

AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, January 21, 2020

6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons 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 commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.*

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

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

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

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

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

Recess Items

- 1. License Agreement: California Jazz Conservatory for Property at 1947 Center Street**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a license agreement with California Jazz Conservatory (“Jazz School”) for non-exclusive use of space on the fifth floor at 1947 Center Street for a three-month term ending March 31, 2020.
Financial Implications: See report
Contact: David White, City Manager’s Office, (510) 981-7000
- 2. Contract: Capoeira Arts Foundation**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract with Capoeira Arts Foundation in an amount not to exceed \$150,000.
Financial Implications: See report
Contact: David White, City Manager’s Office, (510) 981-7000

Consent Calendar

3. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of December 3, 2019 (special closed and regular), December 10, 2019 (special closed and regular) and December 16, 2019 (special closed).

Financial Implications: None

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

4. City Council Short Term Referral Process

From: City Manager

Recommendation: Approve moving Short Term Referral reporting to a quarterly basis, in alignment with Strategic Plan reporting.

Financial Implications: None

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

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 21, 2020

From: City Manager

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

Financial Implications: Various Funds - \$7,281,620

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

6. Contracts: Citywide Printing and Copying Services

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager to approve contracts and any amendments with the following named firms for Citywide Printing and Copying Services for a total amount not to exceed \$675,000 for a 3 year period starting February 1, 2020 through January 31, 2023, subject to the City's annual budget appropriation process:

1. Synthesis Group Inc. dba Minuteman Press Berkeley in an amount not to exceed \$575,000;

2. In and Out Printing Services, Inc. in an amount not to exceed \$100,000.

Financial Implications: Various Funds - \$675,000

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

7. Contract: Venture Tactical for Personal Protective Equipment for Firefighters

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Venture Tactical to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$112,000.

Financial Implications: See report

Contact: David Brannigan, Fire, (510) 981-3473

Consent Calendar

- 8. Contract: First Spear Of California (FSOC) for Personal Protective Equipment for Firefighters**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with First Spear Of California (FSOC) to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$47,000.
Financial Implications: See report
Contact: David Brannigan, Fire, (510) 981-3473
- 9. Contract: Michael Brady for Emergency Management Training**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff in an amount up to \$166,680.
Financial Implications: See report
Contact: David Brannigan, Fire, (510) 981-3473
- 10. Designate the Line of Succession for the Director of Emergency Services**
From: City Manager
Recommendation: Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 68,336-N.S.
Financial Implications: None
Contact: David Brannigan, Fire, (510) 981-3473
- 11. Grant Application: Funding from Bay Area Urban Areas Security Initiative (UASI) to Support Emergency Medical Training Equipment and Fire/Rescue Utility Vehicle Purchases**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager or her designee to submit grant applications to the Bay Area Urban Areas Security Initiative grant program in the amount of \$56,472 to fund purchase of Emergency Medical Training Equipment and in the amount \$53,134 to fund purchase of a Polaris Fire/Rescue Utility Vehicle, and to accept grant funds and execute resulting grant agreements.
Financial Implications: See report
Contact: David Brannigan, Fire, (510) 981-3473

Consent Calendar

12. Grant Application: Funding from California Department of Forestry and Fire Protection to Support Hazardous Fuels Reduction in Berkeley Wildland Urban Interface

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit a grant application in the amount of \$800,484 to the California Department of Forestry and Fire Protection (Cal Fire) California Climate Investments (CCI) program to fund a three-year vegetation mitigation program to operate in the Wildland Urban Interface (WUI) of Berkeley's Fire Zones 2 and 3, and to accept grant funds and execute a resulting grant agreement.

Financial Implications: See report

Contact: David Brannigan, Fire, (510) 981-3473

13. Contract No. 31900132 Amendment: BOSS for Representative Payee Services
From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900132 with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. (A representative payee is a person or organization appointed by the Social Security Administration to receive the Social Security or Supplemental Security Income benefits for anyone who is unable to manage or direct the management of his or her benefits.) The amendment will add \$25,000 to the current contract and extend it through June 30, 2020 for a total contract not to exceed amount of \$100,000. The current contract would be extended by four months, pursuant to the MHSA Plan, with additional funding proportionate to the monthly payment terms of the original contract.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

14. Contract No. 10631B Amendment: Resource Development Associates for HOTT Evaluation Consulting Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10631B with Resource Development Associates (RDA) to provide evaluation consulting services for the Mental Health Division's Homeless Outreach and Treatment Team (HOTT), in an amount not to exceed \$24,000, for a total contract amount not to exceed \$78,500.

Financial Implications: Mental Health Services Act Prevention and Early Intervention Homeless Outreach Fund - \$24,000

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

15. Release of Resale Restrictions on former Redevelopment Agency Homeowner Loans

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute releases for resale restrictions on seven homeowner loans made by the former Berkeley Redevelopment Agency.

Financial Implications: None

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

16. Grant Applications: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with the Proposed Blake Apartments and Maudelle Miller Shirek Community Projects

From: City Manager

Recommendation: Adopt a Resolution: 1. Authorizing the City Manager to negotiate, enter into, and cause the City to perform its obligation under agreements (including amendments) with the following developers and/or their affiliates relating to grant applications to the California Affordable Housing and Sustainable Communities program for project-related transportation and infrastructure improvements: a. Satellite Affordable Housing Associates for Blake Apartments (2527 San Pablo), for a total grant amount of up to \$1.422 million; and b. Resources for Community Development for Maudelle Miller Shirek Community (2001 Ashby), for a total grant amount of up to \$2.625 million. 2. Authorizing the City Manager to accept up to \$4.047 million in state AHSC funds from the projects and complete selected transportation improvements if awarded.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

17. Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way

From: City Manager

Recommendation: Adopt first reading of an Ordinance approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

18. *Removed from Agenda by the City Manager*** Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services**

From: City Manager

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

Consent Calendar

- 19. Classification and Salary: Establish Mental Health Nurse Classification Series From: City Manager**
Recommendation: Adopt a Resolution amending Resolution No. 68,626-N.S. Classification and Salary Resolution for SEIU Local 1021 CSU & PTRLA to establish the classifications of Mental Health Nurse with a monthly salary range of \$9,348.02 - \$11,363; Senior Mental Health Nurse with a monthly salary range of \$9,815.87 - \$11,931.92; and amending Resolution No. 68,710–N.S. Classification and Salary Resolution for Public Employees Union Local to establish a Supervising Mental Health Nurse classification with a monthly salary range of \$10,307.24 - \$12,528.52 – effective January 21, 2020.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 20. 2020 Fee Assessment – State of California Self-Insurance Fund (Workers’ Compensation Program) From: City Manager**
Recommendation: Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2020 for administering the Workers’ Compensation Program, in an amount not to exceed \$285,609.
Financial Implications: Workers’ Compensation Self-Insurance Fund - \$285,609
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
- 21. Contract No. 9791 Amendment: Environmental Systems Research Institute, Inc. (ESRI) for Enterprise Graphical Information Systems (GIS) Software License Maintenance and Support From: City Manager**
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (ESRI) for Enterprise GIS software license maintenance and support increasing the amount by \$225,000 for a not-to-exceed total of \$621,000 for the period of July 1, 2020 through June 30, 2023.
Financial Implications: Various Funds - \$225,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 22. Contract No. 10264B Amendment: ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Certification Training From: City Manager**
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 10264B with ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Workshops for an amount not to exceed \$73,658, and a total contract value not to exceed \$329,061 from May 1, 2016 through June 30, 2021.
Financial Implications: Various Funds - \$73,658
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

Consent Calendar

- 23. Contract No. 10988 Amendment: Presidio Network Solutions, LLC: Develop and Deliver a roadmap for Cyber Resilience Plan (CRP)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 10988 with Presidio Network Solutions (“Presidio”) for an amount not to exceed \$28,620 and a total contract value not to exceed \$128,620 from September 21, 2018 through June 30, 2021.
Financial Implications: Various Funds - \$28,620
Contact: Savita Chaudhary, Information Technology, (510) 981-6500
- 24. Donation: Memorial Bench at Cesar Chavez Park in memory of Michael H. Weiss**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Michael H. Weiss.
Financial Implications: \$3,400 (Donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 25. Amendment to Contract No. 32000034 with Bellingham to Replace Additional Finger Docks at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000034 with Bellingham Inc. to replace damaged finger docks at the Berkeley Marina by increasing the construction contract amount by \$60,000 for a not-to-exceed amount of \$384,335.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 26. Contract No. 31900207 Amendment: Recruiting, Advertising, and Marketing Strategy for the Berkeley Police Department**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900207 with Epic Recruiting, to provide additional recruiting and advertising services for police and professional staff vacancies. This amendment would add \$90,000 for a total contract amount not to exceed \$190,000, and extending the term through April 30, 2021.
Financial Implications: General Fund - \$90,000
Contact: Andrew Greenwood, Police, (510) 981-5900

Consent Calendar

27. **Contract No. 10645 Amendment: Recology Blossom Valley Organics - North for the Hauling and Processing of Organic (Compostable) Materials**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10645 for a five (5) year term with Recology, Inc.'s Blossom Valley Organics - North facility for the hauling and processing of organic (compostable green and food waste) materials through February 28, 2025 increasing the amount of the contract by \$13,600,000 for a total amount not-to-exceed \$26,661,930.
Financial Implications: Zero Waste Fund - \$13,600,000
Contact: Phillip Harrington, Public Works, (510) 981-6300
28. **Appointments of Maria Moore, Edward Opton and Farzaneh Izadi to the Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt a Resolution approving the appointment of Maria Moore as a representative of the Special Public Interest Category; Edward Opton, as a representative of the General Public Interest Category; and Farzaneh Izadi as a representative of the Special Public Interest Category to the Mental Health Commission, for three year terms beginning January 22, 2020 and ending January 21, 2023.
Financial Implications: None
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400
29. **Resolution: Oppose the new U.S. base construction in Henoko-Oura Bay of Okinawa**
From: Peace and Justice Commission
Recommendation: Adopt a resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa.
Financial Implications: None
Contact: Nina Goldman, Commission Secretary, (510) 981-7000

Council Consent Items

30. **YMCA of the East Bay Youth & Government Program**
From: Mayor Arreguin and Councilmember Bartlett
Recommendation: Adopt a Resolution approving the D-13 expenditure of \$1,500 in an amount not to exceed \$300 per Councilmember, to the YMCA of the East Bay's Youth & Government program.
Financial Implications: Mayor's Discretionary Fund - \$300
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Council Consent Items

31. Berkeley Youth Alternatives (BYA) 16th Crab Feed on Thursday, February, 27, 2020: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmembers Davila and Bartlett

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$120 from Councilmember Cheryl Davila, to support Berkeley Youth Alternatives, for their 16th Annual Crab Feed Fundraiser on Thursday, February 27, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Cheryl Davila and Mayor or any other Councilmembers who would like to contribute.

Financial Implications: Councilmember's Discretionary Fund - \$120

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

32. Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability (Reviewed by the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)

From: Councilmembers Davila and Bartlett

Recommendation: Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” 2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding. 3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

Financial Implications: To be determined

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

33. Budget Referral to Conduct an Equal Pay Audit

From: Councilmember Harrison

Recommendation:

1. Refer to the June 2020 Budget Process \$20,000 to pay for an Equal Pay Audit for City of Berkeley employees. The audit would include pay band analyses and analyses of job segregation and glass ceilings.

2. Issue an RFP to complete the Equal Pay Audit

Financial Implications: \$20,000

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

Council Consent Items

34. National Zero Waste Conference: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds From: Councilmember Hahn, Mayor Arreguin, and Councilmember Bartlett Recommendation:

1. Adopt a resolution co-sponsoring the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.
2. Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn, to the National Recycling Coalition, the fiscal sponsor of the conference, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.

Financial Implications: See report

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

35. Small Business Listening Sessions

From: Councilmember Hahn

Recommendation: Refer to the City Council's Land Use, Housing & Economic Development policy committee to establish regular Small Business/Enterprise Listening Sessions.

Financial Implications: See report

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

Council Consent Items

36. Recommendations Related to Code Enforcement and Receivership Actions
(Reviewed by Health, Life Enrichment, Equity, and Community Committee)

From: Health, Life Enrichment, Equity & Community Committee

Recommendation: On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150; Rashi Kesarwani, Councilmember, District 1, (510) 981-7110; Cheryl Davila, Councilmember, District 2, (510) 981-7120

37. Co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall
From: Councilmembers Wengraf and Bartlett

Recommendation: That the City of Berkeley co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall to be held on February 20, 2020 from 5:30 – 7 PM at the Ed Roberts Campus. By co-sponsoring, the Mayor and Councilmembers pledge to publicize and promote the Town Hall to their constituents, and attend themselves if possible.

Financial Implications: None

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

Council Consent Items

- 38. Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**
From: Councilmembers Wengraf, Hahn, Bartlett, and Mayor Arreguin
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmembers Wengraf, Hahn and Bartlett and Mayor Arreguin, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf, Hahn, Bartlett and Mayor Arreguin's discretionary Council Office Budgets, and all other Councilmembers who would like to contribute, allows the City of Berkeley to hold the City's 18th Annual Holocaust Remembrance Day program. All are invited to attend on Sunday, April 19th, 11:30 AM at the Magnes Collection of Jewish Art and Life.
Financial Implications: Mayor and Councilmembers' Discretionary Funds - \$500
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 39. Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade**
From: Councilmembers Wengraf, Hahn, and Davila
Recommendation: Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 47th anniversary of its passage.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 40. No War With Iran**
From: Councilmembers Robinson and Harrison, Mayor Arreguin, and Councilmember Davila
Recommendation: Adopt a resolution: 1. Condemning the Trump administration's assassination of a foreign government official, an act of war not authorized by Congress. 2. Endorsing the resolution by Senator Sanders and Representative Khanna to block funding for any military actions against or in Iran without prior Congressional authorization. 3. Endorsing the resolution by Representative Omar and Representative Lee directing the removal of all Armed Forces from hostilities with Iran and requiring that all future actions be explicitly authorized by Congress.
Financial Implications: None
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action Calendar

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

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

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

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

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

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

41. Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street *(Continued from December 10, 2019)*

From: City Manager

Recommendation: Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25N by adding a subsection to implement Residential Preferential Parking (RPP) on the 1500 block of Lincoln Street in RPP Area N.

Financial Implications: General Fund - \$2,000

Contact: Phillip Harrington, Public Works, (510) 981-6300

42. Extension of the Urgency Ordinance Amending the Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development for a Period of 10 Months and 15 Days

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt an extension of the Urgency Ordinance (Number 7,683-N.S.) amending Berkeley's ADU Ordinance to comply with new State law, and extend limits on ADU development for a period of 10 months and 15 days, pending further analysis and adoption of local regulations that ensure public safety in Fire Zones 2 and 3.

Financial Implications: None

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar

43a. Public Works Commission Recommendation for the Five-Year Paving Plan *(Continued from December 10, 2019)*

From: Public Works Commission

Recommendation: Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.

Financial Implications: See report.

Contact: Nisha Patel, Commission Secretary, (510) 981-6300

Action Calendar

43b. Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan *(Continued from December 10, 2019)*

From: City Manager

Recommendation: Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024 and refer to the City Manager consideration of a Long-Term Paving Master Plan to be started after the completion of the public process of T1 Phase 2. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

44. Establishing an Outdoor Emergency Shelter *(Reviewed by Health, Life Enrichment, Equity & Community Committee)*

From: Councilmembers Harrison and Davila, Mayor Arreguin, and Councilmember Robinson

Recommendation:

1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required: A. Climate-controlled, wind-resistant durable tents with wooden pallets for support. B. Seeking an agency to manage and oversee the emergency shelter. C. Portable toilet service and handwashing service. D. Shower and sanitation services. E. Garbage pickup and safe needle disposal.

2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.

3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.

4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.

Financial Implications: See report

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

45. Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021

From: Mayor Arreguin

Recommendation: Confirm the City Council's action taken on December 3, 2019 to allocate General Funds generated by the Measure P Transfer Tax increase for existing and new homeless programs and implementation for Fiscal Years 2020 and 2021. Detailed listing of approved expenditures is included in Attachment 1 to the report.

Financial Implications: See report

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

Action Calendar

- 46. Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations** *(Continued from December 10, 2019)*
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group in an amount not to exceed \$492,284, and a subsequent purchase order for the conversion of the nine (9) Ford Super Duty F-Series Pickup Trucks to plug in hybrid vehicles in an amount not to exceed \$245,000 using XL Fleet technology when it becomes commercially available.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow** *(Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)*
From: Councilmember Harrison
Recommendation:
1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.
2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 48. City Council Rules of Procedure and Order Revisions** *(Reviewed by the Agenda & Rules Committee) (Continued from December 3, 2019. Item contains revised and supplemental material.)*
From: City Manager
Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to integrate the previously adopted regulations for policy committees and make associated changes to other sections; update outdated references and practices; conform to the Open Government Ordinance; make other technical corrections; and rescinding any preceding amendatory resolutions.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Action Calendar

- 49a. Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales and Serving of Sugar-Sweetened Beverages**
From: Sugar Sweetened Beverage Product Panel of Experts
Recommendation: The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not: 1. Serve sugar-sweetened beverages at City meetings and events on City property; 2. Procure sugar-sweetened beverages with City funds; or, 3. Sell sugar-sweetened beverages on City property, including in vending machines.
Financial Implications: See report
Contact: Dechen Tsering, Commission Secretary, (510) 981-5300
- 49b. Companion Report: Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales, and Serving Sugar-Sweetened Beverages**
From: City Manager
Recommendation: Recommend that the City Council adopt an amended resolution that recognizes the important principles in the Commission recommendation, clarifies the intent of the measure and provides some flexibility for City programs and staff while still emphasizing availability of healthy options. This amended resolution would require that the majority of all beverages provided or sold at any City event or on any City property (including vending machines) be non-sugar sweetened beverages (as defined in chapter 7.72 of the Berkeley Municipal Code) and education materials be provided to all COB staff to actively discourage the consumption of sugar-sweetened beverages and encourage the consumption of water.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Information Reports

- 50. 2019 Business Survey Results**
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 51. Referral Response: Small Business Retention Programs**
From: City Manager
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 52. Update on Measure T1 City Infrastructure Bond Program**
From: City Manager
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Phillip Harrington, Public Works, (510) 981-6300
- 53. Animal Care Commission FY 2019/2020 Work Plan**
From: Animal Care Commission
Contact: Amelia Funghi, Commission Secretary, (510) 981-6600

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

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be 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 as well as posted on the City's website at <http://www.cityofberkeley.info>.

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

City Clerk Department
2180 Milvia Street
Tel: 510-981-6900
TDD: 510-981-6903
Fax: 510-981-6901
Email: clerk@cityofberkeley.info

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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*I hereby certify that the agenda for this 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 January 9, 2020.*

Mark Numainville, City Clerk

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **Item #41: Implement Residential Preferential Parking (RPP) on the 1500 Block of Lincoln**

1. Anonymous

### **Item #44: Establishing an Outdoor Emergency Shelter**

2. Zipporah Collins
3. Councilmember Harrison

### **Item #46: Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations**

4. Donald Goldmacher

### **Item #47: Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow**

5. David Lerman

### **BART MOU**

6. 11 identical form letter
7. Matt Rosen
8. Eric Glick Rieman
9. Jeannette McNeil
10. Laura Cochrane
11. Ignacio
12. Hayley Currier

13. Lee Bishop
14. Susi Marzuola
15. Paul Bickmore
16. Vivian Warkentin
17. Howard Goldberg
18. Avram

### **5G/Telecom**

19. Vivian Warkentin (3)
20. Phoebe Sorgen (2)
21. Soula Culver
22. Cecile Leneman
23. Marge Turngren
24. Mary McGann
25. Whitney Vosburgh
26. Cynthia Papermaster (2)
27. Ellie Marks (3)
28. Councilmember Harrison
29. Cynthia Rahav
30. Ron Pollak (2)
31. Alexander Benn
32. Connie Anderson
33. Avram (2)
34. Pollock & James, Attorneys at Law
35. Ed Schmookler

### **Homelessness/Encampments**

36. Carole Marasovic, on behalf of the Homeless Commission (2)
37. Ryan Hilton, on behalf of the Pacific Racing Association
38. David Lerman
39. Meta Baerwalk Pasternak
40. James Wood (4)
41. Erwan Illien
42. Russbumper
43. Pedro Alvarez

### **Request for Corrective Action**

44. David Kellogg

### **City Manager's Evaluation**

45. Margot Smith (2)
46. Phoebe Sorgen
47. Juli Dickey
48. Judy Ann Alberti

**Affordable Housing**

49. Judith Turley

**Bay Trail Extension**

50. Mark Elgood

51. Lee Henderson

52. David Fraser, on behalf of the Cal Sailing Club

53. Caryl Woulfe

54. Tom Gandesbery

55. Leslie Buck

56. Molly Morelock

57. Nicholas Waton

58. Sheldon Coad

59. Sebastian Gomez Biggeri

60. Nick Goyhenetche

61. David Fraser

62. Rick Kosarchuk

63. Gene Golfus

**Police Review**

64. Racism and Criminal Justice Reform Group, et al

65. Phoebe Sorgen

66. Jane Welford

**Banning Natural Gas**

67. LR

**Persons with Disabilities**

68. Mary Behm-Steinberg

69. Councilmember Kesarwani

70. Mark Numainville

**Berkeley Police**

71. Carol Denney

**Square Footage Based Special Taxes**

72. Shirley Dean

73. Auditor

**Youth Spirit Artworks (YSA)**

74. Abby Hu

75. Eric Friedman

76. Hanna Lykke

**Healthy Options at Point of Sale (HOPS)**

77. Marty Lynch, CEO of LifeLong Medical Care

78. The Latinxas & the Environment Initiative  
79. Mansour Id-Deen

**Campaign Contributions from Real Estate Developers**

80. Margot Smith

**New Smoke-free Signage**

81. Carol Denney

**Homeless Measure P Funding**

82. David Lerman

**Under Grounding Utility Wires**

83. Arek Goetz

**Low Flying Aircraft over Berkeley**

84. Judith McEnroe

**Be Wise! Be Bright When Crossing at Night**

85. Vivian Clayton

**City Council May Direct the City Attorney**

86. Thomas Lord

**Gas Car Sales**

87. Dale Miller, on behalf of the Golden Gate Electric Vehicle Association

88. Andy Shrader, on behalf of Councilmember Paul Koretz of Los Angeles

**Development of 2435 San Pablo**

89. The Berkeley Neighborhoods Council Executive Committee

**Adeline Corridor**

90. Chimey Lee

**Acute Housing Crisis – AB 1482**

91. Julia Cato, on behalf of the Berkeley Tenants Union

**Misrepresented FCC Regulations, Etc.**

92. Arthur Stopes, III (7)

**Harriet Tubman Terrace**

93. Harriet Tubman Terrace Tenant Council Steering Committee (3)

94. DeAnna Gee, on behalf of the Agent for Owner, Harriet Tubman Terrace (2)

**Downtown Streets Team**

95. Julia Lang

### **Drones at Cesar Chavez Park**

96. Carol Denney

97. Max Newton

### **Trash Truck Purchases – Reducing Pavement Damage**

98. Bryce Nesbitt

### **Pathways STAIR Center**

99. James Wood (9)

100. M. Zint

101. Marcia Poole (3)

102. Eric Friedman

### **Bbox Café – A Cashless Business**

103. Carol Denney

### **3404 King Street – Covenant House**

104. Pedro Alvarez

### **Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.







Office of the City Manager

**RECESS ITEM**  
**CONSENT CALENDAR**  
 January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Economic Development Manager  
 Subject: License Agreement: California Jazz Conservatory for Property at 1947 Center Street

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a license agreement with California Jazz Conservatory (“Jazz School”) for non-exclusive use of space on the fifth floor at 1947 Center Street for a three-month term ending March 31, 2020.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

If this action is delayed, Jazz School will be forced to cancel their winter 2020 quarter, threatening the sustainability of the organization.

**FISCAL IMPACTS OF RECOMMENDATION**

Jazz School will pay license fees totaling \$36,960, which will be deposited into the Building Purchase and Management Fund 636. Additional fees will be assessed of Jazz School to cover building security costs; the fiscal impacts of those fees and expenditures will be neutral.

**CURRENT SITUATION AND ITS EFFECTS**

Jazz School has been temporarily displaced from their rented premises at 2087 Addison Street since late October 2019. Temporary occupancy of approximately 4,100 square feet of the City-owned facility at 1947 Street (5<sup>th</sup> floor) will allow the organization to continue to offer classes during its regularly scheduled winter quarter.

**BACKGROUND**

The California Jazz Conservatory, founded in 1997, is a nonprofit organization that is the only independent, accredited music conservatory in America completely devoted to the study and performance of jazz. Since the organization has been from 2087 Addison Street, its leadership has searched for but has been unable to identify an alternate location to temporarily offer classes during the upcoming winter quarter.

**ENVIRONMENTAL SUSTAINABILITY**

There are no significant environmental sustainability impacts related to this action.

RATIONALE FOR RECOMMENDATION

California Jazz Conservatory is a valued community institution. By offering this temporary space, the City can help to ensure the continuity of their operations and protect the long-term sustainability of the organization.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered accommodating Jazz School at 1001-1011 University Avenue, but that site was deemed unsuitable for the organization's needs.

CONTACT PERSON

David White, Deputy City Manager, (510) 981-7012

Attachments:

1: Resolution

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

LICENSE AGREEMENT: CALIFORNIA JAZZ CONSERVATORY FOR PROPERTY AT  
1947 CENTER STREET

WHEREAS, California Jazz Conservatory (“Jazz School”) seeks the temporary use of approximately 4,100 square feet of space at 1947 Center Street; and

WHEREAS, the temporary use of this space will allow the Jazz School to continue to offer classes and avoid cancelation of its regularly scheduled winter quarter; and

WHEREAS, the Jazz School is a valued community organization that contributes to the cultural fabric and economic vitality of Downtown Berkeley and the greater community; and

WHEREAS, this agreement will generate license fees totaling \$36,960, which will be deposited into the Building Purchase and Management Fund 636.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute a license agreement with California Jazz Conservatory for a three-month term, ending March 31, 2020.





Office of the City Manager

**RECESS ITEM**  
**CONSENT CALENDAR**  
 January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Economic Development Manager  
 Subject: Contract: Capoeira Arts Foundation

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract with Capoeira Arts Foundation in an amount not to exceed \$150,000.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

Capoeira Arts Foundation (CAF) is in urgent need of funding that the City Council allocated to the organization on November 19, 2019. If the City Manager were to wait until after the City Council recess to execute the contract, it would jeopardize CAF's planned acquisition of Casa de Cultura, the building located at 1901 San Pablo Avenue.

**FISCAL IMPACTS OF RECOMMENDATION**

On November 19, 2019, City Council allocated \$150,000 of Fiscal Year 2019 excess property transfer tax revenues to provide a forgivable loan to Capoeira Arts Foundation to support their planned acquisition of Casa de Cultura.<sup>1</sup>

**CURRENT SITUATION AND ITS EFFECTS**

CAF is currently in contract to purchase the building at 1901 San Pablo Avenue for \$1.8 million, where it has co-located with BrasArte, another nonprofit organization, for over a decade. Their contract with the seller requires them to submit a down-payment of \$500,000 by December 31, 2019. CAF has raised approximately \$350,000 for the down-payment and is in urgent need of funding from the City in order to be able to move forward with the acquisition.

Staff from the Office of Economic Development have worked closely with CAF representatives, following the funding commitment by City Council on November 19, 2019, to review financial records and negotiate the terms of a forgivable loan agreement. The City Manager executed the loan agreement during the Council recess given the deadline to close on the purchase of the building and City Council's express intent to assist CAF.

<sup>1</sup> [Berkeley City Council Meeting, November 19, 2019, Item 15.](#)

### BACKGROUND

Capoeira Arts Foundation is a 501(c)3 nonprofit organization dedicated to preserving, teaching, and performing arts related to African-Brazilian experience. Led by Mestre Acordeon (Ubirajara G. Almeida), a world-renowned capoeira master who has been sharing capoeira in the United States since 1978, the organization has operated in Berkeley for nearly 40 years. In 2008, the organization relocated to its current home at 1901 San Pablo Avenue, in partnership with BrasArte, another non-profit organization with a similar goal of preserving African Brazilian culture and arts. Now, CAF has the opportunity to purchase the building and secure a permanent home in Berkeley.

On October 15, 2019, City Council adopted a budget referral to the mid-year budget process to support CAF's purchase of the Casa De Cultura in partnership with BrasArte "to create a permanent home for their organizations, their school, the United Capoeira Association (UCA) Berkeley, and for other Brazilian art forms."<sup>2</sup> Subsequently, on November 19, during the mid-year budget update and allocation of FY19 excess equity and property transfer tax revenue, City Council allocated the funding.

Under the terms of the agreement, the City's loan to Capoeira Arts Foundation will be gradually forgiven over a ten-year period, as long as CAF continues operations at 1901 San Pablo Avenue. If at any point CAF sells the building or otherwise ceases its operations there, the organization will be required to repay the outstanding balance of the loan.

### ENVIRONMENTAL SUSTAINABILITY

There are no significant environmental sustainability impacts related to this action.

### RATIONALE FOR RECOMMENDATION

Capoeira Arts Foundation is a valued cultural institution. Council directed staff to provide funding to the organization via a forgivable loan.

### ALTERNATIVE ACTIONS CONSIDERED

Staff considered various terms for the forgivable loan agreement.

### CONTACT PERSON

David White, Deputy City Manager, (510) 981-7012

### Attachments:

1: Resolution

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<sup>2</sup> [Berkeley City Council Meeting, October 15, 2019, Item 18.](#)

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

CONTRACT: CAPOEIRA ARTS FOUNDATION

WHEREAS, Capoeira Arts Foundation is a nonprofit organization dedicated to preserving, teaching, and performing arts related to African-Brazilian experience, and has been operating in the City of Berkeley for nearly forty years; and

WHEREAS, since 2008, Capoeira Arts Foundation has, along with BrasArte, occupied the building at 1901 San Pablo Avenue known as Casa de Cultura; and

WHEREAS, Capoeira Arts Foundation (CAF) and BrasArte are arts and cultural organizations that make significant economic and social contributions to their immediate neighborhood and the greater Berkeley community; and

WHEREAS, on October 15, 2019, City Council adopted a budget referral to the mid-year budget process to support CAF's purchase of the Casa De Cultura; and

WHEREAS, on November 19, 2019, City Council allocated \$150,000 of Fiscal Year 2019 excess property transfer tax revenues to provide a forgivable loan to Capoeira Arts Foundation to support their planned acquisition of Casa de Cultura; and

WHEREAS, the City Manager executed a contract agreement with CAF during the City Council recess in order to make immediately available urgent funding needed to enable CAF to acquire Casa de Cultura.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council ratifies the action taken by the City Manager to execute a contract with Capoeira Arts Foundation not to exceed \$150,000.







Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Mark Numainville, City Clerk  
Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of December 3, 2019 (special closed and regular), December 10, 2019 (special closed and regular) and December 16, 2019 (special closed).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. December 3, 2019 - Special Closed City Council Meeting
2. December 3, 2019 - Regular City Council Meeting
3. December 10, 2019 - Special Closed City Council Meeting
4. December 10, 2019 - Regular City Council Meeting
5. December 16, 2019 - Special Closed City Council Meeting

**MINUTES  
BERKELEY CITY COUNCIL  
SPECIAL MEETING**

**TUESDAY, DECEMBER 3, 2019**

**4:00 P.M.**

**School District Board Room – 1231 Addison Street, Berkeley, CA**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 4:03 p.m.

**Present:** Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani, Davila, Harrison

Councilmember Davila present at 4:10 p.m.

**Public Comment - Limited to items on this agenda only – 0 speakers**

**CLOSED SESSION:**

The City Council will convene in closed session to meet concerning the following:

**1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2):**

- a. Claim (AIMS # 0196) submitted by The California Jazz Conservatory regarding a sewer backup incident on October 17, 2019.

**Action:** No action taken.

**2. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1)**

- a. Guzman, Richard vs. City Of Berkeley, WCAB Case Numbers: ADJ11422355; ADJ10835887; ADJ11758093; ADJ11657337; ADJ113628

**Action:** M/S/C (Wengraf/Droste) to provide direction to outside counsel and approve a stipulated settlement up to 54% (\$87,942.50) or else by compromise and release settlement up to \$250,000, as to workers compensation matter entitled Guzman, Richard vs. City Of Berkeley, WCAB Case Numbers: ADJ11422355; ADJ10835887; ADJ11758093; ADJ11657337; ADJ113628

**Vote:** Ayes – Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Harrison.

## OPEN SESSION:

**Action:** M/S/C (Wengraf/Droste) to provide direction to outside counsel and approve a stipulated settlement up to 54% (\$87,942.50) or else by compromise and release settlement up to \$250,000, as to workers compensation matter entitled Guzman, Richard vs. City Of Berkeley, WCAB Case Numbers: ADJ11422355; ADJ10835887; ADJ11758093; ADJ11657337; ADJ113628

**Vote:** Ayes – Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Harrison.

## Adjournment

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

**Vote:** Ayes – Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Harrison.

Adjourned at 5:03 p.m.

I hereby certify that the foregoing is a true and correct record of the Closed Session meeting held on December 3, 2019.

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Mark Numainville  
City Clerk

**MINUTES  
BERKELEY CITY COUNCIL MEETING  
Tuesday, December 3, 2019  
6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 6:04 p.m.

**Present:** Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani, Harrison

Councilmember Kesarwani present at 6:10 p.m.

Councilmember Harrison present at 7:13 p.m.

**Ceremonial Matters:**

1. Recognition of Berkeley High School Girls Tennis
2. Recognition of NAACP Youth
3. Recognition of Starry Plough
4. Adjourned in Memory of Nolan Coleman, Berkeley Resident

**City Manager Comments:** None

**City Auditor Comments:** None

**Public Comment on Non-Agenda Matters:** 10 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 5 speakers.

**Action:** M/S/Failed (Kesarwani/Droste) to accept supplemental materials on Item 24.

**Vote:** Ayes – Kesarwani, Wengraf; Noes – Davila, Bartlett, Hahn, Robinson, Arreguin; Abstain – Droste; Absent – Harrison.

## Consent Calendar

**Action:** M/S/Failed (Kesarwani/Wengraf) to accept supplemental materials on Item 27a.  
**Vote:** Ayes – Kesarwani, Wengraf; Noes – Davila, Bartlett, Hahn, Robinson, Arreguin; Abstain – Droste; Absent – Harrison.

**Action:** M/S/C (Wengraf/Hahn) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

- 1. Amend BMC Chapter 14.52 Adding the North Shattuck Metered Parking Area to the goBerkeley Program**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,679-N.S. amending Berkeley Municipal Code (BMC) Chapter 14.52 to add the North Shattuck metered parking area to the goBerkeley parking program.  
**First Reading Vote:** Ayes – Kesarwani, Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison (recused).  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted second reading of Ordinance No. 7,679-N.S.
- 2. Emergency Standby Officers for the Mayor and Councilmembers**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution confirming the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 68,454-N.S.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Adopted Resolution No. 69,190–N.S. as revised in Supplemental Communications Packet #1 to include Solomon Alpert as a Standby Officer for District 7.
- 3. Contract: Michael Arcega for San Pablo Park Measure T1 Public Art Commission**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract for an amount not to exceed \$210,000, and any amendments thereto, with Michael Arcega for a public art commission for San Pablo Park.  
**Financial Implications:** Measure T1 Bond Fund - \$210,000  
Contact: Jordan Klein, Economic Development, (510) 981-7530  
**Action:** Adopted Resolution No. 69,191–N.S.

## Consent Calendar

- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 3, 2019**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Various Funds - \$2,871,500  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Approved recommendation.
- 5. Contract with Berkeley Food & Housing Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with vendor Berkeley Food & Housing Project (BFHP) to provide administrative services for Berkeley Mental Health (BMH) Flexible Spending Programs and the Russell Street Residence through June 30, 2021 in an amount not to exceed \$357,000.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,192–N.S.
- 6. Contract Amendment: Bay Area Hearing Voices Network for Hearing Voices Support Groups**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with vendor Bay Area Hearing Voices Network (BAHVN) to provide Hearing Voices Support Groups through June 30, 2020 in an amount not to exceed \$68,442.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,193–N.S.
- 7. Contract Amendment: Youth Spirit Artworks for Transition Age Youth (TAY) Case Management and Linkage Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with vendor Youth Spirit Artworks (YSA) to provide Transition Age Youth (TAY) case management and linkage services through June 30, 2020 in an amount not to exceed \$100,000.  
**Financial Implications:** \$100,000  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400  
**Action:** Adopted Resolution No. 69,194–N.S.

## Consent Calendar

- 8. Contract: Trip Stop Sidewalk Repair, Inc. for FY2020 Sidewalk Inspection and Shaving Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments, extensions or other change orders with Trip Stop Sidewalk Repair, Inc. for FY2020 Sidewalk Inspection and Shaving Services, Specification No. 20-11345-C; for an amount not to exceed \$450,000.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,195–N.S.
- 9. Contract No. 31900082 Amendment: Silva Business Consulting Agreement for Provision of Real Property Management Consulting Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900082 with David L. Silva d.b.a. Silva Business Consulting for provision of various real property management services, increasing the contract by \$220,000 for a total not to exceed \$270,000. If approved, the amended contract will terminate January 31, 2022 or when funding limit is reached.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,196–N.S.
- 10. Reimbursement Agreement with Wareham Development for Wareham’s Construction of Public Facilities**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a reimbursement agreement (Attachment 1) and any amendments with Wareham Development for reimbursement of City’s share of construction of a traffic signal at the intersection of San Pablo Avenue and Parker Street, and lane re-striping and associated signing and parking restrictions at the intersection of San Pablo Avenue and Dwight Street.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,197–N.S.
- 11. Transfer Tax Refund for 1638 Stuart Street**  
**From: Housing Advisory Commission**  
**Recommendation:** The Commission recommends that the City Council authorize the City Manager to grant a transfer tax refund of an estimated \$10,260 to the Bay Area Community Land Trust (BACLT) refund in support of the renovation of 1638 Stuart Street and BACLT’s operation of the property as affordable housing.  
**Financial Implications:** See report  
Contact: Amy Davidson, Commission Secretary, (510) 981-5400  
**Action:** Approved recommendation.

## Consent Calendar

12. **Authorization for Additional Public Works Commission Meeting in 2019**  
**From: Public Works Commission**  
**Recommendation:** Adopt a Resolution authorizing one additional meeting of the Public Works Commission Meeting in 2019.  
**Financial Implications:** None  
Contact: Nisha Patel, Commission Secretary, (510) 981-6300  
**Action:** Adopted Resolution No. 69,198–N.S.

## Council Consent Items

13. **Reaffirming the Arctic National Wildlife Refuge Resolution**  
**From: Mayor Arreguin and Councilmembers Hahn, Wengraf, and Davila**  
**Recommendation:** Adopt a Resolution reaffirming Berkeley's position as supporting the preservation of the Arctic National Wildlife Refuge and refrain the City from conducting business with companies that purchases, leases, or develops oil fields within the Refuge.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 69,199–N.S.
14. **Reappointment of Dr. P. Robert Beatty to the Alameda County Mosquito Abatement District Board of Trustees**  
**From: Mayor Arreguin**  
**Recommendation:** Adopt a Resolution reappointing Dr. P. Robert Beatty to the Board of Trustees of the Alameda County Mosquito Abatement District for a two-year term ending on January 1, 2022.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 69,200–N.S.
15. **Oppose the Transportation and Handling of Coal and Petcoke in Our Communities**  
**From: Councilmembers Davila, Hahn, and Harrison**  
**Recommendation:** Adopt a resolution opposing the transportation of coal through our community and send a Letter to the Richmond and Oakland City Councils, including California State Assemblymember Buffy Wicks and State Senator Nancy Skinner, in support of their efforts for a No Coal ordinance.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120  
**Action:** Councilmember Bartlett added as a co-sponsor. Adopted Resolution No. 69,201–N.S. as revised in Supplemental Communications Packet #2.



## Council Consent Items

16. **Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender** *(Reviewed by the Land Use, Housing & Economic Development Policy Committee)*  
**From: Councilmembers Harrison, Hahn, Davila, and Bartlett**  
**Recommendation:** Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all covered businesses accept cash.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140  
**Action:** Adopted first reading of Ordinance No. 7,681–N.S. Second reading scheduled for December 10, 2019.
17. **Berkeley Public Library Foundation 18th Annual Authors Dinner: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmembers Hahn, Wengraf, Davila, and Mayor Arreguin**  
**Recommendation:** Adopt a resolution approving the expenditure of an amount not to exceed \$600 per Councilmember, including \$100 from Councilmember Hahn, to the Berkeley Public Library Foundation’s 18th Annual Authors Dinner with funds relinquished to the City’s general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute. The Berkeley Public Library Foundation raises funds to support and enhance facilities, programs and services of the Berkeley Public Library. Proceeds from this event will subsidize library programs and fulfill the municipal public purpose of the library.  
**Financial Implications:** See report  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150  
**Action:** Adopted Resolution No. 69,202–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$600; Councilmember Bartlett - \$100; Councilmember Robinson - \$100; Councilmember Davila - \$100; Mayor Arreguin - \$600.
18. **Urging the CPUC to Address Its Failure of Oversight and to Transform PG&E Into A Mutual Benefit Corporation**  
**From: Councilmembers Robinson, Harrison, Bartlett and Mayor Arreguin**  
**Recommendation:** Adopt a resolution urging the California Public Utilities Commission to address past failures of oversight and transform PG&E into a mutual benefit corporation with the long-term goal of public ownership.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170  
**Action:** Adopted Resolution No. 69,203–N.S. as amended in Supplemental Reports Packet #1 to include missing attachments.

## Action Calendar – Public Hearings

### 19. Adoption of the 2019 California Fire Code with Local Amendments – Second Reading

**From:** City Manager

**Recommendation:** Conduct a public hearing and upon conclusion adopt the second reading of Ordinance No. 7,680-N.S. repealing and reenacting the Berkeley Fire Code, including amendments to the California Fire Code as outlined in the proposed ordinance, plus Appendix Chapters B (as amended by BMC 19.48.020, Amendments to the California Fire Code), D, E, F, L (as amended by BMC 19.48.020, Amendments to the California Fire Code) and O published by the International Code Council not included in the California Building Standards Code, as Berkeley Municipal Code Chapter 19.48.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: David Brannigan, Fire, (510) 981-3473

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Wengraf/Robinson) to close the public hearing.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

**Action:** M/S/C (Robinson/Wengraf) to adopt second reading of Ordinance No. 7,680–N.S.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

### 20. Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code

**From:** City Manager

**Recommendation:** Conduct a public hearing, and upon conclusion adopt the second reading of Ordinance No. 7,678-N.S. repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions.

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

**Public Testimony:** The Mayor opened the public hearing. 8 speakers.

M/S/C (Wengraf/Davila) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Harrison/Hahn) to adopt second reading of Ordinance No. 7,678–N.S.

**Vote:** All Ayes.

## Action Calendar- Public Hearings

### 21. Milvia Bikeway Project Conceptual Design

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution approving the conceptual design of the Milvia Bikeway Project, including installation of a protected bikeway and the removal or modification of traffic lanes and on-street parking, and specified changes from two-way to one-way traffic operations, as necessary, and directing the City Manager to direct staff to proceed with the detailed engineering design of the project.

**Financial Implications:** None

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Public Testimony:** The Mayor opened the public hearing. 12 speakers. M/S/C (Wengraf/Davila) to close the public hearing.

**Vote:** Ayes – Kesarwani, Davila, Barlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Councilmember Hahn absent 7:44 p.m. – 7:58 p.m.

**Action:** M/S/C (Harrison/Robinson) to adopt Resolution No. 69,204–N.S.

**Vote:** All Ayes.

Recess 8:09 p.m. – 8:21 p.m.

### 22. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras *(Item contains supplemental materials. Item continued from November 12, 2019)*

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

**Financial Implications:** None

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

**Action:** Item 22 held over to January 28, 2019.

## Action Calendar – Old Business

23. **City Council Rules of Procedure and Order Revisions** *(Reviewed by the Agenda & Rules Committee. Continued from November 19, 2019. Item contains revised and supplemental material.)*  
**From: City Manager**  
**Recommendation:** Adopt a Resolution revising the City Council Rules of Procedure and Order to integrate the previously adopted regulations for policy committees and make associated changes to other sections; update outdated references and practices; conform to the Open Government Ordinance; make other technical corrections; and rescinding any preceding amendatory resolutions.  
**Financial Implications:** None  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Item 23 held over to January 21, 2019.
24. **FY 2019 Year-End Results and FY 2020 First Quarter Budget Update** *(Continued from November 19, 2019)*  
**From: City Manager**  
**Recommendation:** Discuss and determine funding allocations for FY 2020 based on the FY 2019 General Fund Excess Equity and Excess Property Transfer Tax for the following: 1) the General Fund Reserves 2) the Mayor's June 25, 2019, Supplemental Budget Recommendations approved by the Council and 3) the Council's Budget Referrals approved during FY 2020 to be considered in November 2019.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000  
**Action:** 20 speakers. M/S/C (Arreguin/Hahn) to adopt the Mayor's proposed allocations listed in Supplemental Communications Packet #1; make an allocation to the budget reserves; approve the City Manager's proposed allocations; suspend the budget policy regarding excess transfer tax revenues; reserve \$2.9 million for Measure P programs.  
**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Kesarwani.
25. **Amendment: FY 2020 Annual Appropriations Ordinance** *(Continued from November 19, 2019)*  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending the FY 2020 Annual Appropriations Ordinance No. 7,669–N.S. for fiscal year 2020 based upon recommended re-appropriation of committed FY 2019 funding and other adjustments authorized since July 1, 2019, in the amount of \$136,730,924 (gross) and \$130,267,144 (net).  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000  
**Action:** 0 speakers. M/S/C (Arreguin/Wengraf) to adopt first reading of Ordinance No. 7,682–N.S. a revised in Supplemental Communications Packet #1 and by Council action on Item 24. Second reading scheduled for December 10, 2019.  
**Vote:** All Ayes.

## Action Calendar – Old Business

26. **goBerkeley Residential Shared Parking Pilot Project Update** *(Continued from November 19, 2019)*  
**From: City Manager**  
**Recommendation:** Receive a presentation providing an update on the Residential Shared Parking Pilot project, and offer any comments to staff on the implementation of the project.  
**Financial Implications:** None  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Item 26 held over to January 28, 2019.
- 27a. **Recommendations for Allocation of FY19/20 Measure P Funds** *(Continued from November 19, 2019)*  
**From: Homeless Services Panel of Experts**  
**Recommendation:** Approve recommendations for the allocation of FY19/20 General Funds at least commensurate with resources accrued to date from the passage of Measure P. Refer to the City Manager to produce data regarding the percentage of those transported with County Emergency Mental Health Transport who are homeless, and other sources that could be used to cover this cost.  
**Financial Implications:** See report  
Contact: Peter Radu, Commission Secretary, (510) 981-5400

## Action Calendar – Old Business

### 27b. Companion Report: Recommendations for Allocation of FY19/20 Measure P Funds *(Continued from November 19, 2019)*

**From: City Manager**

**Recommendation:** The City Manager recommends that Council:

1. Approve the Homeless Services Panel of Experts' recommendation for the allocation of FY20 General Funds (Measure P) in the following investment areas: a. Immediate Street conditions & Hygiene; b. Flexible Housing Subsidies; and c. Infrastructure. For any allocation of "Flexible Housing Subsidies" to families, limit eligibility to those who are imminently at-risk of homelessness, and allow the City Manager to sole-source contracts for the implementation of these subsidies.
2. Refer discussion of the recommendations pertaining to the following areas to the Council Budget & Finance Policy Committee: a. Permanent Housing, b. Shelter & Temporary Accommodations, and c. Supportive Services. The City Manager recommends that the Policy Committee consider the following pertaining to these funding areas: - Allow the "permanent subsidies" allocation to fund tenancy sustaining services, and dedicate 10% of total funding to homeless families. - Allow the "Shelter and temporary accommodations" allocation to fund the creation of new programs (including for new RV parking programs) or maintenance of existing shelter programs funded by HEAP, when that funding is exhausted. - Authorize the City Manager to award any funding for shelter expansion and tenancy sustaining services to agencies that have already responded to the FY20-23 Community Agency Request for Proposals (RFP). - Authorize the City Manager to release one or more RFPs for an RV parking program that would require a non-profit operator and for any supportive services including street medicine, substance abuse treatment or mental health outreach.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Recess 10:30 p.m. – 10:36 p.m.

**Action:** M/S/C (Arreguin/Harrison) to suspend the rules and expend the meeting to 11:45 p.m.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani; Abstain – Wengraf; Absent – Droste.

**Action:** M/S/C (Arreguin/Harrison) to suspend the rules and expend the meeting to 12:00 a.m.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Wengraf, Droste.

**Action:** M/S/C (Arreguin/Hahn) to call for the previous question.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Wengraf, Droste.

## Action Calendar – Old Business

**Action:** 41 speakers. M/S/C (Hahn/Harrison) to adopt the Mayor's proposal in Supplemental Communications Packet #2 amended to reduce the Safe RV Parking allocation to \$100,000 in FY 2021 and remove the Lifelong Street Medicine allocation to the February AAO process.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Droste; Abstain – Wengraf.

## Action Calendar – New Business

**28. Recommendation to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City**

**From: Disaster and Fire Safety Commission**

**Recommendation:** The recommendation as stated above from the Disaster and Fire Safety Commission (DFSC) to the Council includes the following seven components:

1. Allocate full funding of the Fire Department's Safe Passages Program;
2. Initiate immediate action;
3. Recognize that parking restrictions are necessary on some streets for the health and well-being of Berkeley residents;
4. Establish priorities for enacting parking restrictions;
5. Develop a departmental coordinated team effort;
6. Inform the public; and
7. Document and distribute the extent of the access and egress problem.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, (510) 981-3473

**Action:** M/S/C (Arreguin/Robinson) to hold over Item 28 to December 10, 2019.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Hahn, Droste.

Councilmember Harrison absent 10:17 p.m. – 10:36 p.m.

Councilmember Hahn absent 10:20 p.m. – 10:36 p.m.

Councilmember Droste absent 10:21 p.m. – 10:38 p.m.

## Action Calendar – New Business

**29a. Taxi scripts to be provided to residents of Pathways/the STAIR Center**

**From: Homeless Commission**

**Recommendation:** The Homeless Commission recommends that taxi scripts be provided to persons referred to Pathways/ the STAIR Center and that continued taxi scripts be provided to Pathways/STAIR residents, during their stay, in order to insure safe, accessible transport.

Alternatively, the Commission recommends that transportation arrangements be made with ride share services such as Lyft or Uber, or a public shuttle system coordinated by the City of Berkeley and Alameda County.

**Financial Implications:** See report

Contact: Peter Radu, Commission Secretary, (510) 981-5400

**29b. Companion Report: Taxi scripts to be provided to residents of Pathways/the STAIR Center**

**From: City Manager**

**Recommendation:** The City Manager will ensure that STAIR Center staff are incorporating applications and access to existing community transportation programs, such as East Bay Paratransit and Berkeley Rides for Seniors and the Disabled, into routine provision of services to mobility-impaired STAIR guests.

**Financial Implications:** Staff time

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

**Action:** Item 29b moved to Consent Calendar. Approved recommendation.

**30a. Public Works Commission Recommendation for the Five-Year Paving Plan**

**From: Public Works Commission**

**Recommendation:** Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.

**Financial Implications:** See report.

Contact: Nisha Patel, Commission Secretary, (510) 981-6300



## Action Calendar – New Business

### 30b. Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan

**From: City Manager**

**Recommendation:** Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024 and refer to the City Manager consideration of a Long-Term Paving Master Plan to be started after the completion of the public process of T1 Phase 2. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Action:** M/S/C (Arreguin/Robinson) to hold over Items 30a and 30b to December 10, 2019.

**Vote:** All Ayes.

## Council Action Items

### 31. Considering Multi-year Bidding Processes for Street Paving *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*

**From: Mayor Arreguin, Councilmembers Hahn, Harrison, and Davila**

**Recommendation:** 1. Restate the recommendation approved at the December 11, 2018 Council meeting to create a two-year bidding process for street paving to realize savings by (a) reducing by 50% City staff time devoted to bidding and contracting processes over each two year period and (b) benefitting from reduced pricing which may be available for larger contracts that offer greater economies of scale and reduce contractors' bidding and contracting costs.

2. Short-term referral to the City Manager to explore the possibility, feasibility, costs, and benefits of bidding in increments of up to 5 years to encompass entire 5-year paving plans, or other ideas to more rationally and cost-effectively align the paving plan with budget cycles and reduce costs associated with frequent bid cycles for relatively small contracts.

**Financial Implications:** See report

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

**Action:** Item 31 referred to the Public Works Commission.

## Information Reports

### 32. Condominium Conversion Program – Annual Report

**From: City Manager**

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

**Action:** Received and filed.

## Information Reports

- 33. Small Sites Program Update**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400  
**Action:** Received and filed.
- 34. Equal Pay: Classification and Compensation Process City Employees**  
**From: City Manager**  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800  
**Action:** Received and filed.
- 35. LPO NOD: 1581 Le Roy/#LMSAP2019-0004**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400  
**Action:** Received and filed.
- 36. LPO NOD: 2234 Haste Street/#LMSAP2016-0002**  
**From: City Manager**  
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400  
**Action:** Received and filed.

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

## Adjournment

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

**Vote:** All Ayes.

Adjourned at 11:54 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting of the City Council held on December 3, 2019.

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Mark Numainville  
City Clerk

## Communications

**Item 21: Recommendation to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City**

1. David Levy

**Healthy Checkout**

2. Katrina Peters, on behalf of the Alameda-Contra Costa Medical Association
3. Janus Norman, on behalf of the California Medical Association

**PG&E Public Safety Power Shutoff**

4. Maxina Ventura

**Fair Housing Measure**

5. Joel Gerwein

**Cal Student Safety**

6. Karen Thornton
7. Elise Wing
8. Qiang Lu
9. Ningyan Fang
10. Seema Varma
11. Alisa Bunnapradist
12. Yan Ye
13. Charleson Liu & Vicky Li
14. Mbaporia@
15. Sue-z Lopez

**Police Review Commission Charter**

16. Marc Staton
17. Rani Cochran

**Honesty at ZAB Meetings**

18. Janis Ching (2)

**Indigenous Peoples Festival Grant**

19. Indigenous Peoples Day Committee

**#WhereDoWeGoBerk**

20. Margy Wilkinson

**Cashless Businesses**

21. Carol Denney

**Collision at Shattuck and Woolsey**

22. Sallie Hannarhyne
23. Audrey Ichinose

**Homelessness, Encampments and RV's**

24. Summi Kaipa
25. 311 Customer Service
26. Sage Linda Spatz
27. Carole Kennerly

28. Isabelle Gaston

**5G and Wireless**

- 29. Meaveen O'Connor
- 30. Phoebe Anne Sorgen (2)
- 31. Arthur Stopes III
- 32. Brent Green

**Community Choice Electricity**

- 33. Thomas Lord

**Game Day Parking**

- 34. Sam Nickelsen

**Harriet Tubman Terrace Safety**

- 35. Harriet Tubman Tenant Council Steering Committee
- 36. Councilmember Bartlett

**Telegraph Avenue Restroom**

- 37. Gabriel Brugger

**Housing Framework**

- 38. Katharine Bierce
- 39. Josh Daniels, Chair, Measure O Bond Oversight Commission

**Greenway Vision Plan**

- 40. Pam Speich (2)

**Criminal Checks on Rental Forms**

- 41. Pam Speich
- 42. Bryce Nesbitt

**ZAB – Bachesso Property**

- 43. Esther Lerman

**Fossil Fuel Free Berkeley**

- 44. Ben Paulos

**Funding for the Arts**

- 45. Janice Murota

**E-Bikes**

- 46. Tom Lent

**Codornices Creek Fence**

- 47. Susan Schwartz, on behalf of Friends of Five Creeks

**Bicyclist Policy**

48. George Saksa

**Supplemental Communications and Reports 1**

**Item #18: Urging the CPUC to Address Its Failure of Oversight and to Transform PG&E Into A Mutual Benefit Corporation**

49. Supplemental material, submitted by Councilmember Robinson

**Item #21: Milvia Bikeway Project Conceptual Design**

50. Noam Ziv-Crispel

51. Tom Cauchois

52. Lauren Mackey

**Item #2: Emergency Standby Officers for the Mayor and Councilmembers**

53. Revised material, submitted by the City Clerk

**Item #24: FY 2019 Year-End Results and FY 2020 First Quarter Budget Update**

54. Supplemental material, submitted by Budget

**Item #25: Amendment: FY 2020 Annual Appropriations Ordinance**

55. Revised material, submitted by Budget

**Item #27b: Companion Report: Recommendations for Allocation of FY 19/20 Measure P**

56. Julia Lang, on behalf of Downtown Streets Team

57. Brandy Hoang

**Supplemental Communications and Reports 2**

**Item #15: Oppose the Transportation and Handling of Coal and Petcoke in Our Communities**

58. Revised material, submitted by Councilmember Davila

59. Thomas Lord

**Item #20: Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code**

60. Francesca Wahl, on behalf of Tesla

61. Pierre Delforge, on behalf of Natural Resources Defense Council

62. IdaRose Sylvester, on behalf of Fossil Free Buildings

63. Walter Wood

**Item #21: Milvia Bikeway Project Conceptual Design**

64. Charles Siegel

65. Kester Allen

66. Cate Leger

67. Felix Thomson

68. Steve Solnit

69. Heath Maddox

70. Katy Love

- 71. Liza Lutzker
- 72. Donna Graves
- 73. Sarah Deeds
- 74. Susie Hufstader, on behalf of Bike East Bay
- 75. John Caner, on behalf of Downtown Berkeley Association

**Item #23: City Council Rules of Procedure and Order Revisions**

- 76. Supplemental material, submitted by Councilmember Hahn

**Item #24: FY 2019 Year-End Results and FY 2020 First Quarter Budget Update**

- 77. Supplemental material, submitted by Mayor Arreguin
- 78. Revised material, submitted by Councilmember Kesarwani

**Item #27a: Recommendations for Allocation of FY 19/20 Measure P**

- 79. Supplemental material, submitted by Mayor Arreguin

**Item 30b. Companion Report: Public Works Commission Recommendation for the Five-Year Rehabilitation Plan**

- 80. Ben Gerhardstein, on behalf of Walk Bike Berkeley
- 81. Stacie Degeneffe

**Supplemental Communications and Reports 3**

**Item #21: Milvia Bikeway Project Conceptual Design**

- 82. Presentation, submitted by Public Works
- 83. Dan Newman
- 84. Drew Finke
- 85. Chris Ballinger
- 86. Miles Lincoln
- 87. Joe Berry
- 88. Steve Price
- 89. Terry Taplin
- 90. Mitchell Gass

**Item #23: City Council Rules of Procedure and Order Revisions**

- 91. Thomas Lord

**Item #24: FY 2019 Year-End Results and FY 2020 First Quarter Budget Update**

- 92. Diane Weber
- 93. Robin Hollenberg
- 94. Brenda Shank
- 95. Gail Machlis
- 96. David Levy
- 97. Sue Von Baeyer
- 98. John Clarke
- 99. Nancy Rader
- 100. Richard Boyden
- 101. Laura Louis
- 102. Olga Shalygin Orloff

103. Craig Baum
104. Jean Thomas
105. Charlotte von der Hude
106. Marvin Snow
107. William Hurley
108. Ruth White
109. Bernard Marszalek
110. Corinne Haskins
111. Elle Lefebvre
112. Jacob Jianh
113. Sally Hindman
114. Steve Moros
115. Rachel Sing
116. Medhavi Goel
117. Kevin Yen
118. Britney Tran
119. Maya Facciolo
120. Seth Wachter, on behalf of the University of San Francisco
121. Sarah Abdeshahian
122. Sarah Garrett
123. Emma Murphy
124. Rev. Julie Wakeless-Lynch
125. Bryanna Lee
126. Noah Rumbaoa
127. Harrison Miao
128. Kiara Taylor
129. Valerie Johnson
130. Bobby
131. Samantha Warren
132. Wei-Li King
133. Barbara Fisher
134. Kayhill Verceles
135. Bonnie Borucki
136. Margie Cohen, on behalf of the Women's Therapy Center (2)
137. Lance Jackson
138. Rick Dishnica
139. Jesse McFarland
140. Shirley Dean
141. Laurie McWhorter on behalf of Councilmember Wengraf
142. Stuart Baker, on behalf of the Telegraph Business Improvement District
143. Jen Joynt
144. Davina Srioudom
145. Sarick Matzen
146. Jackie Dragon, on behalf of the California Nurses Association
147. Sathvik Nair
148. Nathan Mizell

149. Rolf Bell, Patrick Lerchi and Dr. Robert Girling

**Item #27a: Recommendations for Allocation of FY 19/20 Measure P**

150. Presentation, submitted by the Homeless Services Panel of Experts

**Item #27b: Companion Report: Recommendations for Allocation of FY 19/20 Measure P**

151. Presentation, submitted by HHCS

152. Marbrisa Flores

153. Marty Lynch

154. Firdows Mujir

155. John Caner, on behalf of the Downtown Berkeley Association

156. Jamie Almanza, on behalf of Bay Area Community Services

157. Maryam Eldeeb

158. Julia Lang, on behalf of Downtown Streets Team

159. Robbi Montoya, on behalf of Berkeley Community Resource Center

**Item 30b. Companion Report: Public Works Commission Recommendation for the Five-Year Rehabilitation Plan**

160. Liz Schultz

161. Sara Zimmerman

162. Tom Lent

163. Annie Parks

**Item #34: Equal Pay: Classification and Compensation Process City Employees**

164. Julie Leftwich, on behalf of the Commission on the Status of Women



**MINUTES  
BERKELEY CITY COUNCIL  
SPECIAL MEETING**

**TUESDAY, DECEMBER 10, 2019**

**4:00 P.M.**

**School District Board Room – 1231 Addison Street, Berkeley, CA**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 4:03 p.m.

**Present:** Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani, Davila, Bartlett

Councilmember Bartlett present at 4:08 p.m.

Councilmember Kesarwani present at 4:09 p.m.

Councilmember Davila present at 4:13 p.m.

**Public Comment - Limited to items on this agenda only – 0 speakers**

**CLOSED SESSION:**

The City Council will convene in closed session to meet concerning the following:

**1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8**

Property address: 100 Seawall Drive, Berkeley, CA 94710  
Agency Negotiators: Dee Williams-Ridley, City Manager; Paul Buddenhagen, Deputy City Manager; Scott Ferris, Director, Parks Recreation and Waterfront; Christina Erickson, Deputy Director, Parks, Recreation, and Waterfront  
Negotiating parties: City of Berkeley and Landry's, Inc.  
Property owner: City of Berkeley  
Under negotiation: Price and terms

**Action:** No reportable action taken.

**2. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) AND 54956.9(d)(1)**

City of Berkeley v. Regents of the University of California, Alameda Superior Court  
Case No. RG19023058

**Action:** No reportable action taken

**OPEN SESSION:**

No reportable action.

**Adjournment**

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

**Vote:** All Ayes.

Adjourned at 6:08 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on December 10, 2019.

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Mark Numainville, City Clerk

**MINUTES  
BERKELEY CITY COUNCIL MEETING  
Tuesday, December 10, 2019  
6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 6:16 p.m.

**Present:** Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani

Councilmember Kesarwani present at 6:17 p.m.

**Ceremonial Matters:**

1. Recognition of the Cheeseboard Musicians
2. Recognition of Dr. Rowena Tomaneng, Berkeley City College President
3. Recognition of Stuart Baker, Telegraph BID Executive Director
4. Recognition of Youth BART Station Design Contest Winners
5. Adjourned in memory of Hampton Smith, former City of Berkeley employee

**City Manager Comments:** None

**City Auditor Comments:**

The City Auditor gave a presentation to summarize the report on completed and outstanding recommendations.

**Public Comment on Non-Agenda Matters:** 10 speakers.

**Consent Calendar**

**Public Comment on Consent Calendar and Information Items Only:** 13 speakers.

**Action:** M/S/C (Arreguin/Hahn) to accept an urgent item from Councilmember Harrison for the Womens Therapy Center to be added to the agenda under Government Code Section 54954.2(b)(2).

**Vote:** All Ayes.

**Action:** M/S/C (Arreguin/Hahn) to accept an urgent item from Mayor Arreguin for an appointment to the Berkeley Housing Authority Board to be added to the agenda under Government Code Section 54954.2(b)(2).

**Vote:** Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes - Davila.

**Action:** M/S/C (Arreguin/Wengraf) to accept revised materials from Councilmember Hahn on Item C.

**Vote:** All Ayes.

**Action:** M/S/C (Hahn/Wengraf) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** All Ayes.

**A. Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender** *(Reviewed by the Land Use, Housing & Economic Development Policy Committee. Continued from December 3, 2019)*

**From: Councilmembers Harrison, Hahn, Davila, and Bartlett**

**Recommendation:** Adopt second reading of Ordinance No. 7,681-N.S. adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all covered businesses accept cash.

**First Reading Vote:** Ayes – Kesarwani, Davila, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

**Financial Implications:** See report

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

**Action:** Adopted second reading of Ordinance No. 7,681-N.S.

**B. Amendment: FY 2020 Annual Appropriations Ordinance** *(Continued from December 3, 2019)*

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,682-N.S. amending the FY 2020 Annual Appropriations Ordinance No. 7,669–N.S. for fiscal year 2020 based upon recommended re-appropriation of committed FY 2019 funding and other adjustments authorized since July 1, 2019, in the amount of \$146,891,298 (gross) and \$140,427,518 (net).

**First Reading Vote:** All Ayes.

**Financial Implications:** See report

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

**Action:** Adopted second reading of Ordinance No. 7,682-N.S.

## Consent Calendar

### **Urgent Item: Women's Therapy Center Debt Relief Effort: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**

**From: Councilmembers Harrison, Robinson, Hahn and Mayor Arreguin**

**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember including \$100 from Councilmember Kate Harrison, to Women's Therapy Center's Debt Relief Effort (<http://www.womenstherapy.org>). Funds would be relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.

**Financial Implications:** See report.

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

**Action:** Adopted Resolution No. 69,205–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$300; Councilmember Harrison - \$100; Councilmember Davila - \$250; Councilmember Wengraf - \$100; Councilmember Robinson - \$200; Councilmember Bartlett - \$100; Councilmember Kesarwani - \$100; Mayor Arreguin - \$100.

### **Urgent Item: Appointment of Ali Kashani to the Berkeley Housing Authority Board**

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution appointing Ali Kashani to serve a four-year term on the Berkeley Housing Authority Board of Commissioners.

**Financial Implications:** None.

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

**Action:** Adopted Resolution No. 69,206–N.S.

#### **1. Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for the Council meetings of November 5, 2019 (special), November 12, 2019 (special and regular), and November 19, 2019 (special closed and regular).

**Financial Implications:** None

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

**Action:** Approved minutes as submitted.

#### **2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 10, 2019**

**From: City Manager**

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

**Financial Implications:** Various Funds - \$2,913,252

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

**Action:** Approved recommendation.

## Consent Calendar

**3. Contract: First Alarm Security & Patrol, Inc. for Citywide Security Services  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with First Alarm Security & Patrol, Inc. dba First Security Services to provide unarmed security guard staffing services at various City locations and facilities in an amount not to exceed \$2,100,000 for 36-months commencing on or about March 1, 2020 through to February 28, 2023 and including the option to extend for two additional 1-year periods for a total of 5 years at a total not-to-exceed amount of \$3,550,000, subject to the City's annual budget appropriation process.

**Financial Implications:** See report

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

**Action:** Adopted Resolution No. 69,207–N.S.

**4. Revenue Contract: Community Services Block Grant for Calendar Year 2020  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 20F-3001, estimated to be \$266,863 to provide services for low-income people for the period January 1, 2020 to December 31, 2020.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

**Action:** Adopted Resolution No. 69,208–N.S.

**5. Memorandum of Understanding for a Winter Relief Program  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$75,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2020.

**Financial Implications:** \$75,000 (revenue)

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

**Action:** Adopted Resolution No. 69,209–N.S.

## Consent Calendar

**6. Jointly Apply for Infill Infrastructure Grant Funding for Projects Seeking City Funding through the 2019 Housing Trust Fund Request for Proposals**

**From: City Manager**

**Recommendation:** Adopt two Resolutions that enable affordable housing development projects that applied for City funding through the 2019 Housing Trust Fund Request for Proposals to access State of California Infill Infrastructure Grant (IIG) funds by:

1. Authorizing the City Manager to prepare and submit a joint application with each of the following developers proposing to use IIG funds: a. Satellite Affordable Housing Associates (for Blake Apartments at 2527 San Pablo); b. BRIDGE Housing Corporation (for 1740 San Pablo); c. Resources for Community Development (for Maudelle Miller Shirek Community at 2001 Ashby); and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

**Action:** Adopted Resolution No. 69,210–N.S. (Joint Application); and Resolution No. 69,211–N.S. (IIG Participation).

**7. Jointly Apply for No Place Like Home Funding for Maudelle Miller Shirek Community at 2001 Ashby Avenue**

**From: City Manager**

**Recommendation:** Adopt two Resolutions that enable the proposed Maudelle Miller Shirek Community project to access State of California No Place Like Home program funds by:

1. Authorizing the City Manager to prepare and submit a joint application for Maudelle Miller Shirek Community at 2001 Ashby.
2. Authorizing the City Manager to take actions needed for the City's participation in the No Place Like Home program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents, and providing mental health services for tenants of the resulting housing.

**Financial Implications:** See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

**Action:** Adopted Resolution No. 69,212–N.S. (Joint Application); and Resolution No. 69,213–N.S. (No Place Like Home Participation).

## Consent Calendar

### 8. 2020 Health Plan Changes

**From: City Manager**

**Recommendation:** Adopt two Resolutions:

1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) 2.58% increase for Kaiser S1 Group #60 (Active Group); (b) 2.07% increase for the HSA-Qualified Deductible HMO Plan (Active Group); (c) 6.01% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) -0.004% decrease for Post-65 Senior Advantage (Retiree Group)
2. Approving rates for the Sutter Health Plus health plans as follows: (a) 5.37% increase for the Active HMO ML30 group; and (b) 5.41% increase for the Pre-Medicare retiree group.

The health plan premium rates will be effective for the period of January 1, 2020 through December 31, 2020.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

**Action:** Adopted Resolution No. 69,214–N.S. (Kaiser); and Resolution No. 69,215–N.S. (Sutter).

### 9. Contract No. 31900092 Amendment: Basic Pacific, Third-Party Administrator for COBRA Administration and Retiree Health Premium Assistance Plan Administration

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment to Contract No. 31900092 with BASIC Pacific (BASIC) for COBRA Plan administration and administration of the Retiree Health Premium Assistance Plan for non-sworn retirees and other retiree medical programs for sworn Fire and Police, for the period covering October 1, 2018, through December 31, 2022; for a total cost not to exceed \$405,000.

**Financial Implications:** See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

**Action:** Adopted Resolution No. 69,216–N.S.

### 10. Contract No. 10542 Amendment: ServiceNow, Inc. for Information Technology Service Management, Project Management, and Government Risk and Compliance Software Licenses

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10542 with ServiceNow, Inc., for the extension of software licenses of the IT Service Management, Business Management, and Governance Risk and Compliance (GRC) modules, for an additional amount not-to-exceed \$266,076 and a total not-to-exceed amount of \$527,832 from February 14, 2017 to June 30, 2022.

**Financial Implications:** See report

Contact: Savita Chaudhary, Information Technology, (510) 981-6500

**Action:** Adopted Resolution No. 69,217–N.S.



## Consent Calendar

- 11. Waiver of City Ordinance No. 7,650-N.S. for Berkeley Tuolumne Camp Reconstruction Contracts**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing a waiver of City Ordinance No. 7,650-N.S. (which adds Chapter 13.105 to the Berkeley Municipal Code to Adopt a Sanctuary Contracting Ordinance) for Berkeley Tuolumne Camp Reconstruction Project contracts.  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,218–N.S.
- 12. Contract No. 32000082 Amendment: Mar Con Builders, Inc. for Live Oak Community Center Seismic Upgrade Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000082 with Mar Con Builders, Inc. for the Live Oak Community Center Seismic Upgrade Project, increasing the contract amount by \$241,451 plus a 20% contingency in the amount of \$48,290 for a total amount not to exceed of \$5,705,668.  
**Financial Implications:** Measure T1 Fund - \$289,741  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,219–N.S.
- 13. Contract No. 10793 Amendment: Siegel & Strain Architects for Construction Administration for the Berkeley Tuolumne Camp Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 10793 with Siegel & Strain Architects for Construction Support Services for the Berkeley Tuolumne Camp Project, increasing the contract by \$2,900,000 for a total amount not to exceed \$7,200,000, and extending the term of the contract to July 1, 2022.  
**Financial Implications:** Camps Fund - \$2,900,000  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700  
**Action:** Adopted Resolution No. 69,220–N.S.

## Consent Calendar

### 14. Adjustments to the Measure T1 Phase 1 Project List

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the following adjustments to the Measure T1 Phase 1 project list with no additional funding: 1. Removal of the following projects: -Transfer Station Conceptual Master Plan; -West Berkeley Service Center conceptual design; 2. Change of phase from construction to planning for the following projects: -Berkeley Health Clinic; -Public Safety Building; -Hopkins Street – San Pablo to the Alameda; -Bancroft Way – Milvia to Shattuck; 3. Change of phase from design to planning for the following projects: -Berkeley Municipal Pier; -Tom Bates (Gilman) Fields North Field House / Restroom; 4. Addition of the following projects and funding to supplement existing T1 projects at the same site: -San Pablo Park – Additional Play Structure Replacement (ages 2-5); -Strawberry Creek Park – Play Structure Replacement; -Codornices Creek at Kains Avenue.

**Financial Implications:** See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Phillip Harrington, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 69,221–N.S.

### 15. Referral Response: Telegraph Avenue Loading Zone and Customer Parking Pilot Project Evaluation and Next Steps

**From: City Manager**

**Recommendation:** Adopt a Resolution marking the successful completion of the Telegraph Avenue Loading Zone and Customer Parking pilot project, making the pilot parking changes permanent, and authorizing the City Traffic Engineer to establish similar loading zone and/or customer parking regulations in all parking meter districts citywide, based on staff parking demand analysis, at the request of adjacent merchants, and/or in consultation with local business associations.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 69,222–N.S.

### 16. Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations

**From: City Manager**

**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group in an amount not to exceed \$492,284, and a subsequent purchase order for the conversion of the nine (9) Ford Super Duty F-Series Pickup Trucks to plug in hybrid vehicles in an amount not to exceed \$245,000 using XL Fleet technology when it becomes commercially available.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Action:** Item held over to January 21, 2020.

## Consent Calendar

- 17. Contract Nos. 31900080 and 31900205 Amendment: Edgeworth Integration, LLC for Server Storage**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions authorizing the City Manager to execute:  
1. Amendment to Contract No. 31900080 with Edgeworth Integration, LLC for server storage, increasing the current contract by \$36,588 for a total not to exceed amount of \$71,588.  
2. Amendment to Contract No. 31900205 with Edgeworth Integration, LLC for server storage, increasing the current contract by \$17,972 for a total not to exceed amount of \$35,028.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,223–N.S. (Contract No. 31900080); and Resolution No. 69,224–N.S. (Contract No. 31900205).
- 18. Contract No. 9893B Amendment: ABM Industries for Expanding Electric Vehicle Charging Station Operations and Extended Maintenance Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9893B with ABM Industries to extend the term by three years, purchase additional Electric Vehicle (EV) charging stations, and provide network operations and maintenance, including extended warranty services, in the amount of \$131,556 for a total Contract not to exceed \$557,552 through June 30, 2026.  
**Financial Implications:** Various Funds - \$131,556  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,225–N.S.
- 19. Contract: Pacific Trenchless, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Dwight Way, Fourth Street, Camelia Street, Seventh Street, Heinz Avenue, University Avenue, Dana Street, Ward Street, Dover Street, Haskell Street, and Seawall Drive; accepting the bid of the lowest responsive and responsible bidder, Pacific Trenchless, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$3,821,569 which includes a 10% contingency of \$347,415.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,226–N.S.

