurisdictions, including Oakland and San Francisco, as well as state-level guidance applicable to California public agencies.

This review was limited to evaluating policy design and coverage in employment and supervisory context. We did not conduct an investigation related to the reported relationship, did not interview individuals, and did not review personnel files, as the conduct described in the Whistleblower Report is not prohibited under current City policy. Additionally, we only examined one specific aspect of conflict-of-interest risks, those arising in employment and supervisory decisions. Other types of conflicts, such as financial interests in contracting, procurement, or policy decisions, as well as other potential conflicts in governance or personal financial dealings, are governed by separate policies and legal frameworks and were outside the scope of this review.

## **Office of the City Auditor**

City of Berkeley

## **Mission Statement**

Promoting transparency and accountability in Berkeley government.

## **Report Preparation**

Erin Mullin, Whistleblower Program Manager

## **City Auditor**

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