## Consent Calendar

- 20. Contract: Precision Engineering Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on San Pablo Avenue at University Avenue, Parker Street, Carleton Street, Derby Street, and from Grayson Street to South City Limit; accepting the bid of the lowest responsive and responsible bidder, Precision Engineering Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$2,246,219, which includes a 10% contingency of \$204,202.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,227–N.S.
- 21. Contract: Cratus, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Neilson Street Backline, Thousand Oaks Boulevard Backline, Portland Avenue Backline, Peralta Avenue, San Lorenzo Avenue/Washington Avenue, Capistrano Avenue, Miramar Avenue Backline, The Alameda Backline, Arlington Avenue Backline, Michigan Avenue Backline, Alamo Avenue Backline, San Diego Road and Backline, Santa Barbara Road and Backline, San Luis Road Backline, Henry Street Backline, Berryman Street and Backline, Grizzly Peak Boulevard and Backline, Cypress Street/Buena Avenue, Rose Street, Grant Street, Edith Street, and Milvia Street Backline; accepting the bid of the lowest responsive and responsible bidder, Cratus, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$3,654,358, which includes a 10% contingency of \$332,214.  
**Financial Implications:** Sanitary Sewer Fund - \$3,654,358  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,228–N.S.
- 22. Contract No. 10396A Amendment: Du-All Safety, LLC for Safety Consulting and Training Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10396 with Du-All Safety, LLC for continued safety training and consulting services up to \$100,000 for a total contract amount not to exceed \$300,000, and to extend the contract term through December 31, 2022.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Adopted Resolution No. 69,229–N.S.

## Consent Calendar

**23. Contract No. 31900124 Amendment: B Bros Construction Inc. for Adult Mental Health Services Center Renovations Project at 2640 Martin Luther King Jr Way  
From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 31900124 with B Bros Construction, Inc. to complete renovation and seismic upgrade work at the Adult Mental Health Services Center (Center), increasing the current contract amount of \$4,886,293 by \$500,000 for a total amount not-to-exceed (NTE) of \$5,386,293.

**Financial Implications:** T1 Fund - \$500,000

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Action:** Adopted Resolution No. 69,230–N.S.

## Consent Calendar

### 24. 2019 Housing Trust Fund Request for Proposals Funding Reservations From: Measure O Bond Oversight Committee

**Recommendation:** Adopt a Resolution to:

1. Reserve Measure O bond revenues and other available funds for the following proposals at the following levels, for a total reservation of \$36,002,640: a. Satellite Affordable Housing Associates' Blake Apartments development (2527 San Pablo) at \$11,500,000; and b. BRIDGE Housing Corporation's 1740 San Pablo Avenue development at \$7,500,000; and c. Northern California Land Trust's (NCLT) Anti-Displacement Project (2321-2323 10th Street) at \$1,570,640; and d. Resources for Community Development's (RCD) Maudelle Miller Shirek Community (2001 Ashby) at \$15,432,000.
2. Fund the projects in the priority order listed above. If the available funds are insufficient to support all four proposals in full, forward commit funds from the next planned issuance of Measure O funds.
3. Consider funding 2321-2323 10th Street/Anti-Displacement Project (NCLT) using general funds such as those received pursuant to Measure U1.
4. For the NCLT Project at 2321-2323 10th Street: a. Waive the HTF Guidelines requirements listed below to allow funding for this project: i. Threshold for developer experience; and ii. City subsidy limit equal to 40% of total development costs. b. Condition this new funding on NCLT's demonstrated compliance with the Council-mandated requirements of its 2017 development loan agreement. c. Apply Small Sites Program development and operating budget standards to NCLT's project.
5. Authorize the City Manager to execute all original or amended documents or agreements to effectuate this action.

**Financial Implications:** See report

Contact: Amy Davidson, Commission Secretary, (510) 981-5400

**Action:** Adopted Resolution No. 69,231–N.S. amended to add an additional recommendation as written below.

*6. After funding the priorities listed above, establish housing for Berkeley Unified School District employees under the Teacher Housing Act of 2016 (Health and Safety Code Section 53570 et seq.) as the first priority for any remaining funding from the next planned issuance of Measure O funds; and the City Council will consider, after review and recommendation from the Measure O Bond Oversight Committee, forward committing funding once the Berkeley Unified School District presents the Measure O Bond Oversight Committee with a proposal with sufficient specificity as to reasonably enable such a forward commitment.*

## Consent Calendar

25. **Support for Non-Violent Activists and Protections of Animals in Commercial Operations**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a resolution supporting non-violent activists and protecting animals in commercial operations.  
**Financial Implications:** Minimal  
Contact: Erin Steffen, Commission Secretary, (510) 981-7000  
**Action:** Adopted Resolution No. 69,232–N.S. as revised in Supplemental Communications Packet #1 and further revised on the record at the Council meeting.

## Council Consent Items

26. **Ninth Annual Martin Luther King Jr. Celebration: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Fund**  
**From: Mayor Arreguin and Councilmembers Davila and Bartlett**  
**Recommendation:**  
1. Adopt a Resolution co-sponsoring the 9th Annual Martin Luther King Jr. Celebration Breakfast on January 20, 2020.  
2. Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin, to the Berkeley Rotary Endowment, the fiscal sponsor of the 9th Annual Martin Luther King Jr. celebration, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.  
**Financial Implications:** Mayor's Discretionary Fund - \$500  
Contact: Jesse Arreguin, Mayor, (510) 981-7100  
**Action:** Adopted Resolution No. 69,233–N.S. (Sponsorship); and Resolution No. 69,234–N.S. (Relinquishment of Funds) revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$100; Councilmember Harrison - \$100; Councilmember Davila - \$250; Councilmember Wengraf - \$250; Councilmember Robinson - \$100; Councilmember Bartlett - \$200; Mayor Arreguin - \$500.

## Council Consent Items

**27. February 2020 Berkeley Black History Month organized by Berkeley Juneteenth Association: Relinquishment of Council Office Budget Fund to General Fund and Grant of Such Funds**

**From: Councilmembers Bartlett and Davila**

**Recommendation:** Adopt a Resolution approving the expenditure of funds, including \$500 from Councilmember Bartlett, for Black History Month and the Berkeley Juneteenth Festival (organized by Berkeley Juneteenth Association, Inc. 501(c)(3). The funds should be 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:** Staff time

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

**Action:** Adopted Resolution No. 69,235–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$200; Councilmember Harrison - \$250; Councilmember Davila - \$250; Councilmember Robinson - \$100; Councilmember Bartlett - \$500; Mayor Arreguin - \$250.

## Action Calendar – Public Hearings

**28. 2019 Local Hazard Mitigation Plan**

**From: City Manager**

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

1. Adopt a Resolution adopting the 2019 Local Hazard Mitigation Plan (LHMP); and
2. Adopt a Resolution amending the General Plan to incorporate the LHMP.

**Financial Implications:** See report

Contact: David Brannigan, Fire, (510) 981-3473

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.

M/S/C (Wengraf/Droste) to close the public hearing.

**Vote:** All Ayes.

**Action:** M/S/C (Wengraf/Droste) to:

1. Adopt Resolution No. 69,236–N.S. (Local Hazard Mitigation Plan)
2. Adopt Resolution No. 69,237–N.S. (General Plan)

**Vote:** Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Davila, Harrison.

Councilmember Davila absent 11:23 p.m. – 11:25 p.m.

Councilmember Harrison absent 11:23 p.m. – 11:25 p.m.



## Action Calendar – Public Hearings

**29. Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street**

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25N by adding a subsection to implement Residential Preferential Parking (RPP) on the 1500 block of Lincoln Street in RPP Area N.

**Financial Implications:** General Fund - \$2,000

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Action:** M/S/C (Arreguin/Wengraf) to hold over Item 29 to January 21, 2020.

**Vote:** All Ayes.

## Action Calendar – Continued Business

**C. Recommendation to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City (Continued from December 3, 2019)**

**From: Disaster and Fire Safety Commission**

**Recommendation:** The recommendation as stated above from the Disaster and Fire Safety Commission (DFSC) to the Council includes the following seven components:

1. Allocate full funding of the Fire Department's Safe Passages Program;
2. Initiate immediate action;
3. Recognize that parking restrictions are necessary on some streets for the health and well-being of Berkeley residents;
4. Establish priorities for enacting parking restrictions;
5. Develop a departmental coordinated team effort;
6. Inform the public; and
7. Document and distribute the extent of the access and egress problem.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, (510) 981-3473

**Action:** Moved to Consent Calendar. Adopted recommendation as revised in materials accepted for consideration at the meeting with further amendments noted below.

*Revise the item to add that the City will help residents/property owners problem solve for unusual circumstances where new red striping of curbs will significantly curtail the ability of residents to access their homes through non-conforming applications or other approaches. Circumstances to be considered:*

- 2. Unusual property configurations that render parking alternatives difficult or impossible.*

## Action Calendar – Continued Business

**Da. Public Works Commission Recommendation for the Five-Year Paving Plan**

*(Continued from December 3, 2019)*

**From: Public Works Commission**

**Recommendation:** Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.

**Financial Implications:** See report.

Contact: Nisha Patel, Commission Secretary, (510) 981-6300

**Db. Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan** *(Continued from December 3, 2019)*

**From: City Manager**

**Recommendation:** Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024 and refer to the City Manager consideration of a Long-Term Paving Master Plan to be started after the completion of the public process of T1 Phase 2. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

**Action:** Items Da and Db held over to January 21, 2020.

## Action Calendar – New Business

**30. Urgency Ordinance Amending Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development; Amending BMC Chapter 23C.24**

**From: City Manager**

**Recommendation:** Adopt an Urgency Ordinance amending Berkeley Municipal Code Chapter 23C.24 (Accessory Dwelling Units) to comply with new State law and establish interim limits on ADU development pending further analysis, deliberation and adoption of local regulations, in order to help ensure public safety.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

**Action:** Moved to Consent Calendar. Adopted Ordinance No. 7,683–N.S.

## Council Action Items

**31. Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group From: Mayor Arreguin, and Councilmembers Bartlett and Kesarwani**

**Recommendation:**

1. Approve a Memorandum of Understanding (MOU) between the City of Berkeley and the Bay Area Rapid Transit District (BART) to establish a process for cooperatively pursuing the implementation of Assembly Bill 2923 (AB 2923, Stats. 2018, Chp. 1000) at the Ashby and North Berkeley BART Stations. This action is pursuant to unanimous City Council direction on May 9, 2019, to direct the City Manager to “engage with BART to develop an MOU that outlines the project planning process including feasibility analysis, project goals, and roles and responsibilities; and direct that the MOU return to Council for adoption.”
2. Establish a Community Advisory Group (CAG) for the purposes of providing input:  
-To the City Planning Commission as it considers zoning standards that will be consistent with the City’s obligations under AB 2923 for the Ashby and North Berkeley BART station areas; and -To the City and BART as the parties establish a joint vision and priorities document that will be incorporated in eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART Properties.

**Financial Implications:** See report

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

**Action:** M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 11:30 p.m.

**Vote:** Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila, Harrison.

**Action:** 73 speakers. M/S/C (Arreguin/Kesarwani) to:

Pass the recommendation in the item, authorizing the Mayor and City Manager to execute a Memorandum of Understanding between the City of Berkeley and the Bay Area Rapid Transit District to establish a process for cooperatively pursuing the implementation of Assembly Bill 2923 at the Ashby and North Berkeley BART Stations;

And correct inadvertent omissions in the drafting of the MOU, including a reference to General Plan policy LU-32 on page 2, and noting that the MOU will need to be updated with final language of the Adeline Corridor Specific Plan once it is adopted by Council, and clarify wherever there is a reference to developer to notate “parenthesis – s – end parenthesis”;

And to establish a Community Advisory Group, with members recommended by the Council and appointed by the Mayor and Councilmembers Kesarwani and Bartlett, for the purposes of providing input to the Planning Commission as it considers

## Council Action Items

zoning standards that will be consistent with the City's obligations under Assembly Bill 2923 for the Ashby and North Berkeley BART station areas;

And to refer issues arising from tonight's Council discussion, including requesting a broader access study contingent on funding, seeking additional affordable housing funds, and requiring that the Joint Vision and Priorities Document and the Access Study return to Council for approval, to the City Manager and the Planning Commission process.

**Vote:** All Ayes.

## Information Reports

- 32. City Council Short Term Referral Process – Monthly Update**  
**From: City Manager**  
Contact: Mark Numainville, City Clerk, (510) 981-6900  
**Action:** Received and filed.
- 33. Examination of Department Directors Transition Procedures Follow-Up Audit - Status Report**  
**From: City Manager**  
Contact: Dave White, City Manager's Office, (510) 981-7000  
**Action:** Received and filed.
- 34. Recommendation Status Reports: Credit Card Audit, Cash Handling, Business License Tax, and Contracts Review Audits**  
**From: City Manager**  
Contact: Henry Oyekanmi, Finance, (510) 981-7300  
**Action:** Received and filed.
- 35. Public Health Division Strategic Plan Update**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400  
**Action:** Received and filed.
- 36. Report on Workers' Compensation Annual Program Review FY18-19**  
**From: City Manager**  
Contact: LaTanya Bellow, Human Resources, (510) 981-6800  
**Action:** Received and filed.
- 37. goBerkeley Parking Management Program - Recommended Adjustments for February 1, 2020**  
**From: City Manager**  
Contact: Phillip Harrington, Public Works, (510) 981-6300  
**Action:** Received and filed.

## Information Reports

### 38. Recommendation Follow Up Report, December 2019

**From: Auditor**

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

**Action:** Received and filed.

**Public Comment – Items Not Listed on the Agenda** - 2 speakers.

## Adjournment

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

**Vote:** Ayes – Kesarwani, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Davila, Harrison.

Adjourned at 11:25 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting of the City Council held on December 10, 2019.

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Mark Numainville  
City Clerk

## Communications

### Item #14: Modification of Measure T1 Phase 1 Project List

1. MiSoon Yang (2)

### Item #25: Support for Non-Violent Activists and Protections of Animals in Commercial Operations

2. Shawna Hamilton

### Item #31: Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group

3. Mary-Louise Hansen

### Women's Therapy Center

4. Margie Cohen

### Kids Art Contest – North Berkeley BART

5. Beth Gerstein, on behalf of Councilmember Kesarwani

### Trash Pick Up at University and Highway 80

6. Diana Bohn

**Pedestrian Protection at Shattuck and Woolsey**

7. Ashleigh Kanat

**UC Berkeley/Citywide Security Concerns**

8. Marianna Bacher

**Public Safety Power Shutoffs**

9. Thomas Gregory

**Nutrition Standards at Checkout**

10. Darya Minovi, on behalf of the Center for Science in the Public Interest

11. Xochitl Castaneda, on behalf of the Health Initiative of the Americas

12. Amanda Nube

13. Juan Garay

**Support YSA's Tiny House Village Project**

14. Sara Fread

15. Helen Toy

16. Eunice Orfa Bonfil Tapia

**2710 Shattuck Apartment Building**

17. Hector Salgado

**5G/Cell Antenna Regulation**

18. Meaveen O'Connor

19. Carol Pinson

20. Beth Jerde

21. Councilmember Harrison

22. Gar Smith

23. T. Tobey

24. Regina DiMaggio

25. Tom Luce

26. Susan Griffin

27. Vivian Warkentin

**Opportunity Zones**

28. Margy Wilkinson

**Police Review**

29. Linda Franklin

**Affordable Housing Framework**

30. Linda Franklin

**Here/There Encampment**

31. Pedro Alvarez, Jr.

**Supplemental Communications and Reports 1**

**Item #24: 2019 Housing Trust Fund Request for Proposals Funding Reservations**

32. Ranil Abeysekera

**Item #25: Support for Non-Violent Activists and Protections of Animals in Commercial Operations**

33. Revised material, submitted by Councilmember Davila

**Item #30: Urgency Ordinance Amending Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development; Amending BMC Chapter 23C.24**

34. Berkeley Neighbors Council Executive Committee

**Item #31: Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group**

35. Libby Lee-Egan

36. Phyllis Orrick

37. Adam Rogers

38. Gerry Tierney

39. Victoria Eisen

40. Lee Bishop

41. Alfred Twu

42. Jonathan Singh

43. Kim Thompson

44. Will Travis

45. Tedi Siminowsky

46. Andrew Doran

47. Janice Murota

48. North Berkeley Now!

49. Valerie Knepper

50. Betsy Thagard

51. Joann Sullivan

52. 10 identical form letters

**Supplemental Communications and Reports 2**

**Item #28: 2019 Local Hazard Mitigation Plan**

53. Bentham Paulos, Commission, Berkeley Energy Commission

**Item #C: Recommendation to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City**

54. Supplemental material, submitted by Councilmember Hahn

**Item #Db: Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan**

55. Amber Menzies

**Item #31: Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group**

56. Theo Posselt

57. Alice Philipson

58. Sara and Kathy Dwight

59. Alicia Telford

60. Riti Dhesi

61. Walter Wood

62. Michael Katz

63. Paul Bickmore

64. Pablo Diaz-Gutierrez

65. Jenn Guitart

66. Mark

67. Watson Ladd

68. Teresa Clarke on behalf of South Berkeley Now!

69. Denise Keller

70. Laura Mason, on behalf of Engage

71. Elaine Hutsinpillar

72. Charles Siegel

73. Shawn Drost

74. Laura Klein

75. Liza Lutzker

76. Neal Donnelly

77. Charis Baz

78. Laura Leticia

79. Pamela Montanaro

80. Iris Starr

81. Laura Magnani

82. Barbara Fisher

83. Laura Garcia-Moreno

84. Howard Goldberg

85. Cindi Goldberg

86. Mary Ann Brewin

87. Eileen Hughes

88. Corey Smith, on behalf of Bay Area Housing Advocacy Coalition

89. Tony Corman

90. Paola Laverde, on behalf of the Berkeley Tenants Union

91. Kathleen Tuttle



- 92. Sophia DeWitt, on behalf of East Bay Housing Organizations
- 93. Jane Scantlebury
- 94. Phyllis Orrick
- 95. Claudia Valas
- 96. Sean Gibson
- 97. Chimey Lee
- 98. Sean Kennedy

**Item #28: 2019 Local Hazard Mitigation Plan**

- 99.0 (zero) Communications submitted via Berkeley Considers, included summary information.

**Supplemental Communications and Reports 3**

**Appointment of Ali Kashani to the Berkeley Housing Authority Board**

- 100. Urgency item, submitted by Mayor Arreguin

**Women's Therapy Center Debt Relief Effort: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**

- 101. Urgency item, submitted by Councilmembers Harrison, Robinson, Hahn and Mayor Arreguin
- 102. Women's Therapy Center

**Item# 16: Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations**

- 103. Dave Margulius
- 104. Kelly Hammargren

**Item #24: 2019 Housing Trust Fund Request for Proposals Funding Reservations**

- 105. Marissa Ashkar
- 106. Alexes Link

**Item #25: Support for Non-Violent Activists and Protections of Animals in Commercial Operations**

- 107. Anne Greene
- 108. Holly Zappala
- 109. Angela Pitkin
- 110. Robbi Norman
- 111. Sabrina Harbison
- 112. Donna Beck
- 113. Robert Bulger
- 114. Mary Jaimes
- 115. Jan Dykema

**Item #29: Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street**

- 116. Nathan Tsuizaki

**Item #C: Recommendation to Immediately Fund and Implement the Safe Passages Program and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City**

117. Proposed revision, submitted by Councilmember Hahn

**Item #Db: Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan**

118. Ben Gerhardstein

**Item #31: Approval of a Memorandum of Understanding between the City of Berkeley and BART on Implementation of State Law AB 2923 at the Ashby and North Berkeley BART Stations and Establishment of a Community Advisory Group**

119. Tobey Wiebe (2)
120. Liat Zavodivker
121. Phil Sanders
122. Mary Law
123. Noah Budnick
124. Ross Esters Blum
125. Elisa Mikiten
126. Elizabeth Horowitz
127. Rebecca and Peretz Wolf-Prusan
128. Kyle Lian
129. Jodi Levin
130. Kevin Burke
131. Jennifer Price Wolf
132. Lois Cantor
133. Elana Naftalin-Kelman
134. Quentin Freeman
135. Samantha Warren
136. Katharine Bierce
137. Dmitriy Ryaboy
138. Janice Schroeder
139. Margy Wilkinson
140. Soula Culver
141. Varsha Sarveshwar, on behalf of the Associated Students of Cal
142. Nathan Tsuizaki
143. Julieta Pisani McCarthy
144. Gramma Grass
145. Fran Wicker
146. Jacqueline Erbe, on behalf of Walk Bike Berkeley
147. Rudabeh Pakravan
148. Richard Barber
149. Vicki Sommer (2)
150. Teresa Clarke
151. Ellen Woods

152. Marcia Poole
153. Friends of Adeline
154. Anna Weinstein
155. Davina Srioudom
156. Ann Rogers
157. Jonathan Sklute
158. Elliott Schwimmer
159. Scot Conner
160. Alan Mitchell Siebuhr
161. Atticus Liu
162. Susan Overton
163. Diego
164. Barak Gila
165. Carole Cool
166. Katy Love
167. Avram Gur Arye
168. Christine Schwartz
169. Patrick Journey
170. Todd Darling
171. Meredith Gold
172. Sarah Abdeslahian, on behalf of the Cal Berkeley Democrats
173. Cora Johnson-Grau
174. Michael Caplan
175. Daniel Rosenthal
176. Charles Deuter
177. Aaron Stein-Chester
178. Manuel Hurtado
179. Sarah Bancroft
180. Sara Doudreau
181. Sarah Garrett
182. Lindsay Brothers
183. Elena Topete
184. Karen Roekard
185. Miranda Ewell
186. Theo Posselt
187. Toni Stein
188. Betsy Thagard

**Item #38: Recommendation Follow Up Report, December 2019**

189. Presentation, submitted by the Auditor
190. Berkeley City Auditor

**Street Light Installation Report**

191. Tanko Lighting



**MINUTES  
BERKELEY CITY COUNCIL  
SPECIAL MEETING**

**MONDAY, DECEMBER 16, 2019**

**4:00 P.M.**

**2180 Milvia Street, Berkeley, CA 94704 – Redwood Room, 6<sup>th</sup> Floor  
TELECONFERENCE LOCATION – 1543 Timberlake Manor Pkwy, Chesterfield, MO**

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 4:05 p.m.

**Present:** Davila, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

**Absent:** Kesarwani, Bartlett

Councilmember Bartlett present at 4:07 p.m.

**Public Comment - Limited to items on this agenda only – 7 speakers**

**CLOSED SESSION:**

The City Council will convene in closed session to meet concerning the following:

**1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6**

**Negotiators:** Dee Williams-Ridley, City Manager, David White, Deputy City Manager, LaTanya Bellow, Director of Human Resources.

**Employee Organizations:** Berkeley Police Association, SEIU 1021 Community Services/PTRLA.

**Action:** No reportable action.

**OPEN SESSION:**

No reportable action.

## Adjournment

Adjourned at 7:17 p.m.

This is to certify that the foregoing is a true and correct record of the closed session meeting on December 16, 2019.

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April Richardson, Assistant City Clerk



Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: City Council Short Term Referral Process

RECOMMENDATION

Approve moving Short Term Referral reporting to a quarterly basis, in alignment with Strategic Plan reporting.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impact. Greater efficiencies in staff resources due to alignment of reporting efforts, prioritization of work, and alignment with budget and Strategic Plan goals.

CURRENT SITUATION AND ITS EFFECTS

In this context, tracking refers to a manually updated chart (Attachment 1). The May 15, 2018 Council referral establishing the monthly update includes both “short term” and “date-certain” referrals. Short term referrals are referrals that staff determines they will be able to complete in approximately three months. Date-certain referrals are those which contain a specified date of completion at the time they are approved by the City Council.

The majority of short term referrals to date require more than 90 days to complete and frequently there is not incremental, notable progress to report on a monthly basis. Further, the same staff providing the information for the monthly report, also provide information for a quarterly report on Strategic Plan projects. To increase the efficiency of reporting and to ensure that updates are substantive and meaningful, staff proposes shifting from a monthly to a quarterly (90 day) reporting structure. This shift would support the City’s Strategic Plan goal to provide an efficient and financially-health City government.

BACKGROUND

In 2016, the City Council adopted a system of Re-Weighted Range Voting (RRV) to prioritize the outstanding City Council referrals to staff. The RRV system enables City Council to provide direction to staff on which referrals are highest priority to the City Council. However, that process does not provide information on the status of short term or date-certain referrals. While many short term or date-certain referrals were “updated”

through being completed and presented to Council as consent or information items, there was no comprehensive overview of this subset of referrals.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Moving short term referral reporting to a quarterly basis would result in more meaningful updates. Aligning short term referral reporting with the other citywide reporting (i.e., Strategic Plan) would increase efficiencies, by reducing the number of times staff are reporting.

ALTERNATIVE ACTIONS CONSIDERED

Council may decide to maintain the current system and forego any efficiencies in staff time and increased substance that moving to quarterly reporting would provide.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

- 1: Short Term Referrals - Completed
- 2: Short Term Referrals - In Progress



85 Projects

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                     | Recommendations                                                                                                                                                                     | Referral by    | Referral District       | Sponsor           | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
|--------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------|-------------------|---------------------|---------------------|------------------------|-----------|---------------------|---------------------|---------------------|
| 2014-04-29   | 35                 | 35. City Manager Referral: Policy for Companies Such as Airbnb to Pay Transient Occupancy Tax, as Currently Paid by Other Small Local Businesses | Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.                  | Council member | City Council District 7 | Kriss Worthington |                     | 2014-10-24 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2014-10-27 08:00:00 | 2016-09-07 00:00:00 |                     |
| 2014-12-16   | 25                 | Reconcile the West Berkeley Plan and the Zoning Code as it Pertains to Medical Uses                                                              | Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley. | Council member | City Council District 2 |                   |                     | 2015-06-12 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2015-06-15 08:00:00 | 2017-01-24 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                           | Recommendations                                                                                                                                                                                                                                     | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2015-09-15   | 43                 | Prohibit Sales of Tobacco Products to Persons Under the Age of 21                                                                                      | Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21. | Council member |                   | Jesse Arreguin    |                     | 2016-03-11 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2016-03-11 17:00:00 |                     |                     |
| 2015-09-15   | 55                 | Referral to the Community Environmental Advisory Commission to Install 1.8 GPM Showerheads in All New Housing Projects or Any Renovation Over \$50,000 | Refer to the Community Environmental Advisory Commission to explore requiring a maximum of 1.8 GPM low flow showerheads in new housing projects and all housing renovations exceeding \$50,000 throughout Berkeley.                                 | Council member |                   | Kriss Worthington |                     | 2016-03-11 17:00:00 | PLANNING & DEVELOPMENT      | Completed | 2016-03-14 08:00:00 | 2016-07-19 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                          | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Referral by | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department  | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2015-11-10   | 1                  | Proposed Amendments to the Minimum Wage Ordinance; Amending Berkeley Municipal Code Chapter 13.99 (Continued from September 15, 2015) | Review and consider information regarding the activities and costs associated with implementing and enforcing the Commission on Labor's proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, non-profit organizations and community-based organizations, on-call workers and youth training program workers, and either:<br>1. Adopt first reading of an Ordinance amending Berkeley Municipal |             |                   |         |                     | 2016-05-06 17:00:00 | CITY MANAGER'S OFFICE | Completed | 2016-05-09 08:00:00 | 2016-09-01 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                       | Recommendations                                                                                                                                                                           | Referral by    | Referral District | Sponsor                                                   | Referral Commission | Original end date   | Lead City Department      | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                            |
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|              |                    |                                                                                                                    | Code Chapter 13.99, which includes staff-recommended revisions to the Commission's proposed Ordinance; -OR- 2. Refer the MWO back to the City Manager for further analysis and revisions. |                |                   |                                                           |                     |                     |                           |           |                     |                     |                                                                                                                                |
| 2015-11-17   | 30                 | Fourth Ambulance Pilot Project 6-Month Update                                                                      | No recommendation noted. Action: Moved to Consent Calendar and held over to January 19, 2016. Fire to report back in May 2016 for permanent program.                                      |                |                   |                                                           |                     | 2016-05-13 17:00:00 | FIRE & EMERGENCY SERVICES | Completed | 2016-05-16 08:00:00 | 2018-07-01 00:00:00 |                                                                                                                                |
| 2015-12-01   | 22                 | City Manager Referral: Pilot Program to Implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley | Refer to the City Manager to adopt a Pilot Program to implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley.                                                         | Council member |                   | Kriss Worthington, Linda Maio, Susan Wengraf, Lori Droste |                     | 2016-05-27 17:00:00 | Public Works              | Completed | 2016-05-30 08:00:00 | 2018-07-24 00:00:00 | 2019-02-05 16:44:20 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts. |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                  | Recommendations                                                                                                                                                                                                                                                                     | Referral by    | Referral District       | Sponsor           | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2015-12-01   | 33                 | City Manager and Planning Commission's Referral: Enable Implementation of Council Approved Floor Area Ratio in the Telegraph Commercial District between Dwight and Bancroft by Amending the Zoning Ordinance | Refer to the City Manager and Planning Commission an immediate implementation strategy to bring the City Zoning Ordinance in compliance with the policy adopted by City Council to increase Floor Area Ratio (FAR) in the Telegraph Commercial District between Dwight and Bancroft | Council member | City Council District 7 | Kriss Worthington |                     | 2016-05-27 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2016-05-30 08:00:00 | 2016-06-28 00:00:00 |                     |
|              |                    | Google Translate Bar                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                     |                |                         |                   |                     |                     | Information Technology | Completed | 2016-06-01 00:00:00 | 2016-06-01 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                         | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Referral by    | Referral District | Sponsor                                    | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date | Additional comments |
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| 2015-12-15   | 35                 | Amending Open Government Ordinance to Allow Submission of Revised/Supplemental Items | Refer to the City Manager and City Attorney to draft an ordinance amending Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) to allow the submission of revised or supplemental agenda material for the Supplemental Communications Packet 2. The revised or supplemental material must be submitted no later than 12 noon the day of the City Council meeting at which the item is to be considered. The online version of the City Council agenda shall also contain a link to such items. If revised agenda | Council member |                   | Jesse Arreguin, Susan Wengraf, Lori Droste |                     | 2016-06-10 17:00:00 | City Clerk           | Completed | 2016-06-10 17:00:00 |                 |                     |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                       | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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|              |                    |              | material is submitted by this deadline, it would not require a two-thirds vote of the Council to accept the material. |             |                   |         |                     |                   |                      |         |                  |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                      | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Referral by    | Referral District | Sponsor        | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                             |
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| 2015-12-15   | 54                 | Referral to City Manager: Establishment of Affordable Housing Small Sites Program Revised Version | Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing. | Council member |                   | Jesse Arreguin |                     | 2016-06-10 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2016-06-13 08:00:00 | 2016-12-13 00:00:00 | 2019-02-05 16:47:39 - Melissa McDonough (Additional comments) 2 is completed. 1 was later prioritized long term as top priority of Council's housing action plan. Plan outline complete and will bring before HAC in July 2018. |



| Meeting Date | Agenda Item Number | Project Name                                        | Recommendations                                                                                                                                                                                                  | Referral by    | Referral District       | Sponsor        | Referral Commission | Original end date   | Lead City Department  | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2015-12-15   | 30                 | Provide Cost Estimates to Restore the Berkeley Pier | Refer to the City Manager to determine the cost to make the appropriate repairs so that it will be safe for public use.                                                                                          | Council member | City Council District 2 |                |                     | 2016-06-10 17:00:00 | CITY MANAGER'S OFFICE | Completed | 2016-06-13 08:00:00 | 2017-03-14 00:00:00 |                     |
| 2016-01-19   | 24                 | Tenant Buyout Agreement Ordinance                   | Refer to the City Manager and the Rent Stabilization Board to draft an ordinance regulating situations where a tenant agrees to vacate a rent-controlled unit in exchange for a sum of money, known as a buyout. | Council member |                         | Jesse Arreguin |                     | 2016-07-15 17:00:00 | CITY MANAGER'S OFFICE | Completed | 2016-07-18 08:00:00 | 2016-03-31 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                             | Recommendations                                                                                                                                                                                                                                              | Referral by    | Referral District | Sponsor                        | Referral Commission | Original end date   | Lead City Department  | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                            |
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| 2016-02-09   | 26                 | Develop a Provision for the Landmarks Preservation Ordinance to Allow for the De-designation of a Landmark Designation for a Building that has been Legally Demolished (Continued from January 12, 2016) | Refer to the City Manager to develop a provision for the Landmarks Preservation Ordinance (LPO) that would allow a landmark designation to be de-designated for a building that has been previously landmarked but subsequently has been legally demolished. | Council member |                   |                                |                     | 2016-08-05 17:00:00 | CITY MANAGER'S OFFICE | Completed | 2016-08-08 08:00:00 | 2016-05-10 00:00:00 |                                                                                                                                |
| 2016-02-09   | 15                 | Budget Referral: Including BigBelly Solar Compactor Bins Allocation in the 2016 Mid-Year Budget Process                                                                                                  | Refer to the 2016 Mid-year budget process the purchasing of BigBelly Solar Compactor Bins in order to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.                                                                     | Council member |                   | Kriss Worthington, Lori Droste |                     | 2016-08-05 17:00:00 | Public Works          | Completed | 2016-08-08 08:00:00 | 2018-07-24 00:00:00 | 2019-02-05 16:51:37 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts. |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                      | Recommendations                                                                                                                                                                                                                                                                                                           | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-03-15   | 6                  | Prioritize Installation of Bicycle Lane on Fulton Street                                                                                                          | Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.                                                                                                                                                    | Council member |                   | Jesse Arreguin    |                     | 2016-09-09 17:00:00 | Public Works                | Completed | 2016-09-12 08:00:00 | 2016-05-10 00:00:00 |                     |
| 2016-04-05   | 10                 | Modify the Proposed Early Mitigation Fee Discount and Preserve Revenue Towards Units At Or Below 50% AMI and Add Sunset Clause (Continued from February 23, 2016) | That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause. | Council member |                   | Kriss Worthington |                     | 2016-09-30 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2016-10-03 08:00:00 | 2016-07-19 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                | Recommendations                                                                                                                                                                                                                                                                                                                                       | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-04-26   | 31                 | Creation of 311 Mobile Application                                                                                                                                                          | Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.                                                                                                                                                                                                                                | Council member |                   | Jesse Arreguin    |                     | 2016-10-24 08:00:00 | Information Technology | Completed | 2016-10-24 08:00:00 | 2016-11-15 00:00:00 |                     |
| 2016-05-10   | 21                 | Resolutions Consenting to Inclusion of the City of Berkeley Properties in the California Home Finance Authority PACE Programs and Associate Membership in California Home Finance Authority | ABAG has a new report and the City Council has voted twice in favor; thus, the City of Berkeley should approve and sign an agreement for collaborative services for Property Assessed Clean Energy Financing (PACE) marketplace. Also, that the City of Berkeley approve and sign acknowledgment addendum of RCSA, as executed between ABAG and RPPs. | Council member |                   | Kriss Worthington |                     | 2016-11-04 17:00:00 | City Attorney          | Completed | 2016-11-07 08:00:00 | 2016-09-20 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                           | Recommendations                                                                                                                                                                                                                                                                                                                                                                                               | Referral by    | Referral District       | Sponsor           | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-05-31   | 20                 | Requesting a Comprehensive Report on the State of Homeless Services within the City of Berkeley                        | Request the City Manager direct staff to prepare a report outlining the details of City funded homeless services. The purpose of this report is to help Council and the community understand the various factors related to the allocation of resources to address homelessness within the City. Once the report is complete, it is requested that city staff schedule a worksession to go over the findings. | Council member | City Council District 5 |                   |                     | 2016-11-25 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2016-11-28 08:00:00 | 2016-11-01 00:00:00 |                     |
| 2016-05-31   | 22                 | City Manager Referral: Consider Adding Energy Efficient Equity as an Additional Property Assessed Clean Energy Program | Refer to the City Manager to consider adding Energy Efficient Equity as an additional property assessed clean energy program.                                                                                                                                                                                                                                                                                 | Council member |                         | Kriss Worthington |                     | 2016-11-25 17:00:00 | PLANNING & DEVELOPMENT      | Completed | 2016-11-28 08:00:00 | 2016-09-20 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                          | Recommendations                                                                                                                                                      | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-06-28   | 47                 | City Manager Referral: Feasibility of Acquiring a High-Capacity Scanner for Multiple City Departments                 | Refer to the City Manager to consider investing in a high-capacity scanner to digitize City records for the Council and multiple City departments.                   | Council member |                   | Kriss Worthington |                     | 2016-12-26 08:00:00 | Information Technology      | Completed | 2016-12-26 08:00:00 | 2017-12-12 00:00:00 |                     |
| 2016-07-12   | 27                 | Refer to City Manager to Consider Applying for \$100,000 from the Better Together Resilient Communities Grant Program | That the City Manager consider applying for the \$100,000 grant that PG&E's Better Together Resilient Communities grant program will offer in the beginning of 2017. | Council member |                   | Kriss Worthington |                     | 2017-01-06 17:00:00 | PLANNING & DEVELOPMENT      | Completed | 2017-01-09 08:00:00 | 2016-12-31 00:00:00 |                     |
| 2016-07-19   | 41                 | Companion Report: Amend Berkeley Municipal Code Creating Community Health Commission                                  | Refer to staff to write an ordinance based on the Community Health Commission (CHC) recommendation with the changes suggested by staff.                              |                | MAYOR AND COUNCIL |                   |                     | 2017-01-13 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2017-01-16 08:00:00 | 2016-11-29 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                      | Recommendations                                                                                                                                                                       | Referral by    | Referral District | Sponsor                        | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                            |
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| 2016-09-20   | 32                 | City Manager Referral: Implementing BigBelly Solar Compactor Bins | Refer to the City Manager to examine the feasibility of procuring BigBelly Solar Compactor Bins to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions. | Council member |                   | Kriss Worthington, Lori Droste |                     | 2017-03-17 17:00:00 | Public Works         | Completed | 2017-03-20 08:00:00 | 2018-07-24 00:00:00 | 2019-02-05 17:04:44 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts. |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                              | Recommendations                                                                                                                                                                                                                                                                                                                                                           | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                    |
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| 2016-09-20   | 22                 | Amending Council Rules Regarding Removal of Commissioners                                                                                 | Direct staff to return with a policy recommendation consistent with the recommendations in this report, i.e., noting that as a matter of courtesy and respect, Council members are expected to set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner not less than two weeks from the official date of replacement. | Council member |                   | Commission        |                     | 2017-03-17 17:00:00 | City Clerk             | Completed | 2017-03-20 08:00:00 | 2018-06-12 00:00:00 | 2019-02-05 17:02:37 - Melissa McDonough (Additional comments) Incorporating changes from City Council. |
| 2016-09-20   | 21                 | City Manager Referral: Consider the Four Recommendations Contained in the Alameda County Grand Jury Report (Continued from July 19, 2016) | Refer to the City Manager to consider the four recommendations in response to the Alameda County Grand Jury Report recommendations.                                                                                                                                                                                                                                       | Council member |                   | Kriss Worthington |                     | 2017-03-20 08:00:00 | Information Technology | Completed | 2017-03-20 08:00:00 | 2016-10-20 00:00:00 |                                                                                                        |



| Meeting Date | Agenda Item Number | Project Name                           | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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|              |                    | Improved Emergency Notification System |                 |             |                   |         |                     |                   | Information Technology | Completed | 2017-04-01 00:00:00 | 2017-06-05 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                         | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Referral by    | Referral District | Sponsor        | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-10-18   | 41                 | City Plan for Emergency Shelter During Winter Season | Refer the following actions to the City Manager to consider in developing a plan for emergency shelter/services during the upcoming winter season. These actions will help implement Resolution No. 67,357-N.S. "Declaring a Homeless Shelter Crisis in Berkeley":<br>1. Allow full use of the Multi-Agency Service Center (MASC) at 1931 Center Street as a Warming Center. Direct the City Manager to study the feasibility of using the West Berkeley Senior Center as a day-time Warming Center or evening shelter. Engage in discussions | Council member |                   | Jesse Arreguin |                     | 2017-04-14 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2017-04-17 08:00:00 | 2017-06-27 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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with Dorothy Day House about a day-time respite center.  
 2. Direct staff to develop a winter shelter services program for Fall 2016-Spring 2017 with funding to increase warming centers and emergency shelter.  
 3. Direct staff to work with service providers and faith-based organizations who have capacity, to add shelter beds during the year.  
 4. Direct that all bathrooms in City-owned buildings be available to homeless people for use at the City Manager's discretion.  
 5. Prioritize people on the street for Housing First funds who are in frail health, disabled, or

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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with special needs and have a source of income. Direct the City Manager to create a list of city-owned properties that could be used for a Tiny House development for the homeless, a successful and growing model for dense urban regions.

| Meeting Date | Agenda Item Number | Project Name                                                                                             | Recommendations                                                                                                                                                                                                                                                                                                                                                    | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department           | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-10-18   | 25                 | Amendments to BMC 23C.23.050 to Allow a Third Option to Satisfy the Private Percent for Art Requirements | Request the City Manager draft an ordinance for Council adoption to revise BMC 23C.23.050, the One-Percent for Public Art on Private Projects Ordinance, to do the following: 1. Have 5% of the 1% requirement go directly to administration of the Public Art in Private Development program regardless of how the developer decides to satisfy the requirement ; | Council member |                   |         |                     | 2017-04-14 17:00:00 | Office of Economic Development | Completed | 2017-04-17 08:00:00 | 2017-01-24 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                       | Recommendations                                                                                                                                                                                                                                               | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department           | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-10-18   | 26                 | Revisions to the Public Art in Private Development Program                         | Request the City Manager draft a resolution to revise the Public Art in Private Development Program Guide to provide the Civic Arts Commission guidance and more flexibility in the use of the Cultural Trust Fund with the language suggested in the report. | Council member |                   |                   |                     | 2017-04-14 17:00:00 | Office of Economic Development | Completed | 2017-04-17 08:00:00 | 2016-12-13 00:00:00 |                     |
| 2016-11-01   | 15                 | City Manager Referral: Increasing Transparency in City Public Record Act Responses | Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.                                                                                        | Council member |                   | Kriss Worthington |                     | 2017-04-28 17:00:00 | City Attorney                  | Completed | 2017-05-01 08:00:00 | 2016-12-13 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                          | Recommendations                                                                                                                                                                                                                    | Referral by    | Referral District | Sponsor       | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2016-12-13   | 29                 | Ordinance for Standards for Testing and Certification of DAS Antennas | Request that the City Manager draft ordinance language to amend Section 16.10.100 of the Berkeley Municipal Code to include Standards for Testing and Certification of DAS Antennas and return to the City Council within 60 days. | Council member |                   | Susan Wengraf |                     | 2017-06-09 17:00:00 | City Attorney        | Completed | 2017-06-12 08:00:00 | 2017-03-28 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name               | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department  | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-01-24   | 37                 | Berkeley BABIES Initiative | Request that the City Manager create a provision and enforcement mechanism to ensure that all publically-accessible City buildings install and maintain at least one baby diaper-changing accommodation that is accessible in both men and women's restrooms or a single diaper-changing accommodation that is accessible to all genders. In addition, request that the City Manager provide recommendations to mandate all businesses to provide changing stations in either women's and men's restrooms or gender-neutral restrooms. | Councilmembers |                   |         |                     | 2017-07-24 08:00:00 | CITY MANAGER'S OFFICE | Completed | 2017-07-24 08:00:00 | 2017-07-01 00:00:00 |                     |



| Meeting Date | Agenda Item Number | Project Name                                                             | Recommendations                                                                                                                                                                             | Referral by    | Referral District | Sponsor     | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-01-24   | 38                 | Berkeley Mothers Initiative                                              | Request that the City Manager ensure that all City buildings provide and maintain at least one private place reasonably close to an employee's workspace for breastfeeding mothers to pump. | Councilmembers |                   | Lori Droste |                     | 2017-07-21 17:00:00 | CITY MANAGER'S OFFICE  | Completed | 2017-07-24 08:00:00 | 2017-07-01 00:00:00 |                     |
| 2017-01-31   | 10                 | Medical Cannabis Ordinance Revisions and Cultivation Application Process | Request that the City Manager provide Council with analysis of the questions presented by Councilmember Sophie Hahn.                                                                        | Council member |                   |             |                     | 2017-07-28 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2017-07-31 08:00:00 | 2017-11-07 00:00:00 |                     |
| 2017-02-14   | 11                 | Updated Information Report on Measure M                                  | Request that the City Manager return to the City Council in April with an Information Report on Measure M implementation, expenditures, projected expenses and plans.                       | Council member |                   |             |                     | 2017-08-11 17:00:00 | Public Works           | Completed | 2017-08-14 08:00:00 | 2017-05-02 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name             | Recommendations                                                                                                                                                                                                                                                                                                                                                                     | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-03-28   | 22                 | Security Camera Database | Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley. With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators - amended to include direction that guidelines protect privacy and prevent misuse of camera footage. | Council member |                   |         |                     | 2017-09-25 08:00:00 | Police               | Completed | 2017-09-25 08:00:00 | 2018-08-15 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                           | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Referral by | Referral District | Sponsor | Referral Commission                         | Original end date   | Lead City Department           | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-03-28   | 33                 | Referral Response: Cigarette Butt Pollution Prevention | REFER to the City Manager to enact a pilot program in downtown Berkeley with the goal of greatly reducing cigarette butt litter that accumulates on sidewalks and curbsides, in a central location. This pilot program would: a) Place a total of four receptacles for cigarette butt disposal in front of three adult schools and a bus stop where smoking behavior continues despite its prohibition. The receptacles are to be placed in front of: i. Berkeley City College, 2050 Center Street; ii. Language Studies International on 2015 Center | Commission  |                   |         | Community Environmental Advisory Commission | 2017-09-22 17:00:00 | Office of Economic Development | Completed | 2017-09-25 08:00:00 | 2017-05-30 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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Street; iii. Kaplan International, Berkeley, 150 Berkeley Square; and iv. a selected major bus stop in the vicinity of an entrance to the Downtown Berkeley BART station; and b) Exhibit graphics on the receptacles to remind and inform the public that tobacco litter is hazardous to the health of the Bay; and c) Enter into a partnering agreement with the Downtown Berkeley Association (DBA) for upkeep of the receptacles for the duration of the one-year pilot program, including sending collected butts to the company for recycling;

| Meeting Date | Agenda Item Number | Project Name                                                                                              | Recommendations                                                                                                                                                                                                                                                                                        | Referral by    | Referral District | Sponsor                                                   | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                   |
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|              |                    |                                                                                                           | and d) TerraCycle® will track the weight of butts received, and share the data with the City of Berkeley and CEAC commissioners to help track and assess the success of the pilot program; and e) Identify funding sources to expand the pilot program if successful at the end of the one year trial. |                |                   |                                                           |                     |                     |                             |           |                     |                     |                                                                                                                       |
| 2017-07-25   | 40                 | Expediting Elements of Previous Council Referral to Study Possible Scenarios of the Loss of Federal Funds | Direct the City Manager to expedite the compilation and delivery of a list of federal funds that the City of Berkeley receives and the programs and facilities supported by such funds.                                                                                                                | Council member |                   | Sophie Hahn, Jesse Arreguin, Cheryl Davila, Kate Harrison |                     | 2018-01-19 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2017-10-23 00:00:00 | 2018-12-11 12:22:40 | 2019-02-05 17:14:03 - Melissa McDonough (Additional comments) HHCS is updating with the latest single audit findings. |

| Meeting Date | Agenda Item Number | Project Name                                                     | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                  |
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| 2017-05-30   | 53                 | Eliminate the Required Affidavits of Residency for Commissioners | Eliminate the requirement for Commissioners to submit Affidavits of Residency when they are appointed, and annually thereafter, in pursuit of saving time and money for the City of Berkeley. Revised Materials - <a href="http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx">http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx</a> | Council member |                   |         |                     | 2017-11-24 17:00:00 | City Clerk             | Completed | 2017-11-27 08:00:00 | 2017-09-12 00:00:00 |                                                                                                                                                                                      |
| 2017-06-27   | 32                 | Housing Inspection and Community Services Manager                | Request the City Manager to create and fill the position of Housing Inspection and Community Services Manager.                                                                                                                                                                                                                                                                                                                                                                            | Council member |                   |         |                     | 2017-12-22 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2017-12-25 08:00:00 | 2018-09-13 00:00:00 | 2019-02-05 17:13:07 - Melissa McDonough (Additional comments) New position approved by Personnel Board. Will bring to Council for adoption by November which will complete referral. |

| Meeting Date | Agenda Item Number | Project Name                                                                                  | Recommendations                                                                                                                                                            | Referral by    | Referral District | Sponsor                                                 | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                           |
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| 2017-10-03   | 7                  | Request for Information Regarding Grant Writing Services from Specialized Grant Writing Firms | Refer to the City Manager to issue a request for information to explore grant writing services from specialized municipal grant-writing firms, and report back to Council. | Council member |                   | Sophie Hahn, Kate Harrison, Cheryl Davila, Ben Bartlett |                     | 2018-01-01 17:00:00 | Finance              | Completed | 2018-01-01 17:00:00 | 2019-09-24 12:41:03 | 2019-04-12 15:07:44 - Melissa McDonough (Additional comments) Issued #18-11201 Feb. 5, 2018 as an RFI (Request for information) ; closed March 1, 2018. Received 13 information responses for review. Next Steps: use responses to inform scope of work, then release as RFP. |

| Meeting Date | Agenda Item Number | Project Name                                  | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                  | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                                                                                      |
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| 2017-07-25   | 51                 | Commercial Cannabis Regulations and Licensing | Refer to the City Manager and Cannabis Commission the proposed local ordinances to establish a licensing process for Commercial Cannabis operations, as permitted under Proposition 64, Adult Use of Marijuana Act. The Council requests that the City Manager and Cannabis Commission report to the City Council on its recommendations on regulations and licensing for commercial cannabis businesses before the end of 2017. | Council member |                   |         |                     | 2018-01-19 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2018-01-22 08:00:00 | 2018-09-13 00:00:00 | 2019-02-05 17:15:33 - Melissa McDonough (Additional comments) Lengthy process involving 3 Commissions and many City departments. Some Ordinance changes will be at Council 9/13/18. But more will be needed. Council Worksession scheduled for 10/9/18, then adoption of more Ordinance changes expected by end of year, which will close this referral. |



| Meeting Date | Agenda Item Number | Project Name                                         | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Referral by    | Referral District | Sponsor                                  | Referral Commission       | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                                                                                                                                           |
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| 2017-10-31   | 17                 | Expanded Criteria for the Installation of Stop Signs | 1. Refer to the Transportation Commission consideration of additional or supplemental stop sign criteria which addresses the needs of vulnerable populations, the presence of bicycle boulevards, and the difficulty of crossing particular intersections. 2. Direct that staff consult with the Bicycle Subcommittee of the Transportation Commission when making decisions impacting bicycle boulevards, whenever possible. 3. Request that the City Manager provide an informational report on the particular state and federal warrants | Council member |                   | Kate Harrison, Ben Bartlett, Lori Droste | Transportation Commission | 2018-01-29 17:00:00 | Public Works         | Completed | 2018-01-29 17:00:00 | 2019-11-12 17:00:00 | 2019-09-25 08:55:09 - Melissa McDonough (Additional comments) Commission Recommendation and City Manager Companion report are under review and tentatively scheduled for council approval in Nov 2019<br><br>2019-02-05 16:27:28 - Melissa McDonough (Additional comments) Transportation Commission formed a subcommittee and held first meeting 6/11/18, additional meetings to be planned by subcommittee. |

| Meeting Date | Agenda Item Number | Project Name                                                        | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                          | Referral by    | Referral District | Sponsor                                   | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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|              |                    |                                                                     | and local policies that prevent stop signs being used as traffic calming measures.                                                                                                                                                                                                                                                                                                                                                       |                |                   |                                           |                     |                     |                      |           |                     |                     |                     |
| 2017-09-12   | 33                 | Voter Registration Forms in All City Buildings on Their Main Floors | Direct the City Manager to provide voter registration forms on the main floor of all designated city buildings that are open to the public and in all Community based organizations within the city limits. Community based organizations that are funded by the City of Berkeley will be required to pick up the voter registration forms from the City Clerk's Office and that should be clearly stated in their respective contracts. | Council member |                   | Cheryl Davila, Kate Harrison, Sophie Hahn |                     | 2018-03-09 17:00:00 | City Clerk           | Completed | 2018-03-12 08:00:00 | 2017-11-08 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                   | Recommendations                                                                                                                                                                                                                      | Referral by    | Referral District | Sponsor                                                | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                         |
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| 2017-10-03   | 21                 | Referral to the City Manager to Provide a Public Master List of the Legislation on which the City Council Has Taken a Position | Request that the City Manager work with the City's lobbyist to create and maintain a master list of the legislation on which the City Council has taken a formal position of support or opposition through passage of an item.       | Council member |                   | Kate Harrison, Sophie Hahn, Cheryl Davila              |                     | 2018-03-30 17:00:00 | City Clerk             | Completed | 2018-04-02 08:00:00 | 2018-01-23 00:00:00 |                                                                                                                                                                                                                                             |
| 2017-10-03   | 24                 | Parallel Permitting Process                                                                                                    | Request that the City Manager in coordination with the Director of Planning and the Chief Building Official work to establish a voluntary parallel permitting process for applications to construct housing in the City of Berkeley. | Council member |                   | Susan Wengraf, Linda Maio, Lori Droste, Jesse Arreguin |                     | 2018-03-30 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2018-04-02 08:00:00 | 2017-11-01 00:00:00 | 2019-02-05 17:23:50 - Melissa McDonough (Additional comments) This voluntary parallel permitting option already exists. Following October 2017 referral we advised Building staff to be sure to make option known to interested applicants. |

| Meeting Date | Agenda Item Number | Project Name                                                                                         | Recommendations                                                                                                                                                                                                                                                                                                                                                                        | Referral by    | Referral District | Sponsor                     | Referral Commission | Original end date   | Lead City Department           | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                                                                              |
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| 2018-01-23   | 27                 | Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool        | Short Term Referral to City Manager to assess the feasibility to keep the West Campus Pool open all year round and to start COB Shower Program at the West Campus Pool. Keeping the West Campus Pool open all year round will provide equitable swimming options in both North Berkeley and in South/West Berkeley and provide another location available for our community to shower. | Council member |                   | Cheryl Davila, Ben Bartlett |                     | 2018-07-20 17:00:00 | Parks, Recreation & Waterfront | Completed | 2018-04-23 00:00:00 | 2018-10-16 10:14:13 | 2019-02-05 17:38:54 - Melissa McDonough (Additional comments) a) On June 12, 2018, Council received an Off Agenda Memo that identifies the cost to establish a shower program at West Campus Pool. B) In mid-September 2018, Council will receive an Off Agenda Memo that describes the feasibility of keeping West Campus pool open year-round. |
| 2017-10-31   | 30                 | Short-Term Referral to the City Manager, a Process for Relocation of a Permitted Cannabis Dispensary | Refer to the City Manager to approve a process for the relocation of Apothecarium, a cannabis dispensary with valid permits.                                                                                                                                                                                                                                                           | Council member |                   |                             |                     | 2018-04-27 17:00:00 | PLANNING & DEVELOPMENT         | Completed | 2018-04-30 08:00:00 | 2018-01-23 00:00:00 |                                                                                                                                                                                                                                                                                                                                                  |

| Meeting Date | Agenda Item Number | Project Name                                                                                  | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-12-05   | 18                 | City Manager Referral: Prioritizing New Business Before Old Business at City Council Meetings | Prioritize new business before old business at City Council Meetings by: 1. Altering the Council rules of procedure as adopted May 24, 2016 so that new business comes before old business. The reformatted section will read "The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, New Business, Old Business); Information Reports; and Communica | Council member |                   |         |                     | 2018-06-01 17:00:00 | City Clerk           | Completed | 2018-06-04 08:00:00 | 2018-01-30 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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tion from the Public"; and 2. Granting explicit authorization to Agenda Committee to move new business backwards or forwards at their discretion by amending section III E of the Rules of Procedure.

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                             | Recommendations                                                                                                                                                                                                                                                                                                                                                                                  | Referral by    | Referral District | Sponsor                                                 | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date | Additional comments |
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| 2018-02-13   | 17                 | Referral to the City Manager to Submit a Filing to the CPUC Recommending Adjusting Electric Rule 20 to Better Serve the City of Berkeley and Other Communities with Very High Fire Hazard Severity Zones | A referral to the City Manager to submit a filing with the California Public Utilities Commission (CPUC) concerning the CPUC's current review of Electric Rule 20. The CPUC is considering, among other things, how the existing program is administered by the various utility companies operating in California and the definition of what projects are to be included in the public interest. | Council member |                   | Susan Wengraf, Sophie Hahn, Jesse Arreguin, Lori Droste |                     | 2018-08-10 17:00:00 | Public Works         | Completed | 2018-08-10 17:00:00 |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                              | Recommendations                                                                                                                            | Referral by    | Referral District | Sponsor                                             | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-02-13   | 26                 | Referral to the City Manager on Gender Options of the General Application for City Boards and Commissions | Refer to the City Manager to add a nonbinary gender option on the General Application for appointments to Berkeley boards and commissions. | Council member |                   | Lori Droste, Linda Maio, Susan Wengraf, Worthington |                     | 2018-08-10 17:00:00 | City Clerk           | Completed | 2018-08-13 08:00:00 | 2018-03-01 00:00:00 |                     |



| Meeting Date | Agenda Item Number | Project Name                                                   | Recommendations                                                                                                                                                                                                                                                                                                                                                              | Referral by | Referral District      | Sponsor | Referral Commission | Original end date   | Lead City Department      | ▲ State   | Planned end date    | Actual end date | Additional comments |
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| 2018-02-27   | 22                 | Wildland Urban Interface Fire Safety and Fire Safety Education | Commission Referral #5 revised to read: 5. Refer to the Planning Commission to consider Accessory Dwelling Units (ADUs) in the Very High Hazard Fire Zone to review public safety issues especially relevant to the risk of WUI fires. Amend Section 23D.10 to incorporate greater public safety considerations to be met before issuing an Administrative Use Permit (AUP); |             | City Council and Mayor |         |                     | 2018-08-24 17:00:00 | FIRE & EMERGENCY SERVICES | Completed | 2018-08-24 17:00:00 |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                    | Recommendations                                                                                                                                                                                                                                                                     | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date | Additional comments |
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| 2018-03-13   | 17                 | Referral to the Arts Commission and the City Manager: Cost Estimate and Plan for Installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St | Refer to the City Manager a request to develop a cost estimate and an installation plan for installing sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer the cost estimate and plan to the Arts Commission. | Council member |                   |         |                     | 2018-09-07 17:00:00 | Public Works         | Completed | 2018-09-07 17:00:00 |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Referral by    | Referral District | Sponsor                                                | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-01-30   | 14                 | Direction and Referral to the City Manager Regarding "Premier Cru" Property | 3. The Berkeley Way Affordable Housing Project is the City's top affordable housing priority. Premier Cru, as a City property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to move Premier Cru forward as a High Priority initiative: a. Based on recommendations from Health, Housing and Community Services and other Departments, the Housing Advisory | Council member |                   | Sophie Hahn, Jesse Arreguin, Linda Maio, Kate Harrison |                     | 2018-09-07 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2018-09-10 08:00:00 | 2018-05-29 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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|              |                    |              | Commission, and on consultation with local affordable housing providers, and taking into consideration requirements and restrictions associated with potential funding sources, create a recommendation or recommendations to Council regarding levels of affordability, unit sizes, on-site services and other features to be included in the proposed project or projects. b. Based on the above analyses and recommendations, and on Council direction, develop and issue an RFQ or RFP to affordable housing developers for proposals to develop |             |                   |         |                     |                   |                      |         |                  |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                           | Recommendations                                                                                                                                                                                                                          | Referral by | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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|              |                    |                                                                                        | affordable housing at the site.                                                                                                                                                                                                          |             |                   |         |                     |                     |                      |           |                     |                     |                     |
| 2017-12-19   | 41                 | Companion Report: Public Works Commission Recommendation for the Five-Year Paving Plan | Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2018 to FY 2022. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan. |             |                   |         |                     | 2018-09-21 17:00:00 | Public Works         | Completed | 2018-09-24 08:00:00 | 2018-07-24 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                          | Recommendations                                                                                                                                                                                                                                                                    | Referral by    | Referral District | Sponsor | Referral Commission       | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-12-05   | 24                 | Ordinance Amending the Berkeley Municipal Code to Establish Ability to Pay Provisions Regarding Parking Fines and Fees in Accordance with Guidelines Established in Assembly Bill 503 | to refer the item as written in Supplemental Reports Packet #2 to the City Manager to conduct an analysis of the item, including a review of current indigency procedures and coordination with similar efforts in the City of Oakland, and report back to the Council in 90 days. | Council member |                   |         | Transportation Commission | 2018-09-28 17:00:00 | Finance              | Completed | 2018-09-28 17:00:00 | 2018-07-02 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                      | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Referral by | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-04-24   | 17                 | Refer the Housing Advisory Commission's Questions on the Smoke-Free Residential Housing Ordinance to Staff and Berkeley Considers | The Housing Advisory Commission respectfully requests that the Council direct the City Manager to assist the HAC in its review of the Smoke-Free Residential Housing Ordinance, a regulation of tobacco use, as follows: 1. By responding to the HAC's questions enumerated in the report with any readily available responsive information. 2. By facilitating the conduct of a "Berkeley Considers" questionnaire about the Smoke-Free Residential Housing Ordinance, questions for which are proposed in the report. | Commission  |                   |         |                     | 2018-10-19 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2018-10-19 17:00:00 | 2019-03-17 14:41:36 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                       | Recommendations                                                                                                                                                                                                                                                                                                                                                                                             | Referral by | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-07-25   | 10                 | Authorizing City Manager Approval for Community Development Block Grant (CDBG) Community Facility Improvement Contracts Under \$200,000; Amending BMC Chapter 7.18 | Adopt first reading of an Ordinance, by two-thirds vote of the Council, amending Chapter 7.18 of the Berkeley Municipal Code to authorize the City Manager to enter into and amend contracts of up to \$200,000 with applicants recommended for funding by staff and the Housing Advisory Commission under the City's Community Development Block Grant (CDBG) program for community facility improvements. |             |                   |         |                     | 2018-10-19 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2018-10-22 08:00:00 | 2018-04-24 00:00:00 |                     |



| Meeting Date | Agenda Item Number | Project Name                                                                                       | Recommendations                                                                                                                                                                                                                                                                                   | Referral by    | Referral District | Sponsor                                                 | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 2018-07-31   | 10                 | Direction to the City Manager Regarding the Community Service In Lieu of Parking Penalties Program | Direct the City Manager to amend the eligibility requirements of the Community Service In Lieu of Parking Penalties Program in order to allow all indigent individuals to be eligible to participate in the program (regardless of the registration status of a potential participant's vehicle). | Council member |                   | Ben Bartlett, Cheryl Davila, Kate Harrison, Sophie Hahn |                     | 2018-10-29 17:00:00 | Public Works         | Completed | 2018-10-29 17:00:00 | 2019-01-19 15:21:35 | 2019-08-27 15:23:33 - Nancy Melendez (Additional comments) FJ/DP: Aside from the fact that Public Works is not actually involved in citations or citation payment plans or alternatives, this program exists and the FAQ at the link below was updated January 2019. <a href="https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf">https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf</a><br><br>2019-02-05 15:38:44 - Melissa McDonough (Additional comments) Because this is a multidepartmental task assigned to Public Works, involving Finance and City Attorney, and |

| Meeting Date | Agenda Item Number | Project Name                                                   | Recommendations                                                                                                                                                            | Referral by    | Referral District | Sponsor       | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                        |
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| 2018-05-15   | 23                 | Transgender Health Access Training at City of Berkeley Clinics | Adopt a Resolution providing \$2,400 from the General Fund to support a half-day Transgender Health Access Training for City of Berkeley Public Health staff in June 2018. | Commission     |                   |               |                     | 2018-11-09 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2018-11-10 17:00:00 | 2019-02-04 10:22:57 | 2019-04-15 10:25:13 - Laura Schroeder (Additional comments) On February 4, 2019 staff from public health and mental health attended a training on Transgender Access to Public Health administered by the City of Oakland, the completion date is unclear. |
|              | 24                 | Budget Referral: Increasing Safety at San Pablo Park           | Request the City Manager perform traffic assessments to gather data and refer any needed improvements to the FY 2020 – FY 2021 budget process.                             | Councilmembers |                   | Cheryl Davila |                     | 2018-11-13 17:00:00 | Public Works                | Completed | 2018-11-13 17:00:00 | 2019-05-16 00:00:00 |                                                                                                                                                                                                                                                            |

| Meeting Date | Agenda Item Number | Project Name                             | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department        | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-05-29   | 14                 | Implementation of Secure Storage Program | 1. Direct the City Manager to expedite implementation of two publicly available, secure storage facilities to accommodate as many individuals as possible, based on the parameters set in staff's March 2, 2018 RFI: Downtown Homeless Storage Pilot - Staffing and Operations and on additional parameters outlined in Program Details, below. 2. Direct the City Manager to publicize the locations, hours, and rules applicable to new storage facilities through normal outreach channels (website, press release, etc.) and through | Council member |                   |         |                     | 2018-11-23 17:00:00 | HEALTH, HSG & COMMUNITY SVC | Completed | 2018-11-26 08:00:00 | 2018-07-24 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                                                                                                                     | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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|              |                    |              | direct outreach to homeless individuals by the City, community organizations (CBOs) and other partners such as the Downtown Berkeley Association and Telegraph Avenue BID. 3. Refer \$100,000 to the budget process; an added \$25,000 for the downtown storage location and \$75,000 for storage in West Berkeley. |             |                   |         |                     |                   |                      |         |                  |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                                                        | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                  | Referral by    | Referral District | Sponsor       | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-12-11   | 23                 | Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use | Short-term referral to City Manager to amend Berkeley Municipal Code 7,441-N.S. according to the changes made in the attached amended ordinance to prohibit the sale of flavored tobacco products and require a minimum package size for cigars and little cigars across the City of Berkeley. The primary purpose of the amendment to the ordinance is to do more to prevent youth and young adult tobacco use. | Councilmembers |                   | Cheryl Davila |                     | 2018-12-11 17:00:00 | City Attorney        | Completed | 2018-12-11 17:00:00 | 2019-09-10 13:15:43 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                      | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Referral by    | Referral District | Sponsor                                    | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                              |
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| 2018-09-13   | 31                 | Short-Term Referral to City Manager re: Emergency Standby Officers Qualifications | Referral to the City Manager to consider the following suggestions for requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations. Possible requirements may include: - Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment . -City government experience. -Council District residency. - Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for | Council member |                   | Susan Wengraf, Jesse Arreguin, Sophie Hahn |                     | 2018-12-11 17:00:00 | City Clerk           | Completed | 2018-12-11 17:00:00 | 2019-05-02 12:02:38 | 2019-02-05 15:21:26 - Melissa McDonough (Additional comments) Ongoing discussion with City Attorney regarding potential criteria |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                    | Recommendations                                                                                                                                                          | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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|              |                    |                                                                                                                                                 | City Councilmembers. -In addition, consider requiring Councilmembers to nominate three people in a single action.                                                        |                |                   |         |                     |                     |                      |           |                     |                     |                     |
| 2018-07-10   | 17                 | Referral to City Manager to Consolidate all City Commission Workplans in One Place for Easy Access for Staff, the Public, and Elected Officials | Make a referral to the City Manager to consolidate all City Commission Workplans in one place for easy (electronic) access for staff, the public, and elected officials. | Council member |                   |         |                     | 2019-01-04 17:00:00 | City Clerk           | Completed | 2019-01-07 08:00:00 | 2018-09-13 00:00:00 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                         | Recommendations                                                                                                                                                                                                                                                                                                       | Referral by    | Referral District | Sponsor                     | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-10-30   | 20                 | Proposed Portland Loo Installations in Telegraph Commercial District | Short-Term Referral to the City Manager to identify costs for the installation of a "Portland Loo" type of bathroom facility in Telegraph Commercial District. Costs should be comprehensive and include, but not be limited to: the facility, infrastructure, design, construction, oversight and any contingencies. | Councilmembers |                   | Jesse Arreguin, Sophie Hahn |                     | 2019-01-31 17:00:00 | Public Works         | Completed | 2019-01-31 17:00:00 | 2019-02-27 00:00:00 |                     |



| Meeting Date | Agenda Item Number | Project Name                               | Recommendations                                                                                                                                                                                                                 | Referral by    | Referral District | Sponsor                                | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                                |
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| 2018-11-13   | 23                 | Clarifying Jurisdiction of Ohlone Greenway | Refer to the City Manager to review the recommendation to place the Ohlone Greenway under park rules and policies with the intent of revising the BMC to include the Ohlone Greenway as open space and enforce park-like rules. | Councilmembers |                   | Linda Maio, Sophie Hahn, Kate Harrison |                     | 2019-02-13 17:00:00 | City Attorney        | Completed | 2019-02-13 17:00:00 | 2019-09-17 10:57:38 | 2019-09-17 10:57:27 - Christopher Jensen (Additional comments) Referral response complete; Public Works is providing assistance on right-of-way issues.<br><br>2019-04-24 10:04:24 - Mark Numainville (Additional comments) City Attorney provided legal opinion to PRW. PRW to report to Council. |
| 2017-05-02   | 27                 | Berkeley Bicycle Plan 2018                 | Adopt a Resolution approving the Berkeley Bicycle Plan 2017, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.                                                                |                |                   |                                        |                     | 2019-02-15 17:00:00 | Public Works         | Completed | 2019-02-15 17:00:00 |                     |                                                                                                                                                                                                                                                                                                    |

| Meeting Date | Agenda Item Number | Project Name                                         | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                        | Referral by    | Referral District | Sponsor       | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                             |
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| 2018-11-13   | 24                 | Budget Referral: Increasing Safety at San Pablo Park | 4. Develop, implement and coordinate drills for active shooter and other emergency protocol at San Pablo Park: Create protocol with input from community partners, then orient licensed daycare providers, coaches, trainers and program staff who operate out of the park, and conduct drills with City staff operating the Center and providers in order to prepare for emergencies and how to use the Center as a shelter during or following them. | Councilmembers |                   | Cheryl Davila |                     | 2019-03-01 17:00:00 | Police               | Completed | 2019-03-01 17:00:00 | 2019-03-30 15:34:27 | 2019-04-24 15:35:06 - Melissa McDonough (Additional comments) Training class conducted March 30 |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                             | Recommendations                                                                                                                                                                                                                                       | Referral by    | Referral District | Sponsor                    | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2017-12-05   | 17                 | City Manager Referral: Consider CPUC Interconnection Applications                                                                                        | Refer to the City Manager consideration of applying for CPUC interconnection applications.                                                                                                                                                            | Council member |                   |                            |                     | 2019-03-04 16:00:00 | Public Works           | Completed | 2019-03-04 16:00:00 | 2018-04-04 00:00:00 |                     |
| 2018-09-13   | 18                 | Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages Resulting from the Removal of Trees at 1698 University Avenue | Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue. | Council member |                   | Kate Harrison              |                     | 2019-03-11 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2019-03-11 16:00:00 | 2018-10-01 15:56:16 |                     |
| 2018-09-25   | 22                 | Safe storage of firearms - Revised materials (Supp 2)                                                                                                    | Refer to the City Manager to review draft Safe Storage of Firearms ordinance, identify and resolve issues, and return to Council within 90 days.                                                                                                      | Council member |                   | Susan Wengraf, Sophie Hahn |                     | 2019-03-22 17:00:00 | City Attorney          | Completed | 2019-03-23 16:00:00 | 2018-12-24 16:21:16 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                     | Recommendations                                                                                                                                             | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-10-02   |                    | Lobbyists Registration and Regulation Ordinance; Amendments to Existing Revolving Door Ordinance | Request an analysis from the City Manager before the November budget discussion on the administrative impacts and cost to implement the lobbyist ordinance. | Council member | MAYOR AND COUNCIL |         |                     | 2019-03-29 17:00:00 | City Attorney        | Completed | 2019-03-30 16:00:00 | 2019-01-22 12:32:26 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                                                                                           | Recommendations                                                                                                                       | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 2018-10-02   | 9                  | Amend BMC Chapters 6.24 and 14.52 to Authorize Paid Parking on Shattuck Avenue between Carleton Street and Ward Street and add the Northside (Euclid/Hearst) Metered Parking Area to the goBerkeley Program; and Authorize Paid Parking at the City-Owned Adeline/Alcatraz Parking Lot | Request staff to perform an analysis of the parking in the Northside area during the academic year to be completed within six months. | Council member | MAYOR AND COUNCIL |         |                     | 2019-04-02 17:00:00 | Public Works         | Completed | 2019-04-02 17:00:00 | 2019-08-01 15:29:17 | 2019-08-27 15:29:52 - Nancy Melendez (Additional comments) GH: Staff conducted an analysis of the parking in the Northside area in spring 2019, roughly six months after goBerkeley price and time limits went into effect on November 1, 2018. As summarized in the June 25, 2019 Information Report submitted to Council, the data showed that goBerkeley changes are working as intended to increase parking availability in the area. Two minor adjustments to prices and time limits in "Value" zones went into effect August 1, 2019 |
|              |                    |                                                                                                                                                                                                                                                                                        |                                                                                                                                       |                |                   |         |                     |                     |                      |           |                     |                     | 2019-02-05                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments                                                                                                                                                                    |
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|              |                    |              |                 |             |                   |         |                     |                   |                      |         |                  |                 | 16:25:11 - Melissa McDonough (Additional comments) Per Council direction to conduct a study in 6 months, the due date should be April 2, 2019, which is 6 months from October 2, 2018. |

| Meeting Date | Agenda Item Number | Project Name                                                       | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                     | Referral by    | Referral District | Sponsor           | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                  |
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| 2018-10-30   | 35                 | City Manager referral: Initiate a franchise agreement with FlixBus | That the Council refer to the City Manager initiation of a franchise agreement with FlixBus, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, and providing a procedure for the assessment and collection of administrative penalties for permit violations. | Councilmembers |                   | Kriss Worthington |                     | 2018-10-30 17:00:00 | Public Works         | Completed | 2019-05-01 11:39:27 | 2019-05-23 00:00:00 | 2019-04-23 11:49:56 - Mark Numainville (Additional comments) Resolution of Intent adopted on 3/26/19; Public Hearing set for 4/30/19 |

| Meeting Date | Agenda Item Number | Project Name                | Recommendations                                                                                                                                                                                                                                                                                                                                        | Referral by    | Referral District       | Sponsor       | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-10-16   | 25                 | Welcome to Berkeley Signage | Refer to the City Manager on a short term basis to replace all the Welcome to Berkeley signs with the Option B design per the Transportation Commission recommendation, including "Ohlone Territory" but not a second motto. Also, leave space on the sign to add a policy message and consult with Ohlone leaders on the use of the word "territory." | Councilmembers | City Council District 2 | Cheryl Davila |                     | 2018-10-16 17:00:00 | Public Works         | Completed | 2019-05-03 12:00:00 | 2019-02-07 00:00:00 |                     |



| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                                                                                           | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Referral by    | Referral District | Sponsor                                    | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                          |
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| 2019-02-19   | 21                 | Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation | 1) Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by April 30, 2019. 2) Refer to the Planning Commission to | Councilmembers |                   | Kate Harrison, Rigel Robinson, Sophie Hahn |                     | 2019-05-21 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2019-05-21 17:00:00 | 2019-06-11 09:40:07 | 2019-04-15 09:44:51 - James Bondi (Additional comments) Scheduled for Council 4/30/19.<br><br>2019-04-12 16:04:35 - Melissa McDonough (Additional comments) May be done at Council 4/30/19, pending recommendation from Planning Commission (special Public Hearing 4/3/19). |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report. 3) Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12. 4) The Planning Commission is to consider the following language from the item submitted at the meeting: It is possible that the new fee structure will be adopted prior to the

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.

| Meeting Date | Agenda Item Number | Project Name                                                                                                           | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Referral by    | Referral District | Sponsor        | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                                              |
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| 2019-02-19   | 9                  | Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue | Short-Term Referral to the City Manager to develop ordinance amendments permitting up to three cannabis events per year in the first year in the City of Berkeley and designating Cesar Chavez Park as the sole approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1. reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2. specify procedures for such events that replicate similar alcohol related | Councilmembers |                   | Jesse Arreguin |                     | 2019-05-21 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2019-05-22 00:00:00 | 2019-04-15 09:54:32 | 2019-04-15 09:54:26 - James Bondi (Additional comments) Council considered and opted not to adopt policy, 4/2/19.<br><br>2019-04-12 16:02:31 - Melissa McDonough (Additional comments) Pending Council adoption of Cannabis Ordinance revisions scheduled for April 2 (second reading April 23). |

| Meeting Date | Agenda Item Number | Project Name                              | Recommendations                                                                                                                                                                                                                                                                                                                                                                 | Referral by    | Referral District | Sponsor                   | Referral Commission | Original end date   | Lead City Department | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                           |
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| 2017-07-25   | 37                 | Reviewing the GIG Car Share Pilot Program | event protocols. The City Council will revisit the provisions of the ordinance following the first year of implementation.<br><br>Refer to the City Manager and Transportation Department a review of the concerns, emerging regarding some features of the recently implemented GIG Car Share pilot program, request adjustments before the two-year pilot program from staff. | Council member |                   | Linda Maio, Susan Wengraf |                     | 2019-05-28 17:00:00 | Public Works         | Completed | 2019-05-28 17:00:00 | 2019-05-28 11:39:27 | 2019-02-05 15:16:47 - Melissa McDonough (Additional comments) The program evaluation will be conducted in early 2019 and an action report prepared for Council to continue, modify, or discontinue the pilot. |

| Meeting Date | Agenda Item Number | Project Name                                                                    | Recommendations                                                                                                                                                                                                                                                                 | Referral by    | Referral District | Sponsor                       | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                        |
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| 2019-03-26   | 23                 | Referral to City Manager to Scope Process and Estimate Cost of New General Plan | Referral to the City Manager to return to City Council with an outline of the process for creating a new City of Berkeley General Plan. The cost for the first two years of work will be included in the report for consideration during the upcoming 2020-2021 Budget Process. | Councilmembers |                   | Jesse Arreguin, Cheryl Davila |                     | 2019-06-21 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2019-06-21 17:00:00 | 2019-06-12 09:41:11 | 2019-04-15 09:53:31 - James Bondi (Additional comments) Scoping has begun. Off-Agenda Memo will provide answers (date TBD) |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                               | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Referral by    | Referral District | Sponsor       | Referral Commission | Original end date   | Lead City Department   | ▲ State   | Planned end date    | Actual end date     | Additional comments |
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| 2018-12-11   | 26                 | Referral to the City Manager and Planning Commission to Update the Housing Pipeline Report to Address Timeline between Planning Entitlements and Submission of Building Permit Applications and Consider Reasons for Delay | Referral to the City Manager to include in the Housing Pipeline Report an analysis of the time between planning entitlements and building permit requests for all projects of five units or greater over the past five years. On an ongoing basis, refer to the City Manager and Planning Commission to propose changes to current Planning approval process to address the causes of delays between entitlements and building permits for construction or substantial rehabilitation of five or more dwelling units. | Councilmembers |                   | Kate Harrison |                     | 2018-12-11 17:00:00 | PLANNING & DEVELOPMENT | Completed | 2019-07-16 16:43:23 | 2019-07-23 11:40:57 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                               | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Referral by    | Referral District | Sponsor                    | Referral Commission | Original end date   | Lead City Department  | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                    |
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| 2018-11-13   | 18                 | Short-Term Referral to City Manager to Complete Steps Necessary to Establish Lava Mae Services in Berkeley | Short-term referral to the City Manager to coordinate with Fire, Planning and Public Works Department Heads to provide permits, identify locations and allow access to water and disposal hook-ups necessary to bring Lava Mae shower services to Berkeley's homeless populations within 90 days for a 6-8 week pilot. This includes: - Determining locations to set up portable shower; and - Identifying water source for hook ups designated to dispense water for showers, either fire hydrants (preferred) or garden hose spigots; and -Parking permits for shower | Councilmembers |                   | Cheryl Davila, Sophie Hahn |                     | 2019-09-10 17:00:00 | CITY MANAGER'S OFFICE | Completed | 2019-09-10 17:00:00 | 2019-09-12 08:29:03 | 2019-09-12 08:30:15 - Melissa McDonough (Additional comments) Report on Council agenda.<br><br>2019-08-07 15:07:11 - Melissa McDonough (Additional comments) Sites and hook-ups have been established. |



| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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|              |                    |              | trailer; and -<br>Identifying sewage manholes designated to pump out/dump gray and black water (H2O) into the sewer system; and -<br>Calendaring a Fire Department inspection to inspect the propane to heat up the H2O on the first day of operation or through a dry run.<br>Starting January 2019, Lava Mae is prepared to bring shower service two days a week to two consistent locations (one day per a location) at no charge to the City of Berkeley or the users of the services.<br>The proposal is to start with an 8-week pilot in two locations to test sites. |             |                   |         |                     |                   |                      |         |                  |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                  | Recommendations                                                                                                                                                                                                                                                                                                                                                    | Referral by | Referral District | Sponsor | Referral Commission    | Original end date   | Lead City Department  | ▲ State   | Planned end date    | Actual end date     | Additional comments                                                                                                                                                                                                                                                               |
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| 2019-09-10   | 30                 | Referral Response: Proposed New BMC Ordinance Adding Chapter 9.26 Live Animal Sales – Disclosure Requirements | In lieu of approving the ordinance, encourage Berkeley live animal retailers to provide purchasers with information regarding the sourcing of their animals by utilizing one or two of the following designations describing the sourcing of the particular animal: 'captive bred;' 'hobby breeder' or 'licensed breeder;' 'rescue;' 'wild caught;' or 'imported.' | Commission  |                   |         | Animal Care Commission | 2019-12-16 17:00:00 | CITY MANAGER'S OFFICE | Completed | 2019-12-16 17:00:00 | 2019-10-03 17:00:00 | 2019-10-15 14:28:21 - Melissa McDonough (Additional comments) Staff developed a set of standard terms and sent a letter to all animal retailers on 10/3/2019, encouraging them to use the designations. Staff has prepared and submitted a referral response via off-agenda memo. |

Short Term Referrals - In Progress

19 Projects

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                   | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                         | Referral by    | Referral District | Sponsor                        | Referral Commission       | Original end date   | Lead City Department | ▲ State | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                             |
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| 2018-07-10   | 20                 | Refer to City Manager to look into adopting an ordinance requiring a permit process for scooter sharing companies to operate on public streets | Refer to the City manager to look into adopting an ordinance establishing a pilot Powered Scooter Share Permit Program for 24 months, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, providing a procedure for the assessment and collection of administrative | Council member |                   | Kriss Worthington, Sophie Hahn | Transportation Commission | 2018-11-27 17:00:00 | Public Works         | Pending | 2018-11-27 17:00:00 |                 | <p>2019-11-26 14:11:56 - Melissa McDonough (Additional comments) Continuing to monitor status of outstanding lawsuits against other cities re: scooters.</p> <p>2019-08-07 11:03:01 - Nancy Melendez (Additional comments) City issued an RFP for Franchise applications due back by 1/25/19. A panel consisting of staff reps from Public Works, Police, 311, Economic Development and UC Berkeley scored the applications</p> |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                 | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|              |                    |              | ve penalties for permit violations or parking or leaving standing an unpermitted powered scooter subject to the pilot Powered Scooter Share Permit Program on a sidewalk, street, or other public right-of-way. |             |                   |         |                     |                   |                      |         |                  |                 | . A draft Council report was prepared to recommend the top 3 scorers when staff learned that the City of San Diego was being sued by Disability Rights California over accessibility impacts of permitted scooter sharing operations. City of Berkeley staff is reevaluating the scooter applications with an eye toward requirements informed by the lawsuit. The approval of 3 Scooter Franchises is expected to go to Council in Oct 2019.<br><br>2019-02-05 15:22:21 - Melissa McDonough (Additional comments) Council adopted tentative terms for franchise agreements |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                 |
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|              |                    |              |                 |             |                   |         |                     |                   |                      |         |                  |                 | on December 4, 2018 based on input from the Transportation Commission and multiple other commissions and agencies. Transportation staff has solicited proposals from various scooter sharing companies and will return to Council with recommendations for up to 3 service providers and adoption of franchise agreements for each. |

| Meeting Date | Agenda Item Number | Project Name                   | Recommendations                                                                                                                                                     | Referral by | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                |
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| 2018-04-03   | 18                 | Supplemental Paid Family Leave | 2) refer to the City Manager to draft an ordinance regarding retaliation against employees using state family leave, including a private right of action provision. | Commission  |                   |         |                     | 2019-01-31 17:00:00 | City Attorney        | Pending | 2019-01-31 17:00:00 |                 | <p>2019-12-16 10:27:45 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources.</p> <p>2019-09-17 11:24:26 - Christopher Jensen (Additional comments) City Attorney's Office to coordinate with Human Resources</p> |

| Meeting Date | Agenda Item Number | Project Name                                          | Recommendations                                                                                                                                                                                                                                                                                                                                                     | Referral by    | Referral District | Sponsor                     | Referral Commission | Original end date   | Lead City Department | ▲ State     | Planned end date    | Actual end date | Additional comments                                                                                     |
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| 2019-09-10   | 55                 | Game Day Parking - Minor Update to include RPP area K | Refer to the City Manager the modification of parking restrictions in specified RPP Zones on UC Berkeley home football game days as follows: establish "Enhanced Fine Areas" to prohibit parking without a valid RPP permit to include RPP Zone K; and install new RPP signs in zone K to clearly indicate UC Berkeley home football game day parking prohibitions. | Council member |                   | Lori Droste, Jesse Arreguin |                     | 2019-09-16 17:00:00 | Public Works         | Not Started | 2019-09-16 17:00:00 |                 | 2019-11-26 14:14:38 - Melissa McDonough (Additional comments) Scheduled for Council action spring 2020. |

| Meeting Date | Agenda Item Number | Project Name                             | Recommendations                                                                                                                                                                                                                                                                                                                              | Referral by    | Referral District | Sponsor       | Referral Commission | Original end date   | Lead City Department | ▲ State     | Planned end date    | Actual end date | Additional comments |
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| 2019-11-12   | 18                 | Request for Information: Police Dispatch | Refer to the City Manager a request for information clarifying: 1. when non-emergency phone calls to the police are directed to the Berkeley Police Department and when to the California Highway Patrol or other outside agencies, and 2. what staffing or technological changes would be needed to direct more calls to Berkeley dispatch. | Councilmembers |                   | Kate Harrison |                     | 2019-11-20 17:00:00 | Police               | Not Started | 2019-11-20 17:00:00 |                 |                     |



| Meeting Date | Agenda Item Number | Project Name                                            | Recommendations                                                                                                                                                                                                      | Referral by    | Referral District | Sponsor                                  | Referral Commission | Original end date   | Lead City Department           | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| 2019-03-26   | 15                 | Ensuring the Sustainability of the Berkeley Flea Market | Short-term referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market, to sustain and enhance its ability to serve both merchant participants and the community at large. | Council member |                   | Ben Bartlett, Sophie Hahn, Cheryl Davila |                     | 2019-05-27 17:00:00 | Office of Economic Development | Work in Progress | 2019-07-30 11:38:31 |                 | <p>2019-11-25 13:18:59 - Melissa McDonough (Additional comments) Community Services United (nonprofit that runs the flea market) submitted their strategic plan for the flea market to OED on November 15th. Communication from OED to Council pending.</p> <p>2019-09-24 11:03:09 - Melissa McDonough (Additional comments) Still waiting for the Flea Market's strategic plan, expected end of calendar year.</p> <p>2019-06-06 10:40:44 - Jordan Klein (Additional comments) OED's small business retention consultant, Uptima Business</p> |

| Meeting Date | Agenda Item Number | Project Name                                                                                                             | Recommendations                                                                                                                                                                                                  | Referral by    | Referral District | Sponsor      | Referral Commission | Original end date   | Lead City Department | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                          |
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|              |                    |                                                                                                                          |                                                                                                                                                                                                                  |                |                   |              |                     |                     |                      |                  |                     |                 | <p>Bootcamp, is working closely with the Flea Market on the development of a new strategic plan. Expected completion is July 2019. At that point, OED will submit an information report to City Council with an update and summary, with strategic plan attached. Expected for the 9/10/19 City Council regular meeting.</p> |
| 2019-09-10   | 48                 | Request for Information Regarding Current Status and Progress on Traffic Mitigations at Dwight Way and California Street | Refer to the City Manager a request for information regarding the current status and progress on traffic mitigations and pedestrian safety improvements at the intersection of Dwight Way and California Street. | Council member |                   | Ben Bartlett |                     | 2019-09-16 17:00:00 | Public Works         | Work in Progress | 2019-09-16 17:00:00 |                 | 2019-11-26 14:16:26 - Melissa McDonough (Additional comments) Off agenda memo pending                                                                                                                                                                                                                                        |

| Meeting Date | Agenda Item Number | Project Name                                                     | Recommendations                                                                                                                                                                                      | Referral by    | Referral District | Sponsor                                                 | Referral Commission | Original end date   | Lead City Department | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                            |
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| 2019-09-10   | 53                 | Voluntary Time Off on Statewide Election Days for City Employees | Refer to the City Manager to designate Statewide Election Days as VTO days, and refer to the 2x2 Committee to discuss coordinating City and District policy on holidays, in particular Election Day. | Council member |                   | Rigel Robinson, Cheryl Davila, Sophie Hahn, Lori Droste |                     | 2019-09-16 17:00:00 | Human Resources      | Work in Progress | 2019-09-16 17:00:00 |                 | 2019-11-06 15:47:09 - Wilhelmina Parker (Additional comments) Referred to the budget committee to provide analysis on the cost. It is also slated to be a part of labor negotiations in 2020 as it subject to meet and confer. |

| Meeting Date | Agenda Item Number | Project Name                                             | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Referral by    | Referral District | Sponsor                                                    | Referral Commission | Original end date   | Lead City Department           | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                       |
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| 2019-07-16   | 14                 | Opportunity Zone Project Guidelines for the City Manager | Refer to the City Manager the priorities listed below for investment in Berkeley's Opportunity Zones for proactive outreach and marketing to investors or Opportunity Funds, and to guide any discussions or negotiations regarding development projects in Opportunity Zones. The priorities are: Construction of new Affordable Housing units or acquisition and preservation of affordable housing; Preservation of historic buildings; Cultural Institutions and Performing Arts Venues; Civic Uses (Government Offices, | Councilmembers |                   | Ben Bartlett, Kate Harrison, Jesse Arreguin, Cheryl Davila |                     | 2019-07-22 17:00:00 | Office of Economic Development | Work in Progress | 2019-09-25 11:01:10 |                 | 2019-11-25 13:28:38 - Melissa McDonough (Additional comments) Information report postponed pending further analysis.<br><br>2019-11-05 13:31:36 - Jordan Klein (Additional comments) Information report submitted for 12/3/19 Council Meeting<br><br>2019-09-24 07:59:59 - Melissa McDonough (Additional comments) Expect to send an info report/referral response to Council by Oct/Nov. |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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|              |                    |              | Libraries, Schools, Public Safety); Public Open Space and Recreation Facilities; Health Care Services; Transportation Demand Management features; and Job training or employment opportunities.<br>The City Manager should further incorporate these guidelines into any relevant formal document relating to projects in Opportunity Zones. That City staff, working with non-profit organizations OR seeking technical assistance, develop a prospectus marketing community development projects in Berkeley's Opportunity Zones |             |                   |         |                     |                   |                      |         |                  |                 |                     |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                                                | Recommendations                                                                                                                                                                                                                                  | Referral by    | Referral District | Sponsor                                                    | Referral Commission | Original end date   | Lead City Department | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                    |
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|              |                    |                                                                                                                                                                                                             | using the guidelines mentioned above, or any other tools to attract equitable investment in Opportunity Zones.                                                                                                                                   |                |                   |                                                            |                     |                     |                      |                  |                     |                 |                                                                                                                                                                                                                                                                                        |
| 2019-05-28   | 29                 | Referral to the Public Works Department and the City Manager: Finishing the installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St. | Refer to the City Manager a request to finish the installation of sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer to the Public Works Department for its installation. | Councilmembers |                   | Ben Bartlett, Kate Harrison, Cheryl Davila, Jesse Arreguin |                     | 2019-06-13 17:00:00 | Public Works         | Work in Progress | 2019-10-01 17:00:00 |                 | <p>2019-11-26 14:28:34 - Melissa McDonough (Additional comments) Project is out to bid and completion is expected by end of fiscal year.</p> <p>2019-11-26 14:19:08 - Melissa McDonough (Additional comments) Alternatives identified, final selection and implementation pending.</p> |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                                    | Recommendations                                                                                                                                                                                                                                                                                               | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department                   | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                        |
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| 2019-09-24   | 36                 | Companion Report: Health Study to be Conducted by the Public Health Division to Gather Data on Health Conditions, Health Disparities and Mortality Rates of Berkeley's homeless | <p>Send a letter to Alameda County requesting data on deaths of identified homeless individuals.</p> <p>Contact Alameda County request that they explore the feasibility of recording homelessness as a data point in death records and/or making investments to begin tracking this information locally.</p> | Councilmembers |                   |         |                     | 2019-10-31 17:00:00 | Health, Housing and Community Services | Work in Progress | 2019-11-29 17:00:00 |                 | <p>2019-12-02 14:10:47 - Melissa McDonough (Additional comments) Disregard previous comment. Mistake.</p> <p>2019-12-02 14:06:36 - Melissa McDonough (Additional comments) RFP issued, due date for responses 12/12/19</p> |

| Meeting Date | Agenda Item Number | Project Name                                 | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Referral by | Referral District | Sponsor | Referral Commission         | Original end date   | Lead City Department                   | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                              |
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| 2019-09-10   | 35                 | 1281 University Avenue Request for Proposals | Refer to the City Manager to issue a Request for Proposals (RFP) for residential development at the City-owned site at 1281 University Avenue with a requirement that 100% of the on-site units to be restricted to 80% AMI or below households with at least 10% at 50% AMI, with consideration given to accommodations that serve unhoused or homeless households, including nontraditional living arrangements such as tiny homes and that Council consider interim use for the site for housing purposes. | Commission  |                   |         | Housing Advisory Commission | 2019-11-29 17:00:00 | Health, Housing and Community Services | Work in Progress | 2019-11-29 17:00:00 |                 | 2019-12-02 14:11:54 - Melissa McDonough (Additional comments) RFP issued, responses due 12/12/19 |



| Meeting Date | Agenda Item Number | Project Name                                                                                   | Recommendations                                                                                                                                                                                                                                                                                                           | Referral by    | Referral District | Sponsor      | Referral Commission | Original end date   | Lead City Department | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 2019-03-26   | 15                 | Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave Ordinance | That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903. | Councilmembers |                   | Ben Bartlett |                     | 2019-11-29 17:00:00 | City Attorney        | Work in Progress | 2020-01-31 17:00:00 |                 | <p>2019-12-16 10:28:22 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources.</p> <p>2019-09-17 10:59:00 - Christopher Jensen (Additional comments) A draft opinion is under review in the City Attorney's office.</p> <p>2019-06-18 08:04:27 - Melissa McDonough (Additional comments) The City Attorney's Office is drafting a City Attorney opinion analyzing the holding in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4Cal.5th 903 with respect to the City's MWO and</p> |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments                                                                                                                                                                        |
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|              |                    |              |                 |             |                   |         |                     |                   |                      |         |                  |                 | PSLO. The completed memo will be referred to the City Manager and the Labor Commission for review by June 24, 2019 and for any related action, including amending ordinances as necessary. |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                | Recommendations                                                                                                                                                                                                                                                         | Referral by    | Referral District | Sponsor                                                    | Referral Commission | Original end date   | Lead City Department | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 2019-07-16   | 9                  | Referral to the City Manager to Consider Amending the Language of the City's Wireless Telecommunications Ordinance and Aesthetic Guidelines | Request that the City Manager consider amending the language of the City's Wireless Telecommunications Ordinance (BMC 23C.17) and Aesthetic Guidelines (BMC 16.10 & Aesthetic Guidelines for PROW permits) and return to City Council for adoption as soon as possible. | Councilmembers |                   | Susan Wengraf, Jesse Arreguin, Ben Bartlett, Kate Harrison |                     | 2019-07-22 17:00:00 | City Attorney        | Work in Progress | 2020-02-28 17:00:00 |                 | 2019-11-27 10:54:30 - Melissa McDonough (Additional comments) The City Attorney's Office, the City Manager's Office, Public Works, and Land Use Planning are in the process of revising an internal draft of administrative guidelines for implementing BMC 16.10 with respect to small cell wireless facilities.<br><br>2019-09-17 11:03:27 - Christopher Jensen (Additional comments) The City Manager's Office and City Attorney's Office are coordinating with other departments to update guidelines and procedures for wireless application submittals. |

| Meeting Date | Agenda Item Number | Project Name                                                                                                                                                    | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Referral by    | Referral District | Sponsor                                        | Referral Commission | Original end date   | Lead City Department   | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 2019-02-19   | 16                 | Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program | That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report; with the following specifications:<br>Recommendation of creating 1 new dispensary license for equity applicants. It is envisioned as new licenses are created, such as, delivery, manufacturing, and micro-business, permits will be reserved for equity applicants for each new category. | Councilmembers |                   | Ben Bartlett, Kriss Worthington, Cheryl Davila |                     | 2019-05-17 17:00:00 | PLANNING & DEVELOPMENT | Work in Progress | 2020-03-24 12:00:00 |                 | 2019-11-06 09:58:01 - James Bondi (Additional comments) Planned end date changed to 3/24/2020. Cannabis actions coming to Council in Dec 2019 will NOT include the equity program as previously thought. Equity needs more time/coordination with out City departments, Commissions, and constituencies.<br><br>2019-04-12 16:03:50 - Melissa McDonough (Additional comments) This will be included with the next set of Cannabis Ordinance changes, expected in summer 2019. |

| Meeting Date | Agenda Item Number | Project Name                                                                                | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department  | ▲ State          | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| 2019-04-02   | 18                 | Companion Report: Effective Enforcement of Safe Lead-Paint Practices - Update on Amendments | Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to: - Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead paint practices, and to explore options for sharing resources that can support expanded local enforcement; - Identify what resources, staff capacity, and program structure | Councilmembers |                   |         |                     | 2019-06-28 17:00:00 | CITY MANAGER'S OFFICE | Work in Progress | 2020-04-28 15:28:36 |                 | 2019-10-03 13:55:00 - Melissa McDonough (Additional comments) Completed matrix<br><br>2019-09-12 08:32:23 - Melissa McDonough (Additional comments) Convened all City divisions which touch issue (Public Health, Environmental Health, Toxics, Building & Safety, 311). Mapped existing processes. Preparing draft consolidation plan.<br><br>2019-08-07 15:33:54 - Melissa McDonough (Additional comments) In progress, drafting matrix of capacity across multiple city departments, next steps to develop an improved response framework and explore |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments                                                    |
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|              |                    |              | would be required to expand City enforcement of unsafe lead practices; - Continue current work to educate building permit applicants and contractors about safe lead paint practices; train and certify all City of Berkeley Building and Housing Inspectors in lead paint safety; respond to, investigate, and enforce safe lead paint practices as needed; and administer the Public Health Division's Childhood Lead Poisoning Prevention Program; and - Provide an update to City Council within one-year that identifies progress and next steps for |             |                   |         |                     |                   |                      |         |                  |                 | County funding options. Planned report back to Council in spring 2020. |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
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expanding enforcement of unsafe lead practices. AMENDMENTS: Request that the City Manager return to Council as soon as possible with recommendations on staffing for robust enforcement and internal restructuring for inspections. Options for noticing and distributing disclosure information. Enforcement by the City or the County, if feasible.

| Meeting Date | Agenda Item Number | Project Name         | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department  | ▲ State  | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                    |
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| 2017-07-25   |                    | Public Toilet Policy | Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall not fund or contribute to the financing of | Council member |                   |         |                     | 2018-06-29 17:00:00 | CITY MANAGER'S OFFICE | Past Due | 2018-06-29 17:00:00 |                 | <p>2019-08-05 09:47:54 - Melissa McDonough (Additional comments) Staff have prepared a memo which will be submitted to Council in Fall 2019.</p> <p>2019-04-24 15:13:54 - Melissa McDonough (Additional comments) Still on hold as staff attention is on RV, TNC.</p> <p>2019-04-12 15:41:24 - Melissa McDonough (Additional comments) Staff transition and priority put on TNC, RV policy, and Safe Clean Streets</p> |



| Meeting Date | Agenda Item Number | Project Name                                                                                                                          | Recommendations                                                                                                                                                                                                               | Referral by    | Referral District | Sponsor                                  | Referral Commission | Original end date   | Lead City Department | ▲ State                 | Planned end date    | Actual end date | Additional comments                                                                                                 |
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|              |                    |                                                                                                                                       | the public toilets or their maintenance.                                                                                                                                                                                      |                |                   |                                          |                     |                     |                      |                         |                     |                 |                                                                                                                     |
| 2017-12-19   | 22                 | Develop Ordinance Prohibiting Companies Participating in the Construction of a Border Wall from Contracting with the City of Berkeley | Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days. | Council member |                   | Ben Bartlett, Sophie Hahn, Cheryl Davila |                     | 2018-07-20 17:00:00 | Finance              | Pending Not On Schedule | 2018-07-20 17:00:00 |                 | 2019-11-25 13:41:42 - Melissa McDonough (Additional comments) Draft ordinance sent to the City Attorney for review. |

| Meeting Date | Agenda Item Number | Project Name                                                                                             | Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Referral by    | Referral District | Sponsor                 | Referral Commission | Original end date   | Lead City Department  | ▲ State             | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------|--------------------|----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------|-------------------------|---------------------|---------------------|-----------------------|---------------------|---------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2015-11-17   | 28                 | Improve Conditions on Our Community Sidewalks; Amending Berkeley Municipal Code Chapters 13.36 and 14.48 | Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinances:<br>1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places.<br>2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks.<br>3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees.<br>Additional Services: 1. Create a | Council member |                   | Linda Maio, Lori Droste |                     | 2019-02-28 16:00:00 | CITY MANAGER'S OFFICE | Pending On Schedule | 2019-02-28 16:00:00 |                 | <p>2019-10-15 14:27:16 - Melissa McDonough (Additional comments) Staff has prepared an overview of the outcomes from the pilot implementation of the Shared Sidewalk Policy , and anticipates presenting its findings to Council in Fall 2019. The ongoing program is currently in place.</p> <p>2019-08-07 14:46:28 - Melissa McDonough (Additional comments) Storage is done as is mobile showers and expansion of bathrooms, 14.48 re: sidewalks is done.</p> <p>2019-04-24 15:08:11 - Melissa McDonough (Additional comments) Outreach information disseminate</p> |

| Meeting Date | Agenda Item Number | Project Name | Recommendations                                                                                                                                                                                                                                                                                                         | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                       |
|--------------|--------------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------------|---------|---------------------|-------------------|----------------------|---------|------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              |                    |              | secure storage facility for personal belongings; bins must be of adequate size, of reasonable number (estimate of 50 – 100 at the outset) and ensure reasonable access, with posted hours. 2. Provide additional bathrooms in the Downtown and Telegraph areas. 3. Provide mobile showers and bathrooms for public use. |             |                   |         |                     |                   |                      |         |                  |                 | <p>d to people on streets; another round of personal notification starts 4/16/19 and 3 person team starts 4/23/19.</p> <p>2019-04-12 14:20:27 - Melissa McDonough (Additional comments) Ordinances and AR 10.2 have been updated. Homeless storage program created in October 2018. Enforcement of 10.2 has been launched as of 2/28.</p> |

| Meeting Date | Agenda Item Number | Project Name                                                               | Recommendations                                                                                                                                                                    | Referral by    | Referral District | Sponsor | Referral Commission | Original end date   | Lead City Department | ▲ State             | Planned end date    | Actual end date | Additional comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------|--------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------|---------|---------------------|---------------------|----------------------|---------------------|---------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2017-03-14   | 24                 | Referral to Consider Caregiver Parking in Residential Shared Parking Pilot | Refer to the City Manager and Transportation Commission to consider a pilot program for caregiver parking permits in RPP zones in the goBerkeley Residential Shared Parking Pilot. | Council member |                   |         |                     | 2020-06-12 17:00:00 | Public Works         | Pending On Schedule | 2020-06-12 17:00:00 |                 | <p>2019-11-26 14:21:52 - Melissa McDonough (Additional comments) Item being incorporated into residential shared parking pilot, which is on 12/3/20 action calendar.</p> <p>2019-10-11 11:49:18 - Nancy Melendez (Additional comments) Status remains the same</p> <p>2019-09-25 09:09:40 - Melissa McDonough (Additional comments) This fall, City staff, with vendor support, will be collecting "existing conditions" data in the Southside and Elmwood pilot areas, including soliciting public input from a range of stakeholders who are parking in these</p> |

| Meeting Date | Agenda Item Number | Project Name | Recommendations | Referral by | Referral District | Sponsor | Referral Commission | Original end date | Lead City Department | ▲ State | Planned end date | Actual end date | Additional comments |
|--------------|--------------------|--------------|-----------------|-------------|-------------------|---------|---------------------|-------------------|----------------------|---------|------------------|-----------------|---------------------|
|--------------|--------------------|--------------|-----------------|-------------|-------------------|---------|---------------------|-------------------|----------------------|---------|------------------|-----------------|---------------------|

areas. As part of this process, we will assess the need/demand for caregiver parking in the pilot areas.

2019-04-12 14:22:07 - Melissa McDonough (Additional comments) Ongoing, part of 3-year pilot project (Spring 2018); staff will work with consultants to collect data to determine the various needs and constraints of all residential parking users, including those with childcare needs; subsequent policy proposals will balance these needs. Contract for outreach consultant has been executed and work is starting in 2019.





Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 21, 2020

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$7,281,620.

| <u>PROJECT</u>                                                    | <u>Fund</u>       | <u>Source</u>                                                           | <u>Amount</u> |
|-------------------------------------------------------------------|-------------------|-------------------------------------------------------------------------|---------------|
| On-Call Landscape Architectural Services                          | 138<br>511        | Park Tax<br>Measure T1 – Infrstr<br>and Fac                             | \$900,000     |
| San Pablo Park Playground and Tennis Court Renovations            | 511<br>138<br>501 | Measure T1 – Infrstr<br>and Fac<br>Park Tax<br>Capital Improvement      | \$1,471,920   |
| Strawberry Creek Park Phase 2                                     | 511<br>138<br>501 | Measure T1 – Infrstr<br>and Fac<br>Park Tax<br>Capital Improvement      | \$750,000     |
| Grove Park Renovation Phase 2                                     | 511               | Measure T1 – Infrstr<br>and Fac                                         | \$900,000     |
| Solano Avenue Revitalization Plan                                 | 011               | GF - Discretionary                                                      | \$300,000     |
| Sacramento Complete Streets Project (Addison to Virginia Streets) | 344<br>135        | Caltrans Grant<br>Measure BB – Bike<br>and Ped<br>Meas B – Local Street | \$2,237,700   |

|                                          |            |                                 |                    |
|------------------------------------------|------------|---------------------------------|--------------------|
|                                          | 130<br>501 | and Rds<br>Capital Improvements |                    |
| Wellness Fitness Program                 | 011        | GF - Discretionary              | \$132,000          |
| Managed Security Service Provider (MSSP) | 680        | IT Cost Allocation              | \$90,000           |
| Server backup Upgrade and Maintenance    | 680        | IT Cost Allocation              | \$500,000          |
| <b>Total:</b>                            |            |                                 | <b>\$7,281,620</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager’s purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager’s purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City’s environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dennis Dang, Acting General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on December 10, 2019



Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on January 21, 2020

CONSENT CALENDAR  
January 21, 2020

- a) On-Call Landscape Architectural Services
- b) San Pablo Park Playground and Tennis Court Renovations
- c) Strawberry Creek Park Phase 2
- d) Grove Park Renovation Phase 2
- e) Solano Avenue Revitalization Plan
- f) Sacramento Complete Streets Project (Addison to Virginia Streets)
- g) Wellness Fitness Program
- h) Managed Security Service Provider (MSSP)
- i) Server backup Upgrade and Maintenance

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: January 21, 2020

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED        | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                               | ESTIMATED COST                                                                    | BUDGET CODE TO BE CHARGED                                                                                                                                                        | DEPT. / DIVISION         | CONTACT NAME & PHONE                                    |
|-------------------|--------------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------|
| 20-11378-C        | On-Call Landscape Architectural Services               | 1/22/2020            | 2/26/2020                | On-Call Landscape Architectural Services for upcoming City projects (Possibly three separate contracts for \$300,000 each; 3-year term for each contract). | \$300,000 per year<br><br>FY21-FY24<br>3 year term<br><br>Total NTE:<br>\$900,000 | Various:<br><br>(On-Call contract-Funding is project based and subject to available funding)<br><br>138-52-545-000-0000-000-461-612320<br><br>511-52-545-000-0000-000-461-612320 | PRW/Admin                | Scott Ferris<br>981-6711<br><br>Evelyn Chan<br>981-6430 |
| 20-11381-C        | San Pablo Park Playground and Tennis Court Renovations | 1/22/2020            | 2/20/2020                | This project includes renovation of the tennis courts, upgrades and ADA improvements to the ages 2-5 and ages 5-12 play areas.                             | \$1,025,960<br><br><br><br>\$176,920<br><br><br>\$269,040<br>\$1,471,920          | 511-52-545-000 0000-000-461-663110<br>PRWT119009<br><br>138-52-545-000 0000-000-461-663110<br>PRWT119009<br><br>501-52-545-000 0000-000-461-663110<br>PRWT119009                 | PRW/<br>Capital Projects | Wendy Wellbrock<br>981-6346<br><br>Isaac Carnegie       |
| 20-11382-C        | Strawberry Creek Park Phase 2                          | 1/22/2020            | 2/20/2020                | This project includes renovation of the 5-12 playground, restroom, and ADA improvements.                                                                   | \$325,700<br><br><br><br>\$420,000<br><br><br>\$4,300<br>\$750,000                | 511-52-545-000 0000-000-461-663110<br>PRWT119011<br><br>138-52-545-000 0000-000-461-663110<br>PRWT119011<br><br>501-52-545-000 0000-000-461-663110<br>PRWT119011                 | PRW/<br>Capital Projects | Wendy Wellbrock<br>981-6346<br><br>Isaac Carnegie       |

DATE SUBMITTED: January 21, 2020

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                   | APPROX. RELEASE DATE                                                                | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                          | ESTIMATED COST     | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                                                                                                                          | DEPT. / DIVISION                           | CONTACT NAME & PHONE                                    |
|--------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|---------------------------------------------------------|
| 20-11383-C         | Grove Park Renovation Phase 2                                     | 1/22/2020                                                                           | 2/25/2020                | This project includes renovation of sports play field, including irrigation system, dugouts, backstop structure, protective netting, and ADA improvements                                             | \$900,000          | 511-52-545-000 0000-000-461-663110<br>PRWT119004                                                                                                                                                                                                                                                                                                                                   | PRW/<br>Capital Projects                   | Jesus Espinoza<br>981-6708                              |
| <b>DEPT. TOTAL</b> |                                                                   |                                                                                     |                          |                                                                                                                                                                                                       | <b>\$4,021,920</b> |                                                                                                                                                                                                                                                                                                                                                                                    |                                            |                                                         |
| 20-11384-C         | Solano Avenue Revitalization Plan                                 | 1/22/2020                                                                           | 2/25/2020                | Development of a plan to revitalize upper/eastern end of Solano Avenue and mid-corridor blocks within City of Berkeley and coordinate with City of Albany's mid-corridor Solano Complete Streets Plan | \$300,000          | 011-21-208-251-0000-000-446-612990                                                                                                                                                                                                                                                                                                                                                 | City Manager's Office/Economic Development | Melissa McDonough<br>981-7402                           |
| <b>DEPT. TOTAL</b> |                                                                   |                                                                                     |                          |                                                                                                                                                                                                       | <b>\$300,000</b>   |                                                                                                                                                                                                                                                                                                                                                                                    |                                            |                                                         |
| 20-11379-C         | Sacramento Complete Streets Project (Addison to Virginia Streets) | 12/13/2019 January 21, 2019 (Date to Council: will be issued after RFP is released) | 2/14/2020                | Contractor will construct corner bulbouts at four intersections, pedestrian refuge islands, one new traffic signal, modifications at two existing signals                                             | \$2,237,700        | 344-54-622-668-0000-000-431-665110- (\$1,248,678) - Funding will be added as part of AAO #2<br>135-54-622-668-0000-000-431-665110- (\$408,046)<br>130-54-622-668-0000-000-431-665110- (\$550,629) - Funding will be added as part of AAO #2<br>501-54-622-668-0000-000-431-665110- (\$30,347)<br><br>For reference, FUND\$ project code: 18BP03<br>ERMA project code: (PWTRCT1803) | Public Works - Transportation              | Ken Jung<br>981-7028<br><br>Michael Vecchio<br>981-6399 |
| <b>DEPT. TOTAL</b> |                                                                   |                                                                                     |                          |                                                                                                                                                                                                       | <b>\$2,237,700</b> |                                                                                                                                                                                                                                                                                                                                                                                    |                                            | <b>195</b>                                              |

DATE SUBMITTED: January 21, 2020

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                      | ESTIMATED COST                    | BUDGET CODE TO BE CHARGED                                                      | DEPT. / DIVISION                                   | CONTACT NAME & PHONE                                     |
|--------------------|-------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--------------------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------------|
| 20-11380-C         | Wellness Fitness Program                        | 1/22/2020            | 2/18/2020                | Wellness Fitness services for the police and fire departments to include annual physical examinations, entry level physical examinations, provide diagnostics, evaluation and education and other preventative measures to maintain or improve health and wellness, to prevent chronic illness, and to maintain employee records. | \$77,000<br>\$55,000<br>\$132,000 | 011-72-742-835-0000-000-422-612410-<br><br>011-71-704-816-0000-000-421-612410- | Fire/ Suppression<br><br>Police                    | David Sprague<br>981-5590<br><br>Mike Durbin<br>981-5970 |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                   | <b>\$132,000</b>                  |                                                                                |                                                    |                                                          |
| 20-11385-C         | Managed Security Service Provider (MSSP)        | 1/22/2020            | 2/20/2020                | Service providing cybersecurity monitoring and management                                                                                                                                                                                                                                                                         | \$90,000                          | 680-35-363-382-0000-000-472-612990                                             | Information Technology/<br>Enterprise Applications | Savita Chaudhary 981-6525                                |
| 20-11386-C         | Server backup Upgrade and Maintenance           | 1/22/2020            | 2/20/2020                | Local backup appliances, annual support, maintenance, and Cloud backup for the City's Servers                                                                                                                                                                                                                                     | \$500,000                         | 680-35-363-380-0000-000-412-64110                                              | Information Technology/<br>Enterprise Applications | Savita Chaudhary 981-6525                                |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                   | <b>\$590,000</b>                  |                                                                                |                                                    |                                                          |
| <b>GRAND TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                   | <b>\$7,281,620</b>                |                                                                                |                                                    |                                                          |







Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Contracts: Citywide Printing and Copying Services

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to approve contracts and any amendments with the following named firms for Citywide Printing and Copying Services for a total amount not to exceed \$675,000 for a 3 year period starting February 1, 2020 through January 31, 2023, subject to the City's annual budget appropriation process:

1. Synthesis Group Inc. dba Minuteman Press Berkeley in an amount not to exceed \$575,000;
2. In and Out Printing Services, Inc. in an amount not to exceed \$100,000.

FINANCIAL IMPLICATIONS

Based on actual historical cost analysis, the City spends approximately \$218,000 annually for printing and copying services. These costs are spread across various funds. It is projected that the City's continuing needs for these services will cost approximately \$675,000 for three years (February 2020 to January 2023). Out of the total of \$675,000, 85% or \$575,000 will be allocated to the Contract with Minuteman Press Berkeley, while the other 15% or \$100,000 will be allocated to a Contract with In and Out Printing Services.

CURRENT SITUATION AND ITS EFFECTS

City-wide, departments use printing and copying services for different purposes: business cards, envelopes, marketing materials, public notices, Council reports, brochures etc. In 2011, following an RFP, the City established a contract for printing and copying services with Minuteman Press Berkeley. The Contract was extended through the end of January 2019. In accordance with City practice, the City issued a new RFP in September 2019. The City's intent is to continue the implementation of a cost effective program that will be easy to use and meet the requirements of City departments for quality printing, short turn-around times, and low costs per copy. Moreover, the City seeks to diversify its supply base by having more than a single vendor that can fulfill the City's diverse needs. Diversifying the City's supply base has become imperative, especially with the recent power outages and the expectation of future similar events. In the specific instance of

printing and copying services, the City would have the ability to have multiple vendors for printing of materials during emergency situations. In light of these circumstances, the City issued a multi-award, indefinite time, indefinite quantity type of RFP and selected the two offers evaluated as best fit and value, namely Minuteman Press Berkeley and In and Out Printing Services.

#### BACKGROUND

Request for proposal (RFP) #19-11339-C was issued on September 10, 2019, seeking qualified firms or individuals to provide printing and copying services. Six qualifying offers were received and a thorough evaluation was conducted by a panel of City staff. The panel determined that Minuteman Press Berkeley and In and Out Printing Services, Inc. can best meet the City's needs and fulfill the selection criteria as set out in RFP #19-11339-C. Minuteman Press Berkeley has been a City supplier for several years and has a longstanding record of satisfactory performance. Additionally, Minuteman Press submitted a competitive offer by reducing the current pricing approximately 10%. In and Out Printing Services, Inc. is a certified small business enrolled in Alameda County's Small, Local and Emerging Business (SLEB) program and a union shop. In and Out Printing Services provided the City with the lowest prices for certain range of products, and were evaluated as the best option to diversify the City's supply base.

#### ENVIRONMENTAL SUSTAINABILITY

Minuteman Press Berkeley is a certified Bay Area Green Business since 2014 and has been collaborating for 25 years with the Printing Industries of Northern California (now Visual Media Alliance) in order to foster the use of recycled paper and to reduce the use of dangerous chemicals. Minuteman Press is also certified as a Disability Rights Business and is located in an EMBUD Water Smart Certified Building under The Bay Area Green Business Program guidelines. In and Out Printing Services is a certified Bay Area Green Business, and since 2010 has adopted an environmental strategy that focuses on reducing its carbon footprint. As a result of this strategy, In and Out Printing Services has eliminated harmful chemicals, increased the use of recycled paper and shifted to the exclusive use of soy based ink for its offset printing presses.

#### RATIONAL FOR RECOMMENDATION

RFP submittals were reviewed and scored in accordance with the selection criteria stated in the solicitation documents. A panel of City staff selected the firms deemed the most responsible and responsive.

#### ALTERNATIVE ACTIONS CONSIDERED

Having individual departments seek contracts or execute purchase orders on an ad-hoc as needed basis would increase both the cost of services and the transactional / administrative costs for the City. Concretely, the purchase of services would not benefit from the volume discounts incorporated in the RFP #19-11339-C.

#### CONTACT PERSON

Henry Oyekanmi, Director of Finance     510-981-7324



Attachments:

- 1: Resolution Synthesis Group Inc. dba Minuteman Press Berkeley
- 2: Resolution In and Out Printing Service, Inc.

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

CONTRACT: CITYWIDE PRINTING AND COPYING SERVICES

WHEREAS, on September 10, 2019, the City released a Request of Proposal (Specification No. 19-11339-C) seeking respondents to provide citywide printing and copying services; and

WHEREAS, on October 10, 2019, the City received six submissions that were reviewed and rated; and

WHEREAS, the submission from Synthesis Group Inc. dba Minuteman Press Berkeley was found to be fully responsive to the City's request; and

WHEREAS, funding has been identified and set aside by each City department.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with Synthesis Group Inc. dba Minuteman Press Berkeley for citywide printing and copying services for the contract period on or about February 1, 2020 through January 31, 2023 in an amount not to exceed \$575,000.

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

CONTRACT: CITYWIDE PRINTING AND COPYING SERVICES

WHEREAS, on September 10, 2019, the City released a Request of Proposal (Specification No. 19-11339-C) seeking respondents to provide citywide printing and copying services; and

WHEREAS, on October 10, 2019, the City received six submissions that were reviewed and rated; and

WHEREAS, the submission from In and Out Printing Service, Inc. was found to be fully responsive to the City's request; and

WHEREAS, funding has been identified and set aside by each City department.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments with In and Out Printing Service, Inc. for citywide printing and copying services for the contracting period on or about February 1, 2020 through January 31, 2023 in an amount not to exceed \$100,000.





Office of the City Manager

## CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David Brannigan, Fire Chief, Fire Department  
 Subject: Contract: Venture Tactical for Personal Protective Equipment for Firefighters

### RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Venture Tactical to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$112,000.

### FISCAL IMPACTS OF RECOMMENDATION

On June 25, 2019, the Council allocated \$80,000 in FY 2020 and \$100,000 in FY 2021 to provide personal protective equipment for Firefighters as part of the FY 2020 & FY 2021 Biennial Budget Adoption. The FY 2020 funds were appropriated as part of the FY 2020 Annual Appropriations Ordinance in June 2019. For FY 2021, the funds will be included in the Annual Appropriations Ordinance in June 2020.

### CURRENT SITUATION AND ITS EFFECTS

Currently, the Berkeley Fire Department does not have the PPE required for first responders to operate at intentional multi-casualty incidents (I-MCI).

On September 12, 2019, a Request for Proposal (RFP) for Personal Protective Equipment for the Austere Environment, Specification No. 20-11355-C was issued. The RFP closed on October 22, 2019. Three (3) bids were received and reviewed by staff. Two (2) of the bids were found to collectively meet the requirements of the RFP. The RFP language provides the City the option of selecting multiple vendors to fulfill the identified needs.

Contract: Venture Tactical

January 21, 2020

## BACKGROUND

In the past, it was a common practice at an active shooter/violent intruder incident for fire and Emergency Medical Services (EMS) first responders to stage at safe distances while law enforcement (LE) attempted to suppress the threat and secure the incident location.

The time consuming practice of staging fire and EMS first responders while LE officers cleared and secured the incident location resulted in delayed medical treatment to victims. Many victims who succumbed to penetrating injuries in these incidents would have benefited from immediate medical treatment of massive hemorrhaging.

As a result of several high-profile I-MCI, fire and law enforcement agencies have reexamined the strategies and tactics used at I-MCI incidents in an effort to improve victim outcomes while ensuring the safety of first responders.

One key outcome is that fire and EMS first responders require the PPE and training to operate within an active incident where there threat of violence from firearms may still be present. This allows first responders to provide lifesaving patient care and extrication to those victims that require immediate and definitive care to survive.

## ENVIRONMENTAL SUSTAINABILITY

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

## RATIONALE FOR RECOMMENDATION

Providing lifesaving interventions to patients that are located within a violent incident that have suffered critical injuries is an evolving threat for fire and EMS first responders. The Berkeley Fire Department is working diligently to provide the necessary training and equipment for its members so they are prepared and ready to respond.

## ALTERNATIVE ACTIONS CONSIDERED

None

## CONTACT PERSON

Dave Brannigan, Fire Chief, (510) 981-3473

Attachments:

1: Resolution

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

CONTRACT: VENTURE TACTICAL FOR PERSONAL PROTECTIVE EQUIPMENT  
FOR FIREFIGHTERS

WHEREAS, fire and EMS first responders require PPE and training to operate within an active incident where there threat of violence from firearms may still be present. Proper PPE will allow first responders to provide lifesaving patient care and extrication to those victims that require immediate and definitive care to survive, and

WHEREAS, the Berkeley Fire Department does not have the PPE required for first responders to operate at intentional multi-casualty incidents (I-MCI),

NOW THEREFORE, BE IT RESOLVED that \$112,000 will be appropriated as follows in the General Fund Biennial Budget process in FY 2020 (\$44,000) and FY 2021(\$68,000), and

BE IT FURTHER RESOLVED, by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with Venture Tactical to provide personal protective equipment to Firefighters of the City of Berkeley.







Office of the City Manager

## CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David Brannigan, Fire Chief, Fire Department  
 Subject: Contract: First Spear Of California (FSOC) for Personal Protective Equipment for Firefighters

### RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with First Spear Of California (FSOC) to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$47,000.

### FISCAL IMPACTS OF RECOMMENDATION

On June 25, 2019, the Council allocated \$80,000 in FY 2020 and \$100,000 in FY 2021 to provide personal protective equipment for Firefighters as part of the FY 2020 & FY 2021 Biennial Budget Adoption. The FY 2020 funds were appropriated as part of the FY 2020 Annual Appropriations Ordinance. The FY 2021 funds will be included in the FY 2021 Annual Appropriations Ordinance in June 2020 and are subject to Council approval..

### CURRENT SITUATION AND ITS EFFECTS

Currently, the Berkeley Fire Department does not have the PPE required for first responders to operate at intentional multi-casualty incidents (I-MCI).

On September 12, 2019, a Request for Proposal (RFP) for Personal Protective Equipment for the Austere Environment, Specification No. 20-11355-C was issued. The RFP closed on October 22, 2019. Three (3) bids were received and reviewed by staff. Two (2) of the bids were found to collectively meet the requirements of the RFP. The RFP language provides the City the option of selecting multiple vendors to fulfill the identified needs.

Contract: First Spear Of California (FSOC)

January 21, 2020

## BACKGROUND

In the past, it was a common practice at an active shooter/violent intruder incident for fire and Emergency Medical Services (EMS) first responders to stage at safe distances while law enforcement (LE) attempted to suppress the threat and secure the incident location.

The time consuming practice of staging fire and EMS first responders while LE officers cleared and secured the incident location resulted in delayed medical treatment to victims. Many victims who succumbed to penetrating injuries in these incidents would have benefited from immediate medical treatment of massive hemorrhaging.

As a result of several high-profile I-MCI, fire and law enforcement agencies have reexamined the strategies and tactics used at I-MCI incidents in an effort to improve victim outcomes while ensuring the safety of first responders.

One key outcome is that fire and EMS first responders require the PPE and training to operate within an active incident where there threat of violence from firearms may still be present. This allows first responders to provide lifesaving patient care and extrication to those victims that require immediate and definitive care to survive.

## ENVIRONMENTAL SUSTAINABILITY

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

## RATIONALE FOR RECOMMENDATION

Providing lifesaving interventions to patients that are located within a violent incident that have suffered critical injuries is an evolving threat for fire and EMS first responders. The Berkeley Fire Department is working diligently to provide the necessary training and equipment for its members so they are prepared and ready to respond.

## ALTERNATIVE ACTIONS CONSIDERED

None

## CONTACT PERSON

Dave Brannigan, Fire Chief, (510) 981-3473

Attachments:

1: Resolution

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

Contract: First Spear Of California (FSOC) for Personal Protective Equipment for Firefighters

WHEREAS, fire and EMS first responders require PPE and training to operate within an active incident where there threat of violence from firearms may still be present. Proper PPE will allow first responders to provide lifesaving patient care and extrication to those victims that require immediate and definitive care to survive, and

WHEREAS, the Berkeley Fire Department does not have the PPE required for first responders to operate at intentional multi-casualty incidents (I-MCI),

NOW THEREFORE, BE IT RESOLVED that \$47,000 will be appropriated as follows in the General Fund Biennial Budget process in FY 2020 (\$24,500) and FY 2021 (\$22,500), and

BE IT FURTHER RESOLVED, by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with FSOC to provide personal protective equipment to Firefighters of the City of Berkeley.





Office of the City Manager

CONSENT CALENDAR

January 21, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David Brannigan, Fire Chief, Fire Department  
 Subject: Contract: Michael Brady for Emergency Management Training

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff in an amount up to \$166,680.

FISCAL IMPACTS OF RECOMMENDATION

In FY 2020, \$90,500 of Measure GG funds will be appropriated as part of the Second Amendment to the FY 2020 Annual Appropriations Ordinance. For FY 2021, \$76,180 of Measure GG funds will be included in the FY 2021 Annual Appropriations Ordinance in June 2020.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's contracts for emergency management training have expired.

On April 23, 2019, a Request for Proposal (RFP) for Emergency Management Training, Specification No. 19-11310 was issued. The RFP closed on May 14, 2019. Four (4) bids were received and reviewed by staff. Two (2) of the bids met the requirements of the RFP. The RFP language provides the City the option of selecting multiple vendors to fulfill the identified needs.

BACKGROUND

The City's Emergency Operations Center (EOC) uses City staff to manage emergencies and disasters. City staff perform their EOC duties in addition to their normal job

Contract: Emergency Management Training

January 21, 2019

functions. The Office of Emergency Services helps to coordinate training provision to ensure that staff are ready to perform their EOC roles.

The State and federal governments dictate emergency management structures and practices in the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS). The City's 2016 Emergency Operations Plan applies SEMS and NIMS to the City of Berkeley organization. The Office of Emergency Services provides training to EOC staff on specific City plans and procedures.

OES also works with external contractors to deliver up-to-date training recommended by the State and federal government for EOC staff. These contractors also coordinate with the State Office of Emergency Services to credential these trainings.

Using contractors to deliver training helps to maintain OES staff capacity to manage other important Berkeley Ready programming, including community outreach efforts and plan development.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

Staff training is an important element of the City's readiness to respond to large emergencies and disasters. This contract will enable the City to maintain its training program for EOC staff.

#### ALTERNATIVE ACTIONS CONSIDERED

Do not enter into contract, leaving staff without recommended emergency management training, or select another less-qualified and more costly contractor to deliver training.

#### CONTACT PERSON

Dave Brannigan, Fire Chief, (510) 981-3473

Attachments:

1: Resolution

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

CONTRACT: MICHAEL BRADY FOR EMERGENCY MANAGEMENT TRAINING FOR  
CITY OPERATIONS CENTER (EOC) AND DEPARTMENT  
OPERATIONS CENTER (DOC)

WHEREAS, the State and federal governments dictate emergency management structures and practices in the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS), and

WHEREAS, the Office of Emergency Services works with external contractors to deliver up-to-date training recommended by the State and federal government for Emergency Operations Center (EOC) staff,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with Michael Brady to provide emergency management training City of Berkeley EOC staff in an amount up to \$166,680 of Measure GG funds.

BE IT FURTHER RESOLVED, by the Council of the City of Berkeley that that in FY 2020, \$90,500 of Measure GG funds will be appropriated as part of the Second Amendment to the FY 2020 Annual Appropriations Ordinance and in FY 2021, \$76,180 of Measure GG funds will be appropriated in the Annual Appropriations Ordinance in June 2020.







Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Subject: Designate the Line of Succession for the Director of Emergency Services

RECOMMENDATION

Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 68,336-N.S.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Municipal Code (BMC) requires that the City Manager, who is the Director of Emergency Services, designate the order of succession to that office in the event the director is unavailable to attend meetings and otherwise perform his or her duties during an emergency. Additionally, the City Council must approve the order of succession. (BMC Section 2.88.040)

BACKGROUND

On February 27, 2018 the City Council adopted Resolution No. 68,336-N.S. designating the line of succession to the position of Director of Emergency Services in the event the Director is unavailable to perform his or her duties during an emergency. Since that time, changes in personnel necessitate that a new designation be approved as set forth in the attached Resolution.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Dave Brannigan, Fire Chief, 981-3473

Attachments:

1: Resolution

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

APPROVING THE DESIGNATED LINE OF SUCCESSION TO THE DIRECTOR OF EMERGENCY SERVICES POSITION AND RESCINDING RESOLUTION NO. 68,336-N.S.

WHEREAS, Berkeley Municipal Code Section 2.88.030 designates the City Manager as the Director of Emergency Services; and

WHEREAS, Dee Williams-Ridley, in her position as City Manager, serves as the Director of Emergency Services; and

WHEREAS, pursuant to Berkeley Municipal Code Section 2.88.040, it is necessary to establish a line of succession for the Director of Emergency Services in the event that the Director is unavailable to attend meetings or otherwise perform his or her duties during an emergency.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following order of succession to the position of Director of Emergency Services in the event the Director is unavailable to attend meetings or otherwise perform his or her duties during an emergency is hereby confirmed and approved:

1. Paul Buddenhagen, Deputy City Manager
2. David White, Deputy City Manager
3. David Brannigan, Fire Chief
4. Andrew Greenwood, Chief of Police

BE IT FURTHER RESOLVED that Resolution No. 68,336-N.S. is hereby rescinded.



Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Brannigan, Chief, Fire Department

Subject: Grant Application: Funding from Bay Area Urban Areas Security Initiative (UASI) to Support Emergency Medical Training Equipment and Fire/Rescue Utility Vehicle Purchases

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager or her designee to submit grant applications to the Bay Area Urban Areas Security Initiative grant program in the amount of \$56,472 to fund the purchase of Emergency Medical Training Equipment and in the amount \$53,134 to fund the purchase of a Polaris Fire/Rescue Utility Vehicle, and to accept grant funds and execute resulting grant agreements.

FISCAL IMPACTS OF RECOMMENDATION

The first grant would fund the initial project cost of \$56,472 for the Emergency Medical Training Equipment. These costs would include purchase of mannequins (\$25,200), purchase of hyper-realistic moulage and simulation tools (\$10,800), and for training (\$20,472 to cover classes in the use of simulation tools, travel, lodging, and overtime).

The Fire Department would pay annual maintenance and supplies costs for the Emergency Medical Training Equipment which are estimated at \$3,000. These costs would be shared equally between the General Fund and the Paramedic Tax Fund.

The second grant would fund the purchase cost of \$53,134 for a Polaris Fire/Rescue Utility Vehicle (including taxes and delivery).

This vehicle would be entered into the Public Works Department fleet maintenance program and have a vehicle replacement fund established with an estimated accrual rate of \$3,600 annually.

The Fire Department would pay the estimated annual maintenance costs of \$2,712 through the General Fund.

### CURRENT SITUATION AND ITS EFFECTS

Bay Area UASI opened the FY 2020 grant application period on September 20, 2019. UASI allocated FY 2019 funding \$1,331,862 for projects in the East Bay Hub (Alameda and Contra Costa counties). Funding amounts are expected to be similar for FY20. The stated purpose of the UASI program is to enhance regional terrorism preparedness in major metropolitan areas by developing integrated systems for terrorism prevention, protection, response, and recovery.

Grant funding will allow the Berkeley Fire Department to enhance its response capabilities by being able to provide better training for Multiple Casualty Incidents (MCIs) and being able to more quickly and safely deliver life-saving care in the event of such emergency. The Berkeley Fire Department would make the training tools and vehicle available to support surrounding agencies in Alameda and Contra Costa counties.

With mass shootings on the rise worldwide, and with domestic deaths associated with mass shootings increasing from 269 in 2014 to 390 so far in 2019 (<https://www.gunviolencearchive.org/>), there is strong motivation to prepare for similar events.

Active shooter and MCI drills conducted by the Berkeley Fire Department in conjunction with allied agencies have repeatedly demonstrated the value of realistic scenario-based training. The sophisticated mannequins and moulage tools proposed for purchase will help create high fidelity and hyper-realistic exercises and increase training capacity, thereby enhancing the effectiveness of these trainings and improving preparedness going forward.

The Fire Department currently operates a Polaris Quick Response Vehicle (QRV) for off-road medical/rescue responses, standby activity in difficult-to-access areas (like Panoramic Hill) and for crowded and/or potentially volatile situations (UC Berkeley Football games, Fourth of July celebrations at the Marina, and protest activity are prominent uses). This vehicle works well in these situations but does not have the ability to support firefighting actions.

The proposed additional Polaris QRV adds a fire pump to its configuration to meet the firefighting need and will expand our ability to respond to the other situations described, either doubling the resources available for a single incident or allowing us to respond to two incidents at once.

Emergency Medical Training Equipment and Fire/Rescue Utility Vehicle Purchases advance the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

The grants, if awarded, would allow the City of Berkeley to purchase training equipment to improve the ability to care for victims in active shooter, MCI, or other medical emergencies and to purchase a Fire/Rescue utility vehicle to improve the ability to deliver that care quickly in varied circumstances.

On October 15, 2019 Council adopted Resolution 69,147–N.S Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley. By adding firefighting capability via the proposed Fire/Rescue QRV, this proposed purchase supports this declaration as it builds on the Fire Department’s medical response and rescue capacity.

ENVIRONMENTAL SUSTAINABILITY

Funding from Bay Area Urban Areas Security Initiative (UASI) to Support Emergency Medical Training Equipment and Fire/Rescue Utility Vehicle Purchases will help meet the City of Berkeley’s environmental sustainability goals of reducing energy consumption in transportation, preserving natural habitats, and minimizing air and water pollution. It will achieve these goals by improving the Fire Department’s ability to deliver care and provide service without having to use full-size Type 1, Type 3, or Type 6 fire engines, either on city streets or on the fire roads and trails in the hills.

RATIONALE FOR RECOMMENDATION

The Fire Department requests these grant applications, agreements, and receipt of the associated funding be approved so it can improve its ability to deliver care and provide service to the citizens of Berkeley and those of the greater East Bay.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Scott McKinney, Professional Standards Captain, Fire, 510-981-5588

Attachments:

- 1: Resolution
- 2: Resolution

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

GRANT APPLICATION: FUNDING FROM BAY AREA URBAN AREAS SECURITY INITIATIVE (UASI) TO SUPPORT EMERGENCY MEDICAL TRAINING EQUIPMENT PURCHASE

WHEREAS, the City of Berkeley is committed to creating a resilient, safe, connected, and prepared city; and

WHEREAS, occurrence of intentional Mass Casualty Incidents is on the rise worldwide; and

WHEREAS, the City of Berkeley is home to multiple educational institutions and other large areas of assembly; and

WHEREAS, the City of Berkeley provides emergency medical response through its Fire Department; and

WHEREAS, the Bay Area Urban Areas Security Initiative began accepting grant applications on September 20, 2019 with the stated goal of enhancing regional terrorism preparedness in major metropolitan areas.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to: submit a grant application in the amount of \$56,472 to the Bay Area Urban Areas Security Initiative Grant Program; execute any resulting grant agreements and any amendments; and accept any grants; and that Council authorize the proposed purchase and the appropriation of funding for related expenses, subject to securing the grant. A record signature copy of said agreement(s) and any amendments to be on file in the Office of the City Clerk.

January 21, 2020

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

GRANT APPLICATION: FUNDING FROM BAY AREA URBAN AREAS SECURITY INITIATIVE (UASI) TO SUPPORT FIRE/RESCUE UTILITY VEHICLE PURCHASE

WHEREAS, the City of Berkeley is committed to creating a resilient, safe, connected, and prepared city; and

WHEREAS, the City of Berkeley contains and is surrounded by multiple trails and fire roads inaccessible to full-size fire apparatus; and

WHEREAS, the City of Berkeley is host to several large-scale public events annually, each with tens of thousands of visitors on foot and with limited access for full-size vehicles; and

WHEREAS, the City of Berkeley is historically host to several protests annually; and

WHEREAS, the Berkeley Fire Department is charged with providing fire, rescue, and emergency medical services in all conditions and in all areas of the city; and

WHEREAS, the Bay Area Urban Areas Security Initiative began accepting grant applications on September 20, 2019 with the stated goal of enhancing regional terrorism preparedness in major metropolitan areas.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to: submit a grant application in the amount of \$53,134 to the Bay Area Urban Areas Security Initiative Grant Program; execute any resulting grant agreements and any amendments; and accept any grants; and that Council authorize the proposed purchase and the appropriation of funding for related expenses, subject to securing the grant. A record signature copy of said agreement(s) and any amendments to be on file in the Office of the City Clerk.







Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Brannigan, Chief, Fire Department

Subject: Grant Application: Funding from California Department of Forestry and Fire Protection to Support Hazardous Fuels Reduction in Berkeley Wildland Urban Interface

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to submit a grant application in the amount of \$800,484 to the California Department of Forestry and Fire Protection (Cal Fire) California Climate Investments (CCI) program to fund a three-year vegetation mitigation program to operate in the Wildland Urban Interface (WUI) of Berkeley's Fire Zones 2 and 3, and to accept grant funds and execute a resulting grant agreement.

FISCAL IMPACTS OF RECOMMENDATION

The total project cost for three years of Hazardous Fuels Reduction in Berkeley WUI is \$1,136,197. The grant amount is \$800,484 and two departments within the City of Berkeley will provide in-kind matches. YouthWorks, through the Health, Housing & Community Services Department will contribute an in-kind match of \$232,950 using general funds. The Fire Department will also provide in-kind matches of \$72,763 for labor and \$30,000 for fuel which will both be paid using general funds. Expenditures from the grantor's portion of the project costs will be paid from the general fund and invoiced to the grant for reimbursement.

The attached budget worksheet (Attachment 2) provides further breakdown.

CURRENT SITUATION AND ITS EFFECTS

Cal Fire, through its California Climate Investments grant program, is funding Fire Prevention projects statewide with an allocated budget of \$49.7 million. These funds are being made available to cities and other agencies to "...improve the resiliency of forested and forest adjacent communities...while achieving climate goals."

Grant funding will allow the Berkeley Fire Department to run the Vegetation Management Crew program, working in partnership with YouthWorks. This program will reduce vegetation along rights of way in Fire Zones 2 and 3 (in support of the Safe

Passages wildfire evacuation project) while assisting at-risk or in-need property owners to create defensible space around their homes and on vacant properties. Please see a map of Fire Zones 2 and 3 in Attachment 3.

Hazardous Fuels Reduction in Berkeley Wildland Urban Interface is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city. The project also addresses climate change through carbon sequestration and minimizing carbon emissions while supporting Resolution No. 69,147–N.S Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley.

### BACKGROUND

The grant, if awarded, would provide the City of Berkeley with support to sustain the Berkeley Fire Vegetation Management Crew (VMC), a program which began with excess equity funding in 2019. The grant funding would support the program for three years beginning in 2021 and with a grant closeout by March 15, 2024.

VMC operations over the three years of the grant would target vegetation in Fire Zones 2 and 3. They would work along 41 miles of narrow streets and 137 walking paths, on unmanaged properties among the 122 vacant lots in the Hazardous Hills inspection areas, and adjacent to the homes of those unable physically or fiscally to create or maintain their own defensible space.

Mitigation would simultaneously reduce the likelihood of a fire starting, reduce the speed of fire spread, and reduce the intensity of any fire which did start. These effects would also reduce carbon emissions due to wildfire and support wildfire evacuation by protecting egress routes and enhance wildfire survivability by improving access for emergency personnel.

### ENVIRONMENTAL SUSTAINABILITY

The Hazardous Fuels Reduction in Berkeley Wildland Urban Interface project will help meet the City of Berkeley’s environmental sustainability goals of preparing for the impacts of climate change and preserving natural habitats and minimizing air and water pollution.

The project will also help achieve California Climate Investments (CCI) Greenhouse Gas reduction goals through hazardous fuel reduction along major evacuation and access routes and directly adjacent to homes, thereby addressing all three components of the stated goals of the CCI program:

1. Reducing risk of wildland fires to habitable structures and communities by removing vegetation for fire start, spread, and intensity.
2. Maximizing carbon sequestration in healthy WUI habitat by clearing excess vegetation, thereby supporting food, light, and water availability for remaining, desirable vegetation.

3. Minimizing uncontrolled release of emissions by wildfires by reducing overall fuel availability.

RATIONALE FOR RECOMMENDATION

Vegetation mitigation is needed in Berkeley Fire Zones 2 and 3 to help prevent wildfire and to enhance the safety of residents and emergency responders in the event of wildfire. Grant funding will directly support that effort. Action is required for the City of Berkeley to proceed with the Cal Fire CCI grant program application process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Scott McKinney, Professional Standards Captain, Fire, 510-981-5588

Attachments:

- 1: Resolution
- 2: Fuels Reduction Grant Project Budget Spreadsheet
- 3: Fire Zones Map

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

GRANT APPLICATION: FUNDING FROM CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION TO SUPPORT HAZARDOUS FUELS REDUCTION IN BERKELEY WILDLAND URBAN INTERFACE

WHEREAS, the City of Berkeley has continued to see a buildup of vegetation in the Wildland Urban Interface in spite of the lessons of the 1923 and 1991 fires in the Hills; and

WHEREAS, the City of Berkeley has declared Wildfire Prevention and Safety a Top Priority; and

WHEREAS, on September 25, 2019 the California Department of Forestry and Fire Protection (Cal Fire) began accepting grant applications for Fire Prevention projects aiming to reduce the risk of wildland fires to habitable structures and communities; and

WHEREAS, grant awards are expected in Fall 2020, with grant-funded work beginning in Winter 2021, and with grant closeout by March of 2024; and

WHEREAS, the applicant, if selected, will enter into an agreement with Cal Fire by August 31, 2020 to carry out the Hazardous Fuels Reduction project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to: submit a grant application in the amount of \$800,484 to the California Department of Forestry and Fire Protection's California Climate Investments Fire Prevention Grant Program; execute any resulting grant agreements and any amendments; and accept any grants; and that Council authorize the implementation of the project and the appropriation of funding for related expenses, subject to securing the grant. A record signature copy of said agreement(s) and any amendments to be on file in the Office of the City Clerk.

Tracking #: 19-FP-SCU-1098

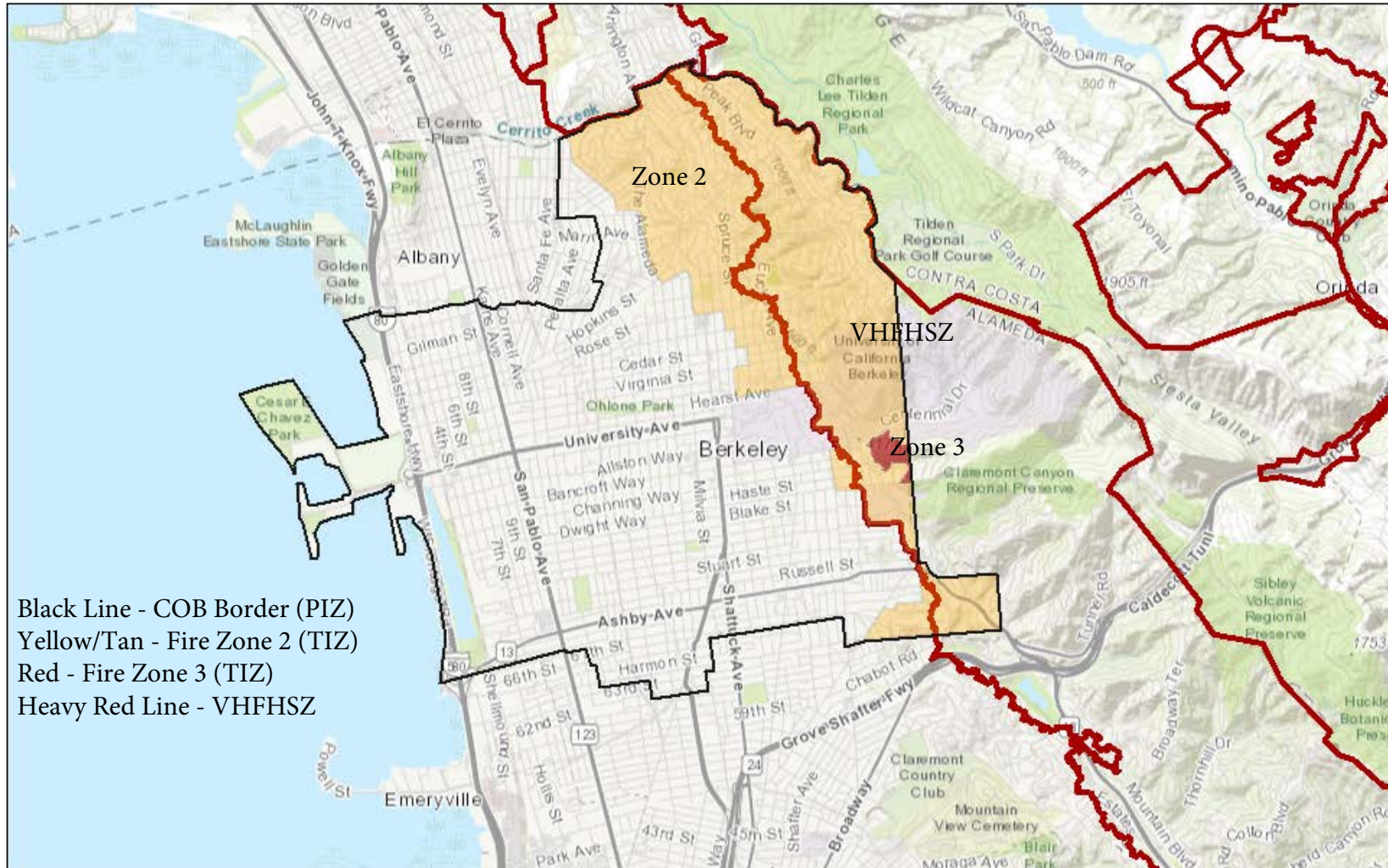
Project Budget

Project Name:

| Budget Category                    | Item Description                           | Cost Basis |       |           | Cost Share (%) |         |         | Funding Source (\$) |            |            | Total (\$)   |
|------------------------------------|--------------------------------------------|------------|-------|-----------|----------------|---------|---------|---------------------|------------|------------|--------------|
|                                    |                                            | Quantity   | Units | Cost/Unit | Grant          | Grantee | Partner | Grant               | Grantee    | Partner(s) |              |
| <b>A. Salaries and Wages</b>       |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    | Fire Captain FTE for project duration      | 6240       | Hours | \$ 63     | 100%           | 0%      | 0%      | \$ 395,242          | \$ -       | \$ -       | \$ 395,242   |
|                                    | Field labor, YouthWorks, 1000/yr           | 15000      | Hours | \$ 15     | 0%             | 0%      | 100%    | \$ -                | \$ -       | \$ 217,500 | \$ 217,500   |
|                                    | Purch. & Finance, duration                 | 144        | Hours | \$ 50     | 0%             | 100%    | 0%      | \$ -                | \$ 7,200   | \$ -       | \$ 7,200     |
|                                    | Mgt. Analyst, duration                     | 624        | Hours | \$ 60     | 0%             | 100%    | 0%      | \$ -                | \$ 37,440  | \$ -       | \$ 37,440    |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Sub-Total Salaries and Wages:              |            |       |           |                |         |         | \$ 395,242          | \$ 44,640  | \$ 217,500 | \$ 657,382   |
| <b>B. Employee Benefits</b>        |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    | Fire Captain @ 0.63                        | 6240       | Hours | \$ 40     | 100%           | 0%      | 0%      | \$ 248,976          | \$ -       | \$ -       | \$ 248,976   |
|                                    | YouthWorks, 1000/yr*5 @ 7.01%              | 15000      | Hours | \$ 1      | 0%             | 0%      | 100%    | \$ -                | \$ -       | \$ 15,450  | \$ 15,450    |
|                                    | Purch., duration @ .63                     | 144        | Hours | \$ 32     | 0%             | 100%    | 0%      | \$ -                | \$ 4,536   | \$ -       | \$ 4,536     |
|                                    | Mgt. Analyst, duration @ .63               | 624        | Hours | \$ 38     | 0%             | 100%    | 0%      | \$ -                | \$ 23,587  | \$ -       | \$ 23,587    |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Hours | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Sub-Total Employee Benefits:               |            |       |           |                |         |         | \$ 248,976          | \$ 28,123  | \$ 15,450  | \$ 292,549   |
| <b>C. Contractual</b>              |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    | CEQA/Forester, est.                        | 160        | Hours | \$ 100    | 100%           | 0%      | 0%      | \$ 16,000           | \$ -       | \$ -       | \$ 16,000    |
|                                    | Transport van, rental, 18 months           | 540        | Daily | \$ 50     | 100%           | 0%      | 0%      | \$ 27,000           | \$ -       | \$ -       | \$ 27,000    |
|                                    | Portable toilet trailer, rental, 18 months | 540        | Days  | \$ 17     | 100%           | 0%      | 0%      | \$ 9,180            | \$ -       | \$ -       | \$ 9,180     |
|                                    | Truck, utility, crew, rental, 18 months    | 540        | Days  | \$ 55     | 100%           | 0%      | 0%      | \$ 29,700           | \$ -       | \$ -       | \$ 29,700    |
|                                    | Chipper, 6in, gas, rental, 18 mos.         | 540        | Days  | \$ 53     | 100%           | 0%      | 0%      | \$ 28,350           | \$ -       | \$ -       | \$ 28,350    |
|                                    | Sub-Total Contractual:                     |            |       |           |                |         |         | \$ 110,230          | \$ -       | \$ -       | \$ 110,230   |
| <b>D. Travel &amp; Per Diem:</b>   |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    |                                            | 0          | Days  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Days  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Days  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Days  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Sub-Total Travel & Per Diem:               |            |       |           |                |         |         | \$ -                | \$ -       | \$ -       | \$ -         |
| <b>E. Supplies</b>                 |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    | Fuel for veh's, 20 gal/day x 250 days      | 5000       | Each  | \$ 6      | 0%             | 100%    | 0%      | \$ -                | \$ 30,000  | \$ -       | \$ 30,000    |
|                                    | Fuel for tools, 2 gal/day x 250 days       | 500        | Each  | \$ 8      | 100%           | 0%      | 0%      | \$ 4,000            | \$ -       | \$ -       | \$ 4,000     |
|                                    | PPE @ 2554/yr for three years              | 3          | Each  | \$ 2,554  | 100%           | 0%      | 0%      | \$ 7,662            | \$ -       | \$ -       | \$ 7,662     |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Sub-Total Supplies:                        |            |       |           |                |         |         | \$ 11,662           | \$ 30,000  | \$ -       | \$ 41,662    |
| <b>F. Equipment</b>                |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    |                                            | 0          | Each  |           | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  |           | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Tools cache, OTP + 20% repl./yr            | 1          | Each  | \$ 17,624 | 100%           | 0%      | 0%      | \$ 17,624           | \$ -       | \$ -       | \$ 17,624    |
|                                    |                                            | 0          | Each  | \$ -      | 100%           | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Sub-Total Equipment:                       |            |       |           |                |         |         | \$ 17,624           | \$ -       | \$ -       | \$ 17,624    |
| <b>G. Other Costs</b>              |                                            |            |       |           |                |         |         |                     |            |            |              |
|                                    | Chip transfer/compost by the ton           | 250        | Each  | \$ 67     | 100%           | 0%      | 0%      | \$ 16,750           | \$ -       | \$ -       | \$ 16,750    |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    |                                            | 0          | Each  | \$ -      | 0%             | 0%      | 0%      | \$ -                | \$ -       | \$ -       | \$ -         |
|                                    | Sub-Total Other Costs                      |            |       |           |                |         |         | \$ 16,750           | \$ -       | \$ -       | \$ 16,750    |
| <b>Total Direct Costs</b>          |                                            |            |       |           |                |         |         | \$ 800,484          | \$ 102,763 | \$ 232,950 | \$ 1,136,197 |
| Indirect Costs (Exclude Equipment) |                                            |            |       |           |                |         |         | 0%                  | \$ -       | \$ -       | \$ -         |
| <b>Total Project Costs</b>         |                                            |            |       |           |                |         |         | \$ 800,484          | \$ 102,763 | \$ 232,950 | \$ 1,136,197 |
| Less Program Income                |                                            |            |       |           |                |         |         | \$ -                | \$ -       | \$ -       | \$ -         |
| <b>Total Grant Proposed Costs</b>  |                                            |            |       |           |                |         |         | \$ 800,484          | \$ 102,763 | \$ 232,950 | \$ 1,136,197 |

19-FP-SCU-1098-MAP-0

### Berkeley Hazardous Fire Zones



November 26, 2019

### Hazardous Fuels Reduction in BER WUI

Sources: Esri, HERE, Garmin, Intermap, Increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri

Lana, Sarah  
Bureau of Land Management, Esri, HERE, Garmin, INCREMENT P, USGS, METIVASA, NGA, EPA, USDA | FRAP



Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services  
 Subject: Contract No. 31900132 Amendment: BOSS for Representative Payee Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900132 with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. (A representative payee is a person or organization appointed by the Social Security Administration to receive the Social Security or Supplemental Security Income benefits for anyone who is unable to manage or direct the management of his or her benefits.) The amendment will add \$25,000 to the current contract and extend it through June 30, 2020 for a total contract not to exceed amount of \$100,000. The current contract would be extended by four months, pursuant to the MHSA Plan, with additional funding proportionate to the monthly payment terms of the original contract.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the scope of work in the amount of \$25,000 will be provided from ERMA GL Code 315-51-503-526-2017-000-451-636110. The Contract Management System number for this contract is CMS No. FQBIS.

CURRENT SITUATION AND ITS EFFECTS

Berkeley Mental Health (BMH) issued a Request for Proposals for Representative Payee services on June 14, 2018, and BOSS was selected as the most responsive responsible bidder. They have provided Representative Payee services for BMH clients since March 1, 2019, and have acted in a satisfactory capacity. Before the current contract began, BMH provided representative payee services to approximately 90 clients through the Alameda County Substitute Payee Program (ACSPP). Although ACSPP acted as payee, they did not have direct contact with clients, with BMH staff acting as intermediaries. Providing these services detracted from BMH's core mission of providing outpatient mental health services which emphasize client needs, strengths, choices and empowerment. Moreover, providing these services altered the relationship between clients and clinicians, introducing angst and potentially damaging the rapport and trust necessary to produce healthy outcomes.

This recommendation entails extending the term of the current contract and increasing the contract limit to reflect the additional months added. Current Contract No. 31900132 ends on February 29, 2020, and the requested amendment would extend the term through June 30, 2020, adding \$25,000 for a total Not to Exceed (NTE) amount of \$100,000. The current payment terms and scope of work would not change.

**BACKGROUND**

On May 26, 2015, City Council approved the MHSA FY14/15-16/17 Three Year Program and Expenditure Plan. In this Plan, the Division proposed to use a portion of CSS System Development Funds to outsource Sub-Representative Payee Services, and explained that the services would be acquired through a competitive Request for Proposal (RFP) process.

A representative payee is a person or organization appointed by the Social Security Administration to receive the Social Security or Supplemental Security Income benefits for anyone who is unable to manage or direct the management of his or her benefits. A payee's main duties are to use the benefits to pay for the current and future needs of the beneficiary, and properly save any benefits not needed to meet current needs. A payee must also keep records of expenses. When a regulatory agency requests a report, a payee must provide an accounting of how he or she used or saved the benefits.

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental impacts or opportunities associated with the action recommended in this report.

**RATIONALE FOR RECOMMENDATION**

BOSS has additional capacity and specialized practices in administering a representative payee program, not only providing an enhanced level of service to consumers, but also permitting BMH clinicians to focus exclusively on their clients' other mental health needs.

**ALTERNATIVE ACTIONS CONSIDERED**

As an alternative action, Council could instead direct staff to circulate a new RFI or formal Request for Proposals to competitively solicit a different vendor.

**CONTACT PERSON**

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611  
Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:  
1: Resolution:



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

CONTRACT NO. 31900132 AMENDMENT: BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY FOR REPRESENTATIVE PAYEE SERVICES

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, on May 26, 2015 by Resolution No. 67,026-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2015 through 2017 Three Year Program and Expenditure Plan; and

WHEREAS, within the City Council approved MHSA Fiscal Years 2015 through 2017 Three Year Program and Expenditure Plan was the goal of contracting with a community based organization to provide Representative Payee Services; and

WHEREAS, on May 29, 2018 City Council approved the Finance Department's request to issue a Request for Proposals for Representative Payee Services; and

WHEREAS, the City of Berkeley's Mental Health Division issued a Request for Proposals for Representative Payee Services, and selected Building Opportunities for Self-Sufficiency as the vendor; and

WHEREAS, on February 26, 2019 by Resolution No. 68,768-N.S., the City Council authorized the City Manager to execute contract No. 31900132 with Building Opportunities for Self Sufficiency for Representative Payee services; and

WHEREAS, Building Opportunities for Self-Sufficiency has been the vendor for Representative Payee services for the City of Berkeley since March 1, 2019, and has acted in a satisfactory capacity; and

WHEREAS, funds are available in the current budget year in ERMA GL Code 315-51-503-526-2017-000-451-636110 and this contract has been entered in the Citywide contract database and assigned CMS No. FQBIS.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 31900132 with Building Opportunities for Self-Sufficiency for Representative Payee services through June 30, 2020 in an amount not to exceed \$100,000. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Interim Director, HHCS  
 Subject: Contract No. 10631B Amendment: Resource Development Associates for HOTT Evaluation Consulting Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10631B with Resource Development Associates (RDA) to provide evaluation consulting services for the Mental Health Division's Homeless Outreach and Treatment Team (HOTT), in an amount not to exceed \$24,000, for a total contract amount not to exceed \$78,500.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the additional scope of work in the amount of \$24,000 will be provided from the Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Homeless Outreach Fund, ERMA GL Account 315-51-503-526-2016-000-451-612990. The Contract Management System number for this contract amendment is CMS No. CHGDV.

CURRENT SITUATION AND ITS EFFECTS

RDA has provided reliable evaluation consulting services for HOTT for over two years. They have also created a proprietary database for the collection and analysis of quantitative data to understand demographics of clients, goods and services provided, and referrals to the HOTT program in support of our most vulnerable community members. This amendment will allow the completion of the final evaluation report.

BACKGROUND

The City of Berkeley's Homeless Outreach Treatment Team (HOTT) is a homeless outreach and engagement pilot program with the goal of engaging homeless individuals currently living on the streets of Berkeley and Albany who have significant mental health needs, connecting them to emergency housing resources (such as emergency shelters and motels), and assisting them with referrals to temporary and permanent housing programs and resources. This three-year pilot program is 60% funded by the City's Mental Health Services Act (MHSA) resources [a combination of Community Services and Supports (CSS) and Prevention Early Intervention (PEI) funds], 30% from realignment funds, and 10% from the City of Berkeley's General Fund. Given the

diversification of program funds, HOTT has the ability to serve the chronically homeless population, while also providing services to individuals with severe and persistent mental illness (SPMI), services for individuals to prevent SPMI, and services to those with functional impairments due to a mental health disorder or high profile problematic behaviors on the streets.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

#### RATIONALE FOR RECOMMENDATION

The HOTT program serves individuals experiencing chronic homelessness who also may be experiencing severe and persistent mental illness (SPMI) or functional impairments due to a mental health problem. The data will be used to 1) assess the efficacy of program implementation, 2) determine who is being referred and served, how much and in what ways, and 3) determine the success of the referral and linkage process, with the goal of creating an impactful program distinguished from other homeless service programs. It is an important resource for the homeless population as well as the larger community where it intersects the issue of homelessness.

#### ALTERNATIVE ACTIONS CONSIDERED

As this contract amendment is required for City of Berkeley to receive a final report on the HOTT, no other alternatives were considered.

#### CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611  
Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:

1: Resolution

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

CONTRACT NO. 10631B AMENDMENT: RESOURCE DEVELOPMENT ASSOCIATES FOR HOMLESS OUTREACH AND TREATMENT TEAM EVALUATION CONSULTING SERVICES

WHEREAS, on July 1, 2017, the City of Berkeley entered into Contract No.10631 with Resource Development Associates (RDA) for Homeless Outreach and Treatment Team (HOTT) evaluation consulting services in an amount not to exceed \$24,000 for the period July 1, 2017 to June 30, 2018; and

WHEREAS, this contract was previously amended on July 1, 2018, to increase the total contract amount by \$24,000 for a total amount of \$48,000 and to extend the expiration date to June 30, 2020; and

WHEREAS, on July 23, 2019 by Resolution No. 69,032-N.S. City Council approved amending Contract No. 10631A to add \$6,500 for the creation of a project-specific database; and

WHEREAS, Resource Development Associates has specific expertise in this area and are very familiar with the unique needs of the Homeless Outreach and Treatment Team, making it necessary for the City to contract with this vendor to perform this work; and

WHEREAS, Resource Development Associates was selected through a competitive request for proposals process;

WHEREAS, funds are available to perform this work in the current year budget in the Mental Health Services Act (MHSA) Prevention and Early Intervention (PEI) Homeless Outreach Fund, ERMA GL Account 315-51-503-526-2016-000-451-612990, and this contract amendment has been entered into the Citywide contract database and assigned CMS No. CHDVG.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 10631B with Resource Development Associates for Homeless Outreach and Treatment Team evaluation consulting services for a total not to exceed \$78,500, and maintaining the term through June 30, 2020. A record signature copy of said contract to be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Release of Resale Restrictions on former Redevelopment Agency Homeowner Loans

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute releases for resale restrictions on seven homeowner loans made by the former Berkeley Redevelopment Agency.

FISCAL IMPACTS OF RECOMMENDATION

None. The City released its financial claims to the properties in 2017, per the executed agreements.

CURRENT SITUATION AND ITS EFFECTS

In 1987, the Berkeley Redevelopment Agency (RDA) created a first-time homebuyers program for low-income households. The agency selected nine eligible households through a lottery to purchase homes owned by the RDA in West Berkeley. The homes were acquired by the agency as part of a larger redevelopment plan in the early 1970s.

The RDA's program allowed the households to purchase a home with a low down payment supplemented by loans provided by the RDA and U.S. Department of Housing and Urban Development (HUD). In exchange, the RDA required program participants to agree to a resale restriction agreement that prohibits sale to anyone other than a low-income buyer at an affordable price for 35 years. Buyers would be required to repay the principal of the loans, down payment and capital improvements and restart the 35-year affordability period. Should the borrower sell to a non-qualifying buyer, they would be required to repay the RDA's loan plus accrued interest. The RDA loans had a 12% compounding interest rate that brought the balance of the loans to over \$2 million by the end of the loan term. The borrowers are also required to remain as the primary occupants of the homes as part of the agreement.

Borrowers paid off the HUD loans in 20 years. The RDA's loans were forgivable after 30-years provided the borrowers remained in compliance. Accordingly, the City forgave all of the loans in November 2017. The resale restrictions for the borrowers will expire in November 2022.

The primary purposes of the RDA's program were to rehabilitate homes in this West Berkeley neighborhood, provide homeownership opportunities for low-income households, and support a stable residential area. However, the program had several features, including the resale restrictions and high-interest rate 30-year (forgivable) loans described above, that make the properties very difficult for owners to sell, even to other low-income buyers. As a result, none of the participating homes have been sold in 32 years, despite an average homeownership term of 13 years in the United States. Over the lifespan of the program, many of the participating buyers have expressed a desire to sell or otherwise change their residence.

The City Council, acting as the Successor Agency to the RDA, previously released the resale restrictions for one borrower near the time of his death since he had no heirs that the agreement would have allowed to occupy the home until the expiration of the restrictions. The Council acted at the December 13, 2016, Successor Agency meeting. A second release was addressed at a Special Closed City Council meeting on October 21, 2019. The remaining seven borrowers are still subject to the 35-year restrictions, expiring in 2022.

The agreements for the remaining borrowers are recorded with the Alameda County Clerk-Recorder's Office with the instrument numbers listed below. Staff will record releases for each agreement following Council's approval.

- 88-018756
- 87-305517
- 87-305548
- 87-305529
- 87-305561
- 87-305554
- 87-305523
- 87-305542

#### BACKGROUND

The City acquired responsibility for these properties following the dissolution of redevelopment agencies by the State of California in 2012. The portfolio is currently being managed by the Department of Health, Housing and Community Services' Housing Services Division.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The City released its monetary claims to these properties when it forgave all the RDA loans in 2017 (per the agreements). At that time, the City informed the owners that



resale restrictions remained in place for five more years. Subsequent conversations and correspondence with the borrowers indicate that a majority of the owners wish to sell their homes in 2022 when the resale restrictions expire.

The purpose of the program has been fulfilled. Enforcing the remaining years of the resale restriction would not advance the public interest in providing affordable housing opportunities, housing preservation, or neighborhood stability. The borrowers have remained in their homes for approximately 32 years, and there is little if any public benefit resulting from postponing the sale of their homes (should they choose) for three more years.

ALTERNATIVE ACTIONS CONSIDERED

The City could take no action and enforce the resale restrictions until they expire in 2022. It is highly unlikely that any borrower would sell at an affordable price to a low income buyer after 32 years, three years before the expiration of the resale restrictions.

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, HHCS, (510) 981-5114

Attachments:

1: Resolution

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

RELEASE OF RESALE RESTRICTIONS ON FORMER REDEVELOPMENT AGENCY  
HOMEOWNER LOANS

WHEREAS, the Redevelopment Agency of the City of Berkeley authorized the sale of nine homes via a first-time homebuyers program the agency established in 1987; and

WHEREAS, the sales of these homes were contingent on each borrower executing a 30-year forgivable loan and 35-year resale restriction agreement held by the Redevelopment Agency and recorded with Alameda County; and

WHEREAS, the California Supreme Court action in the California Redevelopment Association v. Matosantos case dissolved all Redevelopment Agencies as of February 1, 2012; and

WHEREAS, the City of Berkeley is the designated Successor Housing Agency to the former Redevelopment Agency, with the authority to manage its housing assets; and  
WHEREAS, the City forgave all the loans in the program in November 2017 in accordance with the loan agreements; and

WHEREAS, the resale restriction agreements will remain in effect until November 2022; and

WHEREAS, the City Council previously released the resale restrictions for two borrowers; and

WHEREAS, the resale restrictions impose limitations that make the properties very difficult for owners to sell, even to other low-income buyers; and

WHEREAS, enforcing the remaining years of the resale restriction would not advance the public interest in providing affordable housing opportunities, housing preservation, or neighborhood stability.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the release of the resale restrictions for the seven borrowers under the former Redevelopment Agency's first time homebuyer program.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all documents to effectuate this action.



Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Grant Applications: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with the Proposed Blake Apartments and Maudelle Miller Shirek Community Projects

RECOMMENDATION

Adopt a Resolution:

1. Authorizing the City Manager to negotiate, enter into, and cause the City to perform its obligation under agreements (including amendments) with the following developers and/or their affiliates relating to grant applications to the California Affordable Housing and Sustainable Communities program for project-related transportation and infrastructure improvements:
  - a. Satellite Affordable Housing Associates for Blake Apartments (2527 San Pablo), for a total grant amount of up to \$1.422 million; and
  - b. Resources for Community Development for Maudelle Miller Shirek Community (2001 Ashby), for a total grant amount of up to \$2.625 million.
2. Authorizing the City Manager to accept up to \$4.047 million in state AHSC funds from the projects and complete selected transportation improvements if awarded.

SUMMARY

On December 10, 2019, with Resolution 69,231-N.S., Council reserved City funds to support four affordable housing developments, including Satellite Affordable Housing Associates' (SAHA) Blake Apartments, located at 2527 San Pablo Avenue, and Resources for Community Development's (RCD) Maudelle Miller Shirek Community located at 2001 Ashby Avenue. Both projects seek to leverage the City's funding with funding from the state's Affordable Housing and Sustainable Communities (AHSC) program, for which applications are due on February 11. The goal of the AHSC program is to reduce greenhouse gas emissions, and projects are required to incorporate certain transportation improvements. RCD and SAHA have requested that the City partner with them on the applications by agreeing to accept AHSC funds and complete certain transportation improvements.

The project teams for SAHA and RCD strategized on the most competitive combination of transportation projects to propose, and determined that a portion of the AHSC grants will support City projects identified in this report. The City will not be a joint applicant, but will need to enter into a side agreement with each developer in order to receive state AHSC funding passed through the project to the City-sponsored transportation projects. The City will need to commit to completing those transportation projects within three years of the grant award. Completion of the transportation projects in a timely way will be necessary for the projects to receive the AHSC housing funds; the City's default would mean the loss of AHSC funds totaling more than \$10M each for these projects. For that reason, agreeing to participate in this program means the City will need to prioritize completion of those projects or else it will expose the City to liability for those losses. The side agreements will address liability and indemnification as well as the grant activities themselves. This was taken into consideration as the potential projects were identified.

If the projects' applications are successful, the City will receive up to \$1.422 million for transportation projects related to Blake Apartments, and up to \$2.625 million for transportation projects related to Maudelle Miller Shirek Community. The City scope and budget may decrease depending on the final combination of transportation projects proposed in the AHSC applications. The scopes are still in flux as of the writing of this report, as BART is working on estimating costs for its proposed improvements, and consultants are evaluating which combination of transportation projects will maximize the applications' competitiveness. The amounts listed represent the most inclusive City scopes and budgets.

#### FISCAL IMPACTS OF RECOMMENDATION

SAHA and RCD will apply to the state for AHSC program funds for housing development and transportation improvements. SAHA's application for Blake Apartments will include a request for approximately \$11.7 million for housing development. RCD will apply for approximately \$15.8 million to support housing development costs for Maudelle Miller Shirek Community. The housing portions of the applications do not require City participation, and housing funds will be loaned directly to the project without passing through the City. The housing portion of the application cannot go forward without the transportation and infrastructure portion discussed in this report.

The applications also include funding requests for transportation projects, including City projects and BART projects. If awarded, the SAHA and RCD AHSC applications would bring up to \$4.047 million of competitive grant revenue to fund bicycle, pedestrian and transit improvements that were previously identified in City plans. The resolution authorizes the City Manager to enter into agreements that will allow the project sponsors to pass through the funds to the City if their applications are successful.

If the AHSC grant applications are successful, the City will need to complete the agreed upon projects within three years of the grant awards. The resulting City agreements are expected to include generally customary provisions requiring the City (i) to complete the agreed improvements by the deadline, (ii) to be responsible for any funding shortfalls, And (iii) to not seek reimbursement for any grant amounts not otherwise spent on the projects.

**CURRENT SITUATION AND ITS EFFECTS**

SAHA and RCD are pursuing AHSC funding to support affordable housing development for Blake Apartments and Maudelle Miller Shirek Community, respectively. In order to be eligible for about \$11.7 million and \$15.8 million in housing development funds, respectively, the applications need to include transportation and infrastructure improvements consistent with a complex system of priorities.

The project teams have been meeting to strategize on the combination of transportation improvements that will help the application score most competitively.

For Blake Apartments, the up to \$1.422 million of proposed transportation and infrastructure improvements will be selected from the list below based on grant constraints:

| <b>Potential City Transportation Projects – Blake Apartments (SAHA)</b>                                                                                                                                            | <b>AHSC Funds Request (up to this amount)</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| Bicycle Boulevard – Parker Street (from San Pablo Ave to Mabel), Mabel Street (between Ward and Dwight), and Bonar Street (from Dwight to Bancroft) including traffic calming<br><i>2017 Berkeley Bicycle Plan</i> | \$ 191,000                                    |
| West Street Pathway (between Bancroft and Addison)                                                                                                                                                                 | \$ 380,000                                    |
| Pedestrian & Bicycle crossing beacon plus median at Dwight & Mabel<br><i>2017 Berkeley Bicycle Plan</i>                                                                                                            | \$ 185,000                                    |
| New sidewalk along Acton Street (1/2 block gap on the east side from Parker south)<br><i>Pedestrian Master Plan</i>                                                                                                | \$ 50,000                                     |
| Bus Stop and Pedestrian crossing Improvements – University/Bonar and University/Acton<br><i>Pedestrian Master Plan</i>                                                                                             | \$ 616,000                                    |
| <b>Total Potential City Transportation Projects – Blake</b>                                                                                                                                                        | <b>\$1,422,000</b>                            |

In addition to the City of Berkeley transportation projects discussed above, SAHA’s application will also request \$3.3 million for BART to purchase a new train car and

approximately \$3 million for BART to improve signage and wayfinding at the North Berkeley BART station and widen the Ohlone Greenway pathway, including the addition of a separated walkway, along the perimeter of the BART parking lots located between Acton Street and Virginia Gardens, and to make sidewalk ramp improvements in the main station parking lot. BART will enter into one or more separate agreements with SAHA to apply for and receive these funds, and deliver the improvements. The City will have no role or responsibilities in these BART improvements.

For Maudelle Miller Shirek Community, the up to \$2.625 million of proposed transportation and infrastructure improvements will be selected from the list below based on grant constraints:

| <b>Potential City Transportation Projects – Maudelle Miller Shirek Community (RCD)</b>                                                                           | <b>AHSC Funds Request (up to this amount)</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| Bicycle Boulevard – Woolsey and Fulton, from Ashby BART to Dwight Way including traffic calming<br><i>2017 Berkeley Bicycle Plan</i>                             | \$535,000                                     |
| Pedestrian & Bicycle crossing beacons at Adeline & Woolsey, Shattuck & Woolsey, Adeline & Russell, and Shattuck & Russell<br><i>2017 Berkeley Bicycle Plan</i>   | \$1,524,000                                   |
| Bus stop and pedestrian crossing improvements at Shattuck & Ashby, Shattuck & Woolsey, and Martin Luther King, Jr. Way & Prince<br><i>Pedestrian Master Plan</i> | \$566,000                                     |
| <b>Total Potential City Transportation Projects – MMSC</b>                                                                                                       | <b>\$2,625,000</b>                            |

Again, in addition to the City of Berkeley transportation projects discussed above, RCD’s application will also request \$3.3M for BART to purchase a new train car, plus approximately \$1.1 million for BART to improve signage and wayfinding at the Ashby BART station and install a protected bikeway through the station parking lot between Martin Luther King, Jr. Way and Adeline Street. BART will enter into one or more separate agreements with RCD to apply for and receive these funds, and deliver the improvements. The City will have no role or responsibilities in these BART improvements.

Approving the AHSC grant applications is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

## BACKGROUND

Administered by the Strategic Growth Council and implemented by the Department of Housing and Community Development (HCD), the AHSC Program funds land-use, housing, transportation, and land preservation projects to support infill and compact development that reduce greenhouse gas ("GHG") emissions. Funding for the AHSC Program is provided from the Greenhouse Gas Reduction Fund (GGRF), an account established to receive Cap-and-Trade auction proceeds.

To assist with the application, SAHA and RCD both hired consultants with proven track records of successful AHSC applications. SAHA hired Community Development Resource Group, and RCD hired Enterprise Community Partners. The consultants evaluated the AHSC scoring criteria and transportation project options, and advised on strategies that have the greatest chance of achieving the highest scores possible.

## ENVIRONMENTAL SUSTAINABILITY

The purpose of the AHSC program is to reduce greenhouse gas emissions in California, and all of the projects identified for the funding will help accomplish that goal. Increasing cycling and walking would help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction targets of 80% below year 2000 levels by 2050. The Climate Action Plan states that, in order to meet these targets, "Transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs."

## RATIONALE FOR RECOMMENDATION

The City transportation and infrastructure projects proposed for inclusion in this AHSC funding application were all previously identified in existing City plans, including the City's Bicycle Plan, Pedestrian Plan, and Berkeley Strategic Transportation Plan. This grant opportunity has the potential to provide up to a total of \$4.047 million directly to the City, \$3.8 million to BART for bicycle and pedestrian improvements to station access in Berkeley, and \$6.6 million to purchase additional BART train cars, at the same time that the program provides funding for affordable housing in the proposed Blake Apartments and Maudelle Miller Shirek Community projects. If the grant application is successful, staff believes that the AHSC funds will be sufficient for the City to complete its required transportation and infrastructure improvements, based on current cost estimates, already budgeted City funds and already awarded federal funds. Nevertheless, if this turns out to be incorrect, the City will be required to make up any shortfalls from other sources.

Accepting this AHSC grant, like almost all funding grants, comes with some risks. Nevertheless, City staff believes that the City can reasonably bear these risks in light of (i) the understanding that all of the anticipated costs have already been identified or budgeted, (ii) the expectation that all CEQA and NEPA approvals will be timely received, (iii) the City's general extensive experience with executing similar transportation and infrastructure projects, and specific understandings that all of the

projects at issue can be completed within the required three-year period, and (iv) other than customary requirements for carrying out any public works project, staff is not aware of any other significant pre-conditions or risks for the City executing the projects.

Specific design, construction, procurement and related contracts to deliver the City projects will be subject to customary City approvals at the appropriate times, including Council approval when otherwise required.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to participate in the AHSC applications, but that would result in less competitive applications for both SAHA and RCD and may impact their ability to secure funding to support the affordable housing developments. Without the City's participation, the applications would have difficulty achieving full points for active transportation improvements. In addition, it would mean forgoing an opportunity to access up to \$4.047 million for previously identified transportation infrastructure projects.

CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, 510-981-5228  
Beth Thomas, Principal Planner, Public Works, 510-981-7068

Attachments:  
1: Resolution



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

CALIFORNIA AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES  
INFRASTRUCTURE GRANT APPLICATIONS AND AGREEMENTS WITH PROPOSED  
BLAKE APARTMENTS AND MAUELLE MILLER SHIREK COMMUNITY PROJECTS

WHEREAS, the Parker, Mabel, Bonar, Fulton and Woolsey Street Bicycle Boulevards; the West Street Pathway; and street crossing beacons at the intersection of Dwight Way and Mabel Street, Adeline and Woolsey Streets, Shattuck Avenue and Woolsey, Adeline and Russell Street, and Shattuck and Russell were identified as future transportation projects in the Berkeley Bicycle Plan (2017); and

WHEREAS, the intersections of University Avenue with Bonar Street and Acton Street, and the intersections of Shattuck Avenue with Ashby Avenue and Woolsey Street were identified in the Berkeley Pedestrian Master Plan as being in need of pedestrian crossing safety improvements, and filling the sidewalk gap on the east side of Acton Street south of Parker Street is supported by the Berkeley Pedestrian Master Plan Policy 1.2, Implementation Measure 1 to “Maintain an accessible path of travel for all pedestrians at all times”; and

WHEREAS, City General Plan Policy T-2 calls on the City to “implement improvements to make transit more convenient, dependable, and attractive” and Policy T-4 establishes the City’s Transit-First Policy concerning identified Primary and Secondary Transit Routes; and

WHEREAS, University Avenue is identified in the City General Plan as a Primary Transit Route, and Shattuck Avenue south of Adeline Street and Martin Luther King, Jr. Way are identified in the City General Plan as Secondary Transit Routes; and

WHEREAS, the Parker, Mabel, Bonar, Fulton and Woolsey Street Bicycle Boulevards; the West Street Pathway; street crossing beacons at the intersection of Dwight Way and Mabel Street, Adeline and Woolsey Streets, Shattuck Avenue and Woolsey, Adeline and Russell Street, and Shattuck and Russell; bus stop and pedestrian crossing improvements at the intersections of University Avenue with Bonar Street and Acton Street, at the intersections of Shattuck Avenue with Ashby Avenue and Woolsey Street, and at the intersection of Martin Luther King, Jr. Way with Prince Street; and new sidewalk on the east side of Acton Street south of Parker Street are referred to as the “City Transportation Projects”; and

WHEREAS, the City Transportation Projects are related to the Blake Apartments Project and Maudelle Miller Shirek Community Project; and

WHEREAS, at their December 10, 2019 meeting, City Council voted to reserve City funding for Blake Apartments and Maudelle Miller Shirek Community; and

January 21, 2020

WHEREAS, Satellite Affordable Housing Associates and Resources for Community Development requested City funding through the 2019 Housing Trust Fund Request for Proposals for proposed affordable housing developments at Blake Apartments (2527 San Pablo Avenue) and Maudelle Miller Shirek Community (2001 Ashby Avenue), respectively; and

WHEREAS, Satellite Affordable Housing Associates and and/or its affiliate proposes to apply for California Affordable Housing and Sustainable Communities (AHSC) funding in February 2020 for approximately \$11.7 million to support housing development, as well as funding for transportation and infrastructure improvements which, if the application is successful, would result in up to approximately \$1.422 million required to be passed through to the City to deliver the City Transportation Projects; and

WHEREAS, Resources for Community Development and/or its affiliate proposes to apply for California Affordable Housing and Sustainable Communities (AHSC) funding in February 2020 for approximately \$15.8 million to support housing development, as well as funding for transportation and infrastructure improvements which, if the application is successful, would result in up to approximately \$2.625 million required to be passed through to the City to deliver the City Transportation Projects; and

WHEREAS, the amount of funding for and scope of City Transportation Projects may be reduced depending on the final cost estimate for BART projects that will also be paid for out of the AHSC grant.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to negotiate, enter into and cause the City to perform its obligations under agreements (including amendments) Satellite Affordable Housing Associates and Resources for Community Development and their affiliates relating to grant applications to the California Affordable Housing and Sustainable Communities (AHSC) program for Blake Apartments and Maudelle Miller Shirek Community project-related transportation and infrastructure improvements, for a total amount up to \$4.047 million for City projects, and to accept and perform the grants if awarded.



Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way

RECOMMENDATION

Adopt first reading of an Ordinance approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.

FISCAL IMPACTS OF RECOMMENDATION

The attached partial assignment and amendment to the Disposition and Development Agreement (DDA, City contract #R10284C), ground leases and other documents do not change the previously approved financial terms of the project. The City will enter into three ground leases and receive a one-time payment of \$500 for each. The attached documents will enable the development of the proposed Berkeley Way project but do not commit additional City funds.

The City has separately committed (subject to satisfaction of certain conditions) \$27,467,548 in housing financing for the project. Almost \$4 million of that total was provided as a predevelopment loan; as of this writing in early December 2019, all but \$270,000 of that amount has been disbursed. The balance of funds are planned to be made available through three loans at the start of construction by April 2020. The majority of City financing is projected to come from Measure O bonds, which the Council will be asked to approve in the next few months.

CURRENT SITUATION AND ITS EFFECTS

In 2016, the City entered into a Disposition and Development Agreement with BRIDGE Housing Corporation that established the terms and conditions for their eventual lease of the City-owned parking lot at 2012 Berkeley Way. After the City selected the team of BRIDGE and the Berkeley Food and Housing Project (BFHP) as the site's developer, BRIDGE and BFHP proposed leasing (rather than purchasing) the site. The long term

lease will give the City a greater role in the use of the site in the future than would have been possible through a sale.

The site's development will include three separately financed projects: 89 units of affordable housing, 53 units of permanent supportive housing for homeless households, and BFHP's Hope Center, a facility providing 44 temporary housing (32 shelter and 12 transitional) beds along with congregate meal and social services space. BRIDGE has secured all of the financing for all three projects and construction will start in April 2020.

The attached ordinance approves (i) a Partial Assignment and Third Amendment to the DDA revising the timing of leases and confirming approval of certain project mechanics, which will make the DDA and the leases consistent and (ii) three ground leases, one for each of the three project components (affordable housing, permanent supportive housing, and homeless shelter/services (temporary housing)). Additionally, the Ordinance approves two Reciprocal Easement, Maintenance and Joint Use Agreements (REAs), which are the agreements that establish the terms of the relationships between the different projects for operations. One REA establishes responsibilities and relationships for the entire project (all three components); the second REA governs certain matters solely between the permanent supportive housing and shelter (temporary housing) parcels. The City's interest in these agreements is as the owner of the property.

These documents are necessary to allow the developer project team to take possession of the site and start construction by April 2020. Council's approval at tonight's meeting is an important milestone in the project's timeline.

The Berkeley Way project is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

#### BACKGROUND

In 2014, the City selected BRIDGE Housing Corporation and the Berkeley Food and Housing Project to redevelop the City-owned parking lot at 2012 Berkeley Way into affordable housing, permanent supportive housing, and homeless shelter (temporary housing) and services. In 2016 with Ordinances 7,479-N.S. and 7,480-N.S., the City approved a Disposition and Development Agreement (DDA) which established the terms and conditions for the eventual leasing of the site for the purpose of the project. The DDA has subsequently been amended several times as the project plan has been further developed. Under the current design, the project will be a single building containing all three project components. The developer project team has secured commitments for all needed financing for the project and must start construction by April 2020 to satisfy the terms of the commitment of Low Income Housing Tax Credits, which will provide \$37M in project funding.

BRIDGE and BFHP have also created separate limited partnerships that they control and which are necessary for the financing of the separate project components. BRIDGE Berkeley Way LP, a BRIDGE-controlled limited partnership, will own the 89 units of affordable housing. The temporary housing and permanent supportive housing will be developed by BFHP Hope Center LP, controlled by both BRIDGE and BFHP with majority control by BRIDGE. At the end of construction, ownership of the temporary housing will be transferred to BFHP LLC, a limited liability corporation created by BFHP to own the property.

If the Council approves the attached ordinance, prior to construction, the City will enter into three separate leases and loan agreements, one for each of the projects, the REAs, and an amended agreement with BRIDGE regarding the City's responsibility and liability for completing the \$3.8M in state-funded Affordable Housing and Sustainable Communities (AHSC) transportation infrastructure projects that Council authorized on January 22, 2019 with Resolution 68,730-N.S.

Each project will be financed separately using a package of different sources:

- BRIDGE's affordable apartments: City loan, tax-exempt and taxable loans from Prudential, Alameda County A1 funds, state AHSC funds, the Federal Home Loan Bank's Affordable Housing Program, the Low Income Housing Tax Credit (LIHTC) program, and project-based Housing Choice Vouchers from the Berkeley Housing Authority.
- Hope Center permanent supportive housing: City and County loans, at least three state housing programs, LIHTC, and project-based Housing Choice Vouchers from the Berkeley Housing Authority.
- Hope Center temporary housing and services space: City and County loans and BFHP capital campaign proceeds.

#### ENVIRONMENTAL SUSTAINABILITY

Approval of the DDA amendment, ground leases, and REAs will enable the developer project team to develop a portion of this surface parking lot into affordable infill housing in close proximity to BART, which is typically considered a more sustainable form of development.

#### RATIONALE FOR RECOMMENDATION

Approval of these documents is consistent with the Council's goal of completing this project and the City's existing contract for the project to enter into leases if the project satisfies certain conditions.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify another alternative consistent with seeing the proposed project to fruition.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, HHCS, (510) 981-5406

Attachments:

1: Ordinance

- Exhibit A: Partial Assignment and Third Amendment to Disposition and Development Agreement
- Exhibit B: Ground Lease 2012 Berkeley Way: Berkeley Way BRIDGE Affordable Apartments
- Exhibit C: Ground Lease 2012 Berkeley Way: Berkeley Way Permanent Supportive Housing Apartments
- Exhibit D: Ground Lease 2012 Berkeley Way: Berkeley Way Hope Center Temporary Housing
- Exhibit E: Declaration and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way
- Exhibit F: Declaration and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center
- Exhibit G: Draft Parcel Map

ORDINANCE NO. -N.S.

APPROVING A PARTIAL ASSIGNMENT AND THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT, THREE GROUND LEASES, AND CERTAIN RELATED DOCUMENTS FOR 2012 BERKELEY WAY

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

Section 1. FINDINGS

In 2014, the City selected BRIDGE Housing Corporation (BRIDGE) and the Berkeley Food and Housing Project (BFHP) to redevelop the City-owned parking lot at 2012 Berkeley Way into a single building with three separate components: affordable housing, permanent supportive housing, and homeless shelter (temporary housing) and services. In 2016 with Ordinances 7,479-N.S. and 7,480-N.S., the City approved a Disposition and Development Agreement (DDA) with BRIDGE as the named "Developer," which established the initial terms and conditions for the eventual leasing of the site for the purpose of the project. The site will be subdivided into three separate legal parcels, one for each of the three project components, with each parcel leased to a separate tenant under a separate 75-year ground lease.

Under prior Council approved amendments and a partial assignment to the DDA, the deadlines for leasing the site and completing project construction were extended, some specific project development procedures were modified, and Developer BRIDGE formally assigned its interest in the permanent supportive housing and homeless shelter (temporary housing) components (together referred to as "The Hope Center") to BFHP Hope Center LP, an affiliate of BRIDGE and BFHP (BFHP LP).

Consistent with the DDA and prior Council approvals, the three current project components are expected to include the following:

- Affordable Housing: Approximately 89 units of affordable housing (including one manager's unit).
- Permanent Supportive Housing: Approximately 53 units of supportive housing.
- Homeless Shelter (Temporary Housing): Temporary housing (approximately 44 beds), a services center and administrative office space.

The City and BRIDGE have been processing a site subdivision map, which, once finalized and recorded, will be the basis of the legal descriptions of the three project ground lease parcels and will be attached to the three ground leases. The map is expected to be finalized by approximately the end of 2019.

In order to effectuate the development of the site, the City now wishes to take certain actions: to further amend the DDA and approve BRIDGE's assignment of the affordable housing project component to Bridge Berkeley Way LP, an affiliate of BRIDGE (Bridge LP), approve one ground lease for each project component as anticipated in the DDA, and approve two Reciprocal Easement, Maintenance and Joint Use Agreements (REAs)

to govern operational specifics among the separate component tenants, also as anticipated by the DDA.

**Section 2. AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO A PARTIAL ASSIGNMENT AND THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT**

The City Manager is hereby authorized to enter into a Partial Assignment and Third Amendment to Disposition and Development Agreement (Third Amendment) which will allow for the BRIDGE Housing Corporation to assign its rights regarding the affordable housing component of the project to Bridge LP and to clarify certain details of the property transfer, including that both the permanent supportive housing and shelter (temporary housing) components will initially be ground leased to BFHP Hope Center LP, an affiliate of BRIDGE and BFHP (BFHP LP), and following project construction the shelter (temporary housing) component ground lease will be assigned to BFHP Hope Center LLC, an affiliate of BFHP (BFHP LLC). Such Third Amendment shall be on substantially the same terms as Exhibit A.

**Section 3. AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO ONE GROUND LEASE WITH BRIDGE BERKELEY WAY LP AND TWO GROUND LEASES WITH BFHP HOPE CENTER LP**

The City Manager is hereby authorized to enter into one ground lease with Bridge LP for the affordable housing parcel, one ground lease with BFHP LP for the permanent supportive housing parcel, and one ground lease with BFHP LP for the shelter (temporary housing) and services parcel. The City Manager is hereby authorized to enter into the ground leases including draft premises legal descriptions based on the tentative subdivision map if the subdivision has not yet been completed, and is authorized to include final premises legal descriptions and replace the draft subdivision map (included as Exhibit G) with the final subdivision map when available. Such ground leases shall be on substantially the same terms as Exhibits B, C, and D.

**Section 4. AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO TWO RECIPROCAL EASEMENT, MAINTENANCE AND JOINT USE AGREEMENTS FOR 2012 BERKELEY WAY**

The City Manager is hereby authorized to enter, as property owner, into two Reciprocal Easement, Maintenance and Joint Use Agreements (REAs) establishing the responsibilities and relationships between the tenants under the ground leases. Such agreements shall be on substantially the same terms as Exhibits E and F.

**Section 5.** Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Exhibits

A: Partial Assignment and Third Amendment to Disposition and Development Agreement

B: Ground Lease 2012 Berkeley Way: Berkeley Way BRIDGE Affordable Apartments

C: Ground Lease 2012 Berkeley Way: Berkeley Way Permanent Supportive Housing Apartments

D: Ground Lease 2012 Berkeley Way: Berkeley Way Hope Center Temporary Housing

E. Declaration and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way

F: Declaration and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center

G: Draft Parcel Map

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

12-2-2019

City of Berkeley  
Housing Department  
2180 Milvia Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704  
Attn: Housing & Community Services  
Manager

NO FEE FOR RECORDING PURSUANT TO GOVERNMENT CODE SECTION 27383  
& 27388.1

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(space above for Recorder's use)

PARTIAL ASSIGNMENT AND THIRD AMENDMENT TO DISPOSITION AND  
DEVELOPMENT AGREEMENT  
(Berkeley Way)

THIS PARTIAL ASSIGNMENT AND THIRD AMENDMENT (the "**Third Amendment**") to the Disposition and Development Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2020 (the "**Effective Date**"), by and between BRIDGE HOUSING CORPORATION, a California nonprofit public benefit corporation ("**BRIDGE**"), BFHP HOPE CENTER LP, a California Limited Partnership ("**BFHP LP**"), Bridge Berkeley Way LP, a California Limited Partnership ("**BRIDGE LP**") and the CITY OF BERKELEY, a charter city (the "**City**", together with BRIDGE, BFHP LP and BRIDGE LP, the "**Parties**") with reference to the following facts:

RECITALS

- A. BRIDGE and the City entered into a Disposition and Development Agreement dated as of June 8, 2016 (the "**Original Agreement**"), as amended by that certain First Amendment to Disposition and Development Agreement dated August 27, 2018 (the "**First Amendment**") and that certain Second Amendment to Disposition and Development Agreement dated February 1, 2019 (the "**Second Amendment**"), and as partially assigned to BFHP LP pursuant to the terms of that certain Partial Assignment and Assumption Agreement dated December 17, 2018 (the "**Assignment**"; and collectively with the Original Agreement, the First Amendment and the Second Amendment, the "**DDA**"). Capitalized terms used, but not defined in this Third Amendment shall have the meaning set forth in the DDA.
- B. Pursuant to the DDA, the City agreed to lease the Property for the construction and operation of the Development. Specifically, the Development includes: the BHC Improvements, which are approximately 89 units of affordable housing to be constructed and owned by an affiliate of BRIDGE Housing Corporation (the "**BRIDGE Development**"); the BFHP Permanent Improvements, which consist of

approximately 53 units of supportive housing; and, the BFHP Temporary Improvements, which consist of temporary housing (approximately 44 beds), a services center and administrative office space. The BFHP Permanent Improvements and the BFHP Temporary Improvements are commonly referred to, collectively, as the "**BFHP Hope Center**".

- C. BRIDGE previously assigned its rights pertaining to the BFHP Hope Center to BFHP LP. BRIDGE now desires to assign its remaining rights and obligations under the DDA, specifically those pertaining to the BRIDGE Development, to BRIDGE LP and BRIDGE LP desires to assume such rights and obligations.
- D. The Parties also desire to clarify certain transaction details pertaining to the Development.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Development Schedule. Section 2.3 (a) of the DDA is deleted and replaced in its entirety with the following, to reflect the current Development Schedule: "The Development Schedule is attached to the Partial Assignment and Third Amendment to Disposition and Development Agreement dated \_\_\_\_\_, 2020, as Exhibit B."

2. Development Services Agreement. DDA Section 2.4 is hereby amended and restated to read in full as follows:

**Section 2.4 Joint Development Agreement and Developer Agreements.** On or before the date set forth in the Development Schedule (i) BHC LP shall enter into a Joint Development Agreement and Cost Allocation Agreement ("JDA") which will set forth the manner in which BHC LP and BFHP LP will develop and construct the Development in a coordinated and efficient manner consistent with the requirements of the DDA and (ii) BHC LP and BFHP LP will engage BRIDGE to provide predevelopment and preconstruction services for the Development pursuant to a Predevelopment Services Agreement among BHC LP, BFHP LP and BRIDGE, which will be replaced at Close of Escrow by two Development Services Agreements (one for the BHC Improvements and one for the BFHP Hope Center) to provide construction phase services for the Development (collectively, the ("Developer Agreements")). The Developer Agreements and the JDA are subject to the prior approval of the City. References in the Agreement to "Master LLC Agreement" or "DSA" are hereby replaced with JDA.

3. Final Subdivision Map. DDA Section 2.18 is hereby amended and restated to read in full as follows:

**Section 2.18 Final Subdivision Map.** On or before the Close of Escrow, the Developer shall apply for final approval by the City of the Final Subdivision

Map, and all applicable time periods required by law to render such approvals free from legal challenge shall have expired without challenge. If the foregoing cannot be completed by Close of Escrow, the City may convey the applicable portions of the Property to the Permitted Lessee by metes and bounds descriptions. If the Developer obtains a Final Subdivision Map for the Property, the City will cooperate in connection with the recordation of such Map.

4. Hazardous Materials. DDA Section 6.2 is hereby amended and restated to read in full as follows:

**Section 6.2 Hazardous Materials.**

(a) Certain Covenants and Agreements. The Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Development or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Development.

(2) The Developer shall keep and maintain the Development and each portion thereof in compliance with, and shall not cause or permit the Development or any portion thereof to be in violation of, any Hazardous Materials Laws.

(3) Upon receiving actual knowledge of the same the Developer shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Development pursuant to any applicable Hazardous Materials Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (i) and this clause (ii) are hereinafter referred to as "**Hazardous Materials Claims**"); (iii) the presence of any Hazardous Materials in, on or under the Development; or (iv) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development classified as "borderzone property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims, and to have its reasonable attorney's fees in connection therewith paid by Developer.

(4) Without the City's prior written consent, which shall not be unreasonably withheld, and which the City shall promptly grant or deny, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 9.7 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) The failure of the Developer, or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development; or

(2) The presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development; or

(3) Any activity carried on or undertaken on or off the Development, subsequent to the lease of the Property as provided in this Agreement, and whether by the Developer or any successor in title or any employees, agents, contractors or subcontractors of the Developer or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development.

The foregoing indemnity shall further apply to any residual contamination on or under the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

5. REA or Reciprocal Easement Agreement. As used in the DDA, the REA will include the REA governing operations of the Development (the "REA 1") and the REA governing operations of the Hope Center Property (the "REA 2"); provided that obligations under the DDA pertaining to the REA 2 will only be applicable to the BFHP Hope Center and the Hope Center Property.

6. Assignment. BRIDGE hereby assigns and delegates to BRIDGE LP, and BRIDGE LP hereby accepts from BRIDGE, BRIDGE's remaining rights and obligations under the DDA pertaining to the BRIDGE Development. BRIDGE LP hereby accepts the above assignment and hereby assumes, agrees, and undertakes to perform all of the obligations, liabilities, covenants, and agreements of BRIDGE pursuant to the DDA as such relate to the BRIDGE Development. As contemplated in Section 2.5 of the DDA, BRIDGE is hereby released from any and all obligations under the DDA, as amended by this Third Amendment, arising after the date of this Third Amendment. Nothing in this Section 4 limits or modifies Section 2.10 of the DDA pertaining to the guaranties of completion of the development of the Property in accordance with the DDA or BRIDGE's obligations under the Developer Agreements.

7. Agreement on Leases. Notwithstanding anything to the contrary in the DDA, including Section 2.8 of the DDA, the City, BFHP LP and BRIDGE LP seek to clarify that the term "Leases" at closing means: (1) one ground lease between BRIDGE LP and the City for the BHC Parcel; (2) one ground lease between BFHP LP and the City for the BFHP Permanent Parcel; and (3) one ground lease between BFHP LP and the City for the BFHP Temporary Parcel. References in the DDA to the Lease for the Hope Center Property mean the leases described in (2) and (3) above. Following completion of construction of the Temporary Improvements, the BFHP Temporary Parcel Lease will be assigned to the BFHP Entity, and the BFHP Temporary Improvements will be transferred to the BFHP Entity, subject to the consent of the Hope Center lenders and investors.

8. Termination of DDA. Excepting those provisions which will be specified to survive and which will be identified in an Exhibit in the Leases, the DDA will terminate in its entirety at Close of Escrow.

9. Further Assurances. The Parties agree to take such further actions as may be necessary or advisable to effectuate, confirm or document the amendment contemplated hereby, which is consistent with this Third Amendment and not otherwise consistent with the DDA.

10. Successors and Assignor. This Third Amendment shall be binding upon and shall inure to the benefit of each party hereto and its successors and assignors.

11. Effective Date. This Third Amendment shall be effective as of the Effective Date.

12. California Law. This Third Amendment shall be governed by and interpreted in accordance with the laws of the State of California.

13. Counterparts. This Third Amendment may be signed in counterparts, each of which shall constitute one and the same instrument.

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the Effective Date.

BRIDGE LP:

BRIDGE Berkeley Way LP,  
a California limited partnership

By: BRIDGE Berkeley Way LLC,  
a California limited liability company,  
its general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit  
corporation,  
its co- member

By: \_\_\_\_\_  
Smitha Seshadri, Senior Vice  
President

BRIDGE:

BRIDGE HOUSING CORPORATION,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Smitha Seshadri,  
Senior Vice President

NOTE: SIGNATURE MUST BE NOTARIZED

[SIGNATURE PAGES CONTINUE]



BFHP LP:

BFHP Hope Center LP,  
a California limited partnership

By: Hope Center Housing LLC,  
a California limited liability company,  
its general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit  
corporation,  
its co- member

By: \_\_\_\_\_  
Smitha Seshadri, Senior Vice President

By: Berkeley Food and Housing Project,  
a California nonprofit religious corporation,  
its co- member

By: \_\_\_\_\_  
Executive Director

NOTE: SIGNATURE MUST BE NOTARIZED

[SIGNATURE PAGES CONTINUE]

CITY:

CITY OF BERKELEY, a charter city

By: \_\_\_\_\_

Name: B.D. Williams

Its: City Manager

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

NOTE: SIGNATURE MUST BE NOTARIZED

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

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WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

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COUNTY OF \_\_\_\_\_ )

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I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

## EXHIBIT B

**Preliminary Development Schedule**  
**(Effective as of \_\_\_\_\_, 2020)**

This Development Schedule summarizes the schedule for various activities under the Disposition and Development Agreement (the “**Agreement**” or the “**DDA**”) to which this exhibit is attached. The description of items in this Development Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the DDA to which such items relate. Section references herein to the DDA are intended merely as an aid in relating this Development Schedule to other provisions of the DDA and shall not be deemed to have any substantive effect.

Whenever this Development Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

| <u>Action</u>                                                                                                        | <u>Date</u>                                                                                                                      | <u>Date Completed</u>                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 <u>Developer Deposit.</u> The Developer shall deposit the Developer Deposit in the amount of \$10,000. [DDA § 2.2] | No later than three business days after the Effective Date.                                                                      | June 13, 2016                                                                                                                                                                                 |
| 2 <u>Approval of Title Matters.</u>                                                                                  | October 31, 2018                                                                                                                 | October 31, 2018                                                                                                                                                                              |
| 3 <u>Approval of JDA and Developer Agreements.</u> [DDA § 2.4]                                                       | BHC LP and BFHP LP will enter into the construction-phase Developer Agreements with Developer no later than the Close of Escrow. | BHC LP and BFHP LP entered into the JDA, and BHC LP, BFHP LP and Developer entered into the preconstruction/ predevelopment Developer Agreement, before executing the Third Amendment to DDA. |

| <u>Action</u>                                                                                                                                                                                                                          | <u>Date</u>                                                | <u>Date Completed</u>                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------|
| <p>4 <u>Developer Assignment to Permitted Lessees.</u> Developer shall create and assign all of its rights and obligations (except as otherwise provided in the Agreement) to the Permitted Lessees. [DDA §2.5]</p>                    | <p>Assignment to BHC LP no later than Close of Escrow.</p> | <p>Assignment to BFHP LP completed on December 17, 2018</p> |
| <p>5 <u>Approval of Leases.</u> The City and the Developer to approve the provisions of the Leases, each in its sole discretion. [DDA § 2.8]</p>                                                                                       | <p>No later than the Close of Escrow.</p>                  |                                                             |
| <p>6 <u>Approval of REA.</u> The City and the Developer to approve the provisions of the Reciprocal Easement Agreement, each in its sole discretion. [DDA § 2.9]</p>                                                                   | <p>No later than the Close of Escrow.</p>                  |                                                             |
| <p>7 <u>Approval of Completion Guaranty Agreement.</u> The City and the Developer to approve the provisions of the Completion Guaranty Agreement, each in its sole discretion. [DDA § 2.10]</p>                                        | <p>No later than the Close of Escrow.</p>                  |                                                             |
| <p>8 <u>Developer Submission of Preliminary Scope of Development and Preliminary Concept Drawings.</u> The Developer is to submit of Preliminary Scope of Development and Preliminary Concept Drawings to the City. [DDA § 3.1(a)]</p> |                                                            | <p>February 26, 2016</p>                                    |

| <u>Action</u>                                                                                                                                                                                                                             | <u>Date</u>      | <u>Date Completed</u>                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------------------------------------------|
| 9 <u>Approval of Final Scope of Development and Final Concept Design Drawings.</u><br>The City and the Developer to approve the Final Scope of Development and Final Concept Design Drawings, each in its sole discretion. [DDA § 3.1(b)] |                  | September 13, 2018                                                 |
| 10 <u>Condition of Property.</u><br>Developer shall approve or disapprove of the condition of the Property. [DDA § 2.6]                                                                                                                   | October 31, 2018 | October 31, 2018                                                   |
| 11 <u>CEQA Compliance.</u><br>Preparation of Appropriate CEQA Document. [DDA § 2.11]                                                                                                                                                      |                  | December 21, 2018<br>(CEQA has been satisfied with SB 35 approval) |
| 12 <u>City and Other Governmental Approvals.</u> The Developer shall apply for and obtain the City Approvals and all governmental approvals necessary for the development and operation of the Development. [DDA §2.11]                   |                  | December 21, 2018<br>(CEQA has been satisfied with SB 35 approval) |
| 13 <u>Schematic Design Drawings.</u><br>The Developer shall submit the Schematic Design Drawings to the City. [DDA § 3.4(a)].                                                                                                             |                  | February 20, 2017                                                  |
| 14 <u>Design Development Drawings.</u> The Developer shall submit the Design Development Drawings to the City. [DDA § 3.4(b)]                                                                                                             |                  | August 30, 2017                                                    |



| <u>Action</u>                                                                                                                                                                                                                      | <u>Date</u>                                                        | <u>Date Completed</u>                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------|
| 15 <u>Temporary Right of Entry.</u> The City shall grant the Developer the Temporary Right of Entry to enter the Property. [DDA § 9.19]                                                                                            | City grants the Temporary Right of Entry as of the Effective Date. |                                         |
| 16 <u>City Approval of Design Development Drawings.</u> The City shall approve or disapprove the Design Development Drawings. [DDA § 3.5]                                                                                          |                                                                    | December 21, 2018 (SB-35 approval date) |
| 17 <u>Financing Proposal.</u> The Developer shall submit the initial Financing Proposal for the BHC Improvements, BFHP Permanent Improvements, and BFHP Temporary Improvements for the City's review and approval. [DDA § 2.12(a)] |                                                                    | August 23, 2017                         |
| 18 <u>City Financing Application.</u> If Developer will seek City Financing, the Developer shall submit its application for City Financing for the City's review and approval. [DDA § 2.12(d)]                                     |                                                                    | August 23, 2017                         |

| <u>Action</u>                                                                                                                                                                                                                      | <u>Date</u>                                                                                                                                                                                                                                                                                                                                                                                                                                         | <u>Date Completed</u> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 19 <u>City Approval of Financing Plans</u> . The City shall review and either approve or disapprove of the financing plans for the BHC Improvements, BFHP Permanent Improvements, and BFHP Temporary Improvements. [DDA § 2.12(c)] | Within <b>[TBD]</b> days following receipt of each initial Financing Plan. Each Financing Plan must be approved by the City no later than <b>[TBD]</b> days following the date of the initial Financing Plan. All Financing Plans must be approved no later than <b>June 30, 2021</b> ; provided, however the City has no obligation to approve any Financing Plan if such Financing Plan does not meet the requirements set forth in Section 2.12. |                       |
| 20 <u>Final Construction Drawings</u> . The Developer shall submit the Final Construction Drawings to the City. [DDA § 3.4(c) and § 2.17]                                                                                          | No later than <b>April 3, 2020</b> .                                                                                                                                                                                                                                                                                                                                                                                                                |                       |
| 21 <u>City Approval of Final Construction Drawings</u> . The City shall either approve or disapprove the Final Construction Drawings. [DDA § 3.5(b)]                                                                               | No later than <b>[10]</b> days after City's receipt, provided such drawings are consistent with Article III.                                                                                                                                                                                                                                                                                                                                        |                       |
| 22 <u>Building Permits</u> . The Developer shall obtain the Building Permits for construction of the Development. [DDA § 2.16]                                                                                                     | No later than Close of Escrow.                                                                                                                                                                                                                                                                                                                                                                                                                      |                       |

| <u>Action</u>                                                                                                                                                                                                                 | <u>Date</u>                                                                                                 | <u>Date Completed</u> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-----------------------|
| 23 <u>Construction Contracts</u> . The Developer shall submit for the City's approval the construction contracts for the construction of the Improvements. [DDA § 2.14]                                                       | No later than <b>10 business</b> days before the Pre-Lease Deadline or Close of Escrow, whichever is first. |                       |
| 24 <u>Construction Bonds</u> . The Developer shall submit payment and performance bonds for the Improvements. [DDA § 2.15]                                                                                                    | No later than Close of Escrow.                                                                              |                       |
| 25 <u>Final Subdivision Map</u> . Unless the City conveys the applicable portion of the Property by metes and bounds, the Developer shall apply for and obtain the City's approval of the Final Subdivision Map. [DDA § 2.18] | No later than the Pre-Lease Deadline or Close of Escrow, whichever is first.                                |                       |
| 26 <u>Completion Guaranty Agreement</u> . The Developer shall deliver the Completion Guaranty Agreement to the City. [DDA §2.16]                                                                                              | No later than Close of Escrow.                                                                              |                       |
| 27 <u>Insurance</u> . The Developer shall submit evidence of insurance to the City. [DDA § 3.21]                                                                                                                              | No later than <b>30</b> days before the Pre-Lease Deadline or Close of Escrow, whichever is first.          |                       |
| 28 <u>Evidence of Availability of Funds</u> . The Developer shall submit evidence to the City of the availability of funds to lease the Property and construct the Improvements. [DDA § 2.13]                                 | No later than the Pre-Lease Deadline or Close of Escrow, whichever is first.                                |                       |

| <u>Action</u>                                                                                                                                                                                                                                                                | <u>Date</u>                                                                                                                                         | <u>Date Completed</u> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 29 <u>Certified copies of limited liability company, limited partnership or corporate authorizing resolutions.</u> Developer shall provide certified copies of limited liability company, limited partnership or corporate authorizing resolutions. [DDA §§ 4.3(b)(1), 9.16] | No later than Close of Escrow.                                                                                                                      |                       |
| 30 <u>Close of Escrow.</u> The Permitted Lessees shall lease the Property from the City. [DDA § 4.1]                                                                                                                                                                         | No later than Pre-Lease Deadline, provided that the Developer has satisfied all requirements set forth above, as reasonably determined by the City. |                       |
| 31 <u>Commencement of Construction.</u> The Permitted Lessees shall commence construction of the Improvements. [DDA § 5.2; Leases]                                                                                                                                           | No later than <b>[30]</b> days following Close of Escrow.                                                                                           |                       |
| 32 <u>Completion of Construction.</u> The Permitted Lessees shall complete construction of the Improvements. [DDA § 5.3; Leases]                                                                                                                                             | No later than the earlier of 40 months following the Commencement of Construction and July 31, 2024.                                                |                       |

1-8-2020

Exhibit B

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way BRIDGE Affordable Apartments)**

by and between

**CITY OF BERKELEY  
("Landlord")**

and

**BRIDGE Berkeley Way LP, a California Limited Partnership**

**("Tenant")**

Dated \_\_\_\_\_, 2020

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**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way BRIDGE Affordable Apartments)**

1. **“Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”**

BRIDGE Berkeley Way

Notice Address:

BRIDGE Berkeley Way LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

3. **“Ground Lease Date”**

The date set forth in the first paragraph below.

4. **“DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as partially assigned to BFHP Hope Center LP pursuant to that certain Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in

**BASIC LEASE INFORMATION**  
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Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to Tenant and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel C of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the Permanent Supportive Improvements. The **“Permanent Supportive Housing Improvements”** consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing

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Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “**Permitted Use**” Affordable housing, subject to the Regulatory Requirements and all other provisions of this Ground Lease.
9. “**Premises Improvements**” The BRIDGE Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.
10. “**REA 1**” or “**Site REA**” or “**Berkeley Way REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.
11. [Intentionally Omitted]
12. “**Regulatory Requirements**” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way BRIDGE Affordable Apartments), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, and any amendments approved by Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.
13. “**Leasehold Mortgage,**” “**Permitted Leasehold Mortgagee**” and “**Senior Leasehold Mortgagee**” As identified in **Exhibit F** attached hereto. See also ARTICLE 14 below.
14. “**Investor(s)**” **[to be provided, including notice addresses]**

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15. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
16. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
17. **[Intentionally Omitted]**
18. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BFHP Hope Center LP, a California limited partnership.
19. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BFHP Hope Center LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
20. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time pursuant to ARTICLE 5 below.
21. **[Intentionally Omitted]**
22. **“Premises Substantial Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
23. **“Premises Substantial Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.
24. **“Guarantor” and “Completion Guaranty”** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date, together with such changes as Landlord may approve.
25. **“Base Rent”** \$500 for the entire Term.
26. **“Additional Rent”** Is defined in Section 3.3 below.
27. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
28. **“County”** The County of Alameda, California.

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- 29. **“State”** The State of California.
- 30. **“City”** City of Berkeley, California.
- 31. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
- 32. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
- 33. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS**\_\_\_\_\_

**TENANT'S INITIALS**\_\_\_\_\_

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way BRIDGE Affordable Apartments)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)



Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion. Nothing in this Section shall prevent Tenant from entering into residential leases as provided herein and in the Regulatory Agreement.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein (such as by giving new rights to Investors), or under the Site REA or Regulatory Requirements is subject to Landlord's reasonable consent.

## **ARTICLE 2. GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

## **ARTICLE 3. RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant's obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its

sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant's right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant's receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

#### **ARTICLE 4. TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term ("**Utilities**"). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the Permanent Supportive Housing Parcel or Temporary Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost

overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

### **5.3 Prior Development Matters**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act (“CEQA”) with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 “**Material Change**” means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

## 5.6 Alterations.

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. “**Alterations**” include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. “**Material Alterations**” means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord’s approval of Tenant’s contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord**. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices**. Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements, Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice**. Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous**.

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In

any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the "**Notice of Completion**"), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of "**As Built**" drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

## ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant's agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord's overall governmental purposes and Tenant understands that Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices



to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

**6.3 Tenant's Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any applicable Law. If compliance with any applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

- A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;
- B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;
- C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;
- D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;
- E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;
- F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or
- G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease,

transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

ARTICLE 7.

CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant".

**7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";
2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.
3. All references to "**Hazardous Materials**" shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.
4. All references to "Development" means the "Premises."
5. All references to "Term" shall mean "Term" as defined in this Ground Lease.
6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA).

B. Tenant's Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants, and ***[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]***, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by

Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

**7.3 Landlord's Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to the extent caused by Tenant or any subtenant. Tenant is not obligated to remove rights arising from the Site REA. The foregoing, however, will be subject to the rights of permitted subtenants at the Premises Improvements provided that the subtenants are not then in default and they attorn to Landlord as their landlord. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and its subtenants and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its subtenants and other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

## ARTICLE 9. INSURANCE AND INDEMNITY

### 9.1 General Insurance Requirements.

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker's Compensation Insurance, including Employer's Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant's contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker's compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible

or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

**ARTICLE 10.  
DAMAGE OR DESTRUCTION**

**10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss. Except as may otherwise be required by any Leasehold

Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which



have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## ARTICLE 11. CONDEMNATION

### 11.1 Definitions.

A. **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect.

**11.5 Restoration of Premises Improvements.** If in Tenant’s judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises

Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

## **ARTICLE 12. ASSIGNMENT AND SUBLETTING**

### **12.1 Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an "**assignment**") without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an "assignment" hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease. For purposes of this Section, "**Affiliate**" means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, "control" means the

direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant's governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant's obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord's consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except as to residential tenants and other tenants typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

### **ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements or Site REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other

default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under

this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

## **ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any

such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any mutual termination or accept any surrender of this Ground Lease without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord's failure to give any such notice to any such Leasehold Mortgagee shall not render such notice ineffective, nor shall any such failure constitute a default hereunder. Landlord acknowledges the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary

obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgagee or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the

interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgage or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within the time provided in Section 14.4 hereof, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Lease Information Section 14.



**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof); the consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed.

**14.11 [Intentionally Omitted]**

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

**ARTICLE 15.  
MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.** Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA shall be deemed to a person claiming by, through or under Tenant.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, “**Force Majeure**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant’s inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant’s interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord ("**Quitclaim Deed**"). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord’s prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant’s failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley’s Living Wage Ordinance (“LWO”). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to

maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide



its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a Charter city

By: \_\_\_\_\_

Dee Williams-Ridley  
City Manager

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_ No \_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

The land referred to is situated in the City of Berkeley, County of Alameda, State of California, and is described as follows:

**PARCEL ONE:**

Parcel C, as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_.

Being a portion of APN 057-2053-022-01

EXHIBIT B

DEVELOPMENT SITE PARCEL MAP

*[Draft to be attached—final to be included before signing]*

**EXHIBIT C**

**STATUS OF CERTAIN DDA PROVISIONS**

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
  - x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.
2. The following DDA provisions are terminated:
- a. Section 3.7 (No Change in Project Documents).
  - b. Section 3.8 (Additional Permits and Approvals).
  - c. Article VII (Assignment and Transfers).
  - d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
  - e. Section 9.3 (Enforced Delay).
  - f. Section 9.19 (Right of Entry to Perform Studies).
3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:
- a. Section 4.5 (Condition of Property) remains in full force and effect.
  - b. Section 4.6 (Costs of Escrow and Closing).
  - c. Section 4.7 (Obligations After Lease).
  - d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
  - e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
  - f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
  - g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
  - h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
  - i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

EXHIBIT D

SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)

*[to be provided]*





EXHIBIT E

RESOLUTION NO. AAAA-N.S.

*[to be attached]*



EXHIBIT F

INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES

**[to be provided—identify “Senior Leasehold Mortgagee” if any and include notice addresses]**

EXHIBIT G

CITY FINANCING DOCUMENTS

*[to be provided]*





**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Permanent Supportive Housing Apartments)**

**by and between**

**CITY OF BERKELEY  
("Landlord")**

**and**

**BFHP Hope Center, LP**

**("Tenant")**

Dated \_\_\_\_\_, 2020



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**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

1. **“Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”**

BFHP Hope Center LP

Notice Address:

BFHP Hope Center LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

BFHP Hope Center LP  
c/o Berkeley Food and Housing Project  
1901 Fairview Street  
Berkeley, CA 94703  
Attn: Executive Director

3. **“Ground Lease Date”**

The date set forth in the first paragraph below.

4. **“DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

partially assigned to Tenant pursuant to that certain Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to BRIDGE Berkeley Way LP and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel **A** of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

Permanent Supportive Improvements. The “**Permanent Supportive Housing Improvements**” consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “**Permitted Use**” Supportive housing, subject to the Regulatory Requirements and all other provisions of this Ground Lease.

9. “**Premises Improvements**” The Permanent Supportive Housing Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.

10. “**REA 1**” or “**Site REA**” or “**Berkeley Way REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.

11. “**REA 2**” or “**Hope Center REA**” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D1**.

12. “**Regulatory Requirements**” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way Permanent Supportive Housing Apartments), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No.



**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

- \_\_\_\_\_, and any amendments approved by Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.
13. **“Leasehold Mortgage,” “Permitted Leasehold Mortgage” and “Senior Leasehold Mortgage”** As identified in **Exhibit F** attached hereto. See also ARTICLE 14 below.
14. **“Investor(s)”** *[to be provided, including notice addresses]*
15. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
16. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
17. **“BFHP”** Berkeley Food and Housing Project, a California religious] corporation
18. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BRIDGE Berkeley Way LP, a California limited partnership.
19. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BRIDGE Berkeley Way LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
20. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time pursuant to ARTICLE 5 below.
21. **[Intentionally Omitted]**
22. **“Premises Substantial Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
23. **“Premises Substantial Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.
24. **“Guarantor” and** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Permanent Supportive Housing Apartments)**

- “Completion Guaranty”** Landlord, dated on or about the Ground Lease Date, together with such changes as Landlord may approve.
25. **“Base Rent”** \$500 for the entire Term.
26. **“Additional Rent”** Is defined in Section 3.3 below.
27. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
28. **“County”** The County of Alameda, California.
29. **“State”** The State of California.
30. **“City”** City of Berkeley, California
31. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
32. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
33. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS** \_\_\_\_\_

**TENANT'S INITIALS** \_\_\_\_\_

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Permanent Supportive Housing Apartments)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion. Nothing in this Section shall prevent Tenant from entering into residential leases as provided herein and in the Regulatory Agreement.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein (such as by giving new rights to Investors), or under the Site REA, Hope Center REA, or Regulatory Requirements is subject to Landlord's reasonable consent.

## ARTICLE 2. GROUND LEASE TERM

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

## ARTICLE 3. RENT

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** "**Additional Rent**" means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant's obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its

sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant's right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant's receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

**ARTICLE 4.  
TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively, "**Impositions**"). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term ("**Utilities**"). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the BRIDGE Affordable Parcel or Temporary Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General.** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost

overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

### **5.3 Prior Development Matters**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act (“**CEQA**”) with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 “**Material Change**” means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

## 5.6 Alterations.

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. “**Alterations**” include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. “**Material Alterations**” means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord’s approval of Tenant’s contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.



B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord**. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices**. Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements, Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice**. Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous**.

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In

any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the “**Notice of Completion**”), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of “**As Built**” drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

## ARTICLE 6. USE OF PREMISES, COMPLIANCE WITH LAWS

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord’s prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA, the Hope Center REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant’s agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord’s overall governmental purposes and Tenant understands that, Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant’s expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually “**Law**” and collectively “**Laws**”), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices

to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

**6.3 Tenant's Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any applicable Law. If compliance with any applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect. Landlord understands and agrees that Tenant's residential subtenants or clients may populate and congregate on the sidewalk adjacent to or near the Premises, and may make noise when arriving at or waiting to enter the Premises Improvements. Whether or not any otherwise legal activities of the Tenant's subtenants and clients constitute a legal nuisance, they will not constitute a default justifying termination of this Lease under ARTICLE 13.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

- A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;
- B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;
- C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;
- D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;
- E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;
- F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or
- G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA, the Hope Center REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord's Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant's compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that

Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

**ARTICLE 7.**

**CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD'S RIGHT OF ENTRY**

**7.1 Landlord's Disclaimers and Tenant's Acknowledgements.** The Premises are being leased to Tenant in their current, existing, "AS-IS" condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to "Developer" are replaced with "Tenant".

**7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to "Developer" are replaced with "Tenant";

2. All references to "Hazardous Materials Laws" shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.

3. All references to "**Hazardous Materials**" shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.

4. All references to "Development" means the "Premises."

5. All references to "Term" shall mean "Term" as defined in this Ground Lease.

6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA) and the Hope Center Project Rules (as defined in the Hope Center REA).

B. Tenant's Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants,

and *[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]*, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

**7.3 Landlord's Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to the extent caused by Tenant or any subtenant. Tenant is not obligated to remove rights arising from the Site REA and Hope Center REA. The foregoing, however, will be subject to the rights of permitted subtenants at the Premises Improvements provided that the subtenants are not then in default and they attorn to Landlord as their landlord. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election,

require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and its subtenants and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its subtenants and other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### **9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker's Compensation Insurance, including Employer's Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.



5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant's contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker's compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use,

generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) or if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise

provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## ARTICLE 11. CONDEMNATION

### 11.1 Definitions.

A. **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect.

**11.5 Restoration of Premises Improvements.** If in Tenant's judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

## **ARTICLE 12. ASSIGNMENT AND SUBLETTING**

### **12.1 Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an "**assignment**") without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an "assignment" hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment. Further, any Developer's departure from Tenant (or Tenant's general partner or managing member) requires Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE or BFHP, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease. For purposes of this Section, "**Affiliate**" means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, "control" means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant's governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant's obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord's consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except to residential tenants and other tenants typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

## **ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements, Site REA or Hope Center REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that

curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination

under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.



**ARTICLE 14.  
MORTGAGEE PROTECTION PROVISIONS**

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any mutual termination or accept any surrender of this Ground Lease without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord's failure to give any such notice to any such Leasehold Mortgagee shall not render such notice ineffective, nor shall any such failure constitute a default hereunder. Landlord acknowledges the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a

termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.

D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgagee or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon

request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within the time provided in Section 14.4 hereof, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Lease Information Section 14.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof); the consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed.

**14.11 Permitted Use Requirements.** Following a transfer of the Premises to any Leasehold Mortgagee (or its nominee or assignee), including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof), notwithstanding anything to the contrary in this Ground Lease, the Permitted Use of the Premises shall be affordable housing.

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

**ARTICLE 15.  
MISCELLANEOUS**

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.** Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA or Hope Center REA shall be deemed to a person claiming by, through or under Tenant.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord) (together, "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal

Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant's business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord ("**Quitclaim Deed**"). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord's demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or

unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant’s members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant’s members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant’s members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant’s consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, Hope Center REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real



estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.), no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of

the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a Charter city

By: \_\_\_\_\_

Dee Williams-Ridley  
City Manager

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_ No \_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

The land referred to is situated in the City of Berkeley, County of Alameda, State of California, and is described as follows:

**PARCEL ONE:**

Parcel A, as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_; and Easements for access, use, ingress and egress, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, 2020.

Being a portion of APN 057-2053-022-01

EXHIBIT B

DEVELOPMENT SITE PARCEL MAP

*[Draft to be attached—final to be included before signing]*



**EXHIBIT C**

**STATUS OF CERTAIN DDA PROVISIONS**

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
- x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.

2. The following DDA provisions are terminated:

- a. Section 3.7 (No Change in Project Documents).
- b. Section 3.8 (Additional Permits and Approvals).
- c. Article VII (Assignment and Transfers).
- d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
- e. Section 9.3 (Enforced Delay).
- f. Section 9.19 (Right of Entry to Perform Studies).

3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:

- a. Section 4.5 (Condition of Property) remains in full force and effect.
- b. Section 4.6 (Costs of Escrow and Closing).
- c. Section 4.7 (Obligations After Lease).
- d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
- e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
- f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
- g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
- h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
- i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and

Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

EXHIBIT D

SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)

*[to be provided]*



EXHIBIT D1

HOPE CENTER RECIPROCAL EASEMENT AGREEMENT (REA 2)

*[to be provided]*



EXHIBIT E

RESOLUTION NO. AAAA-N.S.

*[to be attached]*





EXHIBIT F

INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES

**[to be provided]**—*identify “Senior Leasehold Mortgagee” if any and include notice addresses]*

EXHIBIT G

CITY FINANCING DOCUMENTS

*[to be provided]*





1-8-2020

Exhibit D

**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Hope Center Temporary Housing)**

by and between

**CITY OF BERKELEY  
("Landlord")**

and

**BFHP Hope Center, LP**

**("Tenant")**

Dated \_\_\_\_\_, 2020

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| <u>Exhibit E</u>  | City Resolution No. AAAA-N.S. [ <b><i>Approving the final Leases</i></b> ] |
| <u>Exhibit F</u>  | Initial Leasehold Mortgages and Mortgagees                                 |
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**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

1. **“Landlord”**

CITY OF BERKELEY, a Charter city

Notice Address:

City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley  
2180 Milvia Street, 4<sup>th</sup> floor  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

And

City of Berkeley HHCS  
2180 Milvia Street, 2<sup>nd</sup> floor  
Berkeley, California 94704  
Attention: Housing & Community Services Manager  
Telephone: (510) 981-5400  
Facsimile: (510) 981-5450

2. **“Tenant”**

BFHP Hope Center LP

Notice Address:

BFHP Hope Center LP  
c/o BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108  
Attn: General Counsel

BFHP Hope Center LP  
c/o Berkeley Food and Housing Project  
1901 Fairview Street  
Berkeley, CA 94703  
Attn: Executive Director

3. **“Ground Lease Date”**

The date set forth in the first paragraph below.

4. **“DDA”**

That certain Disposition and Development Agreement (Berkeley Way Development), originally dated June 8, 2016 between Landlord and Bridge Housing Corporation, a California nonprofit public benefit corporation, as amended by First Amendment to Disposition and Development Agreement dated August 27, 2018, as partially assigned to Tenant pursuant to that certain

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

Partial Assignment and Assumption Agreement dated December 17, 2018 and recorded in Official Records of Alameda County on December 21, 2018 as Instrument No. 18-241567, as amended by the Second Amendment to Disposition and Development Agreement, dated February 1, 2019 and recorded in Official Records of Alameda County on February 14, 2019 as Instrument No. 2019029062, and as further partially assigned to BRIDGE Berkeley Way LP and amended pursuant to that certain Assignment and Third Amendment to DDA dated \_\_\_\_\_, 2020 and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_. See **Exhibit C** hereto.

5. **“Premises”**

The Premises is described in **Exhibit A**, being primarily Parcel B of the Parcel Map (defined below).

6. **“Development Site” or “Site”**

That certain approximately 1-acre (approximately 41,000 square feet) parcel of real property generally located at 2012 Berkeley Way, between Milvia Street and Shattuck Avenue (previously APN 57-2053-22-1) in the City of Berkeley, which is the subject of the DDA.

The Development Site has been divided into three parcels, pursuant to that certain Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records (the **“Parcel Map”**), a copy of which is attached hereto as **Exhibit B**. Generally, the three parcels are the **“BRIDGE Affordable Parcel”** (Parcel Map Parcel C), the **“Permanent Supportive Housing Parcel”** (Parcel Map Parcel A), and the **“Temporary Housing Parcel”** (Parcel Map Parcel B).

7. **“Development” or “Project”**

The entire development project to be planned, entitled, developed, financed, designed, constructed, operated and maintained on the Development Site. The overall Development is a six story building with approximately 140,000 square feet of gross interior floor space, with associated landscaping and hardscape, and includes:

- The Temporary Housing Parcel and the Temporary Housing Improvements. The **“Temporary Housing Improvements”** consists of approximately 44 beds of temporary housing, a services center and administrative office space. The Temporary Housing Improvements are located within the Temporary Housing Parcel.
- The Permanent Supportive Housing Parcel and the Permanent Supportive Improvements. The

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

“Permanent Supportive Housing Improvements” consist of approximately 53 permanent supportive housing units and supportive service spaces. The Permanent Supportive Housing Improvements are located within the Permanent Supportive Housing Parcel.

- The BRIDGE Affordable Parcel and the BRIDGE Improvements. The “**BRIDGE Improvements**” consist of 89 affordable housing units (including one manager’s unit) and related improvements. The BRIDGE Improvements are located within the BRIDGE Affordable Parcel.

8. “Permitted Use” Homeless and community services, subject to the Regulatory Requirements and all other provisions of this Ground Lease.

9. “Premises Improvements” The Temporary Housing Improvements, collectively, together with all additions, alterations, modifications, replacements and improvements from time to time pursuant to this Ground Lease.

10. “REA 1” or “Site REA” or “Berkeley Way REA” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D**.

11. “REA 2” or “Hope Center REA” That certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, substantially in form attached hereto as **Exhibit D1**.

12. “Regulatory Requirements” Includes, collectively, (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants (Berkeley Way Hope Center Temporary Housing), dated \_\_\_\_\_, 20\_\_\_\_, between Landlord and Tenant and recorded in Official Records of Alameda County on \_\_\_\_\_, 2020 as Instrument No. \_\_\_\_\_, and any amendments approved by

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

Landlord and Tenant, and (ii) any regulatory or affordability agreement or other covenant, condition or restriction in favor of Landlord and recorded against the Premises.

13. **“Leasehold Mortgage,”  
“Permitted Leasehold  
Mortgagee” and “Senior  
Leasehold Mortgagee”** As identified in **Exhibit F** attached hereto. See also ARTICLE 14 below.
14. **“Investor(s)”** *[to be provided, including notice addresses]*
15. **“Term”** The period of time commencing on the Ground Lease Date and ending on the last day of the month in which the 75<sup>th</sup> anniversary of the Ground Lease Date occurs, subject to earlier termination as provided elsewhere in this Ground Lease.
16. **“Developer”** BRIDGE Housing Corporation, a California nonprofit public benefit corporation.
17. **“BFHP”** Berkeley Food and Housing Project, a California religious corporation
18. **“JDA”** Joint Development Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BRIDGE Berkeley Way LP, a California limited partnership.
19. **“Developer Agreement”** Prior to the Ground Lease Date, the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ among Developer, Tenant and BRIDGE Berkeley Way LP, a California limited partnership; and after the Ground Lease Date the Development Services Agreement, dated \_\_\_\_\_, 20\_\_ between Developer and Tenant.
20. **“Construction Schedule”** The final approved Construction Schedule for the Premises and Project, as amended from time to time pursuant to ARTICLE 5 below.
21. **“Lease Transfer  
Agreement” or “Transfer  
Agreement”** Lease Transfer Agreement, dated \_\_\_\_\_, 20\_\_ between Tenant and BFHP Hope Center LLC, a California limited liability company (“**BFHP LLC**”), together with such changes as City may approve.
22. **“Premises Substantial  
Completion”** Obtaining a temporary certificate of occupancy for the Premises and Project.
23. **“Premises Substantial  
Completion Date”** The earlier of 40 months following the commencement of Project construction and July 31, 2024.

**BASIC LEASE INFORMATION**  
**(Ground Lease - Berkeley Way Hope Center Temporary Housing)**

- 24. **“Guarantor” and “Completion Guaranty”** Developer, as **[Guarantor]** under that certain **[Construction Completion Guaranty]** in favor of the Landlord, dated on or about the Ground Lease Date, together with such changes as Landlord may approve.
- 25. **“Base Rent”** \$500 for the entire Term.
- 26. **“Additional Rent”** Is defined in Section 3.3 below.
- 27. **“Interest Rate”** The maximum rate permitted under Section 1(2) of Article XV of the California Constitution.
- 28. **“County”** The County of Alameda, California.
- 29. **“State”** The State of California.
- 30. **“City”** City of Berkeley, California.
- 31. **“Code”** The Internal Revenue Code of 1986, as amended from time to time.
- 32. **“CPI”** The Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof.
- 33. **“City Financing Documents”** See Section 1.2 below and **Exhibit G** attached hereto.

The Basic Ground Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Ground Lease.

**LANDLORD'S INITIALS**\_\_\_\_\_

**TENANT'S INITIALS**\_\_\_\_\_



**GROUND LEASE  
2012 BERKELEY WAY  
(Berkeley Way Hope Center Temporary Housing)**

THIS GROUND LEASE (“**Ground Lease**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020 (the “**Ground Lease Date**”), by and between the Landlord and Tenant identified in the Basic Ground Lease Information, who agree as follows:

**ARTICLE 1.  
OVERVIEW AND GENERAL**

**1.1 Overview.**

A. General Purpose of Development; Authority. Landlord owns the Site. Landlord entered into the DDA to cause the construction and operation of the Development on the Site for temporary, affordable and permanent supportive housing, and homeless services to help address the City’s homeless and affordability crisis, existing as of the Ground Lease Date. This Ground Lease facilitates one component of the Development. Landlord is entering into two additional ground leases, with an affiliate of Tenant, to implement the other two components of the Development, which components are further described in Basic Lease Information Section 7. In the event of a conflict between the DDA and this Ground Lease, this Ground Lease supersedes the DDA and will control. (See also Exhibit C hereto.) Landlord’s execution of this Ground Lease and the additional ground leases was authorized by City Council Resolution No. AAAA-N.S. attached hereto as Exhibit E.

B. Specific Purpose of Ground Lease. Landlord is entering into this Ground Lease to permit Tenant to construct, operate and maintain the Premises Improvements for the Permitted Use.

C. Regulatory Requirements. The parties intend that the Regulatory Requirements will survive for the full term therein, notwithstanding any prior termination or expiration of this Ground Lease or (except as provided in ARTICLE 14) foreclosure of any Permitted Leasehold Mortgage.

D. City Financing Documents. Nothing in this Ground Lease shall limit any City right under any regulatory or financing agreements between the City and Tenant (or by Tenant for the benefit of City), or under any Regulatory Requirement.

**1.2 Ground Lease and Possession.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, as of the Ground Lease Date Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term and upon the covenants and conditions set forth herein. On the Ground Lease Date, Tenant shall obtain exclusive possession of the Premises.

**1.3 Ownership of Premises Improvements.** At all times during the Term of this Ground Lease, (i) the Premises Improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii)

Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Premises Improvements.

**1.4 Changes to Premises and Parcel Map.** Tenant shall not alter the definition of the Premises, modify the Parcel Map, or further subdivide, by map, subdivision map, or otherwise, the Premises or any portion thereof, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole discretion.

**1.5 Tenant's Organizational Documents.** Tenant has previously provided Landlord with correct and complete copies of organizational documents for itself and (as applicable) its general partner(s) and managing member(s), including without limitation articles of organization, certificates of limited partnership, limited partnership agreements, limited liability company agreements, and the like. Tenant will provide Landlord copies of all amendments and modifications promptly following adoption thereof, and copies of such other organizational documents as Landlord may reasonably request from time to time. Any such amendment or modification which materially alters Landlord's rights herein, or under the Site REA, Hope Center REA, or Regulatory Requirements is subject to Landlord's reasonable consent.

**1.6 Assignment of Ground Lease to BFHP LLC.**

A. Following Premises Substantial Completion, Tenant may convey its interest in this Ground Lease and the Premises Improvement to BFHP LLC pursuant to the Lease Transfer Agreement, in which event Tenant and BFHP LLC shall enter into an assignment of this Ground Lease ("**Lease Assignment**") and grant deed ("**Grant Deed**"), each substantially in form attached to the Transfer Agreement, or in such other form as Landlord may approve in its reasonable discretion (the "**Assignment**"). Concurrently with the effective date of the Assignment, Tenant shall record in the Official Records of Alameda County (i) the Lease Assignment (or memorandum thereof) and (ii) Grant Deed, and upon recording thereof (except as provided in the Transfer Agreement) Tenant shall be released from any and all obligations under this Ground Lease arising after the effective date of the Assignment. Tenant will pay all costs of recording, including any County documentary transfer tax or City conveyance tax, the cost of any title insurance it may require and any escrow to implement the transaction.

B. Nothing in this Section shall prevent Tenant from entering into a temporary sublease with BFHP LLC to operate the Temporary Housing Improvements pursuant to this Ground Lease and the Regulatory Agreement prior to the transfer of this Ground Lease and the Temporary Housing Improvements to the BFHP LLC pursuant to the Lease Transfer Agreement as described in Section 1.6A.

**ARTICLE 2.  
GROUND LEASE TERM**

**2.1 Term.** The Term of this Ground Lease shall be as set forth in the Basic Ground Lease Information.

**ARTICLE 3.  
RENT**

**3.1 Rent.** Tenant shall pay the Base Rent specified in the Basic Ground Lease Information on or before the Ground Lease Date. Base Rent and any Additional Rent (collectively, “**Rent**”) shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent (other than Additional Rent payable to entities other than Landlord) shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 No Cost to Landlord: No Counterclaim, No Abatement.** Except as otherwise expressly provided in this Ground Lease, all Rent payable under this Ground Lease shall be absolutely net to Landlord. Except as otherwise expressly provided in this Ground Lease, Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction.

**3.3 Additional Rent.** “**Additional Rent**” means all sums, Impositions (as defined in Section 4.1 below), costs, expenses, and other payments for which Tenant is responsible pursuant to this Ground Lease. Tenant’s obligation to pay Additional Rent shall begin to accrue on the Ground Lease Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required by this Ground Lease. In addition to and not by way of limitation of Landlord’s rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount, subject to Tenant’s right to contest such charges and provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than 10 business days’ advance written notice of Landlord’s intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section shall constitute “**Additional Rent**” under this Ground Lease, shall be due and payable by Tenant to Landlord within five business days of Tenant’s receipt of an invoice from Landlord therefor, and shall bear interest at the Interest Rate until paid in full.

**3.4 Additional Consideration.** In addition to the Rent and Additional Rent provided for herein, consideration for this Ground Lease shall also be and is Tenant's full and complete compliance with all terms, conditions, warranties and covenants contained in the Regulatory Requirements and this Ground Lease relating to the planning, entitling, developing, financing, designing, constructing, operating and maintaining the Premises and Premises Improvements.

**ARTICLE 4.  
TAXES AND ASSESSMENTS; SERVICES AND UTILITIES**

**4.1 Impositions.** Tenant shall pay or cause to be paid, when due to the proper authority, any and all valid taxes, assessments, impositions, fees and similar charges on the Premises or Premises Improvements which become effective after the Ground Lease Date, including all taxes levied or assessed on the possession, use or occupancy of the Premises (as distinguished from the ownership of the Premises), and all taxes levied or assessed on the ownership, possession, use or occupancy of the Premises Improvements (collectively,

**“Impositions”**). Tenant shall not permit any Impositions to become a defaulted lien on the Premises or Premises Improvements; provided, however, that in the event any Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, imposition, fee or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall protect, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment, imposition, fee or other similar charge. Landlord hereby consents to and shall reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, the Premises Improvements and on Tenant's interest therein. Tenant shall have no obligation to pay Impositions pursuant to this Section that are due and payable prior to the Ground Lease Date, including without limitation any taxes, assessments, impositions, fees or other charges levied against the Premises which are incurred prior to the Ground Lease Date. Any Imposition relating to a period, only a part of which is included within the Term, shall be prorated as between Landlord and Tenant so that Landlord shall pay (if Landlord is subject to such Impositions) the portion of Impositions attributable to any period prior to the Ground Lease Date or subsequent to the expiration of this Ground Lease, and Tenant shall pay the portion thereof attributable to any period during the Term. Nothing contained in this Ground Lease shall be deemed to require the payment by Tenant of any income, franchise, estate, inheritance, succession or capital levy tax of Landlord.

**4.2 Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes (unless Tenant establishes an exemption) shall be paid by Tenant as part of Impositions as provided in this Ground Lease.

**4.3 Services and Utilities.** Tenant shall pay, or cause to be paid, all charges that are incurred by Tenant or that might be a charge or lien against the Premises or Premises Improvements for gas, water, electricity, telephone or other communication service, janitorial service, debris removal, or any other utility or service used, rendered or supplied upon or in connection with the Premises Improvements, throughout the Term (**“Utilities”**). Such charges shall include the cost of installing and metering such utility services. Tenant shall maintain, repair and (if necessary) replace all Utility facilities and installations in, on, about or otherwise serving the Premises or Premises Improvements. Landlord grants to Tenant the right to grant to public entities or public service corporations, for the purpose of serving only the Premises during the Term of this Ground Lease, rights-of-way or easements on or over the Site, for poles or conduits or both, and for other utilities and municipal or special district services; provided, however, that Tenant shall not grant any such rights of way or easements that would adversely affect or create safety problems in connection with the use or operation, or access to and from, the BRIDGE Affordable Parcel or Permanent Supportive Housing Parcel, or any adjoining property. Landlord shall join in the execution of or consent to any such rights of way or easements. Tenant shall promptly provide to Landlord copies of all rights-of-way and easements so granted. Tenant, or third parties other than Landlord, shall bear all costs and expenses incurred in connection with the granting of any such rights-of-way and easements.

**ARTICLE 5.  
DEVELOPMENT OF PREMISES IMPROVEMENTS; ALTERATIONS**

**5.1 General.** Tenant shall plan, entitle, develop, finance, design and construct the Premises Improvements on the Premises pursuant to and in compliance with all the terms and conditions set forth in DDA Article 5, this ARTICLE 5, the JDA, the Developer Agreement and the Construction Schedule. In the event of any conflict between this Ground Lease and the DDA, this Ground Lease shall control. Without limiting the foregoing:

A. Tenant shall notify Landlord regarding (i) any material breaches or defaults, and (ii) any schedule issues that may impair Tenant's ability to substantially complete the Premises Improvements prior to the date contained in the latest Construction Schedule; and

B. Tenant shall require its General Contractor performing the initial construction of the Premises Improvements to prepare all schedule updates required by the Construction Contract and promptly provide copies to Landlord.

**5.2 Commencement and Completion of Construction.** Tenant shall commence construction of the Premises Improvements no later than 30 days following the Ground Lease Date, and shall use diligent efforts to complete construction (subject to Force Majeure delays as defined in delays as defined in Section 15.4 below) no later than the Premises Substantial Completion Date. As between Tenant and Landlord, Tenant shall bear all costs and expenses to complete, or cause the completion of, the Premises Improvements within the time period set forth in the Construction Schedule, including without limitation any cost overruns and changes (regardless of Landlord's approval of any changes) for the Premises Improvements.

**5.3 Prior Development Matters.**

A. Site and Title Approvals. By its execution and delivery of this Ground Lease, Tenant confirms that it has approved all matters relating to the Site and title matters, as provided in DDA Sections 2.6, 2.7 and 4.5.

B. City and Governmental Approvals; CEQA Litigation. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all City Approvals (as defined in the DDA). Tenant confirms that it has obtained all other governmental approvals necessary for the development and operation of the Premises and the Premises Improvements, as provided in DDA Section 2.11. If any third party commences litigation objecting to or otherwise challenging any action or omission under California Environmental Quality Act ("CEQA") with respect to the Premises or any of Landlord's land use approvals relating to this Ground Lease, the Premises Improvements or the use or occupancy thereof, Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel selected by Tenant and reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

C. Construction Drawings and Specifications. By its execution and delivery of this Ground Lease, Tenant and Landlord confirm that Tenant has obtained all required City approvals for the Final Construction Drawings in accordance with DDA Sections 2.17 and 3.4.

**5.4 Non-Responsibility of Landlord.** Tenant shall be solely responsible for all aspects of its conduct in connection with the Premises Improvements, including, but not limited to, the quality and suitability of the final drawings and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review, inspection or approval undertaken by Landlord is solely for the purpose of determining whether the Tenant is properly discharging its obligations to Landlord, and should not be relied upon by Tenant, Developer or any other third parties as a warranty or representation by Landlord as to the quality of the design or construction of the Premises Improvements.

**5.5 No Change in Project Documents.** From and after the Ground Lease Date until Premises Substantial Completion, except as set forth in DDA Section 5.1, Tenant shall not make any Material Change to the Final Construction Drawings or permit others to make any Material Change without the Landlord's prior written approval. As used in this Section 5.5 "**Material Change**" means (i) any change in the work the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (iii) any material change in building materials or equipment, or the structural or architectural design or appearance of the Development as provided for in the plans and specifications approved by the City Building Department. From and after the Ground Lease Date until Premises Substantial Completion, Tenant shall not make any changes to the Construction Schedule or permit others to do so, without the Landlord's prior written approval, which shall not unreasonably be withheld.

**5.6 Alterations.**

A. Alterations shall also be governed by this Ground Lease, including without limitation applicable provisions of this ARTICLE 5. "**Alterations**" include modifications or additions to the Premises Improvements following Premises Substantial Completion, including without limitation Material Alterations. "**Material Alterations**" means (a) the construction of any new additional building or structure, (b) an increase in the bulk or height of the Premises Improvements, (c) any material alteration of exterior architectural designs, colors or materials (unless the applicable exterior component is not reasonably available or does not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed), or (d) reconstruction following fire or other casualty in excess of \$300,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design. Material Alterations shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord's prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed contractors, and in a first-class and workmanlike manner.

B. Except with Landlord's prior written consent, which may be granted or denied in Landlord's reasonable discretion, Tenant shall not make or cause to be made any Material Alterations as set forth below. If Tenant at any time following Premises Substantial Completion desires to undertake any Material Alterations, Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably

requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. In the event Landlord disapproves a submittal pursuant to this Section, Landlord shall submit a list of reasons for the disapproval to the Tenant together with its notice of such disapproval. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord's disapproval. Nothing herein or in any other agreement relating to the Development shall require Landlord to approve Material Alterations which would cause the Building (including any solar canopy or other energy facilities) to be greater than 206 feet high or include more than 167,000 interior square feet.

**5.7 Construction Standards.** The following standards (as applicable) shall apply to the design and construction of all Premises Improvements and Alterations under this Ground Lease.

A. Approval of Contractor and Materials. Landlord's approval of Tenant's contractor or other person engaged to perform the work is required for all Premises Improvements and Alterations with an aggregate cost exceeding \$250,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date) for any single instance, and for such other matters as Landlord may request from time to time.

B. Contracts, Plans and Specifications. Subject to the rights of Leasehold Mortgagees and Tenant's Investor, all contracts with any architect, other design professional or any general contractor for the original construction of the Premises Improvements or the construction of Material Alterations shall provide for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder.

C. General Construction Standards. Except as otherwise expressly provided in this Ground Lease, all Tenant construction contractors and subcontractors shall be licensed. Tenant shall require any general contractor to institute an appropriate safety program to assure the safety and convenience of all persons. In addition, Tenant shall pay (or cause to be paid) all costs and expenses associated with Tenant's work and shall indemnify, defend and hold Landlord harmless from all liabilities, damages, losses or claims attributable to the Tenant's construction of the Premises Improvements, or of any subsequent Alterations on or about the Premises, as the case may be, and the performance of Tenant's work. Dust, noise and other effects of Tenant's work shall be controlled by Tenant as required by the applicable conditions of approval of the Premises Improvements and applicable Laws so as to minimize deleterious effects associated with construction projects in a populated or developed area. Tenant shall identify an individual representative to address any neighborhood complaints related to its construction work and Tenant shall respond promptly to any neighborhood complaints. Tenant shall be required, at Tenant's expense, to obtain any and all air quality and other permits required of Tenant in connection with Tenant's construction.

D. Public Safety. Without limiting the generality of the Subsection 5.7C above, as between Landlord and Tenant, Tenant shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.

E. Permits. To the extent that any Premises Improvements or Alterations require a building permit or other permits from the City of Berkeley and/or any other

governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty, shall forfeit the amount then-specified by applicable Law for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code or other applicable law), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. Unless otherwise specified by Law, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Compliance With JDA and Developer Agreement. During the initial construction of the Project, Tenant shall comply with its obligations under the JDA and Developer Agreement.

H. Insurance. See ARTICLE 9 below.

I. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other property owners and occupants.

**5.8 Protection of Landlord.** Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises and Premises Improvements any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Premises Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations that could give rise to mechanics' liens to be done on or about the Premises or Premises Improvements to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Material Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**5.9 Liens and Stop Notices.** Tenant shall keep the Premises and Premises Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Premises Improvements,



Tenant shall have the right to consent the lien. Tenant shall, within 30 days of recording of a lien or service of a stop notice:

- A. Pay and discharge the same;
- B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Premises and Premises Improvements; or
- C. Otherwise obtain or effect the release thereof.

**5.10 Notice.** Should any claims of lien be filed against the Premises or Premises Improvements thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**5.11 Miscellaneous.**

A. Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Premises upon reasonable notice to Tenant and without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Ground Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with all safety rules of the Tenant and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 below) Tenant shall have the right to accompany Landlord.

B. Guarantee of Workmanship and Materials. Tenant shall insure that any transferable warranties then in effect are transferred to Landlord upon expiration or termination of this Ground Lease.

C. Notice of Completion. Promptly upon completion of construction of the Premises Improvements and Material Alterations, Tenant shall file or cause to be filed in the Official Records of the County a Notice of Completion (the "**Notice of Completion**"), and provide a filed copy to Landlord.

D. As Built Plans and Specifications. Within 30 days following completion of construction of any construction, changes, Alteration or repair on or about the Premises for which architectural drawings and specifications are required, Tenant shall deliver to Landlord three sets (at least one of which is on CD) of "**As Built**" drawings and specifications for such work, and copies of lien waivers from all contractors, subcontractors, suppliers and materialmen involved in construction.

E. Except as otherwise expressly provided in this Ground Lease or other agreement expressly referenced herein, all Premises Improvements and Alterations shall be without cost or expense to Landlord.

**ARTICLE 6.**  
**USE OF PREMISES, COMPLIANCE WITH LAWS**

**6.1 General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Premises Improvements for the Permitted Use and for no other purpose without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion. As a material condition of this Ground Lease and the City Financing Documents, Tenant shall comply and shall at all times be in compliance with the Ground Lease, the Site REA, the Hope Center REA and all Regulatory Requirements. Tenant acknowledges that Landlord has entered into this Ground Lease and has agreed to the Rent structure contained herein in material reliance on Tenant's agreement to permit only those uses described herein. In the event Tenant requests a change in any use described herein, Tenant agrees that Landlord, in its sole discretion, may withhold consent to such a request or that Landlord properly may condition consent to any change in use on a renegotiation of the Rent structure or amounts. Further, Tenant acknowledges that Landlord has determined that this use is beneficial to Landlord's overall governmental purposes and Tenant understands that, except as provided in ARTICLE 14, Landlord has no obligation to consent to any other use of all or any part of the Premises.

**6.2 Governmental Requirements.** Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 7.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Premises Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Premises or Premises Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Premises Improvements or any portion thereof as a source of adverse environmental impacts or effects].

**6.3 Tenant's Right to Contest.** Tenant, at its sole cost and expense, shall have the right to contest, by appropriate proceedings diligently conducted in good faith in the name of Tenant, the validity or application of any applicable Law. If compliance with any applicable Law legally may be delayed pending the prosecution of any such proceeding without cost or penalty and without subjecting Landlord to any liability, civil or criminal, Tenant may delay compliance until the final determination of such proceeding.

**6.4 Nuisance.** Tenant shall not use the Premises or the Premises Improvements for any unlawful purpose and shall not perform, permit or suffer any act of omission or commission upon or about the Premises or the Premises Improvements which would result in a nuisance or a violation of the laws and ordinances of the United States, State, County or City ordinances and all agencies thereof as the same may be now or hereafter in force and effect. Landlord understands and agrees that Tenant's residential subtenants or clients may populate and congregate on the sidewalk adjacent to or near the Premises, and may make noise when arriving at or waiting to enter the Premises Improvements. Whether or not any otherwise legal activities of the Tenant's subtenants and clients constitute a legal nuisance, they will not constitute a default justifying termination of this Lease under ARTICLE 13.

**6.5 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Premises Improvements, and any portion thereof, Tenant will not:

A. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

B. Create, cause, maintain or permit any nuisance (as the same may be defined by Law) in, on or about the Premises or Premises Improvements;

C. Commit or suffer to be committed any waste in, on or about the Premises or Premises Improvements;

D. Use or allow the Premises or Premises Improvements to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;

E. Cause or permit any insurance coverage on the Premises or Premises Improvements to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;

F. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Premises Improvements or to any adjacent public or private property or improvements; or

G. Violate or permit any violation of any applicable Law, ordinance or regulation applicable to the Premises or Premises Improvements.

**6.6 Non-Discrimination.** Tenant covenants and agrees that there shall be no unlawful discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Premises Improvements or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such unlawful practice or practices of discrimination or unlawful segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Premises Improvements, or any portion thereof. Tenant shall refrain from unlawfully restricting the use, occupancy, rental or sublease of the Premises, the Premises Improvements, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person. City understands and agrees that the shelter beds in the Temporary Housing Improvements may be restricted to men, or persons identifying as men.

**6.7 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Premises Improvements, and all improvements and landscaping within the Premises in a good, safe condition and repair, subject only to normal wear and tear, and in full compliance with Site REA, the Hope Center REA all applicable Laws, and this Ground Lease.. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and

any and all other items necessary to comply with the requirements of this Section. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance.

**6.8 Landlord’s Status as a Landowner.** Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Premises Improvements and not as a regulatory authority with certain police powers. Landlord’s legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord’s departments, boards or commissions that have jurisdiction over the Premises or Premises Improvements. By Landlord’s entering into this Ground Lease, neither Landlord nor any of Landlord’s Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises, or Premises Improvements. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, or Premises Improvements by the City in connection with its governmental capacity or police powers. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Premises Improvements to be used and occupied in accordance with all Laws, nor any right of the Landlord or its Council, boards, commissions, agencies, departments, or affiliates to directly enforce Tenant’s compliance with Laws. Further, nothing in this Ground Lease shall subject Landlord to liability or increase its liability in connection with any act, omission, occurrence or circumstance arising from its governmental capacity or police powers due to its status as Landlord under this Ground Lease.

**6.9 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion and applicable Laws.

**ARTICLE 7.**

**CONDITION OF PREMISES; HAZARDOUS MATERIALS; LANDLORD’S RIGHT OF ENTRY**

**7.1 Landlord’s Disclaimers and Tenant’s Acknowledgements.** The Premises are being leased to Tenant in their current, existing, “AS-IS” condition as set forth in, and subject to, DDA Section 4.5, the terms of which are incorporated herein by reference, except that all references therein to “Developer” are replaced with “Tenant”..

**7.2 Hazardous Materials**

A. General Compliance. DDA Section 6.2, the terms of which are incorporated herein by reference, with the following modifications in addition to the other modifications therein:

1. All references therein to “Developer” are replaced with “Tenant”;
2. All references to “Hazardous Materials Laws” shall mean all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or

which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.

3. All references to “**Hazardous Materials**” shall include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof.

4. All references to "Development" means the "Premises."

5. All references to “Term” shall mean “Term” as defined in this Ground Lease.

6. Nothing in this Ground Lease or **Exhibit C** shall limit or restrict the use of limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used in compliance with (i) this Ground Lease, (ii) all applicable Hazardous Materials Laws, and (if applicable) (ii) the Project Rules (as defined in the Site REA) and the Hope Center Project Rules (as defined in the Hope Center REA).

B. Tenant’s Independent Investigation. Tenant or its agents and representatives have undertaken investigations of the Premises in an attempt to determine if any Hazardous Material is present on the Premises. Except as disclosed in the Phase I and Phase II Environmental Assessment report dated \_\_\_\_\_, 2018 by Rincon Consultants, and ***[insert name/other information regarding additional soils testing, expected to be completed on or about December 2019]***, no Hazardous Material has been located or discovered to date and the parties agree that for purposes of this Ground Lease, Tenant assumes full responsibility for the investigation and remediation, as and to the extent required by Environmental Laws, of all Hazardous Material in, on or under the Premises that is discovered during the Term.

### **7.3 Landlord’s Right to Enter Premises and Premises Improvements.**

Landlord and its authorized representatives shall have the right to enter the Premises and Premises Improvements at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Premises Improvements, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Premises Improvements or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease and (except as otherwise permitted in connection with its exercise of rights under Section 6.8 above) Tenant shall have the right to accompany Landlord.

A. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord’s entry on the

Premises and Premises Improvements as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section.

**ARTICLE 8.  
OWNERSHIP OF IMPROVEMENTS AND  
PERSONAL PROPERTY**

**8.1 Ownership of Premises Improvements During Term.** During the Term, the Premises Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Premises Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Premises Improvements is and will at all times be real property.

**8.2 Ownership of Premises Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Premises Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to or against to the extent caused by Tenant or subtenant. Tenant is not obligated to remove rights arising from the Site REA and Hope Center REA. (See also Section 15.10.)

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** At the expiration or termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant and other permitted occupants may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Premises Improvements. Tenant shall (or shall cause its other permitted occupants to) repair all damage caused by any such removal.

B. Any personal property owned by Tenant or its subtenants and not removed by Tenant prior to the expiration or termination of the Term shall be deemed to be abandoned by Tenant or (to the greatest extent permitted by applicable Law) its subtenants, and shall, without compensation to Tenant or (to the extent permitted by applicable Law) subtenant, become the Landlord's property, free and clear of all claims to or against them by Tenant, subtenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

**ARTICLE 9.  
INSURANCE AND INDEMNITY**

**9.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Premises Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance as provided the Site REA or, following the expiration or termination thereof, as Landlord may reasonably specify..

2. Broad Form Commercial General Liability Insurance in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000, as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an “insured contract” for the performance of Tenant’s indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. .

3. Comprehensive Auto Liability Insurance with limits not less than \$2,000,000 each occurrence as further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

4. Worker’s Compensation Insurance, including Employer’s Liability coverage, with limits not less than \$1,000,000 each accident, to the extent required by law, as may be further provided the Site REA and this ARTICLE 9 or, following the expiration or termination thereof, as Landlord may reasonably specify.

5. Leasehold Mortgagee Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Premises Improvements or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage for any five-year period by more than the lesser of (i) 50% and (ii) two times the CPI increase since the last increase under this Section.

C. Insurance for Construction of Premises Improvements and Alterations. Tenant’s contractors and subcontractors for the Premises Improvements shall maintain all insurance required by DDA Section 6.3(b). Tenants contractors and subcontractors for any Alterations shall maintain all liability, property worker’s compensation, employee and insurance as Landlord deems reasonably necessary or as otherwise provided in this Ground Lease.

D. General. All deductibles shall be declared to and subject to Landlord's approval if in excess of \$100,000 per occurrence (as increased by CPI). All commercial general liability and automobile liability policies shall name Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall (to the extent reasonably obtainable) contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination; otherwise, Tenant shall provide such notice. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant or its contractors shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsements shall be furnished by Tenant to Landlord prior to the Ground Lease Date, and prior to each anniversary thereof. If Tenant or its contractors fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

**9.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Premises Improvements, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenants, assignees or Users (collectively "**Tenant's Parties**"), other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; (iii) any pre-Ground Lease Date entry by or on behalf of Developer or Tenant under the Temporary Right of Entry described in DDA Section 9.19(a); and (iv) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

### **10.1 Restoration.**

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Premises Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises



Improvements, shall (except as otherwise provided in Sections 1.1A or 10.1B) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided that Tenant determines that it is feasible to repair the Premises Improvements, and subject to the rights of Leasehold Mortgagees and Tenant's Investors, and specific procedures (if any) set forth in the Site REA, Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Premises Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Premises Improvements, so damaged or destroyed. Subject to the rights of any Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein.

B. Premises Improvements Uninsured Damage. Notwithstanding the provisions of Section 10.1A, if, during the Term, the Premises Improvements are totally destroyed or rendered inaccessible or if the remaining portion of the Premises Improvements are rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and either (i) the cost of restoration exceeds 50% of the then replacement value of the Premises Improvements as reasonably determined by Landlord, (ii) Tenant reasonably determines that repair and reconstruction is infeasible, or (iii) if fewer than fifteen (15) years of the Term remain, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Premises Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's operations in the Premises Improvements could not be maintained at an economically feasible level. Subject to the rights of Leasehold Mortgagees and Tenant's Investors, if this Ground Lease terminates pursuant to this Section, Tenant shall surrender possession of the Premises and, subject to the rights of Leasehold Mortgagees and Tenant's Investors, assign to Landlord its rights and interests in and to the proceed of insurance received by Tenant for the repair or demolition of the Premises Improvements.

C. Loss Adjustment and Disbursement Procedures. Except as may otherwise be required by any Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss. Except as may otherwise be required by any Leasehold Mortgagee and Tenant's Investors, all resulting insurance proceeds shall be held for the following purposes:

1. The sums shall be paid in installments by the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If Landlord, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, Landlord shall have the right to appoint a project manager to supervise construction and to approve payments on certificates or vouchers approved by the architect or engineer retained by the Tenant. The

reasonable expenses and charges of the project manager retained by Landlord shall be paid from the insurance proceeds.

3. If at any time it reasonably appears to Tenant that the sums held by the Tenant are not sufficient to pay the actual cost of restoration, Tenant shall identify the amount of the deficiency to Landlord as promptly thereafter as reasonably possible.

4. Any undisbursed funds after compliance with the provisions of this Section 10.1C shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

**10.2 Waiver.** The provisions of this ARTICLE 10 shall govern the rights of the parties in the event of any full or partial destruction of the Premises Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Premises Improvements.

**10.3 Determination of Extent of Destruction, Interference with Use.** For purposes of this ARTICLE 10, the extent of destruction of the Premises Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord for the full replacement cost of the Premises Improvements, as reasonably determined by Landlord, Tenant and (to the extent required by the applicable insurance policies) Tenant's insurers.

**10.4 Procedures for Repair and Restoration.** Tenant shall promptly give Landlord reasonable written notice in the event of any damage or destruction to either (i) the Premises Improvements or (ii) (to the extent of Tenant's actual knowledge) the entire Development, with an estimated restoration cost exceeding \$1,000,000 (subject to adjustment pursuant to the CPI from and after the Ground Lease Date). Tenant's notice shall include the general nature of the damage or destruction and the date on which it occurred. Regardless of the amount of any damage or destruction, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above and subject to rights of Leasehold Mortgagees and Investors, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Premises Improvements which have been destroyed or damaged (or repaying loans or advances used for such purposes).. Tenant shall commence and complete or cause to be commenced and completed any repairs and reconstruction in a good and workmanlike manner and in accordance with the Site REA, this ARTICLE 10 and the applicable provisions of ARTICLE 5 above.

## ARTICLE 11. CONDEMNATION

### 11.1 Definitions.

A. "**Condemnation**" means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C. **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**11.2 Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Premises Improvements or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 11.

**11.3 Total Taking.** If the Premises or Premises Improvements are totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**11.4 Effect of Partial Taking.** If a portion of the Premises Improvements or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Premises Improvements are rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Premises Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s operations in the Premises Improvements could not be maintained at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 11.4 will result in this Ground Lease continuing in full force and effect.

**11.5 Restoration of Premises Improvements.** If in Tenant’s judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Premises Improvements as is necessary to restore or to add on to the Premises Improvements so that the area and approximate layout of the Premises Improvements will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Premises Improvements, the remaining provisions of this ARTICLE 11 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Premises Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord.

**11.6 Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**11.7 Award.** Subject to the provisions of Section 11.5, and subject to the rights of Leasehold Mortgagees and Investors, if all or any portion of the Premises Improvements or any other improvements on the Premises is taken in connection with a condemnation, the award for the Premises Improvements or such other improvements shall be allocated taking into account that the Landlord's interest is limited to the land or air space (exclusive of the Premises Improvements). If the Premises Improvements are to be restored pursuant to Section 11.5 above, Tenant shall be entitled to recover the costs and expense incurred in such restoration out of any condemnation proceeds. Thereafter, if the condemning authority does not make separate awards, the proceeds will be allocated on a proportionate basis. If Landlord and Tenant are unable to agree as to the amounts that are to be allocated to each other, the allocation will be determined by an appraisal performed by a mutually agreed appraiser. The appraiser shall separately determine the amount of award to be allocated to the interest of each party, and the costs of the appraiser shall be borne equally by each party.

## **ARTICLE 12. ASSIGNMENT AND SUBLETTING**

### **12.1 Assignment.**

A. Except as provided in Section 1.6 and the Lease Transfer Agreement, Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Premises Improvements or any part thereof (collectively an “**assignment**”) without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any direct or indirect controlling or managing ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, or any interest in the Premises Improvements, shall constitute an “assignment” hereunder. However, the transfer of a limited partnership interest in a limited partnership tenant, or of a non-managing membership interest in a limited liability company tenant, shall not constitute an assignment.

B. Notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Affiliate (as defined below) of BRIDGE or BFHP, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease. For purposes of this Section, “**Affiliate**” means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. Also notwithstanding Subsection 12.1A above, Landlord's consent is not required for any assignment to an Investor, as long as the following conditions are met: (i) the assignment occurs pursuant to the term of Tenant's governing documents, following a default to the Investor; (ii) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (iii) the Investor assumes in writing all of Tenant's obligations under this Ground Lease.

D. No partial assignments of this Ground Lease shall be permitted, and all assignments must be accompanied by a concurrent transfer of the Premises Improvements to the assignee. Assignments of this Ground Lease shall only be made pursuant to a written

assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 12.1.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment for which Landlord's consent is required under this ARTICLE 12, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**12.2 Subleases.** Except as provided in Subsection 1.6B, to residential tenants and other tenants typically entered into in connection with residential development (such as laundry leases) and subject to all Regulatory Requirements, Tenant shall not sublease all or any portion of the Premises Improvements or the Premises without Landlord's prior written consent, which may be withheld for any reason whatsoever in Landlord's sole absolute discretion. No permitted subletting shall limit Tenant's obligations under this Lease.

### **ARTICLE 13. TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**13.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 30 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing any of its covenants or agreements contained in the Regulatory Requirements, Site REA or Hope Center REA, and such other default continues for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure, provided that such cure period need not exceed any time period that the failure to cure would result in Landlord itself being in violation of any Law or expose Landlord to unreasonable financial risks; or

C. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements contained in this Ground Lease, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

D. Tenant abandons or substantially suspends the Premises Improvements prior to completion thereof and such default is not cured within 60 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Premises Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

F. Except as otherwise expressly permitted in this Ground Lease there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Subject to ARTICLE 14 below, Tenant defaults on any loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such loan; or

H. Any Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord.

**13.2 Remedies.** Subject to the rights of any Leasehold Mortgagees permitted under ARTICLE 14, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Premises Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Premises Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 13.2B below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Premises Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Premises Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period, and subject to the rights of any subtenant under subleases permitted under Section 12.2. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Premises Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's reasonable expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination, and Tenant shall remain liable for all costs, losses and damages resulting from unperformed Tenant obligations and breaches under permitted subleases.

C. Even though Landlord may have relet all or any portion of the Premises, including the Premises Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**13.3 Damages.** Neither party shall be entitled to recover consequential or punitive damages under this Lease.

**13.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**13.5 Guarantor Performance Under Completion Guaranty.** Notwithstanding anything in this Ground Lease to the contrary (other than the last sentence of this Section 13.5), (i) if Landlord enforces its rights against Guarantor, Guarantor's performance in compliance with the Completion Guaranty shall be deemed to suspend any default by Tenant under this Ground Lease relating to the construction of the Premises Improvements, and Landlord shall accept Guarantor's performance thereof; and (ii) so long as the Guarantor proceeds diligently to perform the guaranteed obligations thereunder (subject to permitted force majeure delays and other delays expressly specified in the Completion Guaranty) and to cause the Premises Improvements to be completed within three years following the date completion is otherwise required under this Ground Lease, Landlord shall not exercise any of its remedies under the Ground Lease arising from the Tenant's failure to construct the Premises Improvements as required herein including, without limitation, termination of this Ground Lease. Nothing in this Section 13.5 shall limit Landlord's right to collect any amounts otherwise due under Section 13.4 following Guarantor's satisfaction of all obligations under the Completion Guaranty or Guarantor's default thereunder.

## ARTICLE 14. MORTGAGEE PROTECTION PROVISIONS

**14.1 Right to Encumber.** Tenant shall have the right during the Term to encumber, through one or more Leasehold Mortgages and the Regulatory Requirements, all of Tenant's right, title and interest in the Premises, subject to the provisions of this Ground Lease; provided, however, that any Leasehold Mortgage shall be in all respects subordinate and inferior to Landlord's right, title and interest as fee title owner of the Site and Premises, and any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Landlord herein contained in this Ground Lease, except as otherwise provided in this Ground Lease. For purposes of this Ground Lease, Landlord and Tenant acknowledge and agree that the Senior Leasehold Mortgagee identified on **Exhibit F** attached hereto is a permitted Leasehold Mortgagee and all references to a "Leasehold Mortgagee" shall specifically include Senior Leasehold Mortgagee. All references to a Leasehold Mortgage shall include, without limitation, that certain Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of even date herewith, made by Tenant for the benefit of the initial Senior Leasehold Mortgagee. For so long as any Leasehold Mortgage is outstanding, Landlord shall not agree to any mutual termination or accept any surrender of this Ground Lease without the prior written consent of the holders of Leasehold Mortgages then in effect, and any such termination or surrender without such consent shall have no force or effect.

**14.2 Leasehold Mortgagee as Third Party Beneficiary.** Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall be deemed to be a third party beneficiary of Tenant's obligations under this Ground Lease; provided that the foregoing shall not alter any right, remedy, duty or obligation between Tenant and Landlord herein.

**14.3 Notice to Leasehold Mortgagee.** During any period in which a Leasehold Mortgage is in place, Landlord shall give any such Leasehold Mortgagee of which Landlord has received notice from Tenant a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Ground Lease. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord in the manner specified in Section 15.5 below. Landlord's failure to give any such notice to any such Leasehold Mortgagee shall not render such notice ineffective, nor shall any such failure constitute a default hereunder. Landlord acknowledges the Leasehold Mortgagee identified in **Exhibit F** as a holder of a Leasehold Mortgage.

**14.4 Right of Leasehold Mortgagee to Cure.** Notwithstanding any default by Tenant under this Ground Lease, Landlord shall have no right to terminate this Ground Lease unless Landlord shall have given each Leasehold Mortgagee written notice of such default and such Leasehold Mortgagees shall have failed to remedy such default or acquire Tenant's leasehold estate created by this Ground Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section 14.4.

A. Any Leasehold Mortgagee which has an outstanding Leasehold Mortgage shall have the right, but not the obligation, at any time to pay any or all of the Rent due pursuant to the terms of this Ground Lease, and do any other act or thing required of Tenant by the terms of this Ground Lease, to prevent termination of this Ground Lease. Each Leasehold Mortgagee shall have 90 days after receipt of notice from Landlord describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Ground Lease as the same would have been if made and performed by Tenant instead of by Leasehold Mortgagees.

B. In addition to the cure period provided in Section 14.4A above, if the default is such that possession of the Premises may be reasonably necessary to remedy the default, any Leasehold Mortgagee shall have a reasonable time after the expiration of such 90 day period within which to remedy such default, provided that (i) such Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease within such 90 day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Leasehold Mortgagee shall have acquired Tenant's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

C. Any default under this Ground Lease which by its nature cannot be remedied by any Leasehold Mortgagee shall be deemed to be remedied if (i) within 90 days after receiving written notice from Landlord describing the default, or prior thereto, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant hereunder which does not require possession of the Premises, and (iv) after gaining possession of the Premises, the Leasehold Mortgagee shall cure all non-monetary defaults of Tenant hereunder capable of cure by Leasehold Mortgagee.



D. If any Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Tenant under this Ground Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Leasehold Mortgagee shall not interfere with Landlord's efforts to seek compliance by the Tenant with any non-monetary obligation under this Ground Lease.

E. As used in this Section 14.4, "monetary obligations of Tenant" does not include damages, costs and expenses arising from any obligation of Tenant to indemnify Landlord for any acts or omission of Tenant prior to the date a Leasehold Mortgagee assumes the obligations of Tenant hereunder.

**14.5 Limitation on Liability of Leasehold Mortgagee.** No Leasehold Mortgagee shall be or become liable to Landlord as an assignee of this Ground Lease or otherwise unless it expressly assumes by written instrument executed by Landlord and Leasehold Mortgagee such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgagee or other instrument or from a conveyance from Tenant pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Tenant under the terms of this Ground Lease.

**14.6 Estoppel Certificates.** Landlord and Tenant agree that at any time and from time to time upon not less than 20 days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or Investor or a permitted assignee, Landlord or Tenant will execute and deliver to the other party or to such Leasehold Mortgagee or Investor a statement in writing certifying (a) that this Ground Lease is unmodified and in full force and effect (or specifying any known amendments if applicable); (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default (or any conditions existing which, but for the passage of time or the giving of notice, would constitute a default) set off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of this Ground Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee or Investor, as the case may be, in this Ground Lease or by any prospective Leasehold Mortgagee or Investor or permitted assignee of any Leasehold Mortgagee or Investor.

**14.7 Registration of Leasehold Mortgages.** Upon written request by Landlord, Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Ground Lease.

**14.8 New Ground Lease.** In the event of the termination of this Ground Lease prior to the natural expiration of the Term of this Ground Lease due to a default of Tenant or operation of law or otherwise (including, without limitation, a rejection or other termination of this Ground Lease pursuant to any bankruptcy filing by or against Tenant or the commencement of any other insolvency proceeding or similar proceeding, an act of condemnation or eminent domain against a portion of the Premises by a government agency or body, the destruction or

damage of the Premises, or upon a foreclosure of Tenant's estate by a Leasehold Mortgagee or acceptance of a deed in lieu of foreclosure or a change in the control or management of Tenant in violation of this Ground Lease), Landlord shall also be obligated to give notice to Leasehold Mortgagee simultaneously under Section 14.3 hereof with such notice given to Tenant; provided that no failure to give such notice to Leasehold Mortgagee shall invalidate the termination of this Ground Lease. Landlord, upon written request from Senior Leasehold Mortgagee and at Senior Mortgagee's sole cost and expense, shall enter into a new lease with such holder or its designee in accordance with and upon the same terms and conditions as set forth in this Ground Lease. In addition, without limiting the preceding sentences, in the event of the filing of a petition in bankruptcy by or against the Tenant, and the Tenant rejects this Ground Lease under the then applicable provisions of the Bankruptcy Code, Landlord shall, upon the request of a Leasehold Mortgagee and at Senior Leasehold Mortgagee or its designee's sole cost and expense, affirm this Ground Lease, and Landlord will enter into a new ground lease on the same terms and conditions set forth in this Ground Lease with such holder or its designee promptly upon Tenant's rejection of this Ground Lease. In the event of the filing of a petition in bankruptcy by the Landlord, and the Landlord rejects this Ground Lease and the Tenant does not affirm it, a Leasehold Mortgagee will have the authority to affirm this Ground Lease on behalf of the Tenant and to keep the Ground Lease in full force and effect.

A. After cancellation and termination of this Ground Lease, and upon compliance with the provisions of this Section 14.8 by Leasehold Mortgagee, or its designee, upon the request of Leasehold Mortgagee or its designee within the time provided in Section 14.4 hereof, Landlord shall, at Senior Leasehold Mortgagee or its designee's sole cost and expense, execute and deliver such new ground lease to such Leasehold Mortgagee or its designee, having the same relative priority in time and right as this Ground Lease (to the extent possible) and having the benefit of all the right, title, interest, powers and privileges, and obligations and liabilities of Tenant hereunder in and to the Premises.

**14.9 Rights of Investor.** The Investor shall have the same notice and cure rights as any Leasehold Mortgagee (including monetary obligations) as set forth in Section 14.4 for so long as it is a limited partner of Tenant; provided, however, that Investor shall be deemed to have met any condition relating to commencement or continuation of a foreclosure proceeding as set forth in Section 14.4 above, if it is attempting with diligence and in good faith to remove the general partner of Tenant. The address for any notices to Investor, as of the date hereof, is provided in Basic Lease Information Section 14.

**14.10 Transfers.** The consent of Landlord shall not be required for the mortgage of Tenant's interest in the Premises and Premises Improvements to any Leasehold Mortgagee, including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof); the consent of Landlord to a Transfer by a Leasehold Mortgagee after acquisition by foreclosure, at Senior Leasehold Mortgagee or its designee's sole cost and expense, will not be unreasonably withheld or delayed.

**14.11 Permitted Use Requirements.** Following a transfer of the Premises to any Leasehold Mortgagee (or its nominee or assignee), including, without limitation, Senior Leasehold Mortgagee, and transfer of the Premises and Premises Improvements to such Leasehold Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent

thereof), notwithstanding anything to the contrary in this Ground Lease, the Permitted Use of the Premises shall be as specified by the zoning or applicable City conditions of approval.

**14.12 Further Ground Lease Amendments.** Landlord shall cooperate in including in this Ground Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or any proposed lender, at Leasehold Mortgagee or proposed lender's sole cost and expense, for the purpose of implementing the mortgagee-protection provisions contained in this Ground Lease and allowing such Leasehold Mortgagee or proposed lender reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security, and to include any additional rights and privileges reasonably requested to be added by such Leasehold Mortgagee. Landlord agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect Landlord's fee estate in the Site or any other interest of Landlord in the Site or Premises, affect the Term or rent under this Ground Lease, or otherwise in any material respect adversely affect any rights of Landlord under this Ground Lease or (except as otherwise expressly provided herein) Regulatory Requirements.

## ARTICLE 15. MISCELLANEOUS

**15.1 Holding Over.** If Tenant shall hold over in the Premises Improvements or Premises after the expiration or termination of the Term hereof with or without the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental \$500 per month, plus all Additional Rent as otherwise required in this Ground Lease.

**15.2 Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**15.3 Quiet Possession.** Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord. For purposes of this Section 15.3, persons exercising their rights under the Site REA or Hope Center REA shall be deemed to a person claiming by, through or under Tenant.

**15.4 Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder (including without limitation continuing obligations under the DDA) shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which

shall not excuse performance by Landlord) (together, “**Force Majeure**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party with reasonable promptness (not more than 30 days) of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that post-Ground Lease Date adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant’s inability to obtain financing or other lack of funding, shall not constitute a Force Majeure delay pursuant to this Section 15.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Ground Lease Date.

**15.5 Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Ground Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**15.6 Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**15.7 Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Premises Improvements, the Premises and any other improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**15.8 Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant’s interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**15.9 Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Premises Improvements or in the conduct of Tenant’s business or operations or otherwise.

**15.10 Quitclaim.** At termination or expiration of the Term of this Ground Lease, Tenant shall execute, acknowledge and deliver to Landlord within 30 days, a valid and recordable quitclaim deed covering the Premises and Premises Improvements, free and clear of all monetary liens and encumbrances not caused or agreed to by Landlord (“**Quitclaim**”).

Deed”). If Tenant fails to clear all monetary liens and encumbrances as required by this Section at termination or expiration of the Term of this Ground Lease, Tenant shall continue to be liable and responsible for all such costs, liabilities and expenses associated with, related to or caused by such encumbrances that were not removed by Tenant, and Landlord may take any and all action to enforce its rights under this Ground Lease and to have such encumbrances removed, and all costs and expenses associated with such actions shall be paid solely by Tenant upon Landlord’s demand

**15.11 Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Ground Lease shall be interpreted as though prepared jointly by both parties.

**15.12 Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**15.13 Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**15.14 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**15.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**15.16 Nonliability of Officials, Employees, etc.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground

Lease. No member, partner (other than general partners as otherwise permitted by law), or board member, officer or employee of Tenant (or of any of Tenant's members or partners) shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against Tenant's members, partners (other than general partners as otherwise permitted by law), or board members, officers or employees (or of any of Tenant's members or partners) with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

**15.17 Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent. Any such assignment or transfer shall be in compliance with all Laws, and the assignee or transferee shall affirmatively assume all Landlord obligations hereunder.

**15.18 Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**15.19 Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**15.20 Integration.** This Ground Lease, together with all exhibits and attachments hereto, the Site REA, Hope Center REA, and Regulatory Requirements (collectively, "**Improvements Documents**"), excluding the City Financing Documents, constitute the entire agreement between the parties relating to the Premises and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents. Without limiting the foregoing, except as expressly provided in this Ground Lease (including without limitation **Exhibit C**), this Ground Lease supersedes the DDA. Notwithstanding the foregoing, nothing herein will limit or restrict the rights of any party under the Improvements Documents and City Financing Documents.

**15.21 Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms herein or the other Improvements Documents. No amendment shall be effective unless in writing and signed by the parties hereto.

**15.22 Proprietary and Governmental Roles: Actions by City.** Except where clearly and expressly provided otherwise in this Ground Lease, the capacity of the City in this Ground Lease shall be as owner and lessor of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Ground Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("**Governmental Capacity**"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated

by the City Manager to the extent otherwise provided herein. In addition, nothing in this Ground Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Law.

**15.23 City Manager Authority and Limitations.** Any amendment to this Ground Lease which affects or relates to: (i) the Term of this Ground Lease; (ii) the permitted use of the Premises and Premises Improvements; (iii) Rent amounts and other monetary payments by Tenant; or (iii) any other material provision of this Ground Lease, shall require approval by the Landlord's City Council. Subject to the foregoing, the City Manager may also issue without City Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation: (w) Material Alterations under Section 5.6 above; (x) assignments under Section 12.1; (y) sublettings under Section 12.2; and (z) rules for a CASp inspection under Section 15.29.

**15.24 Brokerage Commissions.** Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

**15.25 City Non-Discrimination Ordinance.** Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**15.26 Non-Discrimination Against Persons With Disabilities.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of

disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**15.27 Conflict of Interest Prohibited.**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**15.28 Nuclear Free Berkeley.** Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**15.29 Required Accessibility Disclosure.**

A. Landlord hereby advises Tenant that the Premises and Premises Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Premises Improvements in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.



**15.30 Oppressive States.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Term of this Ground Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 13. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**15.31 Berkeley Living Wage Ordinance (LWO).**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 13 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**15.32 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Term of this Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 13.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 13.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**15.33 Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**15.34 City Business License, Payment of Taxes, Tax I.D. Number.** Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

**15.35 Survival.** The provisions of Sections 4.1 (Impositions), 5.6 (Alterations), 5.9 (Liens and Stop Notices), 6.2 (Governmental Requirements), 6.7 (General Standards of Maintenance), 7.2 (Hazardous Materials), 9.2 (Indemnity), 15.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

BFHP Hope Center LP, a California limited partnership

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a Charter city

By: \_\_\_\_\_

Dee Williams-Ridley  
City Manager

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

\_\_\_\_\_  
\_\_\_\_\_, City Auditor

**Attest:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**TENANT INFORMATION**

Tax Identification No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_ No \_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_ No \_\_\_\_

City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_

**EXHIBIT A**

**PREMISES LEGAL DESCRIPTION**

The land referred to is situated in the City of Berkeley, County of Alameda, State of California, and is described as follows:

**PARCEL ONE:**

Parcel B , as shown on the Parcel Map 11051, filed \_\_\_\_\_, 2020 in Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_, Alameda County Records, EXCEPTING THEREFROM all buildings and improvements situated thereon, which buildings and improvements are and shall remain real property.

**PARCEL TWO:**

Easements for construction, maintenance, utilities, structural support and encroachment, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Berkeley Way, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BRIDGE Berkeley Way LP and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_; and Easements for access, use, ingress and egress, set forth in that certain Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, dated \_\_\_\_\_, 2020, executed by the City of Berkeley and BFHP Hope Center LP, and recorded in Alameda County Records on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_, 2020.

Being a portion of APN 057-2053-022-01

EXHIBIT B

DEVELOPMENT SITE PARCEL MAP

*[Draft to be attached—final to be included before signing]*

**EXHIBIT C**

**CERTAIN DDA PROVISIONS**

1. The following DDA provisions have been fully satisfied or waived:
  - a. Section 2.1 (Conditions Precedent to Lease of Property).
  - b. Section 2.2 (Developer Deposit).
  - c. Section 2.3 (Development Schedule).
  - d. Section 2.4 (Development Services Agreement).
  - e. Section 2.5 (Creation of and Assignments to Permitted Lessees).
  - f. Section 2.6 (Developer Approval of Property).
  - g. Section 2.7 (Developer Approval of Title Matters).
  - h. Section 2.8 (Agreement on Leases).
  - i. Section 2.9 (Agreement on Reciprocal Easement Agreement).
  - j. Section 2.10 (Agreement on Completion Guaranty Agreement).
  - k. Section 2.11 (City and Other Governmental Approvals).
  - l. Section 2.12 (Financing Proposals and Financing Plans for the Development).
  - m. Section 2.13 (Evidence of Availability of Funds).
  - n. Section 2.14 (Construction Contract(s)).
  - o. Section 2.15 (Construction Bonds).
  - p. Section 2.16 (Building Permits).
  - q. Section 2.17 (Construction Drawings).
  - r. Section 2.18 (Final Subdivision Map).
  - s. Section 2.19 (No Default).
  - t. Section 2.20 (Permits and Approvals Final; Absence of Litigation).
  - u. Section 2.21 (Insurance).
  - v. Section 2.22 (Representations and Warranties; No Material Adverse Change).

- w. Article III (Design Requirements), except for Sections 3.7 and 3.8.
  - x. Article IV (Lease Disposition of Property) except for Sections 4.5 (see below), 4.6 (with respect to post-closing ad valorem taxes (if any) and other potential pre-closing and post-closing costs) and 4.7.
2. The following DDA provisions are terminated:
- a. Section 3.7 (No Change in Project Documents).
  - b. Section 3.8 (Additional Permits and Approvals).
  - c. Article VII (Assignment and Transfers).
  - d. Article VIII (Termination, Default and Remedies). (Remedies for default in any continuing obligation under the DDA shall be as provided in the Ground Lease.)
  - e. Section 9.3 (Enforced Delay).
  - f. Section 9.19 (Right of Entry to Perform Studies).
3. The following DDA provisions, attached hereto, remain in full force and effect, except to the extent provided below:
- a. Section 4.5 (Condition of Property) remains in full force and effect.
  - b. Section 4.6 (Costs of Escrow and Closing).
  - c. Section 4.7 (Obligations After Lease).
  - d. Article V (Construction of the Development) remains in full force and effect, and is incorporated into Section 5.1 of the Leases and the JDA.
  - e. Article VI (Ongoing Developer Obligations) (except to the extent modified in the Ground Lease or as attached hereto).
  - f. Section 9.1 (Notices, Demands and Communications), but only to the extent notices are required under the DDA, and not some other agreement with its own notice provisions.
  - g. Section 9.2 (Non-Liability of City Officials, Employees and Agents), Section 9.4 (Inspection of Books and Records), Section 9.5 (Provision Not Merged with Leases) and Section 9.6 (Title of Parts and Sections) shall remain in full force and effect.
  - h. Section 9.7 (Indemnification) shall remain in full force and effect against Developer except to the extent assumed by BRIDGE LP and BFHP LP, and otherwise in full force and effect against BRIDGE LP and BFHP LP.
  - i. Section 9.8 (Applicable Law), Section 9.9 (No Brokers), Section 9.10 (Severability), Section 9.11 (Binding Upon Successors), Section 9.12 (Parties Not Co-Venturers), Section 9.13 (Time of the Essence), Section 9.14 (Action by the City), Section 9.15 (Discretion Retained by City), Section 9.16 (Representations and Warranties by Developer), and



Section 9.17 (Multiple Originals; Complete Understanding of the Parties), remain in full force and effect.

j. Except as provided in Leases Subsection 1.1A, Section 9.18 (Conflict Among City Documents) remains in full force and effect to the extent any applicable DDA provision remains in effect.

EXHIBIT D

SITE RECIPROCAL EASEMENT AGREEMENT (REA 1)

*[to be provided]*



EXHIBIT D1

HOPE CENTER RECIPROCAL EASEMENT AGREEMENT (REA 2)

*[to be provided]*



EXHIBIT E

RESOLUTION NO. AAAA-N.S.

*[to be attached]*



EXHIBIT F

INITIAL LEASEHOLD MORTGAGES AND MORTGAGEES

**[to be provided]**—*identify “Senior Leasehold Mortgagee” if any and include notice addresses]*



EXHIBIT G

CITY FINANCING DOCUMENTS

*[to be provided]*





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**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE  
AND MAINTENANCE FOR BERKELEY WAY**

THIS DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND MAINTENANCE FOR BERKELEY WAY (the "Declaration") is made as of \_\_\_\_\_, 2020 (the "Effective Date"), by the City of Berkeley (the "City") as owner of the fee interest in the Property described herein, and BRIDGE Berkeley Way LP and BFHP Hope Center LP, as lessees of portions of said Property (City and said lessees being referred to herein collectively as the "Berkeley Way Declarants"), with reference to the following facts:

RECITALS

- A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Declaration.
- B. The City owns certain real property located at 2012 Berkeley Way in Berkeley, California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"). Berkeley Way Declarants have caused the subdivision of the Property pursuant to the Map. The Map and this Declaration collectively delineate the BRIDGE Affordable Development and the BFHP Hope Center Development, which includes the BFHP Hope Center Permanent Supportive Housing and the BFHP Hope Center Temporary Housing. The BRIDGE Affordable Development is located on the BRIDGE Affordable Parcel and the BFHP Hope Center Development is located on the BFHP Hope Center Parcels.
- C. City has no current intention of developing the BRIDGE Affordable Development, BFHP Hope Center Development or the Parcels comprising the Property. Concurrently with the making of this Declaration, the City has leased the BRIDGE Affordable Parcel to the BRIDGE Affordable Partnership for the purpose of developing and operating the BRIDGE Affordable Development and has leased the BFHP Hope Center Parcels to the BFHP Hope Center Partnership for the purpose of developing the BFHP Hope Center. BFHP Hope Center Partnership is intended to be the long term operator of the Permanent Supportive Housing Development portion of the BFHP Hope Center and BFHP Hope Center LLC is intended to be the long term lessee and operator of the Temporary Housing Development portion of the BFHP Hope Center.
- D. Pursuant to this Declaration, the Berkeley Way Declarants are (i) setting forth certain rights and responsibilities pertaining to the easements affecting the Property granted herein and by virtue of the Map, and (ii) providing for the management, maintenance and operation of the Parcels, and certain joint uses thereof.
- E. The Project is not a common interest development as defined by Civil Code Section 4100. The Project and the Lessees are therefore not subject to the

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Davis-Stirling Common Interest Development Act (codified at Civil Code Sections 4000 et seq.).

F. Concurrently with the recordation of this Declaration, the City and BFHP Hope Center LP will record that certain Declaration of and Agreement Regarding Covenants, Conditions and Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center dated and recorded of even date herewith as it may be amended, the "REA 2").

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Berkeley Way Declarants declare and agree as follows:

ARTICLE 1  
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Declaration, the following definitions shall apply:

(a) "Berkeley Way Annual Joint Expenses Budget" has the meaning given in Section 5.3.

(b) "Berkeley Way Assessments" means Berkeley Way Joint Expenses Assessments, Berkeley Way Reimbursement Assessments and/or Berkeley Way Special Joint Expenses Assessments.

(c) "Berkeley Way Creditor Lessee" means a Lessee to whom an Berkeley Way Assessment is owed by another Lessee or a Lessee seeking to ensure payments required under Section 5.8 are made to a reserve account.

(d) "Berkeley Way Debtor Lessee" means a Lessee who owes either an Berkeley Way Assessment to another Lessee or a payment required under Section 5.8 to be made to its reserve account which Berkeley Way Assessment or payment has not been made when due.

(e) "Berkeley Way Declarants" has the meaning set forth in the preamble of this Declaration.

(f) "Berkeley Way Joint Expenses" means, collectively, (i) all expenses and costs of the Berkeley Way Joint Policy, (ii) all costs and expenses of Maintenance of Berkeley Way Project-Serving Components, and (iii) any other expenses provided for in an Annual Berkeley Way Joint Expense Budget or that this Declaration provides to be paid by a Lessee according to its Designated Share.

(g) "Berkeley Way Joint Expenses Assessment" has the meaning given in Section 5.4.

(h) "Berkeley Way Joint Maintenance Committee" means the committee responsible for the coordination of the Maintenance of Berkeley Way Project-Serving Components and other duties as set forth in more detail in Section 5.1 below.

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(i) "Berkeley Way Joint Policy" means the master policy (or policies) of primary property insurance coverage to be maintained by the Lessees covering the Project as set forth in more detail in Section 6.1 below.

(j) "Berkeley Way Reimbursement Assessment" has the meaning given in Section 5.6(b).

(k) "Berkeley Way Project Rules" means the rules that may be adopted by the Lessees from time to time, pursuant to Section 7.13 to address certain issues not fully addressed in this Declaration.

(l) "Berkeley Way Project-Serving Components" means (i) components of the Improvements that service all Lessee Parcels, such as the foundation, Roof, and the structural walls, and (ii) components of any system in the Improvements that services both the BRIDGE Affordable Parcel and both of the BFHP Hope Center Parcels. Components serving the BFHP Hope Center Parcels exclusively or just one Lessee Parcel exclusively do not constitute Project Serving Components under this Declaration. Berkeley Way Project-Serving Components include (without limitation and as applicable): the vertical shared wall separating the BRIDGE Affordable Development and the BFHP Hope Center Development; the Project generator, MPOE room (which is the main point of entry, or the first point where utilities enter the Project), hardscape and softscape adjacent to the sidewalk or street along the boundary of the Project (including landscaping), fire pump and sprinkler system, fire alarm and other life safety and security systems, water pump, irrigation and backflow preventer, those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires, and other utility installations contained within and immediately surrounded by or attached to any structure or space which is part of the Project and passes through more than one Lessee Parcel (as required to provide power, light, telephone, cable television, gas, water, sanitary sewerage, storm sewerage, and drainage services); window washing anchors; other usual appurtenances; and any other Project element which is not located solely within one Parcel and which the Lessees determine to be a Berkeley Way Project-Serving Component. For the purposes of this Agreement, the following will be considered Berkeley Way Project Serving Components, but subject to the provisions of Section 3.2(c) and (d), respectively: (i) the exterior walls and windows and (ii) the Southern Egress Easement area and improvements constructed thereon pursuant to the Plans and Specifications.

(m) "Berkeley Way Special Joint Expenses Assessment" has the meaning given in Section 5.5.

(n) "BFHP Hope Center Development" means the Permanent Supportive Housing Development and Temporary Housing Development located on the BFHP Hope Center Parcels.

(o) "BFHP Hope Center Ground Leases" means, collectively, the Permanent Supportive Housing Ground Lease and Temporary Housing Ground Lease, as either may be amended from time to time.

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(p) "BFHP Hope Center Lessee" means the Permanent Supportive Housing Lessee and the Temporary Housing Lessee, or one of them as the context requires.

(q) "BFHP Hope Center LLC" means BFHP Hope Center LLC, a California limited liability company.

(r) "BFHP Hope Center Parcels" means, collectively, the Permanent Supportive Housing Parcel and the Temporary Housing Parcel portions of the Property designated as "Parcel A" and "Parcel B", respectively, on the Map.

(s) "BFHP Hope Center Partnership" means BFHP Hope Center LP, a California limited partnership.

(t) "BFHP Hope Center Project-Serving Component" means a Project-Serving Component located on one or both of the BFHP Hope Center Parcels.

(u) "BRIDGE Affordable Development" means approximately eighty-nine (89) units of affordable multifamily housing units located on the BRIDGE Affordable Parcel.

(v) "BRIDGE Affordable Ground Lease" means that certain ground lease entered in by and between the City and the BRIDGE Affordable Lessee for the BRIDGE Affordable Parcel, as amended from time to time.

(w) "BRIDGE Affordable Lessee" means (i) the long term tenant or lessee of the BRIDGE Affordable Parcel pursuant to the BRIDGE Affordable Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the BRIDGE Affordable Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the BRIDGE Affordable Parcel. BRIDGE Affordable Partnership is the initial BRIDGE Affordable Lessee.

(x) "BRIDGE Affordable Parcel" means the portion of the Property designated as "Parcel C" on the Map.

(y) "BRIDGE Affordable Partnership" means BRIDGE Berkeley Way LP, a California limited partnership.

(z) "BRIDGE Affordable Project-Serving Component" means a Project-Serving Component located on the BRIDGE Affordable Parcel.

(aa) "City" has the meaning set forth in the preamble of this Declaration.

(bb) "CPI" has the meaning set forth in Section 7.5(b).

(cc) "Declaration" means this Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing Reciprocal Easements, Joint Use and

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Maintenance for Berkeley Way, and all amendments, modifications and supplements executed in accordance herewith.

(dd) "Designated Share" means the following percentages for the Maintenance of the Berkeley Way Project-Serving Components (which were calculated based upon the gross square footage of the Parcels):

|                                     |     |
|-------------------------------------|-----|
| BRIDGE Affordable Lessee            | 64% |
| Permanent Supportive Housing Lessee | 27% |
| Temporary Housing Lessee            | 9%  |

Notwithstanding the forgoing, the Designated Share paid by a Lessee may be modified by the Lessees (and with the consent of the City) for costs associated with Berkeley Way Project-Serving Components which benefit more than one but not all of the Lessees or which are later determined to provide disproportionate benefit to one or more Lessee shall be allocated in an equitable manner solely among the benefited Lessees.

(ee) "Easements" means the Map Easements and the Project Easements.

(ff) "Encroachments" means minor encroachments among the Parcels due to any of the following: engineering errors; errors in original construction, reconstruction, or repair; settlement, shifting or movement of the Improvements; the insertion of nails, screws, or similar hardware through a boundary between the Parcels for the purpose of securing an item; or any similar cause.

(gg) "Improvements" means, collectively, the BRIDGE Affordable Development and the BFHP Hope Center Development, and all other improvements and fixtures that may be built on and/or installed in any of the Lessee Parcels from time to time, including landscaping.

(hh) "Leases" means the BRIDGE Affordable Ground Lease and the BFHP Hope Center Ground Leases.

(ii) "Lessee" means (i) the BRIDGE Affordable Lessee, (ii) the Permanent Supportive Housing Lessee and (iii) the Temporary Housing Lessee, (each being referred to herein as a "Lessee" and collectively referred to as the "Lessees").

(jj) "Lessee Parcel" means any of the BRIDGE Affordable Parcel, the Permanent Supportive Housing Parcel, and the Temporary Housing Parcel (each being referred to herein as a "Lessee Parcel" and collectively referred to as "Lessee Parcels").

(kk) "Maintain" means undertake Maintenance.

(ll) "Maintenance" means the maintaining (including cleaning and routine, day to day, janitorial services), repairing and replacing of any improvement on a



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Parcel (including a Project-Serving Component), or related to an Easement.

(mm) "Map" means that certain parcel map entitled Parcel Map No. 11051 filed in the Official Records on \_\_\_\_\_, 2020 as file number \_\_\_\_\_, subdividing the Property into the Parcels, a copy of which is attached to this Declaration as Exhibit B and incorporated herein.

(nn) "Map Easements" mean the easements granted by Berkeley Way Declarants through the Map.

(oo) "Mortgage" means a recorded mortgage or deed of trust encumbering a Lessee Parcel, which is given as security by a Lessee for the payment of money or performance of an obligation.

(pp) "Mortgagee" means any Person, bank, savings and loan association, insurance company, or other financial institution that is either a mortgagee under a mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of any such mortgage or deed of trust.

(qq) "Official Records" means the Official Records of the County of Alameda, State of California.

(rr) "Parcels" means the Lessee Parcels.

(ss) "Permanent Supportive Housing Development" means approximately fifty-three (53) supportive housing units located on the Permanent Supportive Housing Parcel.

(tt) "Permanent Supportive Housing Ground Lease" means that certain ground lease entered into by and between the City and the BFHP Hope Center Partnership for the Permanent Supportive Housing Parcel, as amended from time to time.

(uu) "Permanent Supportive Housing Lessee" means (i) the long term lessee of the Permanent Supportive Housing Parcel pursuant to the Permanent Supportive Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Permanent Supportive Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Permanent Supportive Housing Parcel. The BFHP Hope Center partnership is the initial Permanent Supportive Housing Lessee.

(vv) "Permanent Supportive Housing Parcel" means the portion of the Property designated as "Parcel A" on the Map.

(ww) "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or other legal entity.

(xx) "Plans and Specifications" means the plans and specifications for

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the applicable portion of the Project last dated as of \_\_\_\_\_, 20\_\_ prepared by \_\_\_\_\_, together with such changes thereto as may have been made in connection with the approval thereof by any regulatory body having jurisdiction to approve such plans and specifications.

(yy) "Project" means, collectively, the BRIDGE Affordable Parcel, the BFHP Hope Center Parcels, and all Improvements constructed on such Parcels.

(zz) "Project Easements" means the easements granted through this Declaration. The Project Easements will be described in this Declaration by function or location rather than by precise measurement on the Map or the Plans and Specifications.

(aaa) "Property" means that certain real property described in Exhibit A.

(bbb) "REA 2" is defined in Recital F.

(ccc) "Reimbursement Expense" has the meaning given in Section 5.6(a).

(ddd) "Roof" means the waterproof membrane on the uppermost surface of the Project which is exposed to the elements together with the load bearing structure that supports such membrane. The Roof covers and is contained in the BRIDGE Affordable Parcel and the Permanent Supportive Housing Parcel and is a Project-Serving Component.

(eee) "Southern Egress Easement" is defined in Section 2.4.

(fff) "Temporary Housing Development" means approximately forty-four (44) beds of temporary housing, community kitchen and dining hall.

(ggg) "Temporary Housing Ground Lease" means that certain ground lease to be entered into by and between the City and the Temporary Housing Lessee for the Temporary Housing Parcel, as amended from time to time.

(hhh) "Temporary Housing Lessee" means (i) the long term lessee of the Temporary Housing Parcel pursuant to Temporary Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Temporary Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Temporary Housing Parcel. The BFHP Hope Center Partnership is the initial Temporary Housing Lessee, but the parties anticipate that BFHP Hope Center LLC will be the Temporary Housing Lessee following completion of construction and issuance of the IRS Form 8609 (Low Income Housing Tax Credit Allocation and Certification) for the Permanent Supportive Housing Development.

(iii) "Temporary Housing Parcel" means the portion of the Property designated as "Parcel B" on the Map.

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(jjj) "Users" means a Lessee's employees, tenants, lessees, guests, licensees, invitees, contractors and subcontractors.

1.2 Exhibits. The following exhibits are attached to and incorporated into this Declaration:

- Exhibit A      Legal Description of the Property
- Exhibit B      Parcel Map

ARTICLE 2  
DIVISION OF PROPERTY, GRANT OF EASEMENTS

2.1 General Description of Property.

(a) General Boundaries. Each of the Parcels has the boundaries shown on the Map.

(b) BRIDGE Affordable Parcel. The BRIDGE Affordable Parcel will contain the BRIDGE Affordable Development to be developed by the BRIDGE Affordable Partnership.

(c) BFHP Hope Center Parcels. The BFHP Hope Center Parcels will contain the BFHP Hope Center Development to be developed by the BFHP Partnership. The BFHP Hope Center Parcels are comprised of the Permanent Supportive Housing Parcel and the Temporary Housing Parcel.

2.2 No Separate Conveyance of Easements. The ownership of each of the Parcels includes the benefit of, and is encumbered by and is subject to the Easements, as applicable. The Project Easements are (i) established through this Declaration and are to be conveyed, as applicable, with each of the Lessee Parcels (ii) cannot be modified, terminated or relocated (except as set forth in this Declaration), and (iii) may not be separated or separately conveyed. The benefit and burden of each Easement, as applicable, shall be deemed to be conveyed with its respective Parcel, even though the description in the instrument of conveyance may refer only to the fee or leasehold title to such Parcel. The Easements are essential and necessary for the development and ongoing operation of the Improvements.

2.3 Grant of Easements. Through this Declaration, the Berkeley Way Declarants hereby grant and establish the following easements affecting the Project and the Parcels.

(a) Easements for Construction and Maintenance. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, a non-exclusive easement in, on, under, over and across each Lessee Parcel for the purpose of (i) construction or installation and Maintenance of the Improvements within each Lessee Parcel, (ii) repair, restoration, or reconstruction following a casualty affecting all or a portion of the Improvements, (iii) Maintenance of encroachments in which easements are granted in Section 2.3(e), and (iv) Maintenance

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of Improvements within any Lessee Parcel to the extent that performance of such Maintenance is the responsibility or right of another Lessee under Article 3. The exercise of the easements granted in this Section shall be made with as little inconvenience to each Lessee as practicable. Except in cases of emergency prior to exercise of any easement rights granted in this Section, not less than forty-eight (48) hours' advance notice (by telephonic notice together with any one of: (i) overnight delivery, (ii) electronic mail and overnight delivery, or (iii) personal delivery) shall be given to any Lessee whose Parcel will be affected by the exercise of such rights. Any damage to any portion of any of the Parcels as a result of the exercise of the easement rights granted in this Section shall be promptly restored to as near the original condition as possible by the Lessee utilizing the easement at such Lessee's sole cost and expense. The easements granted in this Section are of a temporary nature and the rights hereunder may only be exercised during the relevant period of construction, repair, restoration, reconstruction, or Maintenance.

(i) Safety Matters; Legal Compliance. Each Lessee shall take, and shall cause its agents and contractors to take, all safety measures necessary to protect the other Lessees and their Users and the property of each from injury or damage caused by or resulting from the any construction, repair, restoration, reconstruction or Maintenance undertaken by or on behalf of such Lessee pursuant to the foregoing grant of easement. Each Lessee agrees that all construction work performed hereunder by or on behalf of such Lessee shall be done in a diligent, good and workmanlike manner, with first-class materials and in accordance with approved drawings and specifications (including the Plans and Specifications, as applicable) and all applicable laws, rules, ordinances, regulations, and code requirements.

(ii) Liens. Each Lessee agrees that in the event that any mechanic's lien or other statutory lien arising by reason of labor, services or materials supplied to or at the request of said Lessee shall be recorded against any Parcel other than such Lessee's Parcel, then such Lessee shall pay and discharge the same of record within twenty (20) days after the notice of the filing thereof, by either payment, deposit or bond. Each Lessee shall have the right, but not the obligation, to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, provided it furnishes a lien release bond or otherwise causes such lien to be released of record within such twenty (20) day period. If said Lessee does not, within the time period specified above, cause such lien to be released of record by payment or posting of a proper bond, the Lessee of the Lessee Parcel affected by such lien shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as such Lessee shall deem proper, including, without limitation, by the payment of the claim giving rise to such lien or by the posting of a bond. The Lessee of the Lessee Parcel affected by such lien shall submit an invoice and supporting documentation to the responsible Lessee and the responsible Lessee shall pay such amount no later than ten (10) days following receipt of such invoice.

(b) Utility Easements. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, such non-exclusive

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easements and rights in, on, under, over and across those portions of each of the Lessee Parcels, and the utility rooms identified on the Plans and Specifications, that are reasonably necessary for each Lessee to access, install, operate, maintain, repair, replace and relocate all electrical, gas, water, sewage, drainage, telephone, cable, security, generators, life safety equipment and other utilities and similar facilities identified in the Plans and Specifications and servicing the Lessee Parcel of each Lessee. The exercise of the easements granted in this paragraph shall be made with as little inconvenience to each Lessee as practicable. Except in cases of emergency prior to exercise of any easement rights granted in this paragraph (including but not limited to access to the MPOE and water pump room), not less than forty-eight (48) hours' advance notice (by telephonic notice together with any one of and: (i) overnight delivery, (ii) electronic mail and overnight delivery, or (iii) personal delivery) shall be given to any Lessee whose Parcel will be affected by the exercise of such rights. Any utility work shall be at the sole cost and expense of the Lessee contracting for the performance of the work. Any damage to any portion of any of the Parcels as a result of the exercise of the easement rights granted in this Section shall be promptly restored to as near the original condition as possible by the Lessee utilizing the easement at such Lessee's sole cost and expense.

(c) Structural and Support Easements. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, such non-exclusive easements and rights in, on, under, over, and across each Lessee Parcel as reasonably necessary for the structural support and integrity of the Improvements located within each Lessee Parcel, with such easements and rights being appurtenant to each Lessee Parcel. No Lessee shall perform, or shall permit the performance of, any activity that may materially alter the structural support necessary for the Improvements located within the Lessee Parcel(s) owned by any other Lessee(s) without the consent of the other Lessee(s).

(d) Encroachment Easements. Each Lessee is hereby granted, and each Lessee Parcel shall have the benefit of and shall be burdened by, such non-exclusive easements and rights in, on, under, over, and across each Lessee Parcel as reasonably necessary to accommodate and maintain any Encroachment that may now or hereafter exist. Notwithstanding the forgoing, no Lessee shall have the benefit of an easement for an Encroachment as a result of the negligence or willful misconduct of such Lessee or its Users. If the Improvements are partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, minor encroachments shall be permitted to facilitate repair or reconstruction.

#### 2.4 Egress Easements.

(a) Subject to the terms and conditions in that certain Grant Deed dated September 6, 1955, recording in the Official Records of Alameda County on September 21, 1955 at Book 7788 pages 3-5 (the "Southern Egress Easement Deed"), the Property is subject to a non-exclusive egress easement, three feet wide and seven feet in height, from the Southern Parcels to Berkeley Way for fire escape purposes (the "Southern Egress Easement"). The current location of the Southern Egress Easement is

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shown on the Map. Subject to the terms of the Southern Egress Easement Deed, Lessees will allow access from the parcels benefited by the Southern Egress Easement and identified in the Southern Egress Easement Deed (the "Southern Parcels"); provided that the Lessees may take reasonable measures to prevent the Southern Egress Easement from being utilized as an entrance to the Southern Parcels or (except for emergencies) exit egress from the Southern Parcels. The Southern Egress Easement may also be used by the Lessees for emergency exit.

(b) The BRIDGE Affordable Parcel and Supportive Housing Parcel will also meet City requirements to provide emergency exit egress to Lot 9 and 10 as such lots are shown on page 2 of the Map.

(c) The BRIDGE Affordable Parcel will also meet City requirements to provide emergency exit egress to Lot 57 and 58 as such lots are shown on page 2 of the Map.

## 2.5 Hold Harmless.

(a) Each Lessee (an "Indemnifying Lessee") shall indemnify, defend, and hold each of the other Lessees (the "Indemnified Lessees") harmless from all liability, damage, cost, or expense incurred by any of the Indemnified Lessees arising out of the utilization by the Indemnifying Lessee or any of its Users of any of the Easements within any such Indemnified Lessee's Lessee Parcel, or arising out of any violation by such Indemnifying Lessee of its obligations under this Declaration, except to the extent that any such liability, damage, cost or expense results from the negligence or willful misconduct of the Indemnified Lessee.

(b) Each Lessee shall indemnify, defend, and hold each of the other Lessees harmless from all liability, damage, cost, or expense incurred by any such other Lessee arising out of any liens, including, but not limited to, mechanics' and materialmen's liens, imposed on the Lessee Parcel of such other Lessee as a consequence of any work or labor done, supplies furnished, or services rendered at the request of the contracting Lessee or any of its Users.

(c) Each Lessee shall cause any property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against any other Lessee in connection with any damage covered by such property insurance policy to the personal and real property improvements located in or on the Lessee Parcel or such other Lessee and/or the Project that are caused by or result from risks insured against under any property insurance policies carried by such Lessee and in force at the time of any such damage.

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ARTICLE 3  
MAINTENANCE AND ALTERATIONS

3.1 Maintenance of the Lessee Parcels.

(a) Maintenance of the BRIDGE Affordable Parcel. Maintenance of the BRIDGE Affordable Parcel shall be performed as follows:

(i) Maintenance of the BRIDGE Affordable Parcel and the BRIDGE Affordable Development, including the BRIDGE Affordable Berkeley Way Project-Serving Components shall be performed by the BRIDGE Affordable Lessee in accordance with this Declaration and the BRIDGE Affordable Ground Lease. The BRIDGE Affordable Lessee shall manage, maintain in good condition, repair, and replace the Improvements (which includes landscaping and the courtyards) on the BRIDGE Affordable Parcel, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration.

(ii) Each of the other Lessees shall have the right to perform Maintenance of the BRIDGE Affordable Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this paragraph, the other Lessee shall first take all reasonable steps to contact the BRIDGE Affordable Lessee to permit the BRIDGE Affordable Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d), and Section 3.2, the cost of Maintenance of the BRIDGE Affordable Parcel shall be borne by the BRIDGE Affordable Lessee; provided that failure of the other Lessees to tender their respective cost amounts shall not relieve BRIDGE Affordable Lessee from performing its required Maintenance under this Declaration.

(b) Maintenance of the BFHP HOPE Center Parcels. Maintenance of the BFHP Hope Center Parcels shall be performed as follows:

(i) Maintenance of the BFHP Hope Center Parcels and the BFHP Hope Center Development, including the applicable BFHP Hope Center Berkeley Way Project-Serving Components, shall be performed by the applicable BFHP Hope Center Lessee in accordance with this Declaration and the REA 2. Provisions of the REA 2 concerning the BFHP Hope Center Parcels Berkeley Way Project-Serving Components may not be amended or modified unless consented to by the City and the BRIDGE Affordable Lessee. Each BFHP Hope Center Lessee, as applicable under the REA 2, shall manage, maintain in good condition, repair, and replace the Improvements (which includes landscaping and the courtyards) on the BFHP Hope Center Parcels, except for those items (if any) which another Lessee has been designated to manage, maintain, repair, and replace as described in this Declaration.

(ii) Each of the other Lessees shall have the right to perform Maintenance of a BFHP Hope Center Parcels to the extent necessary to mitigate an

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emergency situation. Before performing Maintenance under this paragraph, the other Lessee shall first take all reasonable steps to contact the applicable BFHP Hope Center Lessee to permit such BFHP Hope Center Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d) and Section 3.2, the cost of Maintenance of each BFHP Hope Center Parcel shall be borne by the applicable BFHP Hope Center Lessee, pursuant to the REA 2; provided that failure of the other Lessees to tender their respective cost amounts shall not relieve BFHP Hope Center Lessees from performing its required Maintenance under this Declaration.

(c) Cost of Maintenance of Berkeley Way Project-Serving Components. The cost of Maintenance of the Berkeley Way Project-Serving Components shall be borne by the Lessees in their Designated Shares.

(d) Cost for Maintenance Caused by Another Lessee. Subject to Section 2.4(c), the cost of any Maintenance of any Parcel required as a result of any act or omission (including without limitation failure to timely perform its own maintenance obligations) of another Lessee or its Users shall be borne solely by such Lessee.

### 3.2 Specific Maintenance.

(a) Each Lessee will coordinate its repair and maintenance of any Berkeley Way Project-Serving Components with the Berkeley Way Joint Maintenance Committee. Costs to maintain and repair Berkeley Way Project-Serving Components shall be allocated in a manner consistent with Section 5.3(c).

(b) BRIDGE Affordable Lessee will manage the maintenance of all exterior landscaping adjacent to the sidewalk or street along the boundary of the Project, the Roof, foundation and exterior walls (all of which are Berkeley Way Project-Serving Components), on behalf of the Lessees, the costs of which will be a Berkeley Way Joint Expense.

(c) BRIDGE Affordable Lessee and the Permanent Supportive Housing Lessee will jointly manage window washing and the costs of such washing will be shared in accordance with each Lessee's Designated Share. Notwithstanding anything to the contrary in this Declaration or the BFHP Hope Center Declaration, other Maintenance of the windows (including repair of any broken or leaking windows) will be the sole responsibility of the Lessee on whose parcel the window is located.

(d) Permanent Supportive Housing Lessee will manage the maintenance of the Southern Egress Easement and all improvements (including the lights and gates) thereon, the costs of which will be a Berkeley Way Joint Expense. Notwithstanding anything to the contrary in this Declaration or the BFHP Hope Center Declaration, Maintenance costs of the Southern Egress Easement will be allocated as follows: 70% to the BFHP Hope Center and 30% to the BRIDGE Affordable Parcel. In addition, the Lessees may seek reimbursement from the Southern Parcel owners pursuant to the Southern Access Easement Deed.



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### 3.3 Prohibited Alterations; Alterations to Berkeley Way Project-Serving Components.

(a) Subject to the requirements of the Leases, no Lessee shall, without the prior written consent of the other Lessees, construct or alter any Improvements on such Lessee's Parcel that will do any of the following:

(i) Unreasonably interfere with any other Lessee's use and enjoyment of its Lessee Parcel;

(ii) Cause the termination or nonrenewal of insurance policies or an increase in insurance premiums for another Lessee;

(iii) Adversely affect or impair the architectural integrity of the Project or the exterior of the Project;

(iv) Interfere with or alter the fire or acoustical rating of any wall separating a Lessee Parcel from another Lessee Parcel; or

(v) Violate the Lessee's Lease.

(b) Prior to performing any alteration to any Project-Serving Component located on a Lessee Parcel (except for cosmetic alterations, such as painting, that are not visible from the exterior of the Project), the Lessee proposing to undertake the alteration shall:

(i) Provide the other Lessees copies of the plans and specifications for the work to be performed; and

(ii) Request and obtain the written approval of the other Lessees, which approval shall not be unreasonably withheld, conditioned, or delayed.

## ARTICLE 4 USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration and in the Leases, the use of the Property is subject to the following:

4.1 BRIDGE Affordable Parcel. The BRIDGE Affordable Parcel shall be occupied and used for residential and related purposes, including but not limited to, affordable multi-family housing apartment purposes. No other trade or business shall be conducted therein, except as follows: (1) secondary use not incompatible with residential use such as an "office in the home," (2) management offices and use of residential units for resident manager's units and assistant residential manager's units, (3) use of residential units, common areas, and offices for the provision of supportive services to the residents of the residential units, (4) other ground floor uses then consistent with zoning.

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4.2 BFHP Hope Center Parcels. The BFHP Hope Center Parcels shall be occupied and used for residential and social or community serving purposes then consistent with zoning. Declarant intend for the BFHP Hope Center Parcel to be used as follows: (a) the Permanent Supportive Housing Parcel shall be used for supportive housing and other community services uses including a kitchen and meal service and (b) the Temporary Housing Parcel shall be used for temporary housing, community and supportive and related office space, and other community and supportive services. No other trade or business shall be conducted therein, except as follows: (1) secondary use not incompatible with residential use such as an "office in the home," (2) management offices and use of residential units for resident manager's units and assistant residential manager's units, (3) use of common areas, and offices for the provision of supportive services to the residents of the residential units and homeless and low income community members.

4.3 Compliance with Laws; No Nuisances. Each Lessee shall comply with, and shall make diligent efforts to cause all Users to comply with, at all times, all applicable laws, rules, ordinances, regulations, and code requirements governing its Lessee Parcel, specifically and the Property generally. Nothing shall be done on any Lessee Parcel which will impair the structural integrity of the Project or which constitutes a nuisance or interferes with the quiet enjoyment of the other Lessees or the Lessee Parcels. No illegal activities will be carried on, in or upon the Property. Each Lessee shall also be responsible for the costs of any false alarms triggered by such Lessee's Users and resulting in any fines, costs or fees.

4.4 Signs. Signs on each Lessee Parcel shall conform to any applicable City ordinances and shall be subject to any applicable Berkeley Way Project Rules. Signs of a reasonable size advertising any residential or otherwise permitted retail unit (if any) for rent may be displayed to the public view, provided such signs comply with the City ordinances.

4.5 Telecommunications Equipment and Roof Mounted Equipment. Other than what is shown on the Plans and Specifications or otherwise required by law and subject to the applicable Leases, no telecommunications equipment or roof mounted equipment of any sort may be put on the Roof or the exterior of the Project without the prior written consent of the Lessees.

4.6 Garbage and Refuse Disposal. All rubbish, trash, and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate. Trash, garbage, and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, or storage piles shall be kept screened and concealed from view of streets, and open spaces in the Lessee Parcels. Each Lessee shall be responsible for the storage and disposal of the rubbish, trash, and garbage generated from the activities occurring on its Lessee Parcel.

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ARTICLE 5  
JOINT MAINTENANCE EXPENSES, ASSESSMENTS AND RESERVES

5.1 Berkeley Way Joint Maintenance Committee. The BRIDGE Affordable Lessee will appoint one representative to serve as a member of the Berkeley Way Joint Maintenance Committee. Pursuant to the procedures set forth in the REA 2, the BFHP Hope Center Lessee will appoint one representative to serve as a member of the Berkeley Way Joint Maintenance Committee. Each member of the Berkeley Way Joint Maintenance Committee may be removed from office at any time by his/her appointing Lessee with or without cause. Any member of the Berkeley Way Joint Maintenance Committee may resign at any time by giving written notice to the appointing Lessee and the Berkeley Way Joint Maintenance Committee.

(a) Meetings. The Berkeley Way Joint Maintenance Committee shall meet annually, no later than August 1 of each year, and at such other times as the members of the Berkeley Way Joint Maintenance Committee may determine. Both members of the Berkeley Way Joint Maintenance Committee must be present to conduct business and approve actions.

(b) Compensation. No member of the Berkeley Way Joint Maintenance Committee shall receive compensation for any service he or she may render to the Berkeley Way Joint Maintenance Committee.

(c) Duties. The duties of the Berkeley Way Joint Maintenance Committee shall include (i) coordination of maintenance of the Berkeley Way Project-Serving Components, and coordination of repair after damage or destruction to the Project (Section 5.2 below); (ii) preparation of the Berkeley Way Annual Joint Expenses Budget (Section 5.3 below); (iii) establishing, levying and collecting Berkeley Way Joint Assessments (Sections 5.4 and 5.5 below); (iv) establishing and monitoring reserves for reasonably anticipated contingencies and repairs or replacements of Berkeley Way Project-Serving Components (Section 5.8 below); and (v) oversight of the Berkeley Way Joint Policy for the Project (Article 6).

(d) Limitation of Liability. The members of the Berkeley Way Joint Maintenance Committee shall not be liable to the Lessees, their Users, or other person for any injury, death, loss or damage due to theft, other breaches of security, failures, or interruption of services, or other circumstances pertaining to activities within the Berkeley Way Joint Maintenance Committee's control. Each member of the Berkeley Way Joint Maintenance Committee shall be entitled to indemnification by the Lessees against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding to which such member may be a party, or in which such member may become involved, by reason of the fact that he or she was or is a member of the Berkeley Way Joint Maintenance Committee.

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## 5.2 Coordination of Berkeley Way Joint Maintenance and Repair after Damage or Destruction.

(a) Maintenance Coordination. The Berkeley Way Joint Maintenance Committee is authorized to coordinate Maintenance of and provide service to, and assure that, each Project-Serving Component is operated, maintained, repaired, and replaced in a first-class condition, and otherwise in accordance with the standards and provisions of this Declaration. Such authorization includes the right to inspect and monitor each Lessee's Maintenance of Berkeley Way Project-Serving Components located on their respective Lessee Parcel, coordinate Maintenance among Lessees, and authorize contracts to perform any Maintenance the Committee reasonably determines is not being properly performed.

(b) Damage or Destruction Repair Coordination. The Berkeley Way Joint Maintenance Committee is authorized to coordinate the repair or restoration activities necessitated by damage or destruction affecting more than one Lessee Parcel, subject to the rights of Mortgagees. The Berkeley Way Joint Maintenance Committee shall have the right to authorize contracts to perform any repair or restoration work the Berkeley Way Joint Maintenance Committee reasonably determines is not being properly performed.

(c) Contracting. The BRIDGE Affordable Lessee (or any other Lessee or property management agent selected by the Berkeley Way Joint Maintenance Committee), as the agent of the Berkeley Way Joint Maintenance Committee, shall have the right but not the obligation to solicit bids, enter into contracts with third parties on behalf of the Berkeley Way Joint Maintenance Committee, and take all other steps reasonably necessary or appropriate to perform the duties of the Berkeley Way Joint Maintenance Committee consistent with the then-current Berkeley Way Annual Joint Expenses Budget or as otherwise authorized to be undertaken by the Berkeley Way Joint Maintenance Committee; provided, however, that if the activities of the Berkeley Way Joint Maintenance Committee are necessitated by a Lessee not performing its required Maintenance, repair or restoration activities, the costs incurred by the Berkeley Way Joint Maintenance Committee to perform such activities shall be a Berkeley Way Reimbursement Assessment charged pursuant to Section 5.6 below.

## 5.3 Berkeley Way Annual Joint Expenses Budget.

(a) By September 1 of each year, the Berkeley Way Joint Maintenance Committee shall meet to discuss the Berkeley Way Joint Expenses that the Lessees expect to be incurred in the following calendar year. By October 1, the Berkeley Way Joint Maintenance Committee shall prepare and deliver to the Lessees a written budget describing in reasonable detail the Berkeley Way Joint Expenses that the Lessees expect to be incurred in the following calendar year (the "Berkeley Way Annual Joint Expenses Budget"). The Berkeley Way Annual Joint Expenses Budget shall also specify the contribution that each Lessee must make, during the following calendar year, to its reserve account pursuant to Section 5.8(b).

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(b) The Berkeley Way Annual Joint Expenses Budget shall account for all expected ordinary and extraordinary Berkeley Way Joint Expenses to be incurred in a calendar year, including expenses expected to be incurred by the Berkeley Way Joint Maintenance Committee for management, accounting or other services, and (ii) any previously unreconciled past payments of Berkeley Way Reimbursement Assessments for Berkeley Way Joint Expenses or Berkeley Way Joint Expenses Assessments for Reimbursement Expenses. The Berkeley Way Annual Joint Expenses Budget shall also describe the following: (1) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component the Maintenance of which is a Berkeley Way Joint Expense; (2) the current estimate of the amount of cash reserves necessary to perform Maintenance on such major components; (3) the current estimate of accumulated cash reserves actually set aside by the Lessees to perform Maintenance on such major components (as further discussed in Section 5.8); and (4) a statement addressing the procedures used for the calculation and establishment of those reserves to defray the Maintenance of major components the Maintenance of which is a Berkeley Way Joint Expense.

(c) The Berkeley Way Annual Joint Expenses Budget shall allocate Berkeley Way Joint Expenses to each Lessee in proportion to their Designated Shares.

(d) Unless one or more of the Lessees objects in writing in a timely manner to the Berkeley Way Annual Joint Expenses Budget pursuant to Section 5.3(e) below, the Berkeley Way Annual Joint Expenses Budget shall be effective as of January 1 of the following year.

(e) If any affected Lessee disputes the Annual Berkeley Way Joint Expense Budget proposed by the Berkeley Way Joint Maintenance Committee and the Lessees are unable to resolve their differences within a reasonable time, then the parties shall submit the Berkeley Way Annual Joint Expenses Budget in question to an arbitrator jointly selected by the parties (or if the Lessees cannot agree on an arbitrator, then each Lessee will select an arbitrator and the selected arbitrators will select a third arbitrator and the third arbitrator shall be the arbitrator to resolve the dispute over the Berkeley Way Annual Joint Expenses Budget). By December 25, the arbitrator shall confirm or revise the Berkeley Way Annual Joint Expenses Budget as the arbitrator determines to be appropriate, and such confirmed or revised Berkeley Way Annual Joint Expenses Budget shall be effective as of January 1 of the following year. The fees of the arbitrator or arbitrators shall be a Berkeley Way Joint Expense, but any other costs incurred in connection with the arbitration shall be borne by the Lessee incurring such costs.

#### 5.4 Berkeley Way Joint Expenses Assessments.

(a) Each Lessee's Designated Share of Berkeley Way Joint Expenses, as set forth in the Berkeley Way Annual Joint Expenses Budget from time to time, shall be a charge levied against such Lessee and its Lessee Parcel and may be collected as a "Berkeley Way Joint Expenses Assessment", enforceable in the manner set forth in Section 5.7.

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(b) The Berkeley Way Joint Maintenance Committee will, from time to time, select a Lessee to receive and hold, in trust, the Berkeley Way Joint Expenses Assessments, and make disbursement thereof for the payment of Berkeley Way Joint Expenses. Each Lessee shall pay its annual Berkeley Way Joint Expenses Assessment in even monthly installments equal to one twelfth (1/12) of its annual Berkeley Way Joint Expenses Assessment, with each monthly installment due on the first day of each month of the year for which the applicable Berkeley Way Annual Joint Expenses Budget is effective. Notwithstanding the forgoing, the Berkeley Way Joint Maintenance Committee may request even quarterly payments in lieu of monthly payments. In addition, in lieu of collecting Berkeley Way Joint Expenses Assessments (either in whole or in part), the Lessees may also choose and the Joint Maintenance Committee may require reimbursement of or payment to any Lessee who pays for or coordinates maintenance of a Berkeley Way Joint Expense.

(c) The Berkeley Way Joint Maintenance Committee shall oversee the use of the Berkeley Way Joint Expense Assessments received from the Lessees pursuant to Section 5.4(b), and the performance of the activities whose costs constitute Berkeley Way Joint Expenses.

5.5 Berkeley Way Special Joint Expenses Assessments. In the event the Berkeley Way Joint Maintenance Committee determines, in good faith, that the Berkeley Way Annual Joint Expenses Budget is or will become inadequate for any reason (including, but not limited to, misinformation or miscalculation, unexpected repair or replacement of any Project-Serving Component, increase in estimates of Berkeley Way Joint Expenses, or increase in the cost of the Berkeley Way Joint Policy, the Berkeley Way Joint Maintenance Committee may, at any time, levy an assessment (the "Berkeley Way Special Joint Expenses Assessment") to make up such inadequacy, which shall be allocated to the Lessee(s) in accordance with the Designated Shares (or in the event of an increase in the cost of the Berkeley Way Joint Policy due to the actions or failure to act of one or more, but not all of the Lessees, to be divided solely among the Lessees responsible for the increase in insurance as further set forth in Article 6).

5.6 Berkeley Way Reimbursement Assessments.

(a) A "Reimbursement Expense" is, subject to Section 5.8(b), any expense actually incurred or expected to be incurred by a Berkeley Way Creditor Lessee that:

(i) is the financial responsibility of a Berkeley Way Debtor Lessee under this Declaration;

(ii) arises out of noncompliance with this Declaration (or any rule or regulation duly adopted pursuant to this Declaration) by the Berkeley Way Debtor Lessee; or

(iii) arises out of inaction by the Berkeley Way Debtor Lessee that does not constitute noncompliance with this Declaration.

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(b) Every Reimbursement Expense shall be a charge levied against the Berkeley Way Debtor Lessee and against the Debtor's Lessee Parcel, as applicable (a "Berkeley Way Reimbursement Assessment").

(c) Reimbursement Expenses shall include actual and reasonable financing costs associated with the Berkeley Way Creditor Lessee advancing funds on behalf of the Berkeley Way Debtor Lessee from the time funds are advanced until the date on which the applicable Berkeley Way Reimbursement Assessment is paid.

(d) Berkeley Way Reimbursement Assessments shall be enforced in the manner set forth in Section 5.7.

#### 5.7 Payment and Enforcement of Assessments.

(a) A Berkeley Way Creditor Lessee shall provide notice to a Berkeley Way Debtor Lessee of the amount and due date of any Berkeley Way Assessment. Notice shall be delivered not less than thirty (30) and not more than sixty (60) days prior to the Berkeley Way Assessment becoming due.

(b) Each Berkeley Way Assessment obligation is a personal obligation of the Berkeley Way Debtor Lessee against whom the Berkeley Way Assessment is levied. Berkeley Way Assessments may be offset against each other unless one Lessee objects in writing to an offset.

(c) Any Berkeley Way Assessment shall become delinquent if not paid within fifteen (15) days after the due date, and a Berkeley Way Creditor Lessee's reasonable costs in collecting the delinquent Berkeley Way Assessment (including reasonable attorneys' fees) may then be added to the Berkeley Way Assessment. Any Berkeley Way Assessment remaining unpaid as of thirty (30) days after the due date shall also have the following charges added to the Berkeley Way Assessment (together with the reasonable costs of collection, the "Additional Charges"): (i) interest at the lesser of twelve percent (12%) per annum and the maximum lawful rate; and (ii) a late charge equal to the greater of Ten Dollars (\$10) and ten percent (10%) of the delinquent Berkeley Way Assessment.

(d) If any Berkeley Way Assessment is not paid within thirty (30) days after its due date, then the Berkeley Way Creditor Lessee shall provide notice to the Berkeley Way Debtor Lessee (and shall simultaneously notify any Mortgagee who has requested a copy of the notice) stating: (i) that the Berkeley Way Assessment is delinquent; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days after the date of the notice, by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in a lawsuit against the Berkeley Way Debtor Lessee. If a delinquent Berkeley Way Assessment and corresponding Additional Charges are not paid in full on or before the date specified in the notice, then the Berkeley Way Creditor Lessee may resort to the remedies set forth in Section 5.7(e) below.

(e) In the event any Berkeley Way Debtor Lessee fails to pay any

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Berkeley Way Assessment, any Berkeley Way Creditor Lessee(s) may, pursuant to Section 7.14 below, commence and maintain an arbitration action, or enforce any other right or remedy available at law or equity, against the Berkeley Way Debtor Lessee obligated to pay such Berkeley Way Assessment. Any ruling rendered in any action shall include the amount of the delinquent Berkeley Way Assessment, Additional Charges, and any other amounts that the ruling body may award.

#### 5.8 Reserve Accounts.

(a) Each Lessee shall establish and contribute to replacement and standard operating reserve accounts in the amount deemed appropriate by the Berkeley Way Joint Maintenance Committee to ensure such Lessee's ability to pay its share of reasonably anticipated Berkeley Way Joint Expenses as may be projected to arise in future years, based on the analysis in the Berkeley Way Annual Joint Expenses Budget. On or about January 1 of each year, each Lessee shall also deliver to the Berkeley Way Joint Maintenance Committee evidence of the amount currently held in the delivering Lessee's collective reserve accounts, including but not limited replacement reserves, standard operating reserves and operating deficit reserves.

(b) A Lessee's failure to deposit funds in its replacement and standard operating reserve account in a manner consistent with 5.8(a) will give rise to a Berkeley Way Reimbursement Assessment even if the other Lessees do not make a contribution to their own reserve account to the extent necessary to compensate for the failing Lessee's failure to contribute to its reserve account.

#### 5.9 Other Reports.

(a) For any year in which the Berkeley Way Assessments payable by a Lessee exceed Fifty Thousand Dollars (\$50,000), a review of the relevant supporting documents and financial statements of such Lessees shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. A Lessee whose relevant supporting documents and financial statements must be reviewed pursuant to this Section 5.9 shall distribute to the other Lessees and the City a copy of such review within one hundred twenty (120) days after the close of each fiscal year for which such a review must be prepared. The dollar amounts in this Section 5.9(a) shall be increased each year by CPI (or by the increase in a similar index if the described index is no longer published).

(b) Unless otherwise agreed to by the Lessees, following completion of the construction of the Project, at least once every five (5) years, the Berkeley Way Joint Maintenance Committee shall perform a physical needs assessment of the Project, and provide a copy to the City. In addition, following completion of the construction of the Project, at least one every five (5) years, the Berkeley Way Joint Maintenance Committee shall cause a study of the reserve requirements of the Property (and the cost of such study shall be a Berkeley Way Joint Expense), and provide a copy to the City. The study shall include the following items:



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(i) Identification of the major components the Maintenance of which is a Berkeley Way Joint Expense and which have, as of the date of the study, a useful life of less than thirty (30) years.

(ii) Identification of the probable remaining useful life of the components identified in Section 5.9(b)(i), as of the date of the study.

(iii) An estimate of the cost of Maintenance of the components identified in Section 5.9(b)(i), both during and at the end of their useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to Maintain the components identified in Section 5.9(b)(i), both during and at the end of their useful life, after taking into account the amount of reserve funds that are available for the Maintenance of such components as of the date of the study. Rights of Mortgagees.

(a) A Mortgagee shall be protected against Berkeley Way Assessments levied prior to foreclosure (or deed-in-lieu) of the lender's deed of trust. In other words, no Berkeley Way Assessment levied prior to foreclosure (or deed-in-lieu) of a lender's deed of trust shall result in liability for such lender (or another transferee through foreclosure) after the foreclosure.

(b) After coming into possession of a Lessee Parcel through foreclosure or deed in lieu of foreclosure, a Mortgagee (or any party coming into ownership of the Lessee Parcel through the Mortgagee) shall be subject to all Berkeley Way Assessments levied after the foreclosure sale or transfer in lieu of foreclosure other than Berkeley Way Assessments based on obligations accruing, or defaults hereunder arising prior to the date of such foreclosure or transfer in lieu of foreclosure.

## ARTICLE 6 INSURANCE

6.1 Berkeley Way Joint Insurance Policy. The Berkeley Way Joint Maintenance Committee shall select a single insurance carrier to provide the primary property insurance coverage required under this Section 6.1 for the Project (the "Berkeley Way Joint Policy"). Procurement of the Berkeley Way Joint Policy is subject to the terms of the Leases. All Lessees shall be named insureds under the Berkeley Way Joint Policy. The Berkeley Way Joint Maintenance Committee will determine which Lessee is the "first named insured" and which Lessee will provide notices of coverage. The BRIDGE Affordable Lessee shall be the initial entity designated as the "first named insured", and receive all notices under the Berkeley Way Joint Policy; this designation shall remain in place unless a change is agreed in writing amongst all Lessees. The BRIDGE Affordable Lessee shall be the initial entity to provide copies of such notices and evidence of insurance to the other Lessees and the City within five (5) days of receipt. To the extent obtainable, the Berkeley Way Joint Policy shall provide that any change or cancellation of such policy must be made in writing and sent to the Lessees at their respective principal offices and the City at least thirty (30) days before the

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effective date of change or cancellation. Costs associated with the Berkeley Way Joint Policy shall be a Berkeley Way Joint Expense payable by the Lessees according to their Designated Share. If the cost of the Berkeley Way Joint Policy is increased due to the actions or failure to act of one or more, but not all of the Lessees, the Berkeley Way Joint Maintenance Committee may levy a Berkeley Way Special Joint Expenses Assessment pursuant to Section 5.5, to be shared solely among those Lessees responsible for the increase in cost of the Berkeley Way Joint Policy. The Berkeley Way Joint Policy shall insure the Project against loss or damage by the perils insured under the standard ISO Causes of Loss - Special Form or equivalent, including broadening endorsements to protect against the perils of water intrusion and sewer and drain backup. Coverage shall be in amount equal to full replacement cost value of the Project with an "agreed amount" endorsement. Policy shall provide for a full waiver of subrogation by the insurer(s) as to any and all claims against the Lessees and their respective members, officers, directors, partners, agents, employees, and tenants. The replacement cost value of the Project covered by the Berkeley Way Joint Policy shall be redetermined and the amount of coverage adjusted accordingly from time to time as frequently as the Berkeley Way Joint Maintenance Committee shall, in good faith, deem necessary to maintain the coverage amounts, but, in any event, no less frequently than annually.

## 6.2 Other Lessee Insurance.

(a) Lessee Property Insurance. The Lessees shall each, at their sole cost and expense (not as a Berkeley Way Joint Expense) obtain property insurance covering each respective Lessee's personal property, contents, equipment, electronic data processing equipment, tools, fixtures, and the improvements and betterments added to its Lessee Parcel located thereon or used in connection therewith, insuring the Lessee against loss or damage by the perils insured under the standard ISO Causes of Loss - Special Form or equivalent, including broadening endorsements to protect against the perils of water intrusion and sewer and drain backup. Coverage shall be in amount equal to full replacement value with an "agreed amount" endorsement. In addition to the waiver of subrogation required by Section 2.4(c), each such property policy shall provide for a full waiver of subrogation by the insurer as to any and all claims against the Lessees and their respective members, officers, directors, partners, agents, employees, and tenants. Any deductible obligations shall be borne by the policyholder.

(b) Lessee Liability Insurance. Each Lessee shall respectively secure, at their sole cost and expense (not as a Berkeley Way Joint Expense) commercial general liability insurance in an amount not less than \$1,000,000 per occurrence; \$2,000,000 general aggregate; \$2,000,000 products and completed operations aggregate. A commercial umbrella and/or excess liability policy(ies) of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate must be maintained in addition to the commercial general liability policy, which is to be scheduled as an underlying policy on the umbrella and/or excess liability policy(ies) along with the automobile liability and employers liability policies required herein. The commercial general liability coverage shall be provided under the Insurance Services Office form

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CG 00 01 or equivalent, and shall provide protection against claims resulting from bodily injury and/or property damage arising out of the respective Lessee's operations and/or use of the Project, and shall include by endorsement if not contained within the coverage form: personal & advertising injury; blanket contractual liability; bodily injury and broad form property damage; fire legal liability; and products and completed operations liability. The Lessee that is the respective policyholder shall name the other Lessees, the City and other Persons specified in the Leases as additional insureds on the general liability and umbrella/excess liability policies and provide a waiver of subrogation endorsement in favor of such additional insureds and their respective members, officers, directors, partners, agents, employees, and tenants. If any Lessee operates at more than one location, or if its policies under this Section cover operations of persons or entities other than the Lessee, the Lessee's policies shall include a "per location" endorsement that provides that the general aggregate and other limits apply separately and specifically to the Project. Any deductible obligations shall be borne by the policyholder.

(c) Lessee Automobile Liability Insurance. Each Lessee shall respectively secure, at their sole cost and expense (not as a Berkeley Way Joint Expense) commercial automobile liability insurance covering all of the Lessee's operations arising out of the use or maintenance of owned, hired and non-owned automobiles, trucks, trailers and semi-trailers, including any machinery or equipment attached thereto. Coverage shall be for limits no less than \$1,000,000 per accident, combined single limit for bodily injury and property damage. The Lessee that is the respective policyholder shall name the other Lessees, the City and other Persons specified in the Leases as additional insureds on this policy and provide a waiver of subrogation endorsement in favor of such additional insureds and their respective members, officers, directors, partners, agents, employees, and tenants. Any deductible obligations shall be borne by the policyholder.

(d) Lessee Workers Compensation & Employers Liability Insurance. Each Lessee shall respectively secure, at their sole cost and expense (not as a Berkeley Way Joint Expense) workers' compensation insurance as required by the statutes of the State in which the Project is located. In addition, Lessee shall secure and maintain employers liability insurance with limits of not less than \$1,000,000 for bodily injury by each accident; \$1,000,000 bodily injury by disease-policy limit; and \$1,000,000 bodily injury by disease each employee. Any deductible obligations shall be borne by the policyholder. Policy shall provide a waiver of subrogation endorsement in favor of each Lessee and their respective members, officers, directors, partners, agents, employees, and tenants, and the City and other Persons specified in the Leases.

(e) Other Insurance. Other than as described in this Declaration, it is the responsibility of each Lessee to secure insurance as the Lessee deems appropriate and as may be required by each Lessee's respective Mortgagees and Lease. Without limiting the foregoing, the Leases may contain specific provisions entitling the City to require higher limits of certain insurance policies under certain circumstances.

### 6.3 General Insurance Provisions.

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(a) Insurer Standards. Except as modified by the Berkeley Way Project Rules, all such policies of insurance shall be obtained from insurance companies authorized or otherwise approved to do business in California, (except for workers compensation and employers liability insurance) and with an A.M. Best rating of Class A:VII or better. In the event A.M. Best should revise its rating system, the Lessees shall (subject to the City's consent) select insurance companies with equivalent financial and policyholder's ratings under the rating system then being used by A.M. Best or in the event A.M. Best discontinues its rating system, insurance companies with equivalent financial and policyholder's ratings under such comparable rating system as the Lessees may select through the Berkeley Way Project Rules.

(b) Notices of Cancellation. To the extent obtainable, all policies shall provide that any change or cancellation of such policy must be made in writing and sent to the Lessees at their respective principal offices and the City at least thirty (30) days before the effective date of the change or cancellation.

(c) Deviation from Insurance Requirements. The Berkeley Way Joint shall be obtained at reasonable premiums in light of the market for such insurance with adequate minimum limits for coverage, endorsements, and deductibles, as determined by the good faith judgment of the Berkeley Way Joint Maintenance Committee, and subject to the City's reasonable consent which consent shall not be unreasonably withheld or delayed (and shall be deemed approved in the City does not approve or disapprove a policy within fifteen (15) business days of request for approval) provided, however, subject to each Lessee's respective Mortgagees and Lease, if the Berkeley Way Joint Maintenance Committee determines that a type or form of insurance required pursuant to this Declaration, is not of any direct benefit to one or more Lessees and the cost of the policy is a Berkeley Way Joint Expense, the Berkeley Way Joint Maintenance Committee shall reduce the proportionate share of the Annual Berkeley Way Joint Expense Budget for the non-benefited Lessee by the amount allocated for that type or form of insurance and shall reallocate that reduced amount among the benefiting Lessees according to their relative Designated Shares; and provided, further, a Lessee may request the Berkeley Way Joint Maintenance Committee to purchase coverage for such Lessee (or tenant(s) of such Lessee) (i) to include coverage for furniture, fixtures, equipment and improvements, and (ii) provide casualty insurance in addition to or excess of that required by Article 6 for such Lessee, its tenants, guests, invitees. All insurance premiums and costs resulting from such request(s) to the Berkeley Way Joint Maintenance Committee shall be charged to and paid by the requesting Lessee as a Berkeley Way Special Joint Expenses Assessment. Notwithstanding anything contained herein, in the event all Lessees agree to obtain one or more types of insurance enumerated in this Article which are in excess of the minimum limits for coverage, endorsements, and deductible set forth herein, upon obtaining prior written consent of the other Lessees, the Berkeley Way Joint Maintenance Committee shall obtain such insurance, and the premiums for such shall be a Berkeley Way Joint Expense.

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ARTICLE 7  
GENERAL PROVISIONS

7.1 Enforcement. Subject to Section 7.14 below, each Lessee, or successor thereto shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, and reservations now or hereafter imposed by the provisions of this Declaration. Failure of any Lessee to enforce any covenant or restriction in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

7.2 Invalidity of Any Provision. Should any provision or portion of this Declaration be declared invalid or in conflict with any applicable law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

7.3 Term; Covenants Run with the Land. The Easements created by and the covenants and restrictions of this Declaration shall run with and bind the Property and each of the Parcels in perpetuity, and shall inure to the benefit of and shall be enforceable by each Lessee, and the Lessee's respective legal representatives, heirs, successors, subtenants and assigns. It is intended that the covenants, easements, agreements, promises and duties of each Lessee set forth in this Declaration shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land and/or constitute equitable servitudes as between the Parcel of the respective covenantor, as the servient tenement, and the Parcel of the respective covenantee, as the dominant tenement.

7.4 Amendments. This Declaration may only be amended in a writing executed by the Lessees. Any amendment must be recorded and shall become effective upon being recorded in the Official Records.

(a) City Approval Rights. Notwithstanding the above, this Declaration shall not be amended in any way or terminated without the prior written approval of the City.

(b) Mortgagee Approval Rights. Notwithstanding the above, this Declaration shall not be amended or terminated without the prior written approval of each Mortgagee holding a Mortgage on a Lessee Parcel.

(c) Limited Partner Approval Rights. Notwithstanding the above, this Declaration shall not be amended or terminated without the prior written approval of the investor limited partners of the BRIDGE Affordable Partnership and the BFHP Hope Center Partnership, if any (the "Limited Partners"), which approval shall not be withheld unreasonably. Failure of any of the Limited Partners to respond in writing within forty-five (45) business days of receipt of a written request for approval of an amendment to or termination of this Declaration, either by approving the amendment or termination or by stating specific reasons for withholding approval, shall be deemed to be approval by any such Limited Partner.

7.5 Damage or Destruction.

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(a) Lessees to Rebuild. Except as set out in Section 7.5(b) below and subject to the rights of Mortgagee and the terms of the Leases, in the event there is any damage or destruction to any portion of the Project as a result of fire or other casualty, the Project shall be repaired and reconstructed in accordance with the Plans and Specifications, as modified by the Lessees, and the provisions for repair and reconstruction as set forth in this Section 7.5. Subject to the rights of Mortgagees, if all such damage or destruction has occurred within the portion of a Project located entirely within one Lessee Parcel, then any cost of repair or reconstruction above the amount of insurance proceeds received for the loss shall be paid by the Lessee of that Lessee Parcel. If the damage or destruction affects more than one Lessee Parcel, then the Berkeley Way Joint Maintenance Committee shall coordinate the repair or reconstruction activities and the cost to repair or reconstruct which are above the amount of insurance proceeds received for the loss shall be divided in an equitable manner (reflecting the amount of repair work needed for each Lessee Parcel) between the Lessee Parcels and paid within a commercially reasonable time as established by the Joint Maintenance Committee.

(b) Lessees Fail to Rebuild. Subject to the terms of the Leases, if any portion of the Project is materially damaged or destroyed by fire or other casualty ("materially damaged or destroyed" is defined for the purpose of this Section 7.5(b) as any damage for which the cost of repair or reconstruction, as determined by a licensed contractor selected by the Lessees, is equal to or greater than Five Hundred Thousand Dollars (\$500,000), as adjusted by a fraction whose numerator is the Consumer Price Index (1982-84=100) for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward area, or any successor thereof ("CPI"), last published on the date of damage or destruction, and whose denominator is the CPI last published prior to the Effective Date), and if the Lessees agree not to rebuild, then the BRIDGE Affordable Lessee or such other Lessee selected by the Berkeley Way Joint Maintenance Committee, shall use all reasonable efforts to sell the Project. Subject to the rights of each Lessee's respective Mortgagees in regards to each Lessee's respective share of the proceeds, all insurance proceeds received shall be divided among the Lessees in an equitable manner reflecting the amount of damage sustained by each Lessee's Parcel, and the sales proceeds attributable to the Project shall be distributed to the Lessees in proportion to the fair market value of each Lessee Parcel as determined at the time of sale of the Project. The fair market value of each Lessee Parcel shall be determined by a MAI qualified appraiser jointly selected by the Lessees. If the Lessees cannot agree on an appraiser, then each Lessee shall select an appraiser and the selected appraisers will select another appraiser and this appraiser shall be the appraiser to determine the fair market value of each Lessee Parcel.

(c) Insurance Trustee. Subject to the rights of Mortgagees described above and the City under the Leases (if applicable), all insurance proceeds and other amounts required to be paid in connection with any work of repair or restoration to be undertaken hereunder shall (unless otherwise agreed to by the Lessees) be paid by, or behalf of, the Lessees to an insurance trustee for periodic disbursement to the Lessee of the damaged Lessee Parcel, if the damage is confined to one Lessee Parcel, as the

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work of repair and reconstruction progresses in accordance with prudent construction loan disbursement practices. If the repair work affects more than one Lessee Parcel, such funds shall be periodically disbursed to the BRIDGE Affordable Lessee (or such other Lessee selected by the Berkeley Way Joint Maintenance Committee) for disbursement to the affected Lessees. The insurance trustee shall be a national bank or a nationally recognized title company reasonably acceptable to the Lessees.

7.6 Condemnation. Any total or partial taking of the Project by eminent domain shall be governed by the Leases.

7.7 Limitation of Restrictions on Lessees. The completion of construction of the Project, and the ability of each Lessee to occupy its Lessee Parcel and use such parcel in accordance with this Declaration is essential to the establishment and welfare of the Project as a combined development. In order that such work may be completed and the Project be established as a fully occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent any Lessee or its contractors or subcontractors from doing on or within any Lessee Parcel whatever is reasonably necessary or advisable in connection with the completion of such work (including construction of, or addition to, any construction that may occur at a date or dates following completion of construction of the remainder of the Project); or

(b) Prevent any Lessee or its representatives from erecting, constructing, or maintaining on any part or parts of the Lessee Parcels such structures as may be reasonable and necessary for the conduct of their business of completing such work and establishing the Project as a combined commercial and residential community; or

(c) Prevent any Lessee from maintaining such sign or signs on any of the Lessee Parcels as may be necessary for the sale, lease, or disposition thereof, to the extent permitted by Section 4.4.

Each Lessee shall make, and shall cause its contractors and subcontractors to make, reasonable efforts to avoid disturbing, while completing any work on the Project, the use and enjoyment of the Lessee Parcels by the other Lessees and their respective Users.

7.8 Lessee's Compliance. Each Lessee shall be liable for performance of, and is bound by and shall comply with, the provisions of this Declaration and the Berkeley Way Project Rules.

7.9 City Manager Authority Limitations. Any amendment to this Declaration, including any amendment which affect or relates to (i) the boundaries of any Parcel; (ii) the grant of any easement, (iii) the permitted use of any Parcel, or (iv) any other material provision of this Declaration, shall require approval by the City's City Council. Subject to the foregoing, the City's City Manager may issue without City Council

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approval any consent or approval which City is entitled to provide under this Declaration, including without limitation: (w) certain Maintenance matters under Section 3.1; (x) certain insurance matters under Article 6; and (v) approval of Berkeley Way Project Rules under Section 7.13.

7.10 Singular and Plural; Gender. The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

7.11 Notices, Demands and Communications. Except as otherwise provided in this Declaration, formal notices, demands, and communications among the Lessees shall be sufficiently given if, and shall not be deemed given unless, delivered personally, with a delivery receipt; sent by United States Postal Service, certified mail, return receipt requested or sent by reputable overnight delivery service with a receipt showing date of delivery, or by electronic transmission with follow-up by one of the previous three methods, to the address of the City and Lessees as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by notice to the other parties as provided in this Section. Delivery shall be deemed to have occurred at the time indicated on the receipt as the date of delivery, the date of refusal of delivery, or the date the item was returned as undeliverable.

7.12 No Discrimination. No Lessee shall, either directly or indirectly, forbid or unlawfully restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its Lessee Parcel, or a part thereof, to any person on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin, familial status, or handicap.

7.13 Rights of Mortgagees. The rights of a Lessee under this Declaration shall be subject to the rights of a Mortgagee to such Lessee. No breach or violation of the Declaration shall defeat or render invalid the lien of any Mortgage upon a Lessee Parcel made in good faith and for value.

7.14 Berkeley Way Project Rules. Subject to the City's reasonable consent if requested by the City, the Lessees may develop mutually acceptable rules (the "Berkeley Way Project Rules") to address matters pertaining to the mutually convenient use and operation of the Project in addition to the matters set forth in this Declaration. If the Lessees cannot develop mutually acceptable Berkeley Way Project Rules then the Lessees shall submit the issues in dispute to mediation in accordance with Section 7.14. The Berkeley Way Project Rules shall be in writing and copies shall be provided to all Lessees, and all amendments to such Berkeley Way Project Rules must be in writing and approved by all Lessees.



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7.15 Dispute Resolution. In the event that the Lessees are unable to agree on any aspect of the requirements of this Declaration, or if there is a dispute as to a Lessee's performance, then any Lessee shall be entitled to mediation in accordance with the following procedures:

(a) Formal Mediation of Disputes. Any Lessee may request the dispute be mediated through a mediation before a retired judge or justice from the Judicial Arbitration & Mediation Services, Inc., or its successor-in-interest, or such other alternative dispute resolution service reasonably acceptable to the Lessees, (in each event such entity is referred to herein as "JAMS") pursuant to the mediation process described in this Section 7.14.

(b) Initiating Mediation. The Lessee desiring the mediation (the "Requesting Party") shall send written notice to the other party (the "Receiving Party") in accordance with Section 7.10 requesting mediation. The Receiving Party shall have thirty (30) days from receipt of the written request to submit the matter to mediation. Within ten (10) days after receipt of the Receiving Party's agreement to submit the matter to mediation, the Requesting Party shall send written demand to the Dispute Resolution Administrator of JAMS (the "Administrator") at the office of JAMS in or closest to the City with the names, addresses, telephone numbers and e-mail addresses of all parties to this Declaration and a brief synopsis of the claim, controversy, difference, or disputed matters and a proposed solution to the problem, with copies sent to the Receiving Party.

(c) Selection of Mediator. As soon as practicable after the demand is served upon JAMS, the Administrator will contact the Lessees to select a mutually agreeable mediator. If the Lessees have no particular mediator in mind or cannot agree on a mediator, the Administrator will submit a list of mediators, and their resumes, numbering at least one more than there are parties. Each Lessee may then strike one name and the Administrator will designate the mediator from the list of remaining names.

(d) Hearings-Scheduling/Parties Present. After the mediator has been selected, the Lessees shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The Lessees understand and agree that, besides counsel, each Lessee may bring only such additional persons as are needed to respond to questions, contribute information and participate in the negotiations. The number of additional parties may be agreed upon in advance with the assistance and advice of the mediator.

(e) Position Papers. No later than seven (7) days before the first scheduled mediation session, each Lessee shall deliver a concise written summary of its position, together with any appropriate documents, views and a proposed solution to the matters in controversy to the mediator and also serve a copy on all other parties.

(f) Participation by Mediator. Once familiar with the case, the mediator will give recommendations on terms of possible settlement conditions to be imposed

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upon the Lessees (if appropriate). The mediator's opinion shall be based on the material and information then available to the Lessees, excluding any information given to the mediator in confidence during a separate caucus. The opinions and recommendations of the mediator are not binding on the Lessees.

(g) Confidentiality of Proceedings. The mediation process is to be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from the later discovery or use in evidence. The Lessees agree that the provisions of California Evidence Code Section 1152.5 shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

(h) Fees and Costs. The fees and costs of the mediation shall conform to the then current fee schedule at JAMS and, in the absence of a written agreement to the contrary, shall be shared equally by the parties in the mediation, but any other costs incurred in connection with the dispute resolution shall be borne by the Lessee incurring such costs.

(i) Termination of Mediation Process. The mediation process shall continue until the matter is resolved, or the mediator makes a good faith finding that all settlement possibilities have been exhausted and there is no possibility of resolution through mediation. To the extent possible, mediation shall be conducted from 9:00 a.m. to 5:00 p.m., with a one (1)-hour break, on consecutive days. In no event shall a Lessee be required to mediate for more than five (5) days.

(j) Condition Precedent to Litigation. The Lessees agree and acknowledge that any dispute arising from this Declaration brought before a court of competent jurisdiction shall first be subject to the mediation process, as set forth in this Section 7.14, as a condition precedent. Any such mediation shall be nonbinding except to the extent otherwise expressly provided herein.

Notwithstanding the foregoing, nothing in this Section 7.14 shall prohibit a Lessee from pursuing the rights set forth in Section 7.17.

7.16 Default Shall not Permit Termination of Declaration. No default under this Declaration shall entitle any Lessee to terminate, cancel or otherwise rescind this Declaration; provided, however, that this limitation shall not affect any other rights or remedies that the Lessees may have by reason of any default under this Declaration.

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7.17 Violation a Nuisance. The result of every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy allowed by law or equity against a Lessee for nuisance, either public or private, shall be available to and may be exercised by the other Lessee.

7.18 Right to Enjoin/Specific Performance. In the event of any violation or threatened violation of any of the provisions of this Declaration by a Lessee or User, the other Lessee shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation, or for specific performance of the subject provision, but nothing in this Section shall be deemed to affect whether or not injunctive relief or specific performance is available on account of such violation or threatened violation. The dispute resolution process set forth in Section 7.14 shall not apply to this Section 7.17.

7.19 Title of Parts and Sections. Any titles of the sections or subsections of this Declaration are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Declaration's provisions.

7.20 Applicable Law. This Declaration shall be interpreted under and pursuant to the laws of the State of California.

7.21 Legal Actions. Without limiting Section 7.14 above, if any legal action is commenced to interpret or to enforce the terms of this Declaration or to collect damages as a result of any breach of this Declaration, then the Lessee prevailing in any such action shall be entitled to recover against the Lessee not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Declaration).

7.22 No Partnership; Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor any acts of the Lessees shall be deemed by any Lessee, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Lessees.

7.23 Declaration for Exclusive Benefit of the Lessees. Except for provisions expressly stated to be for the benefit of a Mortgagee and City, the provisions of this Declaration are for the exclusive benefit of the Lessees and successors and assigns, and not for the benefit of, nor give rise to any claim or cause of action by, any third Person.

7.24 Estoppel Certificate. Within ten (10) days after a written request of a Lessee or the City, the other Lessee(s) shall, issue to such requesting Lessee, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Lessee, or to any other Person reasonably designated by the requesting Lessee or the City (if requested by the City), an estoppel certificate stating: (a) whether the Lessee to whom the request has been directed knows of any default under this Declaration and, if there are known defaults, specifying the nature thereof; (b) whether to such Lessee's knowledge this Declaration has been modified or amended in any way

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(or if it has, then stating the nature thereof); and (c) that to the Lessee's knowledge this Declaration as of that date is in full force and effect or, if not, so stating.

7.25 No Dedication. Nothing contained in this Declaration shall be deemed to create or result in a dedication of any portion of the Lessee Parcels for public use or to create any rights in the general public.

7.26 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

7.27 Multiple Originals; Counterparts. This Declaration may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

7.28 Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered hereunder, each Lessee will perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, instruments, deeds and assurances as may be reasonably required to provide for the use and operation of the Property and the Lessee Parcels in an efficient and coordinated manner as contemplated hereby.

7.29 City As Fee Owner. Unless and until the City is a Lessee as defined in this Declaration, it will have no responsibilities or liabilities under this Declaration.

7.30 Severability. If any term of this Declaration is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Lessees have been materially altered by such holding of invalidity.

12-19-2019

The undersigned has executed this Declaration as of the Effective Date.

CITY OF BERKELEY

By: \_\_\_\_\_

Its: \_\_\_\_\_

BFHP HOPE CENTER LP,  
a California limited partnership

By: Hope Center Housing LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its co-member

By: \_\_\_\_\_  
Smitha Seshadri  
Executive Vice President

By: Berkeley Food and Housing Project,  
a California nonprofit religious corporation,  
its co-member

By: \_\_\_\_\_  
Callenne Egan  
Executive Director

[Signatures continue on following page]

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12-19-2019

BRIDGE Berkeley Way LP,  
a California limited partnership

By: BRIDGE Berkeley Way LLC,  
a California limited liability company,  
its Managing General Partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its sole member and manager

By: \_\_\_\_\_  
Smitha Seshadri,  
Executive Vice President

12-19-2019

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

DRAFT

12-19-2019

EXHIBIT A  
(Property Description)



DRAFT

12-19-2019

EXHIBIT B  
(Parcel Map)

12-19-2019

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Heather Gould

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**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS  
PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND  
MAINTENANCE FOR THE BERKELEY WAY PROJECT**

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**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE  
AND MAINTENANCE FOR THE BFHP HOPE CENTER**

THIS DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND MAINTENANCE FOR THE BFHP HOPE CENTER (the "Hope Center Declaration") is made as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by the City of Berkeley (the "City") as owner of the fee interest in the Hope Center Property described herein, and BFHP Hope Center LP (the "BFHP Hope Center Partnership"), as lessee of said Hope Center Property (City and said lessee being referred to herein collectively as the "Hope Center Declarants"), with reference to the following facts:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms, the definitions of which are identified in Article 1 below.

B. The City owns certain real property located at 2012 Berkeley Way in Berkeley, California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Hope Center Property") The Hope Center Property in this Hope Center Declaration is referred to as the BFHP Hope Center Parcels under the Berkley Way REA. Hope Center Declarants have caused the subdivision of the Hope Center Property pursuant to the Map. The Map and this Hope Center Declaration collectively delineate the Permanent Supportive Housing Parcel and the Temporary Housing Parcel. The Permanent Supportive Housing Development is located on the Permanent Supportive Housing Parcel. The Temporary Housing Development is located on the Temporary Housing Parcel.

C. City has no current intention of developing the Permanent Supportive Housing Development, the Temporary Housing Development or the Hope Center Parcels comprising the Hope Center Property. Concurrently with the making of this Hope Center Declaration, the City has leased both the Permanent Supportive Housing Development and the Temporary Housing Development to the BFHP Hope Center Partnership for the purpose of developing the Permanent Supportive Housing Development and the Temporary Housing Development, which collectively are the BFHP Hope Center Development. BFHP Hope Center Partnership is intended to be the long term lessee and operator of the Permanent Supportive Housing Development portion of the BFHP Hope Center and BFHP Hope Center LLC is intended to be the long term lessee and operator of the Temporary Housing Development portion of the BFHP Hope Center.

D. Pursuant to this Hope Center Declaration, the Hope Center Declarants are (i) setting forth certain rights and responsibilities pertaining to the easements affecting the Hope Center Property granted herein and by virtue of the Map, and (ii) providing for the management, maintenance and operation of the Hope Center Parcels, and certain

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joint uses thereof. Certain other matters are identified in the Berkeley Way REA executed and recorded concurrently herewith.

E. The Hope Center Project is not a common interest development as defined by Civil Code Section 4100. The Hope Center Project and the Hope Center Lessees are therefore not subject to the Davis-Stirling Common Interest Development Act (codified at Civil Code Sections 4000 et seq.).

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Hope Center Declarants declare and agree as follows:

ARTICLE 1  
DEFINITIONS

1.1 Definitions. Capitalized terms not otherwise defined in this Hope Center Declaration shall have the meaning set forth below:

- (a) "Berkeley Way Annual Joint Expenses Budget" is defined in Section 5.3 of the Berkeley Way REA.
- (b) "Berkeley Way Joint Maintenance Committee" means the committee responsible for the coordination of the Maintenance under the Berkeley Way REA, as set forth in more detail in Section 5.1 of the Berkeley Way REA.
- (c) "Berkeley Way Project-Serving Components" has the meaning set forth in Section 1.1 of the Berkeley Way REA.
- (d) "Berkeley Way Property" means the Hope Center Property and the BRIDGE Affordable Parcel.
- (e) "Berkeley Way REA" means the Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for the Berkeley Way between the City, BRIDGE Affordable Partnership and the BFHP Hope Center Partnership dated \_\_\_\_\_ and recorded in the Official Records substantially concurrently herewith.
- (f) "BFHP Hope Center Development" means the Permanent Supportive Housing Development and Temporary Housing Development located on the Hope Center Property.
- (g) "BFHP Hope Center LLC" means BFHP Hope Center LLC, a California limited liability company.
- (h) "BFHP Hope Center Partnership" means BFHP Hope Center Partnership, a California limited partnership.
- (i) "BRIDGE Affordable Parcel" means the portion of the Berkeley

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Way Property designated as "Parcel C" on the Map.

(j) "BRIDGE Affordable Partnership" means BRIDGE Berkeley Way LP, a California limited partnership.

(k) "City" has the meaning set forth in the preamble of this Hope Center Declaration.

(l) "Hope Center Annual Joint Expenses Budget" has the meaning given in Section 5.5.

(m) "Hope Center Assessments" means Hope Center Joint Expenses Assessments, Hope Center Reimbursement Assessments and/or Hope Center Special Joint Expenses Assessments.

(n) "Hope Center Creditor Lessee" means a Hope Center Lessee to whom a Hope Center Assessment is owed by another Hope Center Lessee or a Hope Center Lessee seeking to ensure payments required under Section 5.10 are made to a reserve account.

(o) "Hope Center Debtor Lessee" means a Hope Center Lessee who owes either a Hope Center Assessment to another Hope Center Lessee or a payment required under Section 5.10 to be made to its reserve account which Hope Center Assessment or payment has not been made when due.

(p) "Hope Center Declarants" has the meaning set forth in the preamble of this Hope Center Declaration.

(q) "Hope Center Declaration" means this Declaration of and Agreement Regarding Covenants, Conditions and Restrictions Providing Reciprocal Easements, Joint Use and Maintenance for the BFHP Hope Center, and all amendments, modifications and supplements executed in accordance herewith.

(r) "Hope Center Designated Share" means the following percentages for Maintenance of Hope Center Project-Serving Components (which were calculated based upon the gross square footage of the Hope Center Parcels):

|                                     |     |
|-------------------------------------|-----|
| Permanent Supportive Housing Lessee | 75% |
| Temporary Housing Lessee            | 25% |

Notwithstanding the forgoing, the Hope Center Designated Share paid by a Hope Center Lessee may be modified by the Hope Center Lessees (with the consent of the City) for costs associated with Hope Center Project-Serving Components which benefit more than one but not all of the Hope Center Lessees or which are later determined to provide disproportionate benefit to one or more Hope Center Lessee. Any such modification shall cause costs to be allocated in an equitable manner solely among the benefited Hope Center Lessees

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(s) "Hope Center Easements" means the easements granted through this Hope Center Declaration. The Hope Center Easements will be described by function or location rather than by precise measurement on the Map or the Plans and Specifications.

(t) "Hope Center Improvements" mean the BFHP Hope Center Development, and all other improvements and fixtures that may be built on and/or installed in any of the Hope Center Lessee Parcels from time to time, including landscaping.

(u) "Hope Center Joint Expenses" means, collectively, (i) all costs and expenses of Maintenance of Hope Center Project-Serving Components, and (ii) any other expenses provided for in a Hope Center Annual Joint Expenses Budget or that this Hope Center Declaration provides to be paid by a Hope Center Lessee according to its Hope Center Designated Share.

(v) "Hope Center Joint Expenses Assessment" has the meaning given in Section 5.6.

(w) "Hope Center Joint Maintenance Committee" means the committee responsible for the coordination of the Maintenance of Hope Center Project-Serving Components and other duties as set forth in more detail in Section 5.2 below.

(x) "Hope Center Lessee" means (i) the Permanent Supportive Housing Lessee or (ii) the Temporary Housing Lessee (each being referred to herein as a "Hope Center Lessee" and collectively referred to as the "Hope Center Lessees").

(y) "Hope Center Lessee Parcel" means any of the Permanent Supportive Housing Parcel, or the Temporary Housing Parcel (each being referred to herein as a "Hope Center Lessee Parcel" and collectively referred to as "Hope Center Lessee Parcels").

(z) "Hope Center Project" means, collectively, the Hope Center Parcels, and all Hope Center Improvements constructed on such Hope Center Parcels.

(aa) "Hope Center Project Rules" means the rules that may be adopted by the Hope Center Lessees from time to time, pursuant to Section 7.11 to address certain issues not fully addressed in this Hope Center Declaration.

(bb) "Hope Center Project-Serving Components" means (i) components of the Hope Center Improvements that service both of the Hope Center Lessee Parcels such as the structural walls, elevators, stairways, and (ii) components of any system in the Hope Center Improvements that services both Hope Center Parcels. Hope Center Project-Serving Components include the MPOE room, electric room, gas meter, trash room, bed bug room, elevators, sewer ejector pump, sewer lateral, domestic water connection, and other utility installations contained within and immediately surrounded by or attached to any structure or space which is part of the Hope Center Project and passes through both Hope Center Lessee Parcels (as required to provide power, light,



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telephone, cable television, gas, water, sanitary sewerage, storm sewerage, and drainage services); other usual appurtenances; and any other Hope Center Project element which is not located solely within one Hope Center Parcel and which the Hope Center Lessees determine to be a Hope Center Project-Serving Component, except utility equipment which is part of a discrete and complete system servicing only one Hope Center Lessee Parcel. In addition, Berkeley Way Project-Serving Components are not Hope Center Project-Serving Components under this Hope Center Declaration.

(cc) "Hope Center Property" means that certain real property described in Exhibit A. The Hope Center Property consists of the Permanent Supportive Housing Parcel and the Temporary Housing Parcel portions of the Berkeley Way Property designated as "Parcel A" and "Parcel B", respectively, on the Map.

(dd) "Hope Center Parcels" means the Hope Center Lessee Parcels.

(ee) "Hope Center Reimbursement Assessment" has the meaning given in Section 5.8(b).

(ff) "Hope Center Reimbursement Expense" has the meaning given in Section 5.8(a).

(gg) "Hope Center Special Joint Expenses Assessment" has the meaning given in Section 5.7.

(hh) "Leases" means the Permanent Supportive Housing Ground Lease and Temporary Housing Ground Lease, as either may be amended from time to time.

(ii) "Maintain" means undertake Maintenance.

(jj) "Maintenance" means the maintaining (including cleaning and routine, day to day, janitorial services), repairing and replacing of any improvement on a Hope Center Parcel (including a Hope Center Project-Serving Component, or related to a Hope Center Easement).

(kk) "Map" means that certain parcel map entitled Parcel Map No. 11051 filed in the Official Records on \_\_\_\_\_, 2020 as file number \_\_\_\_\_, subdividing the Berkeley Way Property into the Hope Center Parcels, and BRIDGE Affordable Parcel a copy of which is attached to this Hope Center Declaration as Exhibit B and incorporated herein.

(ll) "Mortgage" means a recorded mortgage or deed of trust encumbering a Hope Center Parcel, which is given as security by a Hope Center Lessee for the payment of money or performance of an obligation.

(mm) "Mortgagee" means any Person, bank, savings and loan association, insurance company, or other financial institution that is either a mortgagee under a mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of any such mortgage or deed of trust.

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(nn) "Official Records" means the Official Records of the County of Alameda, State of California.

(oo) "Permanent Supportive Housing Development" means approximately fifty-three (53) units of affordable supportive housing units located on the Permanent Supportive Housing Parcel.

(pp) "Permanent Supportive Housing Ground Lease" means that certain ground lease entered into by and between the City and the BFHP Hope Center Partnership for the Permanent Supportive Housing Parcel, as amended from time to time.

(qq) "Permanent Supportive Housing Lessee" means (i) the long term tenant or lessee of the Permanent Supportive Housing Parcel pursuant to the Permanent Supportive Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Permanent Supportive Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Permanent Supportive Housing Parcel. The BFHP Hope Center Partnership is the initial Permanent Supportive Housing Lessee.

(rr) "Permanent Supportive Housing Parcel" means the portion of the Hope Center Property designated as "Parcel A" on the Map.

(ss) "Permanent Supportive Housing Hope Center Project-Serving Components" means a Hope Center Project-Serving Components located on the Permanent Supportive Housing Parcel.

(tt) "Person" shall have the meaning set forth in the Berkeley Way REA.

(uu) "Plans and Specifications" shall have the meaning set forth in the Berkeley Way REA.

(vv) "Temporary Housing Development" means approximately forty-four (44) beds of temporary housing, a services center and administrative office space.

(ww) "Temporary Housing Parcel" means the portion of the Hope Center Property designated as "Parcel B" on the Map.

(xx) "Temporary Housing Lessee" means (i) the long term lessee of the Temporary Housing Parcel pursuant to Temporary Housing Ground Lease, or a replacement thereof, as well as the successors or assigns of any such lessee, or (ii) if the Temporary Housing Ground Lease expires or is terminated and is not replaced by a long term lease, the fee owner, from time to time, of the Temporary Housing Parcel. BFHP Hope Center Partnership is the initial Temporary Housing Lessee, but the parties anticipate that BFHP Hope Center LLC will be the Temporary Housing Lessee following completion of construction and issuance of the IRS 8609 (Low Income Housing Tax Credit Allocation and Certification) for the Permanent Supportive Housing Development.

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(yy) "Temporary Housing Ground Lease" means the ground lease to be entered into by and between the City and the Temporary Housing Lessee for all or part of the Temporary Housing Parcel, as amended from time to time.

(zz) "Temporary Housing Hope Center Project-Serving Component" means a Hope Center Project-Serving Component located on the Temporary Housing Parcel.

(aaa) "Users" is defined in the Berkeley Way REA.

1.2 Exhibits. The following exhibits are attached to and incorporated into this Hope Center Declaration:

- Exhibit A      Legal Description of the Hope Center Property
- Exhibit B      Parcel Map

ARTICLE 2  
DIVISION OF HOPE CENTER PROPERTY, GRANT OF EASEMENTS

2.1 General Description of Hope Center Property.

(a) General Boundaries. The Permanent Supportive Housing Parcel and the Temporary Housing Parcel have the boundaries shown on the Map.

(b) Hope Center Property. The Hope Center Property will contain the BFHP Hope Center Development to be developed by the BFHP Partnership. The Hope Center Property is comprised of the Permanent Supportive Housing Parcel and the Temporary Housing Parcel.

2.2 No Separate Conveyance of Hope Center Easements. The ownership of each of the Hope Center Parcels includes the benefit of, and is encumbered by and is subject, to the Hope Center Easements, as applicable. The Hope Center Easements are (i) established through this Hope Center Declaration and are to be conveyed, as applicable, with each of the Hope Center Lessee Parcels (ii) cannot be modified, terminated or relocated (except as set forth in this Hope Center Declaration), and (iii) may not be separated or separately conveyed. The benefit and burden of each Hope Center Easement, as applicable, shall be deemed to be conveyed with its respective Hope Center Parcel, even though the description in the instrument of conveyance may refer only to the fee or leasehold title to such Hope Center Parcel. The Hope Center Easements are essential and necessary for the development and ongoing operation of the Hope Center Improvements.

2.3 Grant of Hope Center Easements. Through this Hope Center Declaration, the Hope Center Declarants hereby grant and establish the following easements affecting the Hope Center Project and the Hope Center Parcels.

(a) Easement for Temporary Housing Access; Use; Ingress and Egress.

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(i) Entry Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement in, on, under, over and across the entryway of the Permanent Supportive Housing Parcel for access to the Temporary Housing Development from Berkeley Way (the "Entry Easement").

(ii) Elevator Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement across eastern portion of the first floor of the Permanent Supportive Housing Parcel (the "Elevator Easement") for access to the elevator in the Permanent Supportive Housing Parcel and use of such elevator on and between the first floor and the second floor of the Hope Center Project.

(iii) Stairway Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, non-exclusive easement across the Permanent Supportive Housing Parcel stairways for emergency exit purposes (the "Stairway Easement").

(iv) Emergency Exit Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive emergency exit easement across the Permanent Supportive Housing Parcel to allow access to the exterior courtyard and Southern Egress Easement (as defined in the Berkeley Way REA) for emergency exit purposes (the "Emergency Exit Easement").

(v) Access to and Use of Trash Room Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement to access and use the trash room located on the ground floor of the Permanent Supportive Housing Parcel (the "Trash Room Easement").

(vi) Access to and Use of Mail Box Easement. The Temporary Housing Lessee is hereby granted, and the Temporary Housing Parcel shall have the benefit of and the Permanent Supportive Housing Parcel shall be burdened by, a non-exclusive easement to access and use the mailbox area located on the first floor of the Permanent Supportive Housing Parcel for Temporary Housing Lessee employee and management agent mail (the "Mail Box Easement").

The exact location of the Elevator Easement, Trash Room Easement and Mailbox Easement shall be reasonably determined by the Permanent Supportive Housing Lessee.

(b) Easement for Permanent Supportive Housing Access; Use; Ingress and Egress.

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(i) PSH Access Easement. The Permanent Supportive Housing Lessee is hereby granted, and the Permanent Supportive Housing Parcel shall have the benefit of and the Temporary Housing Parcel shall be burdened by, a non-exclusive easement in, on, under, over and across the entry way of the Temporary Housing Parcel for access to the Permanent Supportive Housing Parcel ("PSH Access Easement").

(ii) Courtyard Easement. The Permanent Supportive Housing Lessee is hereby granted, and the Permanent Supportive Housing Parcel shall have the benefit of and the Temporary Housing Parcel shall be burdened by, a non-exclusive easement in, on, under, over and across the Temporary Housing Parcel to the courtyard area of the Permanent Supportive Housing Parcel.

(iii) Bed Bug Room Easement. The Permanent Supportive Housing Lessee is hereby granted, and the Permanent Supportive Housing Lessee shall have the benefit of and the Temporary Housing Parcel shall be burdened by, a non-exclusive easement to access and use the bed bug room located on the first floor of the Temporary Housing Parcel (the "Bed Bug Room Easement").

The exact location of the Bed Bug Room Easement and Courtyard Easement shall be reasonably determined by the Temporary Housing Lessee.

#### 2.4 Hold Harmless.

(a) Each Hope Center Lessee (an "Indemnifying Lessee") shall indemnify, defend, and hold each of the other Hope Center Lessees (the "Indemnified Lessees") harmless from all liability, damage, cost, or expense incurred by any of the Indemnified Lessees arising out of the utilization by the Indemnifying Lessee or any of its Users of any of the Hope Center Easements within any such Indemnified Lessee's Hope Center Lessee Parcel, or arising out of any violation by such Indemnifying Lessee of its obligations under this Hope Center Declaration, except to the extent that any such liability, damage, cost or expense results from the negligence or willful misconduct of the Indemnified Lessee.

(b) Each Hope Center Lessee shall indemnify, defend, and hold each of the other Hope Center Lessees harmless from all liability, damage, cost, or expense incurred by any such other Hope Center Lessee arising out of any liens, including, but not limited to, mechanics' and materialmen's liens, imposed on the Hope Center Lessee Parcel of such other Hope Center Lessee as a consequence of any work or labor done, supplies furnished, or services rendered at the request of the contracting Hope Center Lessee or any of its Users.

(c) Each Hope Center Lessee shall cause any property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against any other Hope Center Lessee in connection with any damage covered by such property insurance policy to the personal and real property improvements located in or on the Hope Center Lessee Parcel or such other Hope

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Center Lessee and/or the Hope Center Project that are caused by or result from risks insured against under any property insurance policies carried by such Hope Center Lessee and in force at the time of any such damage.

ARTICLE 3  
MAINTENANCE AND ALTERATIONS

3.1 Maintenance of the Hope Center Lessee Parcels.

(a) Maintenance of the Permanent Supportive Housing Parcel.

(i) Maintenance of the Permanent Supportive Housing Parcel including the Berkeley Way Project-Serving Components located on the Permanent Supportive Housing Parcel and the Permanent Supportive Housing Hope Center Project-Serving Components shall be performed by the Permanent Supportive Housing Lessee. The Permanent Supportive Housing Lessee shall manage, maintain in good condition, repair, and replace the Hope Center Improvements on the Permanent Supportive Housing Parcel, except for those items (if any) which another Hope Center Lessee or Lessee (as defined in the Berkeley Way REA) has been designated to manage, maintain, repair, and replace as described in this Hope Center Declaration or the Berkeley Way REA.

(ii) The Temporary Housing Lessee shall have the right to perform Maintenance of the Permanent Supportive Housing Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this paragraph, the Temporary Housing Lessee shall first take all reasonable steps to contact the Permanent Supportive Housing Lessee to permit such Hope Center Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d), Section 3.2 and the Berkeley Way REA, the cost of Maintenance of the Permanent Supportive Housing Parcel shall be borne by the Permanent Supportive Housing Lessee provided that failure of the other Hope Center Lessees to tender its respective cost amount shall not relieve Temporary Housing Lessee from performing its required Maintenance under this Hope Center Declaration.

(b) Maintenance of the Temporary Housing Parcel.

(i) Maintenance of the Temporary Housing Parcel including the Berkeley Way Project-Serving Components and the Housing Hope Center Project-Serving Components located on the Temporary Housing Parcel shall be performed by the Temporary Housing Lessee. The Temporary Housing Lessee, shall manage, maintain in good condition, repair, and replace the Hope Center Improvements on the Temporary Housing Parcel, except for those items (if any) which another Hope Center Lessee or Lessee (as defined in the Berkeley Way REA) has been designated to manage, maintain, repair, and replace as described in this Hope Center Declaration or the Berkeley Way REA.

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(ii) The Permanent Supportive Housing Lessee shall have the right to perform Maintenance on the Temporary Housing Parcel to the extent necessary to mitigate an emergency situation. Before performing Maintenance under this paragraph, the Permanent Supportive Housing Lessee shall first take all reasonable steps to contact the Temporary Housing Lessee to permit such Hope Center Lessee to perform the necessary Maintenance.

(iii) Except as provided in Section 3.1(c) and (d), Section 3.2, and the Berkeley Way REA, the cost of Maintenance of the Temporary Housing Parcel shall be borne by the Temporary Housing Lessee provided that failure of the other Hope Center Lessees to tender its respective cost amount shall not relieve Temporary Housing Lessee from performing its required Maintenance under this Hope Center Declaration.

(c) Cost of Maintenance of Hope Center Project-Serving Components. The cost of Maintenance of the Hope Center Project-Serving Components shall be borne by the Hope Center Lessees in their Hope Center Designated Shares.

(d) Cost for Maintenance Caused by Another Hope Center Lessee. Subject to Section 2.4(c), the cost of any Maintenance of any Hope Center Parcel required as a result of any act or omission (including without limitation failure to timely perform its own Maintenance obligations) of the other Hope Center Lessee or its Users shall be borne solely by such Hope Center Lessee.

3.2 Specific Maintenance. Each Hope Center Lessee will coordinate its repair and Maintenance of any Hope Center Project-Serving Components with the Hope Center Joint Maintenance Committee. Costs to Maintain and repair Hope Center Project-Serving Components shall be allocated in a manner consistent with Article 5 and paid for with Hope Center Assessments or by other method of reimbursement agreed to by the Hope Center Lessees in writing.

3.3 Prohibited Alterations; Alterations to Hope Center Project-Serving Components.

(a) Subject to the requirements of the Leases, no Hope Center Lessee shall, without the prior written consent of the other Hope Center Lessees construct or alter any Hope Center Improvements on such Hope Center Lessee's Parcel that will do any of the following:

(i) Unreasonably interfere with any other Hope Center Lessee's use and enjoyment of its Hope Center Lessee Parcel;

(ii) Cause the termination or nonrenewal of insurance policies or an increase in insurance premiums for another Hope Center Lessee;

(iii) Adversely affect or impair the architectural integrity of the Hope Center Project or the appearance or aesthetics of a portion of a Hope Center Parcel that is visible from another Hope Center Parcel;

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(iv) Interfere with or alter the fire or acoustical rating of any wall separating a Hope Center Lessee Parcel from another Hope Center Lessee Parcel; or

(v) Violate the Hope Center Lessee's Lease.

(b) Prior to performing any alteration to any Hope Center Project-Serving Component located on a Hope Center Lessee Parcel (except for cosmetic alterations, such as painting, that are not visible from the exterior of the Hope Center Project or another Parcel), the Hope Center Lessee proposing to undertake the alteration shall:

(i) Provide the other Hope Center Lessees copies of the plans and specifications for the work to be performed; and

(ii) Request and obtain the written approval of the other Hope Center Lessees, which approval shall not be unreasonably withheld, conditioned, or delayed.

#### ARTICLE 4 USE RESTRICTIONS; OPERATIONS; TRANSFER

In addition to all of the covenants contained in this Hope Center Declaration, in the Berkeley Way REA and in the Leases, the use of the Hope Center Property is subject to the following:

4.1 Tenant Selection. Tenant and occupant admission and selection at the Permanent Supportive Housing Development and the Temporary Housing Development shall be performed in compliance with applicable law and the public funding requirements.

4.2 Regulatory Compliance. The Hope Center Lessees will comply with all regulatory and financing requirements applicable to their respective Hope Center Parcels in effect as of the date of this Agreement; and any use conflicting with such requirements shall be subject to the prior written approval of the Hope Center Lessees.

4.3 Services. Each Hope Center Lessee will provide services to its respective residents or occupants in compliance with Public Funding requirements, and as necessary to allow all other residents and occupants to enjoy and benefit from the Hope Center Project.

4.4 Transfer of Temporary Housing Development. From and after transfer of the Temporary Housing Development by the BFHP Hope Center Partnership to the BFHP Hope Center LLC, the Temporary Housing Lessee (and its successor) may not transfer any membership or ownership interest or transfer its interest in the Temporary Housing Lease without the prior written approval of the City and the Permanent Supportive Housing Lessee. The City and the Permanent Supportive Housing Lessee's consent shall be within their sole and absolute discretion. The provisions of this Section 4.4 are essential to the Hope Center Project given the integration of the Temporary



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Housing Development within the Hope Center Project and its proximity to the Permanent Supportive Housing Development. Nothing in this Section 4.4 is intended to prevent the City from exercising its rights to terminate the Temporary Housing Ground Lease pursuant to the terms of such lease or to prevent the City or County of Alameda from exercising any foreclosure rights under their financing for the Temporary Housing Development. However, if the City or County obtains fee or leasehold title to the Temporary Housing Parcel, the Permanent Supportive Housing Lessee shall have the right to review and approve the property manager and service provider for the Temporary Housing Development, as well as the operating budget and services plan.

## ARTICLE 5

### JOINT MAINTENANCE EXPENSES, ASSESSMENTS AND RESERVES

5.1 Berkeley Way REA Joint Maintenance Committee. The Berkeley Way REA establishes the Berkeley Way Joint Maintenance Committee. The Permanent Supportive Housing Lessee will serve as the member of the Berkeley Way Joint Maintenance Committee on behalf of the Permanent Supportive Housing Lessee and the Temporary Housing Lessee (the "BFHP Hope Center Committee Representative"). The BFHP Hope Center Representative may resign at, any time by giving written notice to the Hope Center Lessees.

5.2 Hope Center Joint Maintenance Committee. In order to determine those costs and expenses that are necessary to include in the Berkeley Way Annual Joint Expenses Budget established under the Berkeley Way REA, and in order to determine the Hope Center Annual Joint Expenses Budget, the Hope Center Lessees will operate a Hope Center Joint Maintenance Committee. Each Hope Center Lessee will appoint one representative to serve as a member of the Hope Center Joint Maintenance Committee. Each member of the Hope Center Joint Maintenance Committee may be removed from office at any time by his/her appointing Hope Center Lessee with or without cause. Any member of the Hope Center Joint Maintenance Committee may resign at any time by giving written notice to the appointing Hope Center Lessee and Hope Center Joint Maintenance Committee.

(a) Meetings. The Hope Center Joint Maintenance Committee shall meet annually, prior to the date that the Berkeley Way Joint Maintenance Committee will meet and in no event later than August 1 of each year, and at such other times as the members of the Hope Center Joint Maintenance Committee may determine. Both members of the Hope Center Joint Maintenance Committee must be present to conduct business and approve actions.

(b) Compensation. No member of the Hope Center Joint Maintenance Committee shall receive compensation for any service he or she may render to the Hope Center Joint Maintenance Committee.

5.3 Duties. The duties of the Hope Center Joint Maintenance Committee shall include (i) coordination of Maintenance of the Hope Center Project-Serving Components, and repair after damage or destruction to the Hope Center Project

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(Section 5.4 below); (ii) preparation of the Hope Center Annual Joint Expenses Budget (Section 5.5 below); (iii) establishing, levying and collecting Hope Center Joint Assessments (Sections 5.6 and 5.7 below); (iv) establishing and monitoring reserves for reasonably anticipated contingencies and repairs or replacements of Hope Center Project-Serving Components (Section 5.10 below). In the event the Hope Center Joint Maintenance Committee members cannot agree on a particular decision, following mediation under Section 7.12, the Permanent Supportive Housing Lessee member will control as to the decision provided that any such decision must be consistent with the terms of this Hope Center Declaration.

(a) Limitation of Liability. The members of the Hope Center Joint Maintenance Committee shall not be liable to the Hope Center Lessees, their Users, or other person for any injury, death, loss or damage due to theft, other breaches of security, failures, or interruption of services, or other circumstances pertaining to activities within the Hope Center Joint Maintenance Committee's control. Each member of the Hope Center Joint Maintenance Committee shall be entitled to indemnification by the Hope Center Lessees against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding to which such member may be a party, or in which such member may become involved, by reason of the fact that he or she was or is a member of the Hope Center Joint Maintenance Committee.

#### 5.4 Coordination of Hope Center Joint Maintenance and Repair after Damage or Destruction.

(a) Maintenance Coordination. The Hope Center Joint Maintenance Committee is authorized to provide service to, and assure that, each BFHP Hope Center Project-Serving Component is operated, maintained, repaired, and replaced in a first-class condition, and otherwise in accordance with the standards of this Hope Center Declaration. Such authorization includes the right to inspect and monitor each Hope Center Lessee's Maintenance of Hope Center Project-Serving Components located on their respective Hope Center Lessee Parcel, coordinate Maintenance between Hope Center Lessees, and authorize contracts to perform any Maintenance the Hope Center Joint Maintenance Committee reasonably determines is not being properly performed.

(b) Damage or Destruction Repair Coordination. The Hope Center Joint Maintenance Committee is authorized to coordinate the repair or restoration activities necessitated by damage or destruction affecting more than one Hope Center Lessee Parcel, subject to the rights of Mortgagees. The Hope Center Joint Maintenance Committee shall have the right to authorize contracts to perform any repair or restoration work the Hope Center Joint Maintenance Committee reasonably determines is not being properly performed.

(c) Contracting. Permanent Supportive Housing Lessee (or any other Hope Center Lessee or property management agent selected by the Hope Center Joint Maintenance Committee), as the agent of the Hope Center Joint Maintenance

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Committee, shall have the right to solicit bids, enter into contracts with third parties on behalf of the Hope Center Joint Maintenance Committee, and take all other steps reasonably necessary or appropriate to perform the duties of the Hope Center Joint Maintenance Committee consistent with the then-current Hope Center Annual Joint Expenses Budget or as otherwise authorized to be undertaken by the Hope Center Joint Maintenance Committee; provided, however, that if the activities of the Hope Center Joint Maintenance Committee are necessitated by a Hope Center Lessee not performing its required Maintenance, repair or restoration activities, the costs incurred by the Hope Center Joint Maintenance Committee to perform such activities shall be a Hope Center Reimbursement Assessment charged pursuant to Section 5.8 below.

#### 5.5 Hope Center Annual Joint Expenses Budget.

(a) Before the meeting of the Berkeley Way Joint Maintenance Committee, and in any event by September 1 of each year, the Hope Center Joint Maintenance Committee shall meet to discuss the Hope Center Joint Expenses that the Hope Center Lessees expect to be incurred in the following calendar year. By October 1, the Hope Center Joint Maintenance Committee shall prepare and deliver to the Hope Center Lessees a written budget describing in reasonable detail the Hope Center Joint Expenses that the Hope Center Lessees expect to be incurred in the following calendar year (the "Hope Center Annual Joint Expenses Budget"). The Hope Center Annual Joint Expenses Budget shall also specify the contribution that each Hope Center Lessee must make, during the following calendar year, to its reserve account pursuant to Section 5.9(b).

(b) The Hope Center Annual Joint Expenses Budget shall account for all expected ordinary and extraordinary Hope Center Joint Expenses to be incurred in a calendar year, including expenses expected to be incurred by the Hope Center Joint Maintenance Committee for management, accounting or other services, and (ii) any previously unreconciled past payments of Hope Center Reimbursement Assessments for Hope Center Joint Expenses or Hope Center Joint Expenses Assessments for Hope Center Reimbursement Expenses. The Hope Center Annual Joint Expenses Budget shall also describe the following: (1) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component the Maintenance of which is a Hope Center Joint Expense; (2) the current estimate of the amount of cash reserves necessary to perform Maintenance on such major components; (3) the current estimate of accumulated cash reserves actually set aside by the Hope Center Lessees to perform Maintenance on such major components (as further discussed in Section 5.10); and (4) a statement addressing the procedures used for the calculation and establishment of those reserves to defray the Maintenance of major components the Maintenance of which is a Hope Center Joint Expense.

(c) The Hope Center Annual Joint Expenses Budget shall allocate Hope Center Joint Expenses to each Hope Center Lessee in proportion to their Hope Center Designated Shares except that each Hope Center Lessee shall be responsible for windows and doors primarily serving its respective Hope Center Parcel.

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(d) Unless one or more of the Hope Center Lessees objects in writing in a timely manner to the Hope Center Annual Joint Expenses Budget pursuant to Section 5.3(e) below, the Hope Center Annual Joint Expenses Budget shall be effective as of January 1 of the following year.

(e) If any affected Hope Center Lessee disputes the Hope Center Annual Joint Expenses Budget proposed by the Hope Center Joint Maintenance Committee and the Hope Center Lessees are unable to resolve their differences within a reasonable time, then the parties shall submit the Hope Center Annual Joint Expenses Budget in question to an arbitrator jointly selected by the parties (or if the Hope Center Lessees cannot agree on an arbitrator, then each Hope Center Lessee will select an arbitrator and the selected arbitrators will select a third arbitrator and the third arbitrator shall be the arbitrator to resolve the dispute over the Hope Center Annual Joint Expenses Budget). By December 25, the arbitrator shall confirm or revise the Hope Center Annual Joint Expenses Budget as the arbitrator determines to be appropriate, and such confirmed or revised Hope Center Annual Joint Expenses Budget shall be effective as of January 1 of the following year. The fees of the arbitrator or arbitrators shall be a Hope Center Joint Expense, but any other costs incurred in connection with the arbitration shall be borne by the Hope Center Lessee incurring such costs.

#### 5.6 Hope Center Joint Expenses Assessments.

(a) Each Hope Center Lessee's Hope Center Designated Share of Hope Center Joint Expenses, as set forth in the Hope Center Annual Joint Expenses Budget from time to time, shall be a charge levied against such Hope Center Lessee and its Hope Center Lessee Parcel and may be collected as the "Hope Center Joint Expenses Assessment", enforceable in the manner set forth in Section 5.7.

(b) The Hope Center Joint Maintenance Committee will from time to time select a Hope Center Lessee to receive and hold, in trust, the Hope Center Joint Expenses Assessments and make disbursements of such assessment for the payment of Hope Center Joint Expenses. Initially, the Hope Center Lessee to hold and disburse such payments is the Permanent Supportive Housing Lessee. Each Hope Center Lessee shall pay its annual Hope Center Joint Expenses Assessment in even monthly installments equal to one twelfth (1/12) of its annual Hope Center Joint Expenses Assessment, with each monthly installment due on the first day of each month of the year for which the applicable Hope Center Annual Joint Expenses Budget is effective. Notwithstanding the forgoing, the Hope Center Joint Maintenance Committee may request even quarterly payments in lieu of monthly payments. In addition, in lieu of collecting Hope Center Joint Expenses Assessments (either in whole or in part), the Hope Center Lessees may also choose and the Joint Maintenance Committee may require reimbursement of or payment to any Hope Center Lessee who pays for or coordinates Maintenance of a Hope Center Joint Expense.

(c) The Hope Center Joint Maintenance Committee shall oversee the use of the Hope Center Joint Expense Assessments received from the Hope Center

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Lessees pursuant to Section 5.5(b), and the performance of the activities whose costs constitute Hope Center Joint Expenses.

5.7 Hope Center Special Joint Expenses Assessments. In the event the Hope Center Joint Maintenance Committee determines, in good faith, that the Hope Center Annual Joint Expenses Budget is or will become inadequate for any reason (including, but not limited to, misinformation or miscalculation, unexpected repair or replacement of any Hope Center Project-Serving Component, or increase in estimates of Hope Center Joint Expenses, the Hope Center Joint Maintenance Committee may, at any time, levy an assessment (a "Hope Center Special Joint Expenses Assessment") to make up such inadequacy, which shall be allocated to the Hope Center Lessee(s) in accordance with the Hope Center Designated Shares.

5.8 Hope Center Reimbursement Assessments.

(a) A "Hope Center Reimbursement Expense" is, subject to Section 5.10(b), any expense actually incurred or expected to be incurred by a Hope Center Creditor Lessee that:

(i) is the financial responsibility of a Hope Center Debtor Lessee under this Hope Center Declaration;

(ii) arises out of noncompliance with this Hope Center Declaration (or any rule or regulation duly adopted pursuant to this Hope Center Declaration) by the Hope Center Debtor Lessee; or

(iii) arises out of inaction by the Hope Center Debtor Lessee that does not constitute noncompliance with this Hope Center Declaration.

(b) Every Hope Center Reimbursement Expense shall be a charge levied against the Hope Center Debtor Lessee and against the Debtor's Lessee Parcel, as applicable (a "Hope Center Reimbursement Assessment").

(c) Hope Center Reimbursement Expenses shall include actual and reasonable financing costs associated with the Hope Center Creditor Lessee advancing funds on behalf of the Hope Center Debtor Lessee from the time funds are advanced until the date on which the applicable Hope Center Reimbursement Assessment is paid.

(d) Hope Center Reimbursement Assessments shall be enforced in the manner set forth in Section 5.9.

5.9 Payment and Enforcement of Assessments.

(a) A Hope Center Creditor Lessee shall provide notice to a Hope Center Debtor Lessee of the amount and due date of any Hope Center Assessment. Notice shall be delivered not less than thirty (30) and not more than sixty (60) days prior to the Hope Center Assessment becoming due.

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(b) Each Hope Center Assessment obligation is a personal obligation of the Hope Center Debtor Lessee against whom the Hope Center Assessment is levied. Hope Center Assessments may be offset against each other unless one Hope Center Lessee objects in writing to an offset.

(c) Any Hope Center Assessment shall become delinquent if not paid within fifteen (15) days after the due date, and a Hope Center Creditor Lessee's reasonable costs in collecting the delinquent Hope Center Assessment (including reasonable attorneys' fees) may then be added to the Hope Center Assessment. Any Hope Center Assessment remaining unpaid as of thirty (30) days after the due date shall also have the following charges added to the Hope Center Assessment (together with the reasonable costs of collection, the "Additional Charges"): (i) interest at the lesser of twelve percent (12%) per annum and the maximum lawful rate; and (ii) a late charge equal to the greater of Ten Dollars (\$10) and ten percent (10%) of the delinquent Hope Center Assessment.

(d) If any Hope Center Assessment is not paid within thirty (30) days after its due date, then the Hope Center Creditor Lessee shall provide notice to the Hope Center Debtor Lessee (and shall simultaneously notify any Mortgagee who has requested a copy of the notice) stating: (i) that the Hope Center Assessment is delinquent; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days after the date of the notice, by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in a lawsuit against the Hope Center Debtor Lessee. If a delinquent Hope Center Assessment and corresponding Additional Charges are not paid in full on or before the date specified in the notice, then the Hope Center Creditor Lessee may resort to the remedies set forth in Section 5.9(e) below.

(e) In the event any Hope Center Debtor Lessee fails to pay any Hope Center Assessment, any Hope Center Creditor Lessee(s) may, pursuant to Section 7.12 below, commence and maintain mediation, or enforce any other right or remedy available at law or equity, against the Hope Center Debtor Lessee obligated to pay such Hope Center Assessment. Any ruling rendered in any action shall include the amount of the delinquent Hope Center Assessment, Additional Charges, and any other amounts that the ruling body may award.

#### 5.10 Reserve Accounts.

(a) Each Hope Center Lessee shall establish and contribute to replacement and standard operating reserve accounts in the amount deemed appropriate by the Hope Center Joint Maintenance Committee to ensure such Hope Center Lessee's ability to pay its share of reasonably anticipated Hope Center Joint Expenses as may be projected to arise in future years, based on the analysis in the Hope Center Annual Joint Expenses Budget. On or about January 1 of each year, each Hope Center Lessee shall deliver to the Hope Center Joint Maintenance Committee evidence of the amount currently held in the delivering Hope Center Lessee's collective reserve accounts, including but not limited to replacement reserves, standard operating

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reserves and operating deficit reserves.

(b) A Hope Center Lessee's failure to deposit funds in its replacement and standard operating reserve account in a manner consistent with Section 5.10(a) will give rise to a Hope Center Reimbursement Assessment even if the other Hope Center Lessees do not make a contribution to their own reserve account to the extent necessary to compensate for the failing Hope Center Lessee's failure to contribute to its reserve account.

#### 5.11 Other Reports.

(a) For any year in which the Hope Center Assessments payable by a Hope Center Lessee exceed Fifteen Thousand Dollars (\$15,000), a review of the relevant supporting documents and financial statements of such Hope Center Lessees shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, and provided to the City. A Hope Center Lessee whose relevant supporting documents and financial statements must be reviewed pursuant to this Section shall distribute to the other Hope Center Lessees a copy of such review within one hundred twenty (120) days after the close of each fiscal year for which such a review must be prepared. The dollar amounts in this Section 5.11 shall be increased each year by CPI (as defined in the Berkeley Way REA) (or by the increase in a similar index if the described index is no longer published).

(b) Unless otherwise agreed to by the Hope Center Lessees, following completion of the construction of the Hope Center Project, at least once every five (5) years, the Hope Center Joint Maintenance Committee shall perform a physical needs assessment of the Hope Center Project, and provide a copy to the City. In addition, following completion of the construction of the Hope Center Project, at least one every five (5) years the Hope Center Joint Maintenance Committee shall cause a study of the reserve requirements of the Hope Center Property (and the cost of such study shall be a Hope Center Joint Expense), and provide a copy to the City. The study shall include the following items:

(i) Identification of the major components the Maintenance of which is a Hope Center Joint Expense and which have, as of the date of the study, a useful life of less than thirty (30) years.

(ii) Identification of the probable remaining useful life of the components identified in Section 5.11(b)(i), as of the date of the study.

(iii) An estimate of the cost of Maintenance of the components identified in Section 5.11(b)(i), both during and at the end of their useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to Maintain the components identified in Section 5.11(b)(i), both during and at the end of their useful life, taking into account the amount of reserve funds that are available for Maintenance of such components as of the date of the study.

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5.12 Rights of Mortgagees. A Mortgagee shall be protected against Hope Center Assessments levied prior to foreclosure (or deed-in-lieu) of the lender's deed of trust. In other words, no Hope Center Assessment levied prior to foreclosure (or deed-in-lieu) of a lender's deed of trust shall result in liability for such lender (or another transferee through foreclosure) after the foreclosure.

(a) After coming into possession of a Hope Center Lessee Parcel through foreclosure or deed in lieu of foreclosure, a Mortgagee (or any party coming into ownership of the Hope Center Lessee Parcel through the Mortgagee) shall be subject to all Hope Center Assessments levied after the foreclosure sale or transfer in lieu of foreclosure other than Hope Center Assessments based on obligations accruing, or defaults hereunder arising prior to the date of such foreclosure or transfer in lieu of foreclosure.

## ARTICLE 6 INSURANCE

The Hope Center Lessees will comply with the insurance provision in the Berkeley Way REA.

## ARTICLE 7 GENERAL PROVISIONS

7.1 Enforcement. Subject to Section 7.12 below, each Hope Center Lessee, or successor thereto shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, and reservations now or hereafter imposed by the provisions of this Hope Center Declaration. Failure of any Hope Center Lessee to enforce any covenant or restriction in this Hope Center Declaration shall in no event be deemed a waiver of the right to do so thereafter.

7.2 Invalidity of Any Provision. Should any provision or portion of this Hope Center Declaration be declared invalid or in conflict with any applicable law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

7.3 Term; Covenants Run with the Land. The Hope Center Easements created by and the covenants and restrictions of this Hope Center Declaration shall run with and bind the Hope Center Property and each of the Hope Center Parcels in perpetuity and shall inure to the benefit of and shall be enforceable by each Hope Center Lessee and the Hope Center Lessee's respective legal representatives, heirs, successors, subtenants and assigns. It is intended that the covenants, easements, agreements, promises and duties of each Hope Center Lessee set forth in this Hope Center Declaration shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land and/or constitute equitable servitudes as between the Hope Center Parcel of the respective covenantor, as the servient tenement, and the Hope Center Parcel of the respective covenantee, as the dominant tenement.



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7.4 Amendments. This Hope Center Declaration may only be amended in a writing executed by the Hope Center Lessees. Any amendment must be recorded and shall become effective upon being recorded in the Official Records.

(a) City Approval Rights. Notwithstanding the above, this Hope Center Declaration shall not be amended in any way or terminated without the prior written approval of the City.

(b) Mortgagee Approval Rights. Notwithstanding the above, this Hope Center Declaration shall not be amended or terminated without the prior written approval of each Mortgagee holding a Mortgage on a Hope Center Lessee Parcel.

(c) Limited Partner Approval Rights. Notwithstanding the above, this Hope Center Declaration shall not be amended or terminated without the prior written approval of the investor limited partners of the BFHP Hope Center Partnership, if applicable (the "Limited Partner"), which approval shall not be withheld unreasonably. Failure of any of the Limited Partner to respond in writing within forty-five (45) business days of receipt of a written request for approval of an amendment to or termination of this Hope Center Declaration, either by approving the amendment or termination or by stating specific reasons for withholding approval, shall be deemed to be approval by any such Limited Partner.

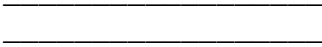
7.5 Hope Center Lessee's Compliance. Each Hope Center Lessee shall be liable for performance of, and is bound by and shall comply with, the provisions of this Hope Center Declaration and the Hope Center Project Rules.

7.6 City Manager Authority Limitations. Any amendment to this Hope Center Declaration, including any amendment which affects or relates to: (i) the grant of any easement, (ii) the permitted use of any Parcel, or (iii) any other material provision of this Hope Center Declaration, shall require approval by the City's City Council. Subject to the foregoing, the City's City Manager may issue without City Council approval any consent or approval which City is entitled to provide under this Hope Center Declaration, including without limitation consents under Section 4.4.

7.7 Singular and Plural; Gender. The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

7.8 Notices, Demands and Communications. Except as otherwise provided in this Hope Center Declaration, formal notices, demands, and communications among the Hope Center Lessees shall be sufficiently given if, and shall not be deemed given unless, delivered personally, with a delivery receipt; sent by United States Postal Service, certified mail, return receipt requested or sent by reputable overnight delivery service with a receipt showing date of delivery, or by electronic transmission with follow-up by one of the previous three methods, to the address of the Hope Center Declarant and Hope Center Lessees as follows:

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Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by notice to the other parties as provided in this Section. Delivery shall be deemed to have occurred at the time indicated on the receipt as the date of delivery, the date of refusal of delivery, or the date the item was returned as undeliverable.

7.9 No Discrimination. No Hope Center Lessee shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of its Hope Center Lessee Parcel, or a part thereof, to any person on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin, familial status, or handicap.

7.10 Rights of Mortgagees. The rights of a Hope Center Lessee under this Hope Center Declaration shall be subject to the rights of a Mortgagee to such Hope Center Lessee. No breach or violation of the Hope Center Declaration shall defeat or render invalid the lien of any Mortgage upon a Hope Center Lessee Parcel made in good faith and for value.

7.11 Hope Center Project Rules. Subject to the City's reasonable consent if requested by the City, the Hope Center Lessees may develop mutually acceptable rules (the "Hope Center Project Rules") to address matters pertaining to the mutually convenient use and operation of the Hope Center Project in addition to the matters set forth in this Hope Center Declaration and not inconsistent with the Berkeley Way Project Rules under the Berkeley Way REA. If the Hope Center Lessees cannot develop mutually acceptable Hope Center Project Rules then the Hope Center Lessees shall submit the issues in dispute to mediation in accordance with Section 7.12. The Hope Center Project Rules shall be in writing and copies shall be provided to both Hope Center Lessees, and all amendments to such Hope Center Project Rules must be in writing and approved by both Hope Center Lessees.

7.12 Dispute Resolution. In the event that the Hope Center Lessees are unable to agree on any aspect of the requirements of this Hope Center Declaration, or if there is a dispute as to a Hope Center Lessee's performance, then any Hope Center Lessee shall be entitled to mediation in accordance with the following procedures:

(a) Formal Mediation of Disputes. Any Hope Center Lessee may request the dispute be mediated through a mediation before a retired judge or justice from the Judicial Arbitration & Mediation Services, Inc., or its successor-in-interest, or such other alternative dispute resolution service reasonably acceptable to the Hope Center Lessees, (in each event such entity is referred to herein as "JAMS") pursuant to the mediation process described in this Section 7.12.

(b) Initiating Mediation. The Hope Center Lessee desiring the mediation (the "Requesting Party") shall send written notice to the other party (the

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"Receiving Party") in accordance with Section 7.8 requesting mediation. The Receiving Party shall have thirty (30) days from receipt of the written request to submit the matter to mediation. Within ten (10) days after receipt of the Receiving Party's agreement to submit the matter to mediation, the Requesting Party shall send written demand to the Dispute Resolution Administrator of JAMS (the "Administrator") at the office of JAMS in or closest to the City with the names, addresses, telephone numbers and e-mail addresses of all parties to this Hope Center Declaration and a brief synopsis of the claim, controversy, difference, or disputed matters and a proposed solution to the problem, with copies sent to the Receiving Party.

(c) Selection of Mediator. As soon as practicable after the demand is served upon JAMS, the Administrator will contact the Hope Center Lessees to select a mutually agreeable mediator. If the Hope Center Lessees have no particular mediator in mind or cannot agree on a mediator, the Administrator will submit a list of mediators, and their resumes, numbering at least one more than there are parties. Each Hope Center Lessee may then strike one name and the Administrator will designate the mediator from the list of remaining names.

(d) Hearings-Scheduling/Parties Present. After the mediator has been selected, the Hope Center Lessees shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The Hope Center Lessees understand and agree that, besides counsel, each Hope Center Lessee may bring only such additional persons as are needed to respond to questions, contribute information and participate in the negotiations. The number of additional parties may be agreed upon in advance with the assistance and advice of the mediator.

(e) Position Papers. No later than seven (7) days before the first scheduled mediation session, each Hope Center Lessee shall deliver a concise written summary of its position, together with any appropriate documents, views and a proposed solution to the matters in controversy to the mediator and also serve a copy on all other parties.

(f) Participation by Mediator. Once familiar with the case, the mediator will give recommendations on terms of possible settlement conditions to be imposed upon the Hope Center Lessees (if appropriate). The mediator's opinion shall be based on the material and information then available to the Hope Center Lessees, excluding any information given to the mediator in confidence during a separate caucus. The opinions and recommendations of the mediator are not binding on the Hope Center Lessees.

(g) Confidentiality of Proceedings. The mediation process is to be considered settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from the later discovery or use in evidence. The Hope Center Lessees agree that the provisions of California Evidence Code Section 1152.5 shall apply to any mediation conducted hereunder. The entire procedure is confidential, and no stenographic or other record shall be made except to

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memorialize a settlement record. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this settlement process.

(h) Fees and Costs. The fees and costs of the mediation shall conform to the then current fee schedule at JAMS and, in the absence of a written agreement to the contrary, shall be shared equally by the parties in the mediation, but any other costs incurred in connection with the dispute resolution shall be borne by the Hope Center Lessee incurring such costs.

(i) Termination of Mediation Process. The mediation process shall continue until the matter is resolved, or the mediator makes a good faith finding that all settlement possibilities have been exhausted and there is no possibility of resolution through mediation. To the extent possible, mediation shall be conducted from 9:00 a.m. to 5:00 p.m., with a one (1)-hour break, on consecutive days. In no event shall a Hope Center Lessee be required to mediate for more than five (5) days.

(j) Condition Precedent to Litigation. The Hope Center Lessees agree and acknowledge that any dispute arising from this Hope Center Declaration brought before a court of competent jurisdiction shall first be subject to the mediation process, as set forth in this Section 7.12, as a condition precedent. Any such mediation shall be nonbinding except to the extent otherwise expressly provided herein.

Notwithstanding the foregoing, nothing in this Section 7.12 shall prohibit a Hope Center Lessee from pursuing the rights set forth in Section 7.15.

7.13 Default Shall not Permit Termination of Hope Center Declaration. No default under this Hope Center Declaration shall entitle any Hope Center Lessee to terminate, cancel or otherwise rescind this Hope Center Declaration; provided, however, that this limitation shall not affect any other rights or remedies that the Hope Center Lessees may have by reason of any default under this Hope Center Declaration.

7.14 Violation a Nuisance. The result of every act or omission whereby any provision of this Hope Center Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy allowed by law or equity against a Hope Center Lessee for nuisance, either public or private, shall be available to and may be exercised by the other Hope Center Lessee.

7.15 Right to Enjoin/Specific Performance. In the event of any violation or threatened violation of any of the provisions of this Hope Center Declaration by a Hope Center Lessee or User, the other Hope Center Lessee shall have the right to apply to a

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court of competent jurisdiction for an injunction against such violation or threatened violation, or for specific performance of the subject provision, but nothing in this Section shall be deemed to affect whether or not injunctive relief or specific performance is available on account of such violation or threatened violation. The dispute resolution process set forth in Section 7.12 shall not apply to this Section 7.15.

7.16 Title of Parts and Sections. Any titles of the sections or subsections of this Hope Center Declaration are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Hope Center Declaration's provisions.

7.17 Applicable Law. This Hope Center Declaration shall be interpreted under and pursuant to the laws of the State of California.

7.18 Legal Actions. Without limiting Section 7.12 above, if any legal action is commenced to interpret or to enforce the terms of this Hope Center Declaration or to collect damages as a result of any breach of this Hope Center Declaration, then the Hope Center Lessee prevailing in any such action shall be entitled to recover against the Hope Center Lessee not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Hope Center Declaration).

7.19 No Partnership; Joint Venture or Principal-Agent Relationship. Neither anything in this Hope Center Declaration nor any acts of the Hope Center Lessees shall be deemed by any Hope Center Lessee, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Hope Center Lessees.

7.20 Hope Center Declaration for Exclusive Benefit of the Hope Center Lessees. Except for provisions expressly stated to be for the benefit of a Mortgagee or the City, the provisions of this Hope Center Declaration are for the exclusive benefit of the Hope Center Lessees and successors and assigns, and not for the benefit of, nor give rise to any claim or cause of action by, any third Person.

7.21 Estoppel Certificate. Within ten (10) days after a written request of a Hope Center Lessee, the other Hope Center Lessee shall, issue to such requesting Hope Center Lessee or the City, or to any Mortgagee, or to any prospective purchaser or prospective Mortgagee specified by such requesting Hope Center Lessee, or to any other Person reasonably designated by the requesting Hope Center Lessee, or to the City (if required by the City), an estoppel certificate stating: (a) whether the Hope Center Lessee to whom the request has been directed knows of any default under this Hope Center Declaration and, if there are known defaults, specifying the nature thereof; (b) whether to such Hope Center Lessee's knowledge this Hope Center Declaration has been modified or amended in any way (or if it has, then stating the nature thereof); and (c) that to the Hope Center Lessee's knowledge this Hope Center Declaration as of that date is in full force and effect or, if not, so stating.

7.22 No Dedication. Nothing contained in this Hope Center Declaration shall

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be deemed to create or result in a dedication of any portion of the Hope Center Lessee Parcels for public use or to create any rights in the general public.

7.23 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Hope Center Declaration.

7.24 Relationship to Berkeley Way REA. The Hope Center Declarants intend this Hope Center Declaration to be consistent with the Berkeley Way REA. To the extent of any conflict between the Berkeley Way REA and this Hope Center Declaration, the Berkeley Way REA shall control.

7.25 Multiple Originals; Counterparts. This Hope Center Declaration may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

7.26 Further Assurances. In addition to the actions recited herein and contemplated to be performed, executed, and/or delivered hereunder, each Hope Center Lessee will perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, instruments, deeds and assurances as may be reasonably required to provide for the use and operation of the Hope Center Property and the Hope Center Lessee Parcels in an efficient and coordinated manner as contemplated hereby.

7.27 City As Fee Owner. Unless and until the City is a Hope Center Lessee as defined in this Hope Center Declaration, it will have no responsibilities or liabilities under this Hope Center Declaration.

7.28 Severability. If any term of this Hope Center Declaration is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Hope Center Lessees have been materially altered by such holding of invalidity.

DRAFT

12-19-2019

The undersigned has executed this Hope Center Declaration as of the Effective Date.

CITY OF BERKELEY

By: \_\_\_\_\_

Its: \_\_\_\_\_

BFHP HOPE CENTER LP,  
a California limited partnership

By: Hope Center Housing LLC,  
a California limited liability company,  
its managing general partner

By: BRIDGE Housing Corporation,  
a California nonprofit public benefit corporation,  
its co-member

By: \_\_\_\_\_  
Smitha Seshadri  
Executive Vice President

By: Berkeley Food and Housing Project,  
a California nonprofit religious corporation,  
its co-member

By: \_\_\_\_\_  
Callenne Egan  
Executive Director

[Signatures continue on following page]

DRAFT

12-19-2019

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public



12-19-2019

EXHIBIT A

(Hope Center Property Description)

DRAFT

12-19-2019

EXHIBIT B  
(Parcel Map)

DRAFT

12-19-2019

RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

Goldfarb & Lipman LLP  
1300 Clay Street, Eleventh Floor  
Oakland, CA 94612  
Attn: Heather Gould

---

---

**DECLARATION OF AND AGREEMENT REGARDING COVENANTS, CONDITIONS  
AND RESTRICTIONS  
PROVIDING FOR RECIPROCAL EASEMENTS, JOINT USE AND  
MAINTENANCE FOR THE BFHP HOPE CENTER**

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EXHIBIT A ..... HOPE CENTER PROPERTY DESCRIPTION

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**OWNER'S STATEMENT**

(I, WE) HEREBY STATE THAT (I, WE) (AM, ARE) THE OWNER(S) OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN THE LAND DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES ON THE HEREIN EMBODIED PARCEL MAP ENTITLED "PARCEL MAP 11051" CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA". THAT (I, WE) CONSENT TO THE PREPARATION AND FILING OF THIS PARCEL MAP.

OWNER(S): CITY OF BERKELEY, A MUNICIPAL CORPORATION  
 BY: \_\_\_\_\_  
 NAME: \_\_\_\_\_  
 TITLE: \_\_\_\_\_

**OWNER'S ACKNOWLEDGEMENT**

A NOTARY PUBLIC OR OTHER OFFICE COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THE DOCUMENT.

STATE OF CALIFORNIA )  
 ) S.S.  
 COUNTY OF \_\_\_\_\_ )  
 ON \_\_\_\_\_, 20\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT, THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

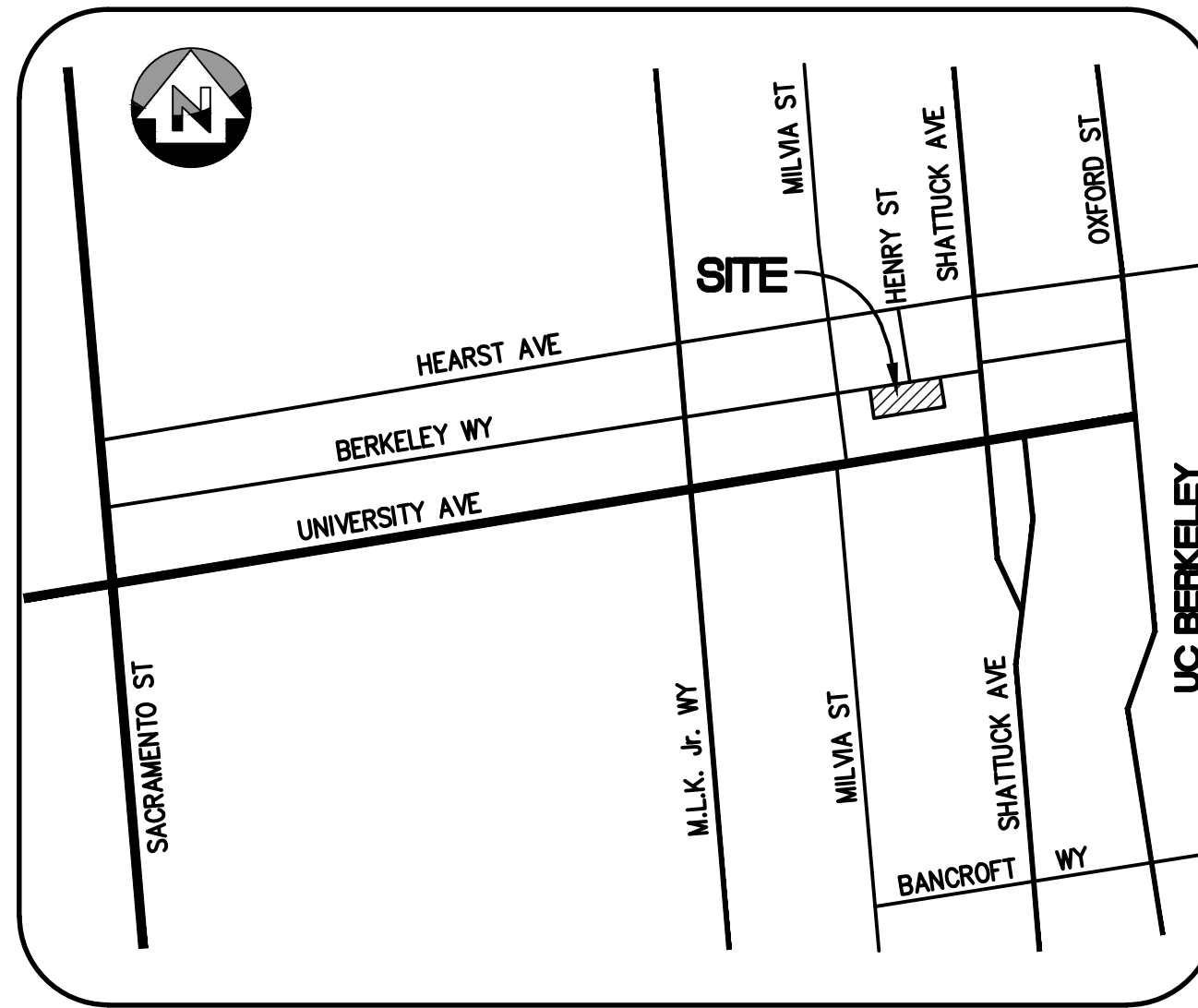
I CERTIFY UNDER PENALTY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.  
 WITNESS MY HAND AND OFFICIAL SEAL

SIGNATURE: \_\_\_\_\_ NOTARY PUBLIC  
 \_\_\_\_\_ PRINTED NAME  
 MY COMMISSION EXPIRES: \_\_\_\_\_  
 MY COMMISSION NUMBER: \_\_\_\_\_  
 COUNTY OF PRINCIPAL PLACE OF BUSINESS: \_\_\_\_\_

**SURVEYOR'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF \_\_\_\_\_ IN AUGUST, 2019. I HEREBY STATE THIS PARCEL MAP CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE PARCEL MAP, IF ANY. I HEREBY STATE THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE: \_\_\_\_\_ PRELIMINARY  
 \_\_\_\_\_  
 KELLY S. JOHNSON, PLS  
 L.S. NO. 9126



**VICINITY MAP**  
 N.T.S.

**CITY ENGINEER'S STATEMENT**

I HAVE EXAMINED THIS MAP AND THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARS ON THE TENTATIVE MAP (IF ANY) AND ANY APPROVED ALTERATIONS THEREOF. THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATE: \_\_\_\_\_  
 \_\_\_\_\_  
 NISHA A. PATEL, RCE 72491  
 CITY ENGINEER

**CITY CONSULTANT SURVEYOR'S STATEMENT**

THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. I, \_\_\_\_\_, DO HEREBY STATE THAT IT HAS BEEN EXAMINED BY ME, OR UNDER DIRECTION BY CITY OF BERKELEY STAFF, AND I AM SATISFIED THAT IT IS TECHNICALLY CORRECT.

DATE: \_\_\_\_\_ PLS NO. \_\_\_\_\_

**PLANNING DIRECTOR'S STATEMENT**

THIS MAP HAS BEEN APPROVED BY THE PLANNING DIRECTOR, CITY OF BERKELEY ON 20\_\_\_\_, AND WHEN RECORDED BECOMES THE OFFICIAL MAP OF THIS LAND DIVISION.

DATE: \_\_\_\_\_  
 \_\_\_\_\_  
 TIMOTHY BURROUGHS  
 PLANNING DIRECTOR

**CLERK OF THE BOARD OF SUPERVISORS CERTIFICATE**

I, ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 66492 AND 66493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

ANIKA CAMPBELL-BELTON  
 CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA  
 DATE: \_\_\_\_\_  
 BY: \_\_\_\_\_  
 DEPUTY COUNTY CLERK

**COUNTY RECORDER'S STATEMENT**

FILED THIS FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OR PARCEL MAPS, AT PAGES \_\_\_\_\_, AT THE REQUEST OF \_\_\_\_\_ TITLE COMPANY.

FEE: \_\_\_\_\_  
 SERIES: \_\_\_\_\_  
 MELISSA WILK  
 COUNTY RECORDER IN AND FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA  
 BY: \_\_\_\_\_  
 DEPUTY RECORDER

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- SHEET 2 LAND OF THE CITY OF BERKELEY
- SHEET 3 KEY MAP
- SHEET 4 PARCEL A LEVEL 1 DETAILS
- SHEET 5 PARCEL A LEVEL 2 DETAILS
- SHEET 6 PARCEL A LEVEL 3 AND UP DETAILS
- SHEET 7 PARCEL B LEVEL 1 DETAILS
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- SHEET 9 PARCEL C LEVEL 1 DETAILS
- SHEET 10 PARCEL C LEVEL 2 DETAILS
- SHEET 11 PARCEL C LEVEL 3 AND UP DETAILS

**PARCEL MAP NO. 11051**

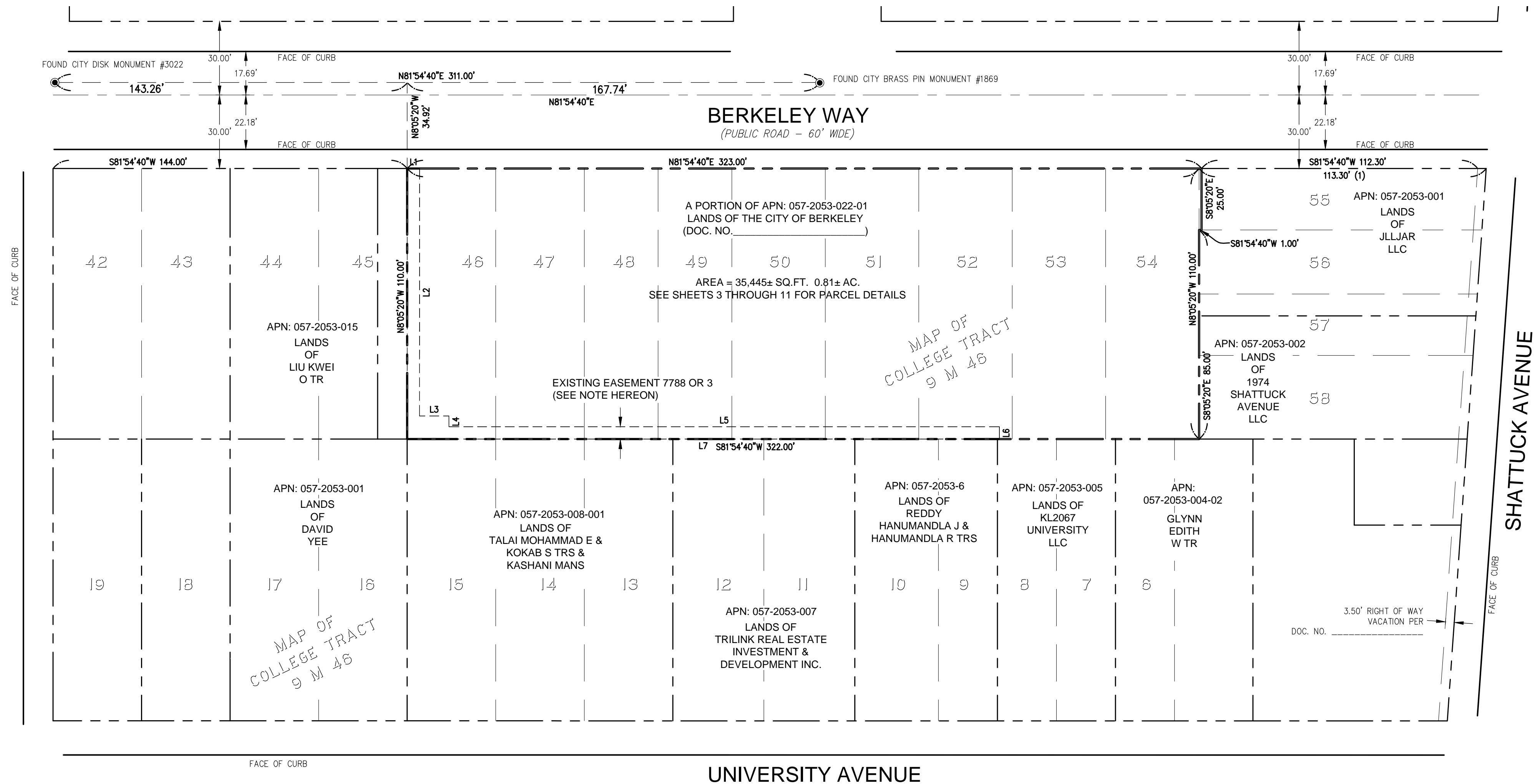
CONSISTING OF THREE AIR RIGHTS PARCELS  
 BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
 "MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
 ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

**SANDIS** CIVIL ENGINEERS SURVEYORS PLANNERS  
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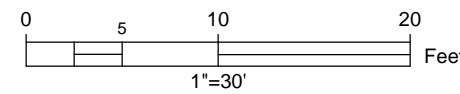
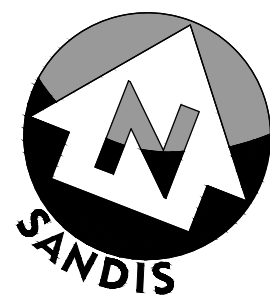


**BASIS OF BEARINGS**

THE BEARINGS SHOWN AS NORTH 81°54'40" EAST BETWEEN FOUND MONUMENTS, ON THE MONUMENT LINE OF BERKELEY WAY, AS DEPICTED ON TRACT MAP 7888, FILED SEPTEMBER 3, 2009 IN BOOK 305 OF MAPS, AT PAGES 18-20, ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

**SURVEY REFERENCES**

- (1) MAP OF COLLEGE TRACT, BOOK 9 OF MAPS, PAGE 46, ALAMEDA COUNTY RECORDS
- (2) TRACT MAP NO. 7888, BOOK 305 OF MAPS, PAGE 20, ALAMEDA COUNTY RECORDS
- (3) EXISTING PEDESTRIAN PASSAGE EASEMENT BOOK 7788, PAGE 3
- (4) AN EASEMENT, NOT CLEARLY DEFINED OF RECORD, FOR PEDESTRIAN PASSAGE RECORDED SEPTEMBER 21, 1955, BOOK 7788, PAGE 3, OFFICIAL RECORDS. IT IS THE INTENT TO DEFINE THE LOCATION OF SAID EASEMENT TO THE AREA SHOWN HEREON AS "PRIVATE EMERGENCY EGRESS EASEMENT BENEFIT OF LOTS 9, 10, 11 AND 12", WHICH ARE ADJOINING LOTS SHOWN ON THE MAP OF COLLEGE TRACT BERKELEY.



| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 5.01   | N81° 55' 05.58"E |
| L2   | 100.62 | S08° 05' 07.27"E |
| L3   | 12.00  | N81° 52' 23.81"E |
| L4   | 4.38   | S08° 05' 20.00"E |
| L5   | 223.80 | N81° 54' 40.00"E |
| L6   | 5.00   | S08° 05' 20.00"E |
| L7   | 240.81 | S81° 54' 40.00"W |

**LEGEND**

- SUBJECT EXTERIOR PROPERTY LINES
- VACATED LOT LINE
- AIR RIGHT PARCEL LINE
- FACE OF CURB
- CENTERLINE ROAD
- LOT LINE
- EASEMENT LINE (#)
- RECORD REFERENCE

NOTE: IT IS THE INTENT TO RELOCATE EXISTING EASEMENT 7788, PAGE 3 TO THE AREA SHOWN HEREON AS "EXISTING EASEMENT 7788 OR 3"

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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CITY OF BERKELEY COUNTY OF ALAMEDA

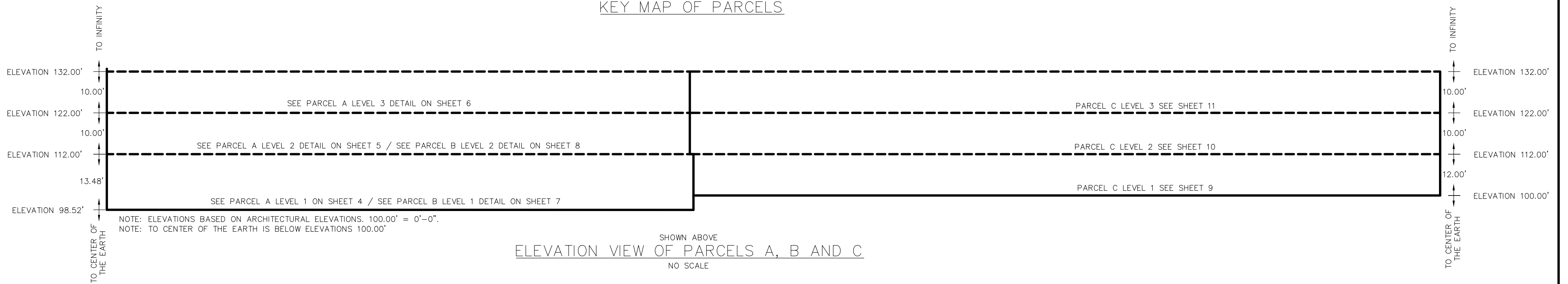
SEPTEMBER, 2019

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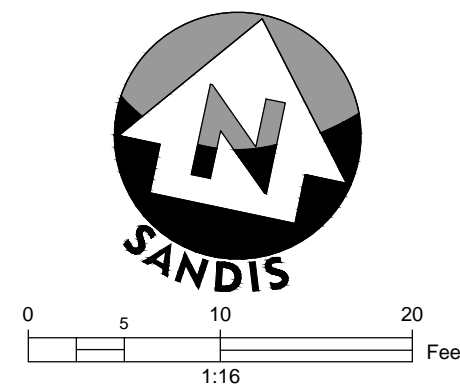
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OWNER/SUBDIVIDER  
CITY OF BERKELEY

KEY MAP OF PARCELS



FOR PARCEL A DETAILS SEE SHEETS 4-6  
FOR PARCEL B DETAILS SEE SHEETS 7-8  
FOR PARCEL C DETAILS SEE SHEETS 9-11



SHOWN ABOVE  
PARCEL A, B AND C LEVEL 1  
SCALE: 1"=16'

# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

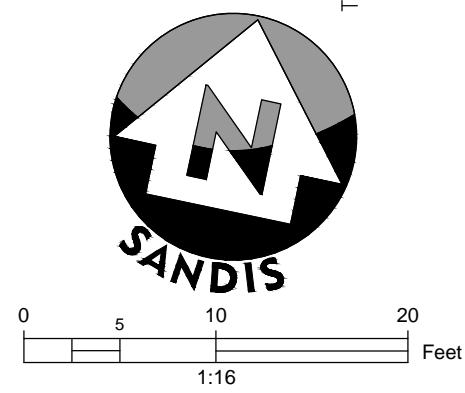
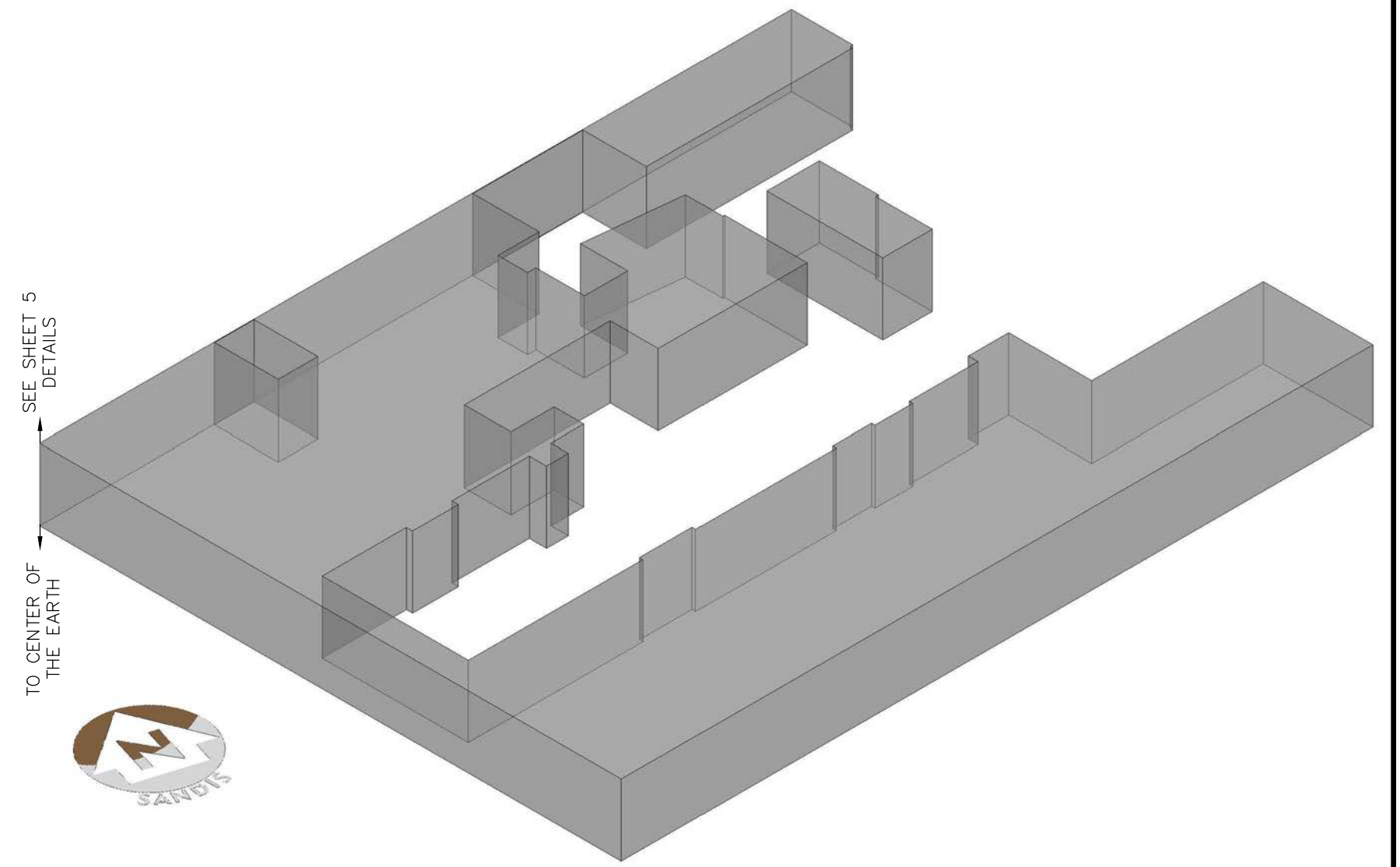
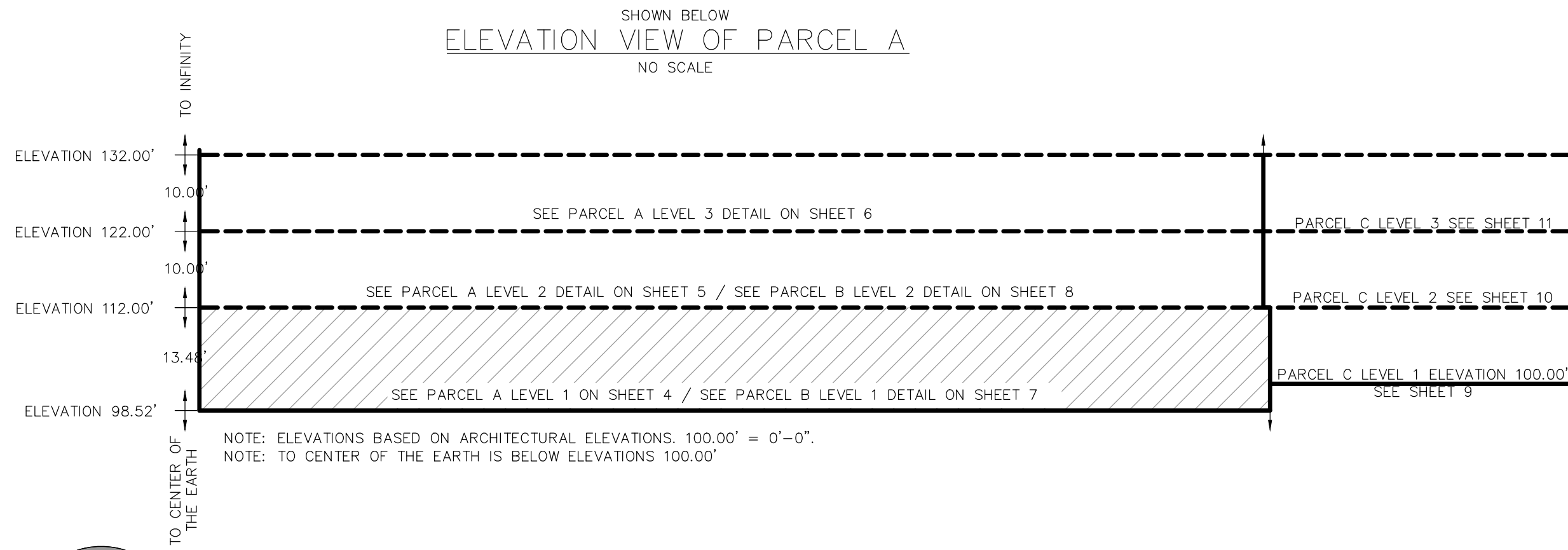
CONSISTING OF 11 SHEETS

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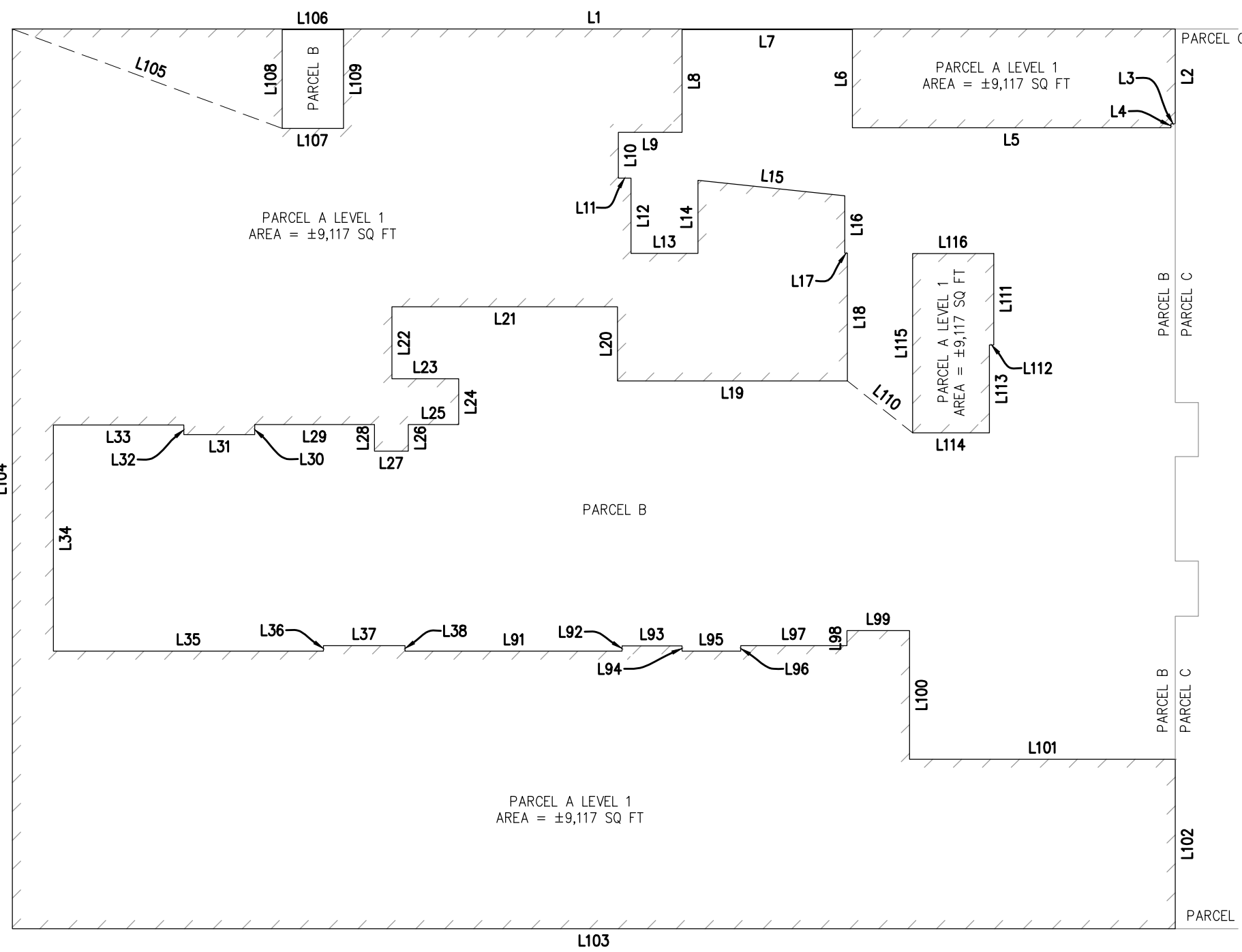
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF





SHOWN BELOW  
PARCEL A LEVEL 1  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 142.10 | N81° 54' 40.00"E |
| L2   | 11.59  | S08° 05' 20.00"E |
| L3   | 0.52   | S81° 54' 40.00"W |
| L4   | 0.50   | S08° 05' 20.00"E |
| L5   | 38.93  | S81° 54' 40.00"W |
| L6   | 12.00  | N08° 05' 21.43"W |
| L7   | 20.83  | S81° 54' 40.00"W |
| L8   | 12.55  | S08° 05' 20.00"E |
| L9   | 7.77   | S81° 54' 40.00"W |
| L10  | 5.59   | S08° 05' 20.00"E |
| L11  | 1.55   | N81° 54' 40.00"E |
| L12  | 9.20   | S08° 05' 20.00"E |
| L13  | 8.18   | N81° 54' 40.00"E |
| L14  | 8.93   | N08° 05' 20.00"W |
| L15  | 18.02  | N87° 54' 40.00"E |
| L16  | 7.03   | S08° 05' 20.00"E |
| L17  | 0.33   | N81° 54' 40.00"E |
| L18  | 15.62  | S08° 05' 20.00"E |
| L19  | 28.09  | S81° 54' 40.00"W |
| L20  | 9.08   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L21  | 27.58  | S81° 54' 40.00"W |
| L22  | 8.82   | S08° 05' 20.00"E |
| L23  | 8.18   | N81° 54' 40.00"E |
| L24  | 5.59   | S08° 05' 20.00"E |
| L25  | 6.18   | S81° 54' 40.00"W |
| L26  | 3.26   | S08° 05' 20.00"E |
| L27  | 4.13   | S81° 54' 40.00"W |
| L28  | 3.26   | N08° 05' 20.00"W |
| L29  | 14.62  | S81° 54' 40.00"W |
| L30  | 1.22   | S08° 05' 20.00"E |
| L31  | 8.68   | S81° 54' 40.00"W |
| L32  | 1.17   | N08° 05' 20.00"W |
| L33  | 15.93  | S81° 54' 40.00"W |
| L34  | 27.65  | S08° 05' 20.00"E |
| L35  | 33.01  | N81° 54' 40.00"E |
| L36  | 0.67   | N08° 05' 20.00"W |
| L37  | 9.97   | N81° 54' 40.00"E |
| L38  | 0.67   | S08° 05' 20.00"E |
| L39  | 26.52  | N81° 54' 40.00"E |
| L40  | 0.65   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L93  | 7.33   | N81° 54' 40.00"E |
| L94  | 0.65   | S08° 05' 20.00"E |
| L95  | 7.17   | N81° 54' 40.00"E |
| L96  | 0.67   | N08° 05' 20.00"W |
| L97  | 12.99  | N81° 54' 40.00"E |
| L98  | 1.83   | N08° 05' 20.00"W |
| L99  | 7.65   | N81° 54' 40.00"E |
| L100 | 15.71  | S08° 05' 20.00"E |
| L101 | 32.47  | N81° 54' 40.00"E |
| L102 | 20.72  | S08° 05' 20.00"E |
| L103 | 142.10 | S81° 54' 40.00"W |
| L104 | 110.00 | N08° 05' 20.00"W |
| L105 | 35.14  | S77° 49' 48.20"E |
| L106 | 7.49   | N81° 54' 40.00"E |
| L107 | 7.49   | S81° 54' 40.00"W |
| L108 | 12.07  | N08° 05' 20.00"W |
| L109 | 12.07  | S08° 05' 20.00"E |
| L110 | 10.18  | S59° 36' 30.50"E |
| L111 | 11.16  | S08° 05' 20.00"E |
| L112 | 0.53   | S81° 54' 40.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L113 | 10.75  | S08° 04' 54.42"E |
| L114 | 9.38   | S81° 54' 40.00"W |
| L115 | 21.91  | N08° 05' 20.00"W |
| L116 | 9.92   | N81° 54' 40.00"E |

LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

PARCEL MAP NO. 11051

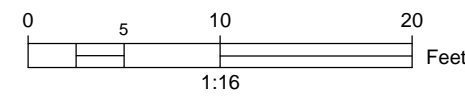
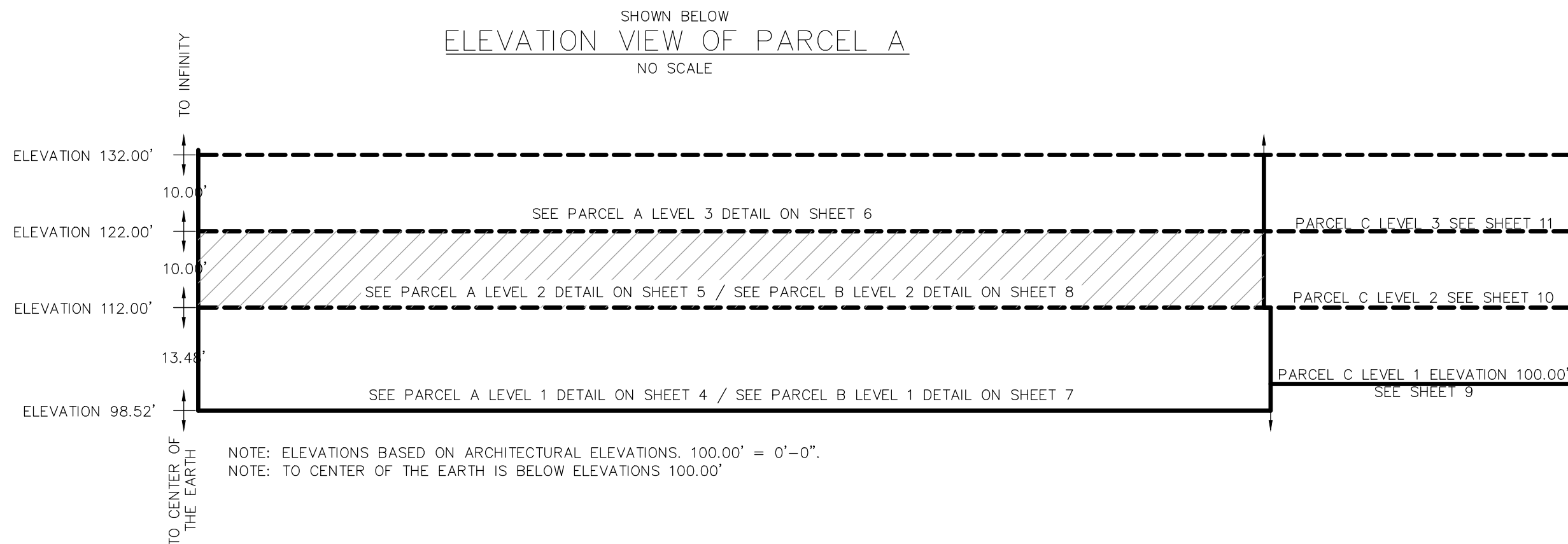
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CITY OF BERKELEY COUNTY OF ALAMEDA

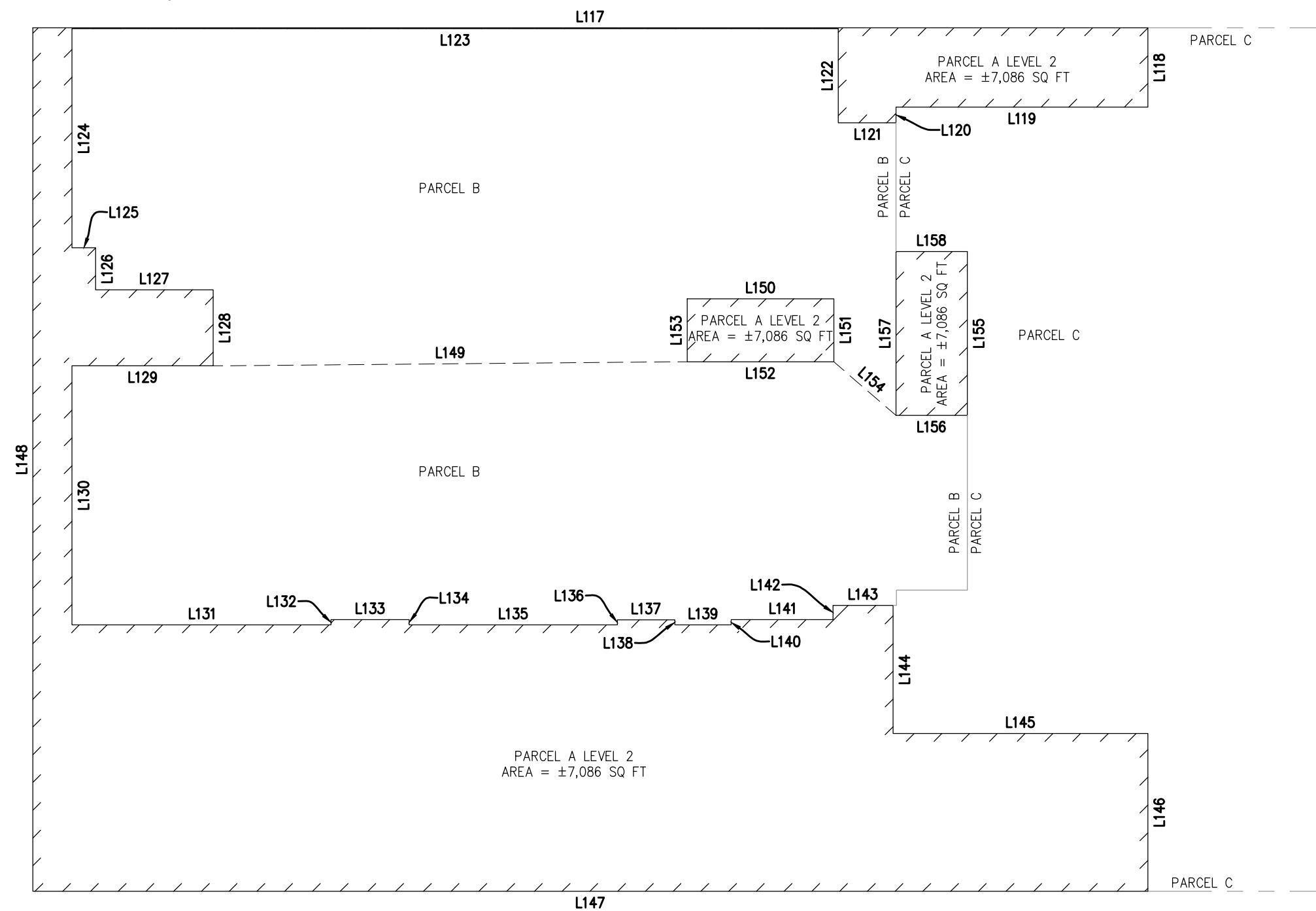
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

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SHOWN BELOW  
**PARCEL A LEVEL 2**  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L117 | 142.10 | N81° 54' 40.00"E |
| L118 | 10.09  | S08° 05' 20.00"E |
| L119 | 32.09  | S81° 54' 40.00"W |
| L120 | 2.00   | S08° 05' 20.00"E |
| L121 | 7.35   | S81° 54' 40.00"W |
| L122 | 12.00  | N08° 05' 21.43"W |
| L123 | 97.65  | S81° 54' 40.00"W |
| L124 | 27.94  | S08° 05' 20.00"E |
| L125 | 3.00   | N81° 54' 40.00"E |
| L126 | 5.35   | S08° 05' 20.00"E |
| L127 | 14.99  | N81° 54' 40.00"E |
| L128 | 9.68   | S08° 05' 19.13"E |
| L129 | 17.99  | S81° 54' 46.67"W |
| L130 | 33.01  | S08° 05' 20.00"E |
| L131 | 33.01  | N81° 54' 40.00"E |
| L132 | 0.67   | N08° 05' 20.00"W |
| L133 | 9.97   | N81° 54' 40.00"E |
| L134 | 0.67   | S08° 05' 20.00"E |
| L135 | 26.52  | N81° 54' 40.00"E |
| L136 | 0.65   | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L137 | 7.33   | N81° 54' 40.00"E |
| L138 | 0.65   | S08° 05' 20.00"E |
| L139 | 7.17   | N81° 54' 40.00"E |
| L140 | 0.67   | N08° 05' 20.00"W |
| L141 | 12.99  | N81° 54' 40.00"E |
| L142 | 1.83   | N08° 05' 20.00"W |
| L143 | 7.65   | N81° 54' 40.00"E |
| L144 | 16.33  | S08° 05' 20.00"E |
| L145 | 32.47  | N81° 54' 40.00"E |
| L146 | 20.09  | S08° 05' 20.00"E |
| L147 | 142.10 | S81° 54' 40.00"W |
| L148 | 110.00 | N08° 05' 20.00"W |
| L149 | 60.41  | N81° 24' 59.76"E |
| L150 | 18.67  | N81° 54' 40.00"E |
| L151 | 8.02   | S08° 05' 20.00"E |
| L152 | 18.67  | S81° 54' 40.00"W |
| L153 | 8.02   | N08° 05' 20.00"W |
| L154 | 10.47  | S57° 19' 23.65"E |
| L155 | 20.89  | S08° 05' 20.00"E |
| L156 | 9.08   | S81° 54' 40.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L157 | 20.89  | N08° 05' 20.00"W |
| L158 | 9.08   | N81° 54' 40.00"E |

**LEGEND**

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

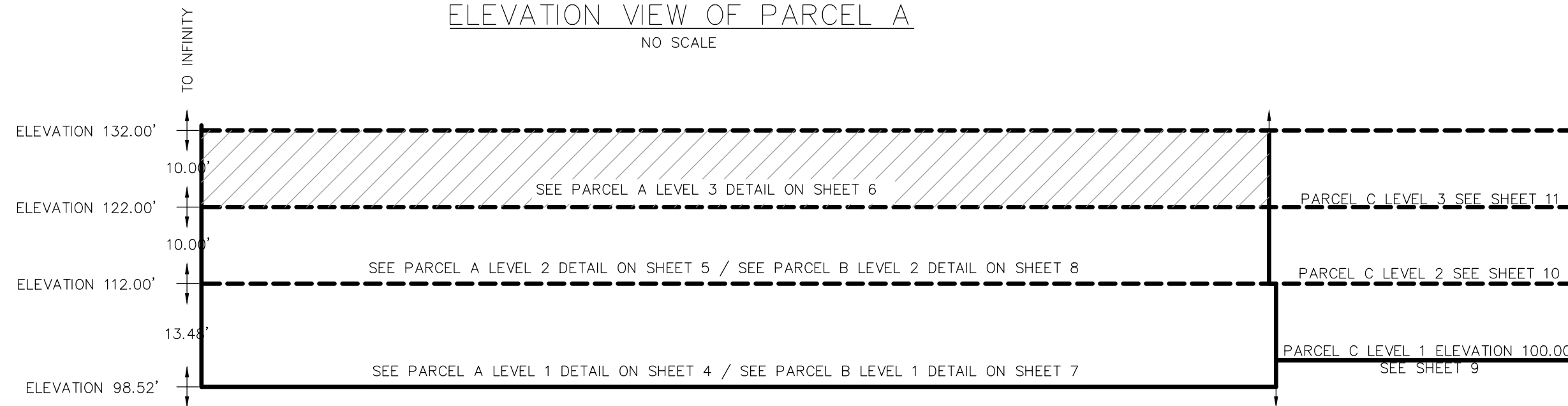
CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

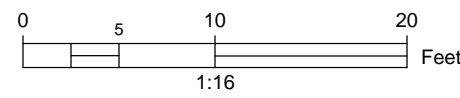
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

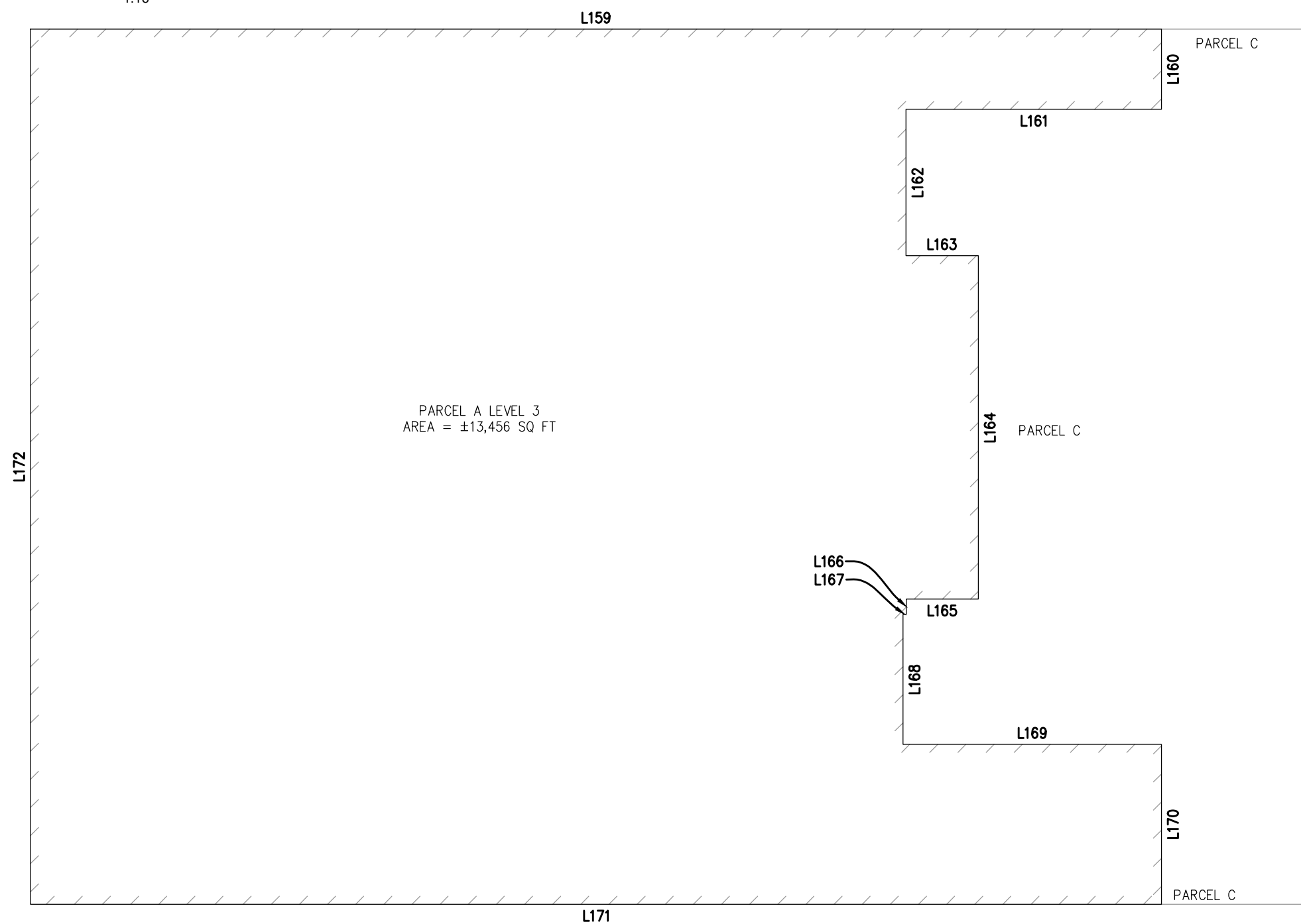
SHOWN BELOW  
ELEVATION VIEW OF PARCEL A  
NO SCALE



NOTE: ELEVATIONS BASED ON ARCHITECTURAL ELEVATIONS. 100.00' = 0'-0".  
NOTE: TO CENTER OF THE EARTH IS BELOW ELEVATIONS 100.00'

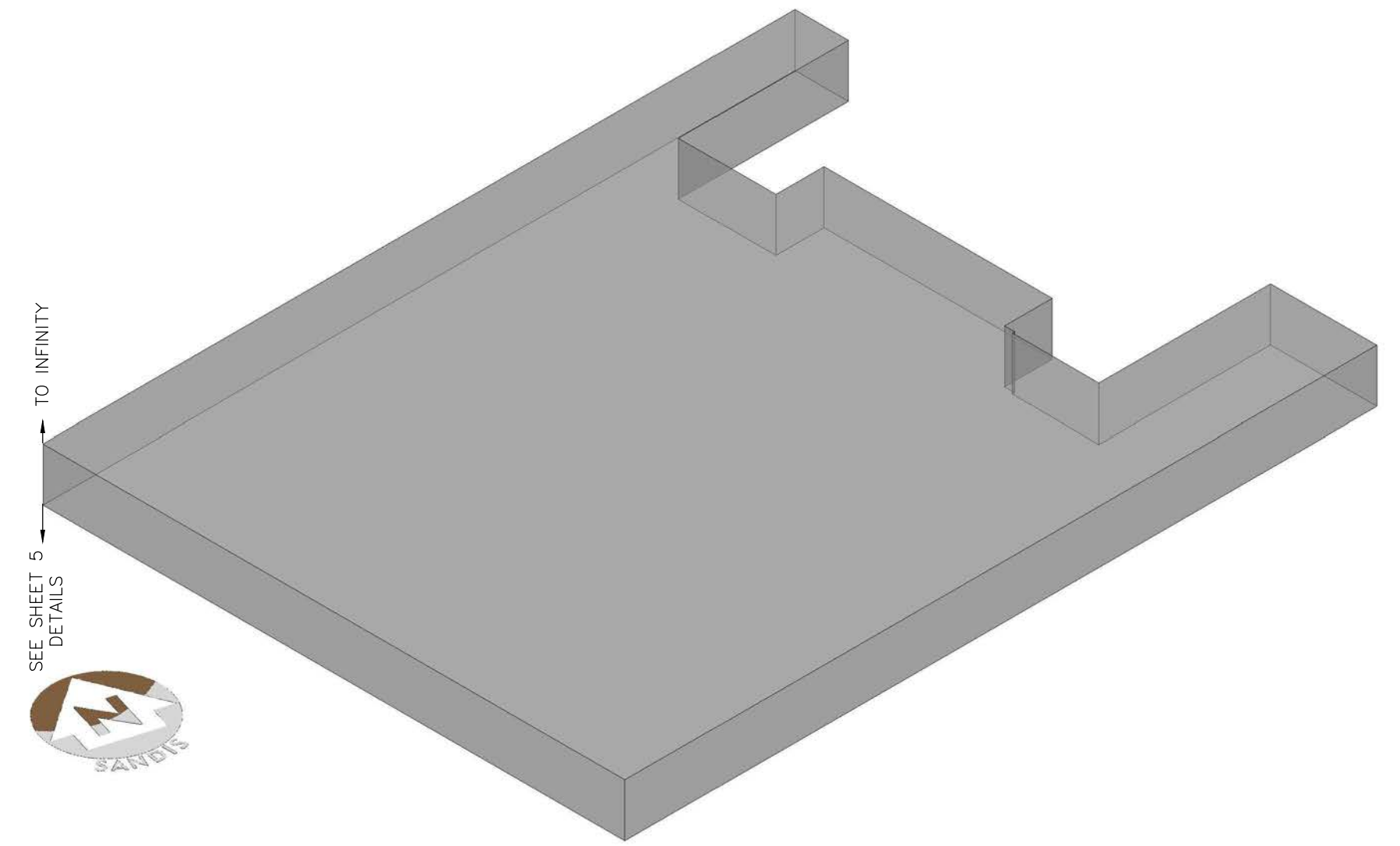


SHOWN BELOW  
PARCEL A LEVEL 3 AND UP  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L159 | 142.10 | N81° 54' 40.00"E |
| L160 | 10.09  | S08° 05' 20.00"E |
| L161 | 32.09  | S81° 54' 40.00"W |
| L162 | 18.40  | S08° 05' 20.00"E |
| L163 | 9.08   | N81° 54' 40.00"E |
| L164 | 43.16  | S08° 05' 20.00"E |
| L165 | 9.02   | S81° 54' 40.00"W |
| L166 | 1.93   | S08° 05' 20.00"E |
| L167 | 0.44   | S81° 54' 40.00"W |
| L168 | 16.33  | S08° 05' 20.00"E |
| L169 | 32.47  | N81° 54' 40.00"E |
| L170 | 20.09  | S08° 05' 20.00"E |
| L171 | 142.10 | S81° 54' 40.00"W |
| L172 | 110.00 | N08° 05' 20.00"W |

SHOWN ABOVE  
ISOMETRIC VIEW OF PARCEL A LEVEL 3  
SCALE: 1"=20'



LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

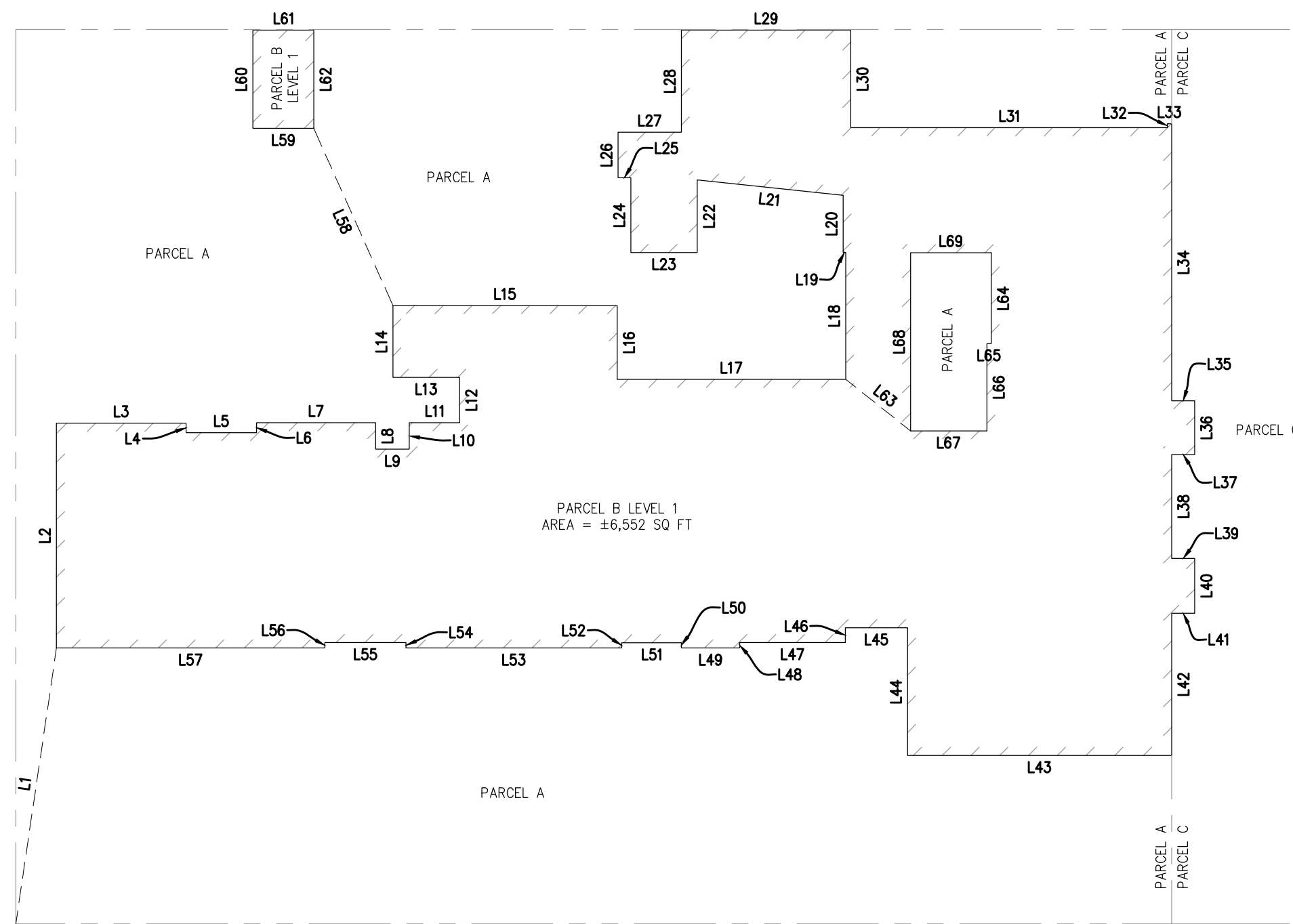
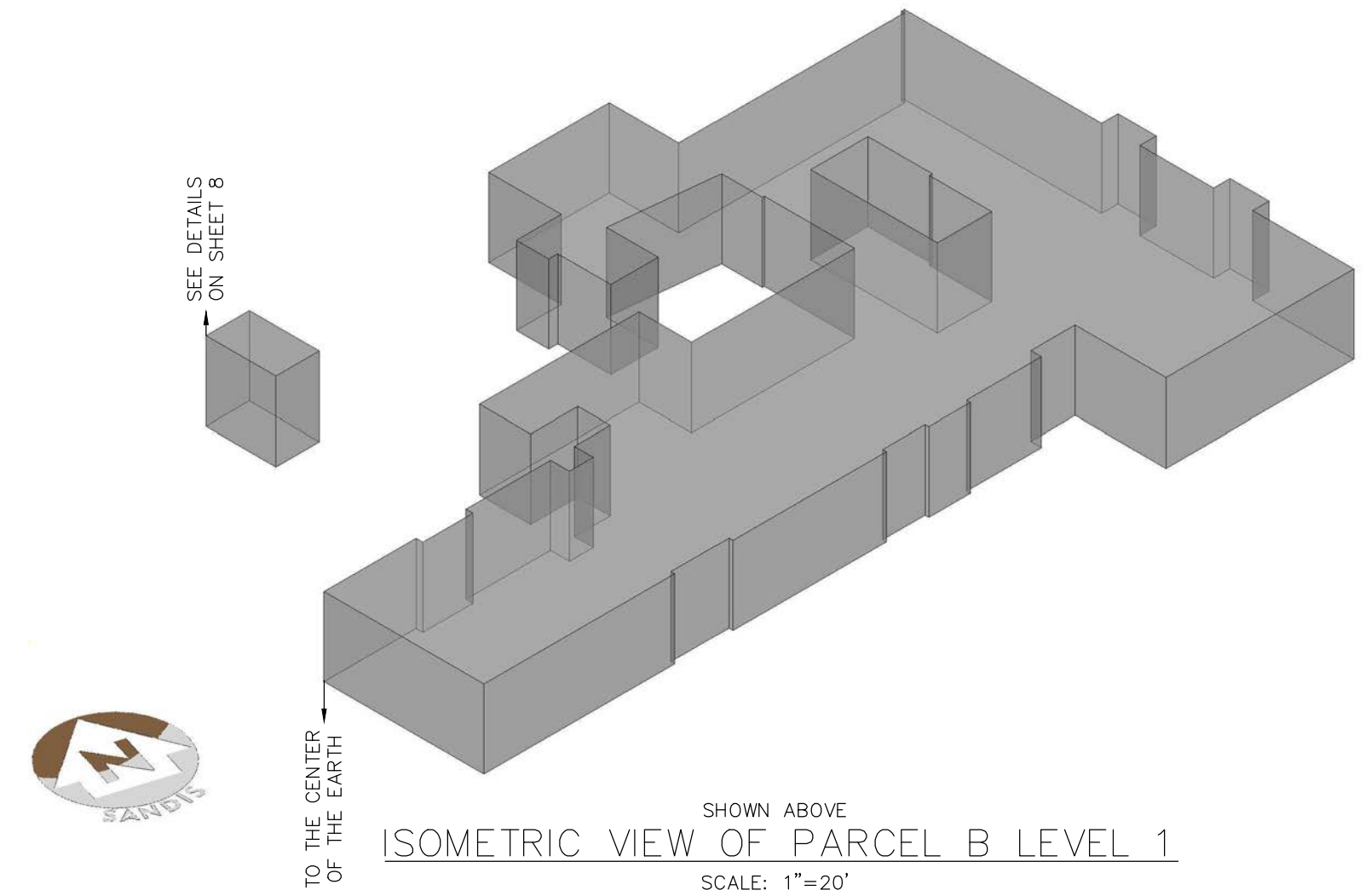
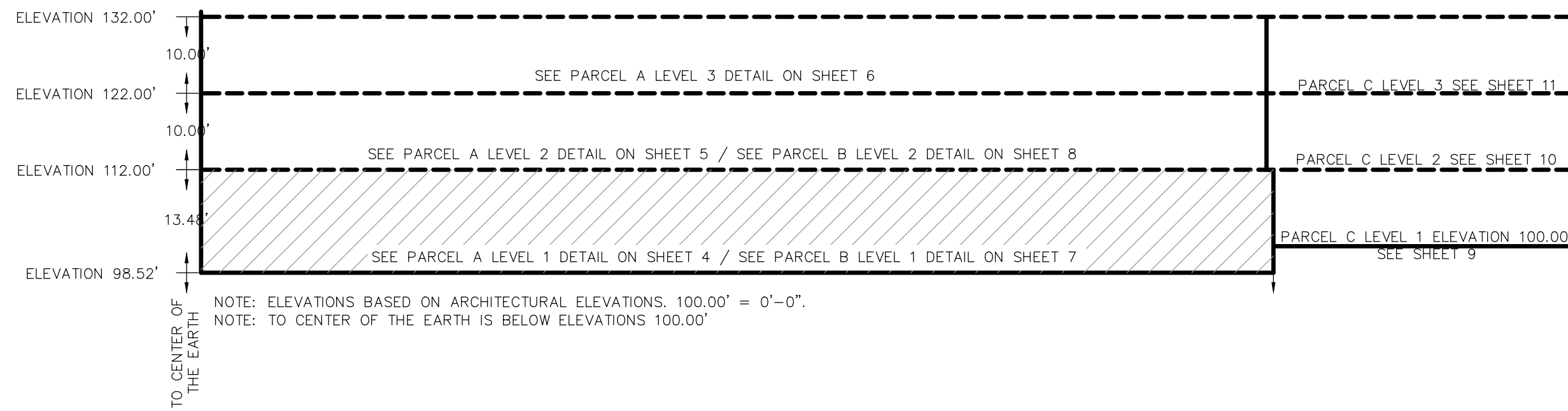
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

SHOWN BELOW  
ELEVATION VIEW OF PARCEL B  
NO SCALE



| Line | Length | Direction        |
|------|--------|------------------|
| L1   | 34.30  | N00° 18' 42.98"E |
| L2   | 27.65  | N08° 05' 20.00"W |
| L3   | 15.93  | N81° 54' 40.00"E |
| L4   | 1.17   | S08° 05' 20.00"E |
| L5   | 8.68   | N81° 54' 40.00"E |
| L6   | 1.22   | N08° 05' 20.00"W |
| L7   | 14.62  | N81° 54' 40.00"E |
| L8   | 3.26   | S08° 05' 20.00"E |
| L9   | 4.13   | N81° 54' 40.00"E |
| L10  | 3.26   | N08° 05' 20.00"W |
| L11  | 6.18   | N81° 54' 40.00"E |
| L12  | 5.59   | N08° 05' 20.00"W |
| L13  | 8.18   | S81° 54' 40.00"W |
| L14  | 8.82   | N08° 05' 20.00"W |
| L15  | 27.58  | N81° 54' 40.00"E |
| L16  | 9.08   | S08° 05' 20.00"E |
| L17  | 28.09  | N81° 54' 40.00"E |
| L18  | 15.62  | N08° 05' 20.00"W |
| L19  | 0.33   | S81° 54' 40.00"W |
| L20  | 7.03   | N08° 05' 20.00"W |

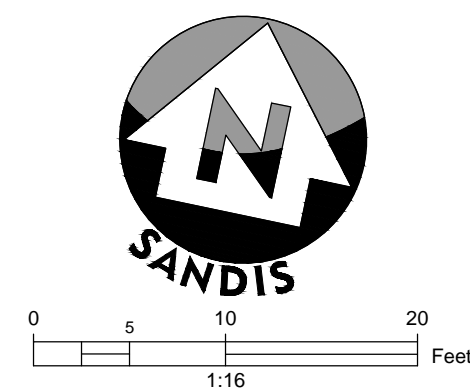
| Line | Length | Direction        |
|------|--------|------------------|
| L21  | 18.02  | S87° 54' 40.00"W |
| L22  | 8.93   | S08° 05' 20.00"E |
| L23  | 8.18   | S81° 54' 40.00"W |
| L24  | 9.20   | N08° 05' 20.00"W |
| L25  | 1.55   | S81° 54' 40.00"W |
| L26  | 5.59   | N08° 05' 20.00"W |
| L27  | 7.77   | N81° 54' 40.00"E |
| L28  | 12.55  | N08° 05' 20.00"W |
| L29  | 20.83  | N81° 54' 40.00"E |
| L30  | 12.00  | S08° 05' 21.43"E |
| L31  | 38.93  | N81° 54' 40.00"E |
| L32  | 0.50   | N08° 05' 20.00"W |
| L33  | 0.52   | N81° 54' 40.00"E |
| L34  | 34.08  | S08° 05' 20.00"E |
| L35  | 2.83   | N81° 54' 40.00"E |
| L36  | 6.62   | S08° 05' 20.00"E |
| L37  | 2.83   | S81° 54' 40.00"W |
| L38  | 12.76  | S08° 05' 20.00"E |
| L39  | 2.83   | N81° 54' 40.00"E |
| L40  | 6.75   | S08° 05' 20.00"E |

| Line | Length | Direction        |
|------|--------|------------------|
| L41  | 2.83   | S81° 54' 40.00"W |
| L42  | 17.48  | S08° 05' 20.00"E |
| L43  | 32.47  | S81° 54' 40.00"W |
| L44  | 15.71  | N08° 05' 20.00"W |
| L45  | 7.65   | S81° 54' 40.00"W |
| L46  | 1.83   | S08° 05' 20.00"E |
| L47  | 12.99  | S81° 54' 40.00"W |
| L48  | 0.67   | S08° 05' 20.00"E |
| L49  | 7.17   | S81° 54' 40.00"W |
| L50  | 0.65   | N08° 05' 20.00"W |
| L51  | 7.33   | S81° 54' 40.00"W |
| L52  | 0.65   | S08° 05' 20.00"E |
| L53  | 26.52  | S81° 54' 40.00"W |
| L54  | 0.67   | N08° 05' 20.00"W |
| L55  | 9.97   | S81° 54' 40.00"W |
| L56  | 0.67   | S08° 05' 20.00"E |
| L57  | 33.01  | S81° 54' 40.00"W |
| L58  | 23.87  | N32° 08' 40.92"W |
| L59  | 7.49   | S81° 54' 40.00"W |
| L60  | 12.07  | N08° 05' 20.00"W |

| Line | Length | Direction        |
|------|--------|------------------|
| L61  | 7.49   | N81° 54' 40.00"E |
| L62  | 12.07  | S08° 05' 20.00"E |
| L63  | 10.18  | S59° 36' 30.50"E |
| L64  | 11.16  | S08° 05' 20.00"E |
| L65  | 0.53   | S81° 54' 40.00"W |
| L66  | 10.75  | S08° 04' 54.42"E |
| L67  | 9.38   | S81° 54' 40.00"W |
| L68  | 21.91  | N08° 05' 20.00"W |
| L69  | 9.92   | N81° 54' 40.00"E |

LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE



SHOWN ABOVE  
PARCEL B LEVEL 1  
SCALE: 1"=16'

# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY

COUNTY OF ALAMEDA

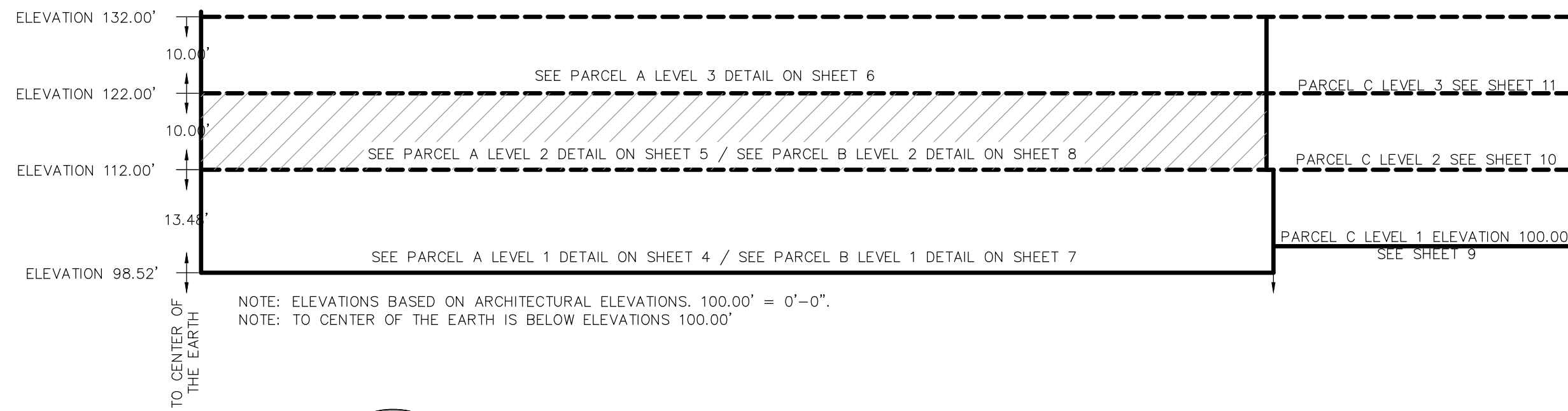
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

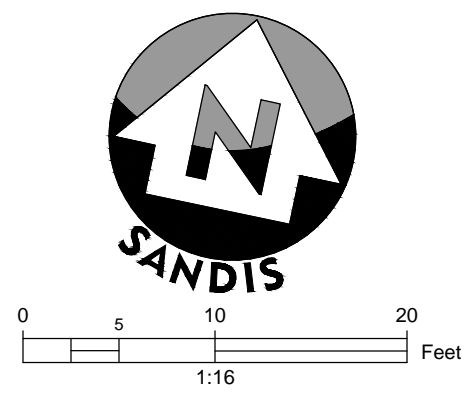
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF

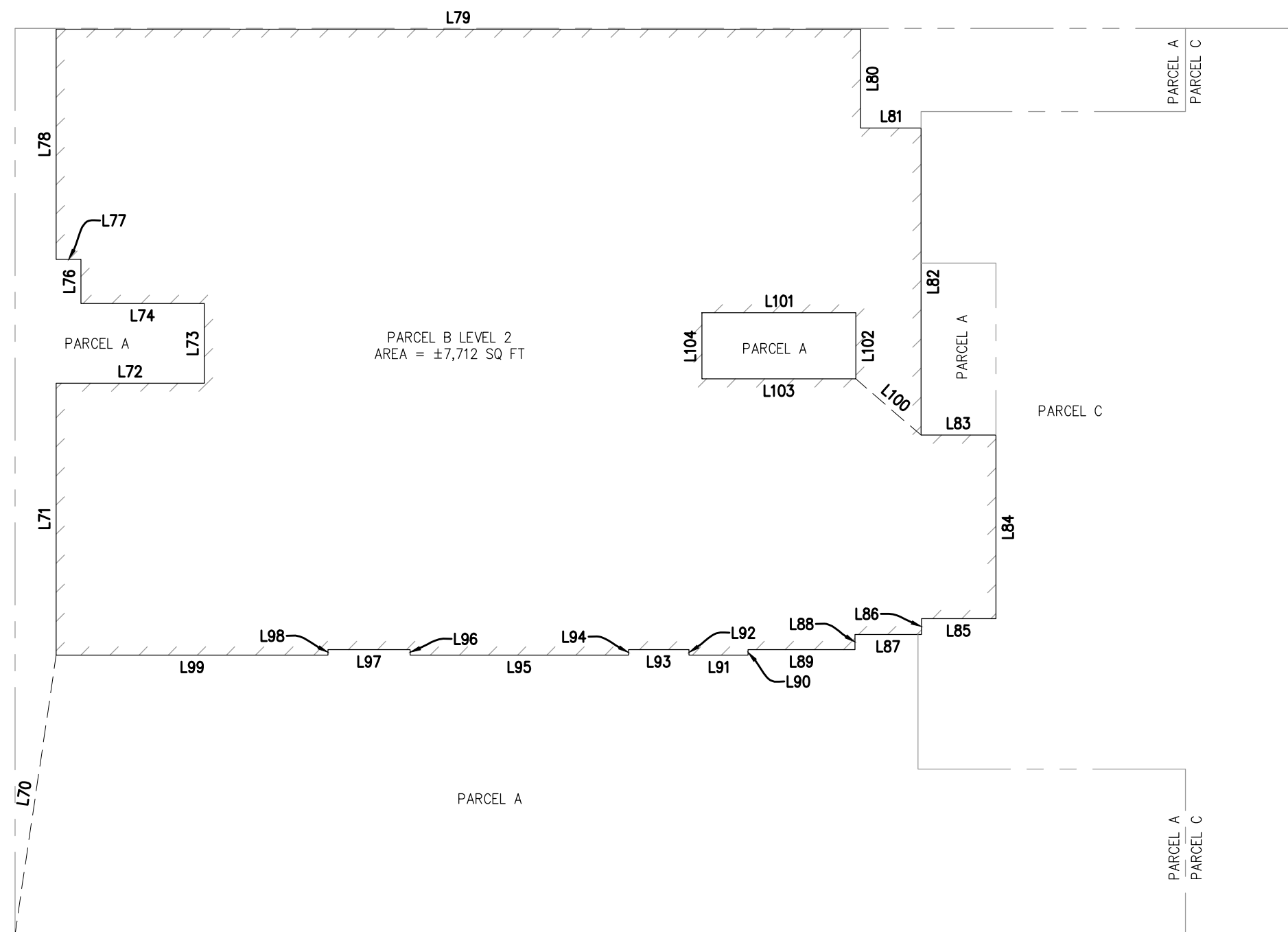
SHOWN BELOW  
ELEVATION VIEW OF PARCEL B  
NO SCALE



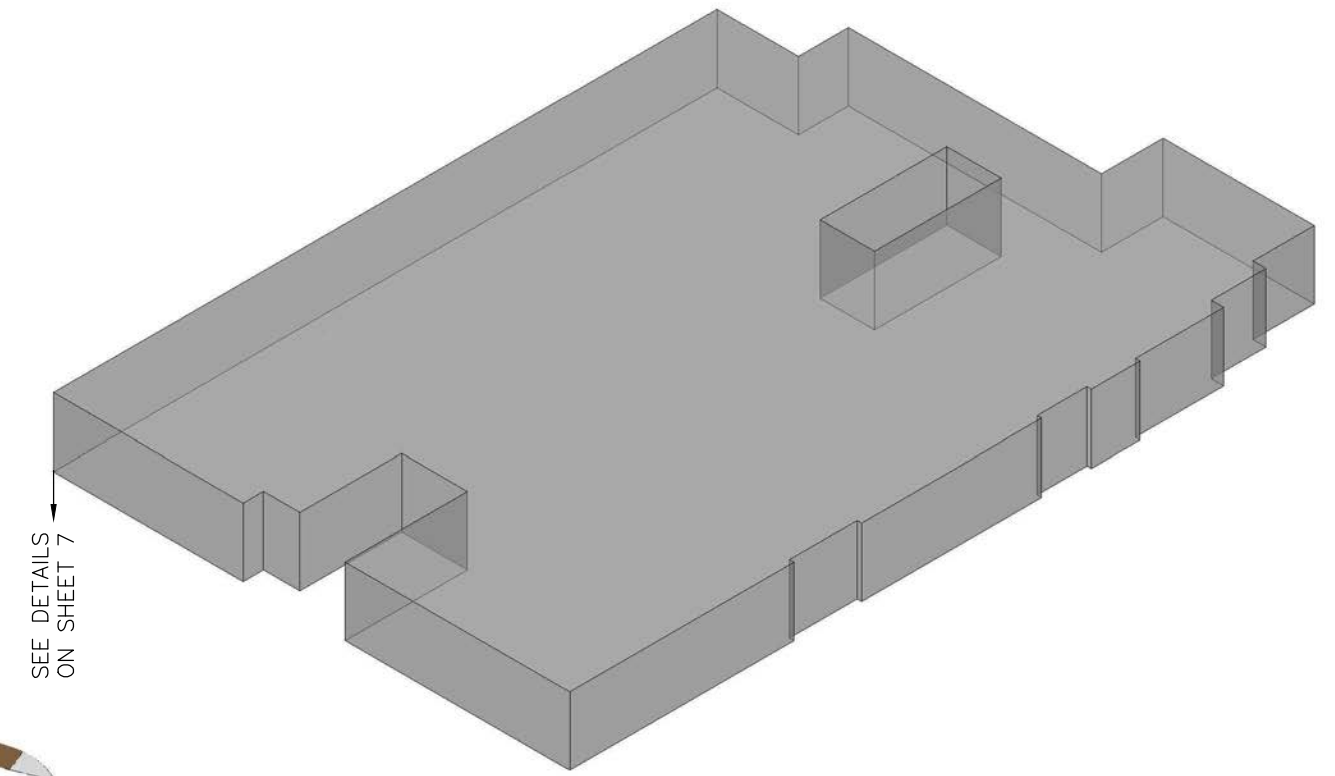
NOTE: ELEVATIONS BASED ON ARCHITECTURAL ELEVATIONS. 100.00' = 0'-0".  
NOTE: TO CENTER OF THE EARTH IS BELOW ELEVATIONS 100.00'



SHOWN BELOW  
PARCEL B LEVEL 2  
SCALE: 1"=16'



| Line | Length | Direction        |
|------|--------|------------------|
| L70  | 34.30  | N00° 18' 42.98"E |
| L71  | 33.01  | N08° 05' 20.00"W |
| L72  | 17.99  | N81° 54' 46.67"E |
| L73  | 9.68   | N08° 05' 19.13"W |
| L74  | 14.99  | S81° 54' 40.00"W |
| L76  | 5.35   | N08° 05' 20.00"W |
| L77  | 3.00   | S81° 54' 40.00"W |
| L78  | 27.94  | N08° 05' 20.00"W |
| L79  | 97.65  | N81° 54' 40.00"E |
| L80  | 12.00  | S08° 05' 21.43"E |
| L81  | 7.35   | N81° 54' 40.00"E |
| L82  | 37.28  | S08° 05' 20.00"E |
| L83  | 9.08   | N81° 54' 40.00"E |
| L84  | 22.27  | S08° 05' 20.00"E |
| L85  | 9.02   | S81° 54' 40.00"W |
| L86  | 1.93   | S08° 05' 20.00"E |
| L87  | 8.08   | S81° 54' 40.00"W |
| L88  | 1.83   | S08° 05' 20.00"E |
| L89  | 12.99  | S81° 54' 40.00"W |
| L90  | 0.67   | S08° 05' 20.00"E |



SHOWN ABOVE  
ISOMETRIC VIEW OF PARCEL B LEVEL 2  
SCALE: 1"=20'

| Line | Length | Direction        |
|------|--------|------------------|
| L91  | 7.17   | S81° 54' 40.00"W |
| L92  | 0.65   | N08° 05' 20.00"W |
| L93  | 7.33   | S81° 54' 40.00"W |
| L94  | 0.65   | S08° 05' 20.00"E |
| L95  | 26.52  | S81° 54' 40.00"W |
| L96  | 0.67   | N08° 05' 20.00"W |
| L97  | 9.97   | S81° 54' 40.00"W |
| L98  | 0.67   | S08° 05' 20.00"E |
| L99  | 33.01  | S81° 54' 40.00"W |
| L100 | 10.47  | S57° 19' 23.65"E |
| L101 | 18.67  | N81° 54' 40.00"E |
| L102 | 8.02   | S08° 05' 20.00"E |
| L103 | 18.67  | S81° 54' 40.00"W |
| L104 | 8.02   | N08° 05' 20.00"W |

LEGEND

- BUILDING INTERIOR PARCEL LINE
- ADJACENT PARCEL LINE
- PARCEL TIE LINE
- LOT LINE

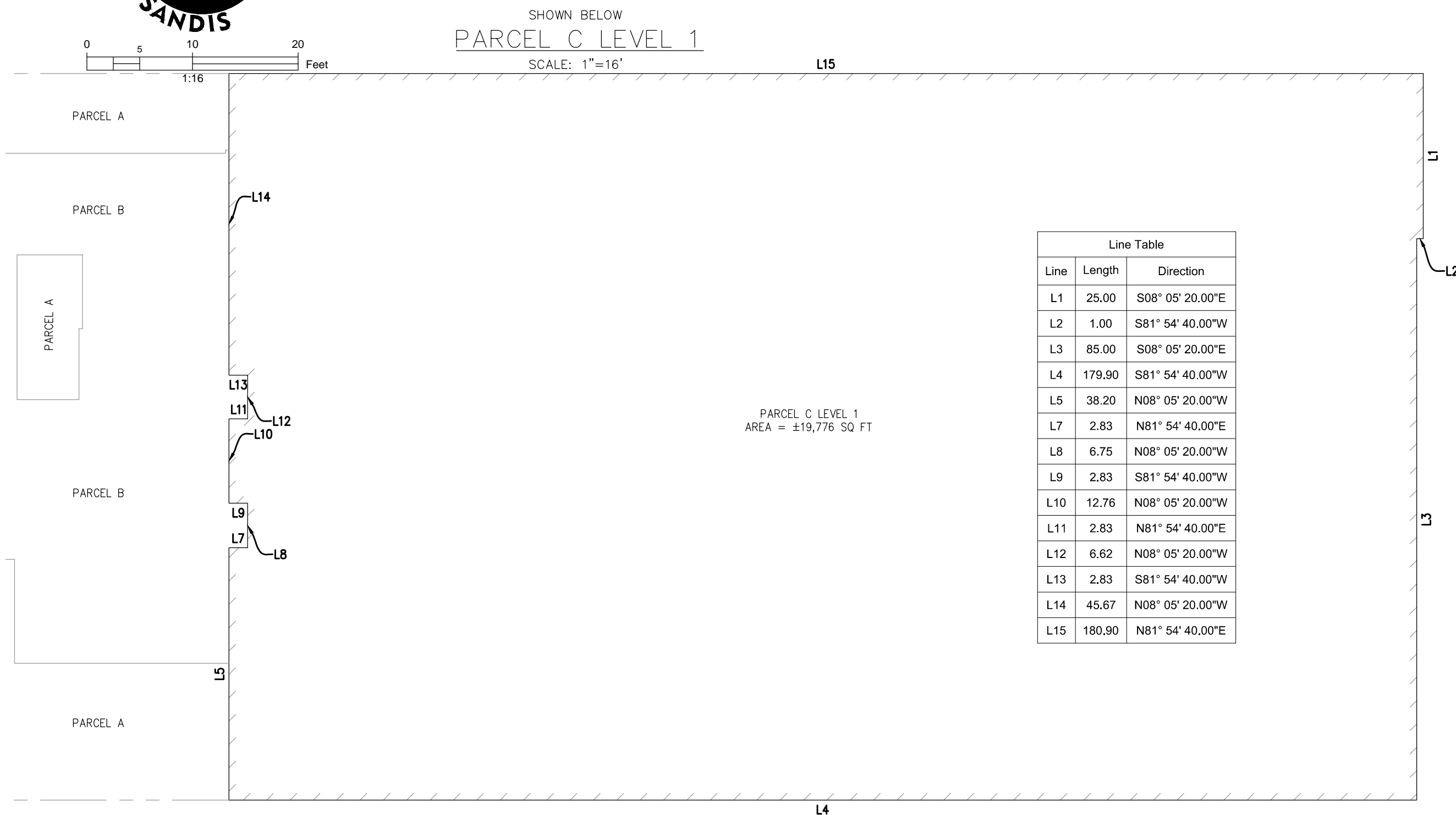
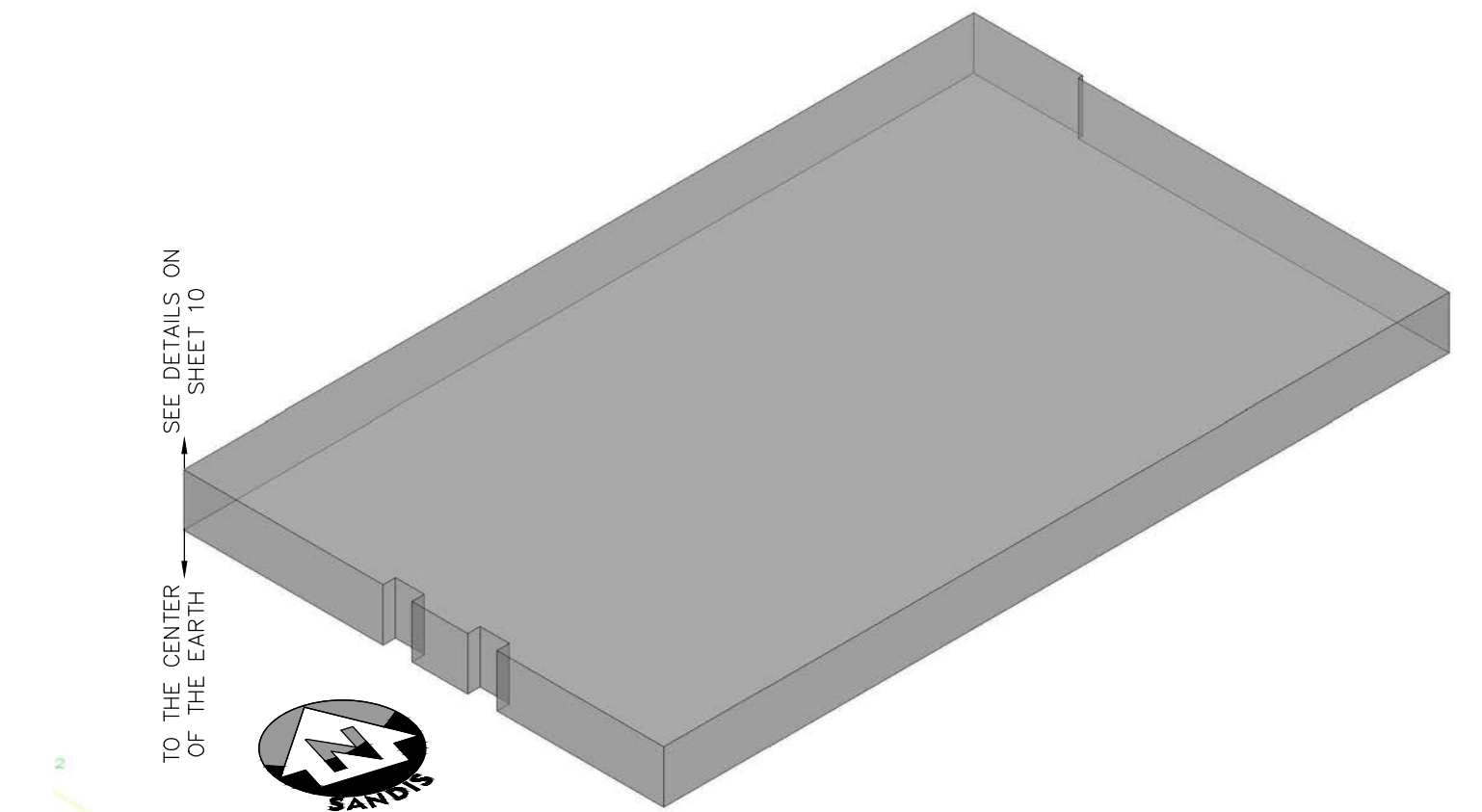
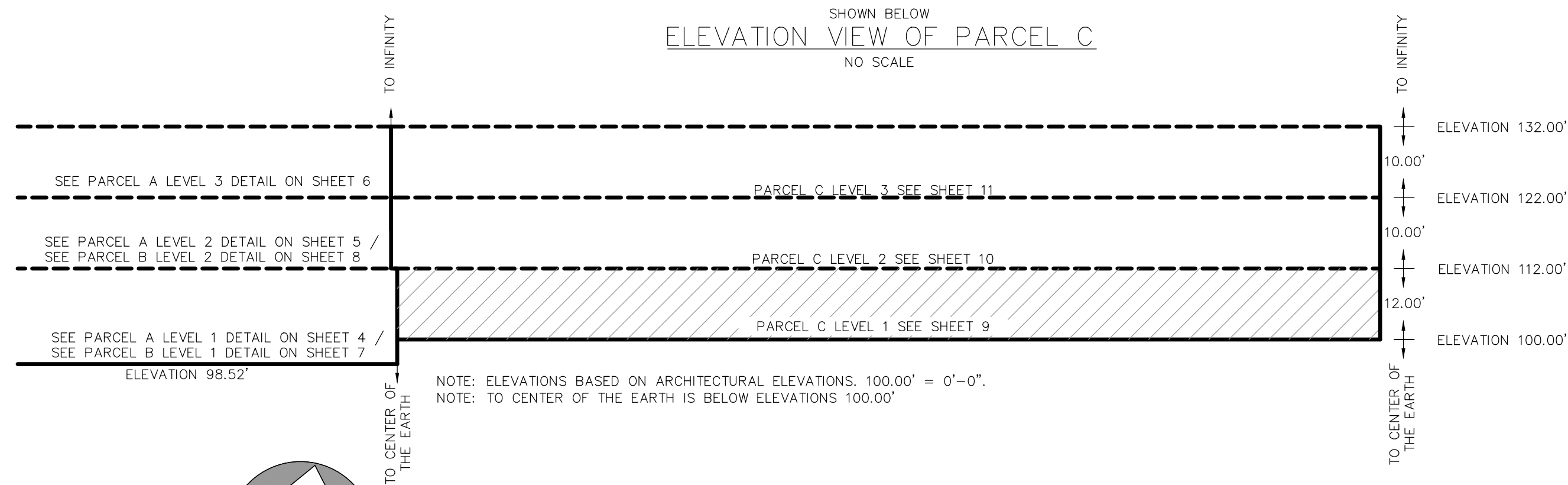
# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

CONSISTING OF 11 SHEETS



**LEGEND**

|                               |  |
|-------------------------------|--|
| BUILDING INTERIOR PARCEL LINE |  |
| ADJACENT PARCEL LINE          |  |
| PARCEL TIE LINE               |  |
| LOT LINE                      |  |

**PARCEL MAP NO. 11051**  
 CONSISTING OF THREE AIR RIGHTS PARCELS  
 BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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CITY OF BERKELEY COUNTY OF ALAMEDA

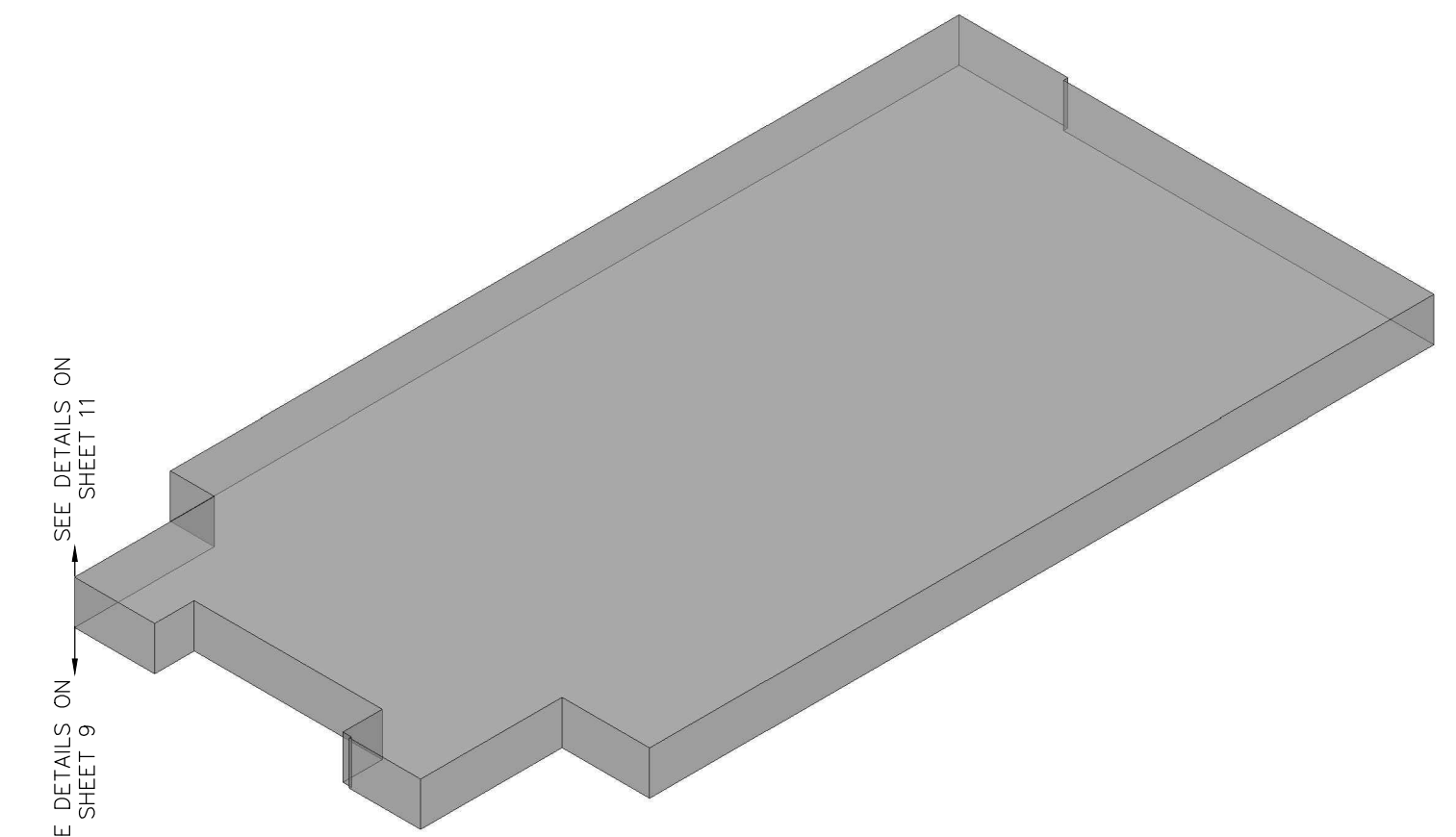
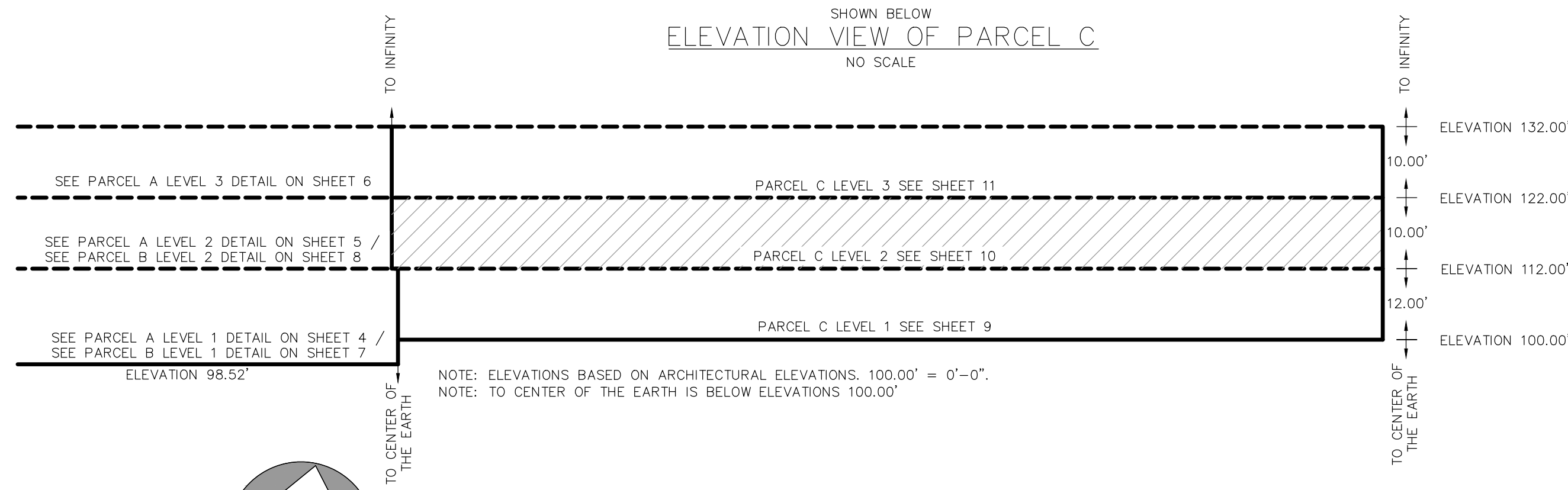
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CONSISTING OF 11 SHEETS

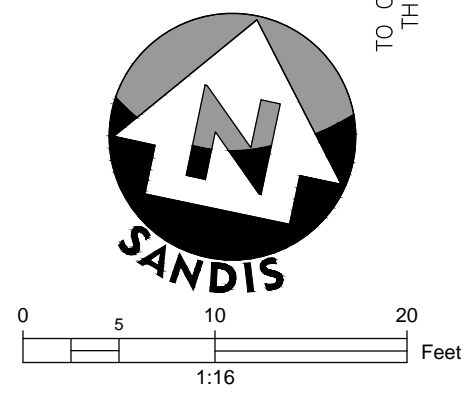
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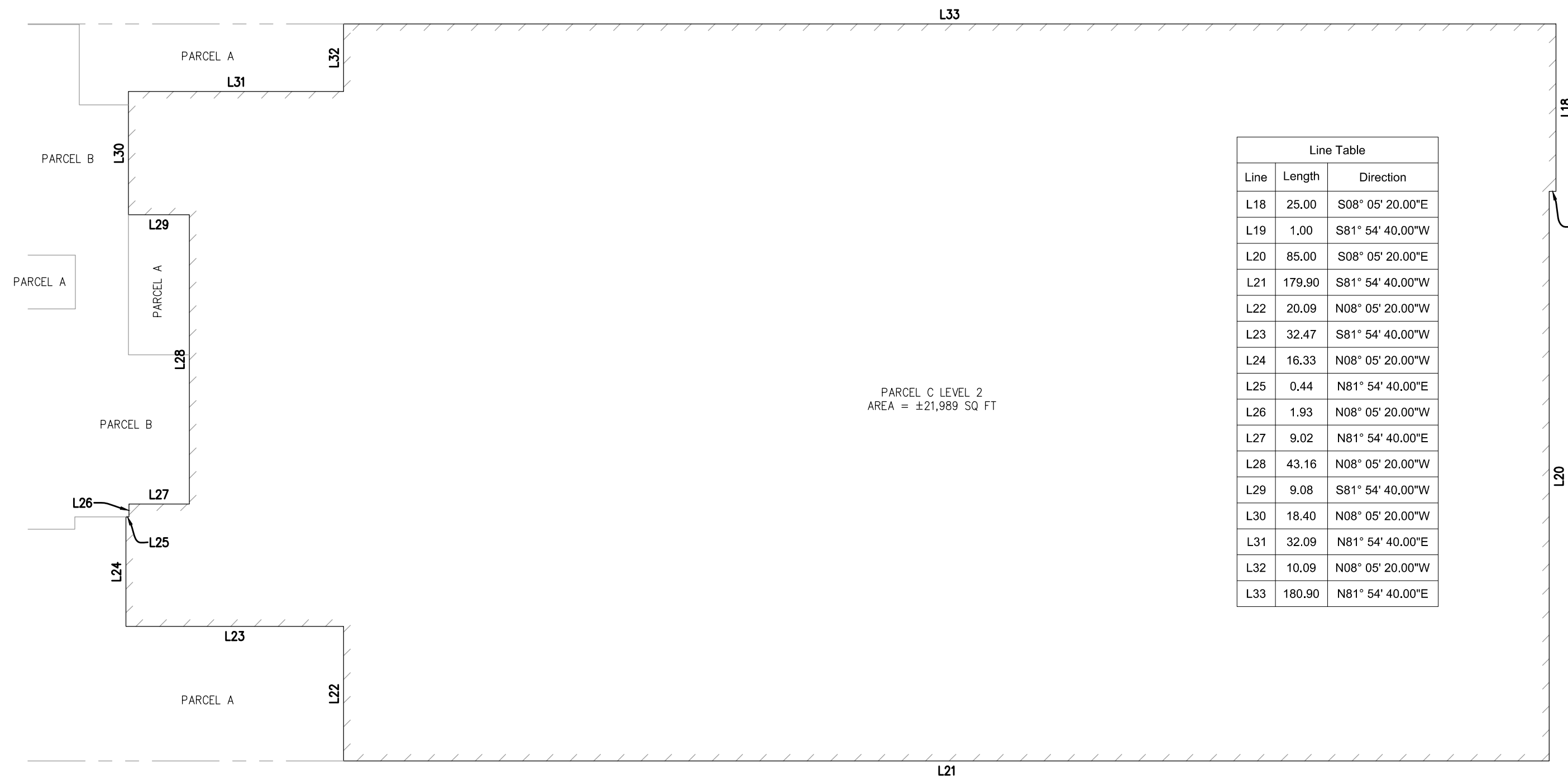
SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN ABOVE  
ISOMETRIC VIEW OF PARCEL C LEVEL 2  
SCALE: 1"=30'



SHOWN BELOW  
PARCEL C LEVEL 2  
SCALE: 1"=16'



| Line Table |        |                  |
|------------|--------|------------------|
| Line       | Length | Direction        |
| L18        | 25.00  | S08° 05' 20.00"E |
| L19        | 1.00   | S81° 54' 40.00"W |
| L20        | 85.00  | S08° 05' 20.00"E |
| L21        | 179.90 | S81° 54' 40.00"W |
| L22        | 20.09  | N08° 05' 20.00"W |
| L23        | 32.47  | S81° 54' 40.00"W |
| L24        | 16.33  | N08° 05' 20.00"W |
| L25        | 0.44   | N81° 54' 40.00"E |
| L26        | 1.93   | N08° 05' 20.00"W |
| L27        | 9.02   | N81° 54' 40.00"E |
| L28        | 43.16  | N08° 05' 20.00"W |
| L29        | 9.08   | S81° 54' 40.00"W |
| L30        | 18.40  | N08° 05' 20.00"W |
| L31        | 32.09  | N81° 54' 40.00"E |
| L32        | 10.09  | N08° 05' 20.00"W |
| L33        | 180.90 | N81° 54' 40.00"E |

LEGEND

|                               |  |
|-------------------------------|--|
| BUILDING INTERIOR PARCEL LINE |  |
| ADJACENT PARCEL LINE          |  |
| PARCEL TIE LINE               |  |
| LOT LINE                      |  |

# PARCEL MAP NO. 11051

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
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ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

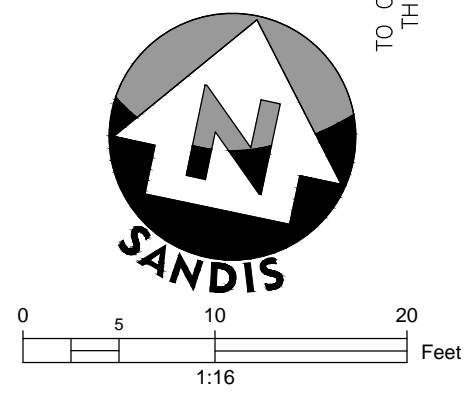
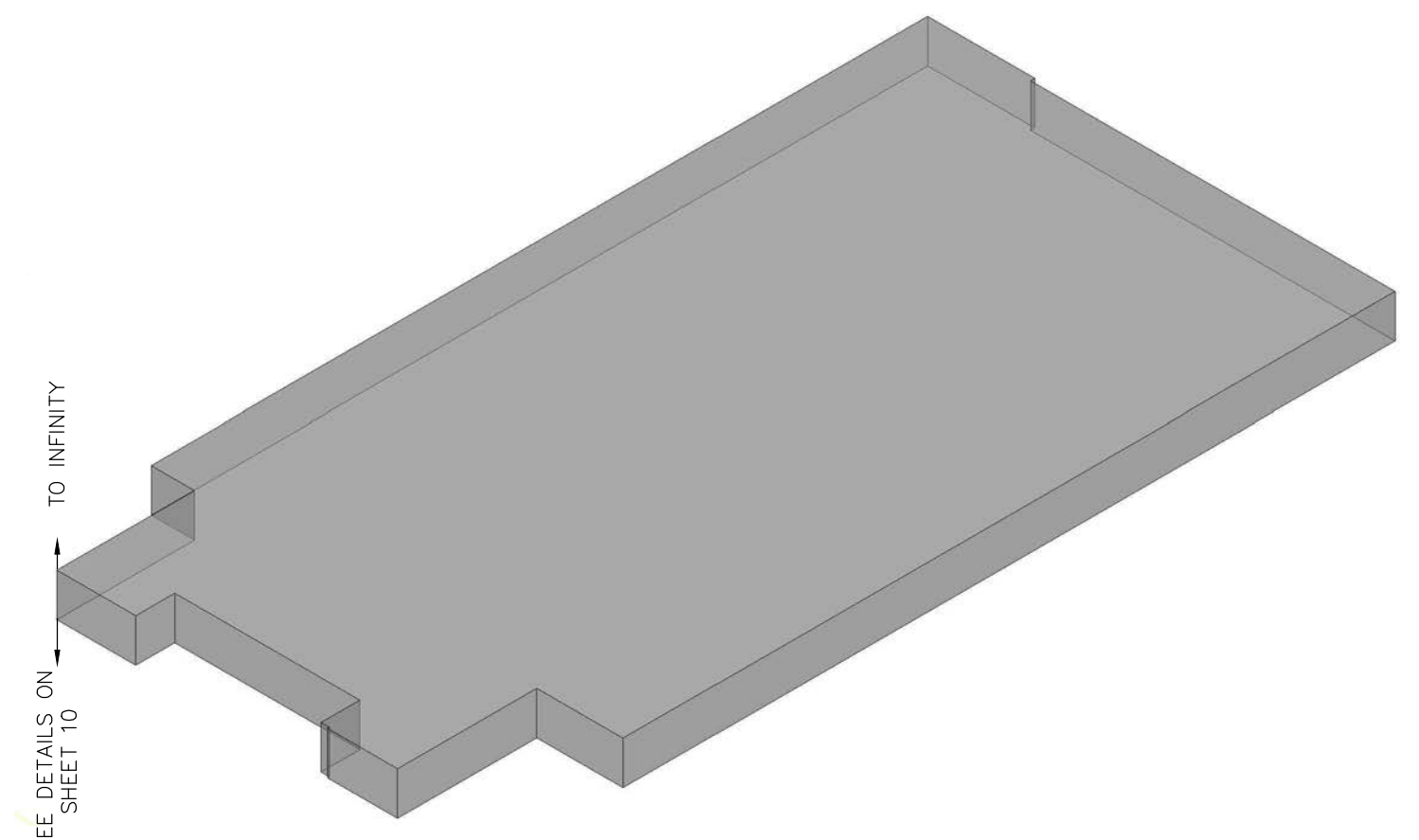
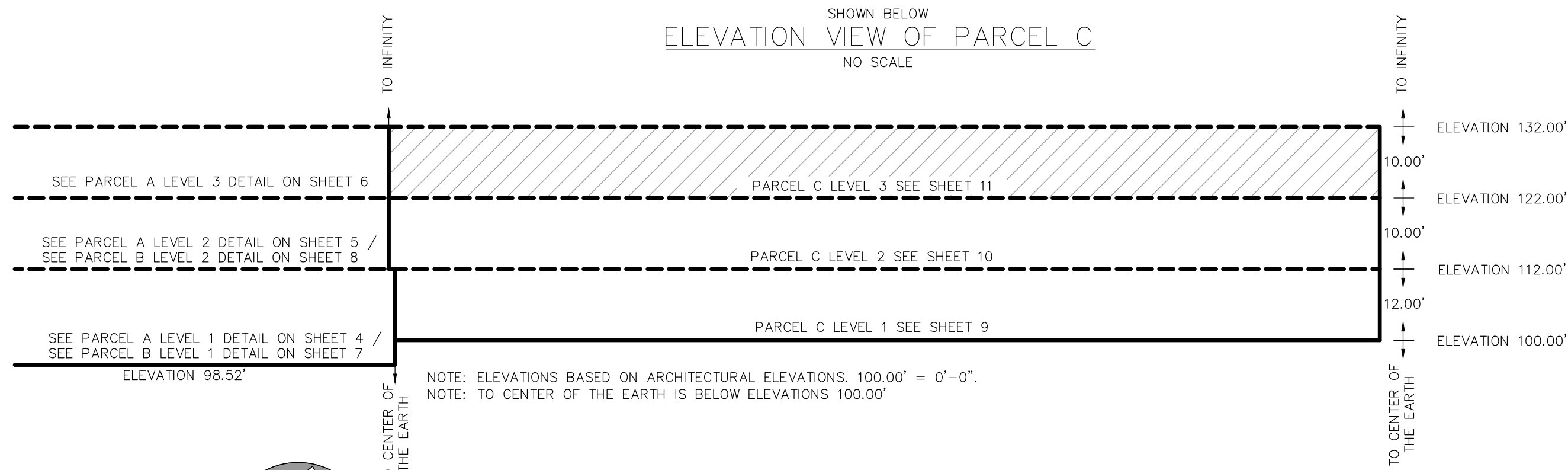
SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

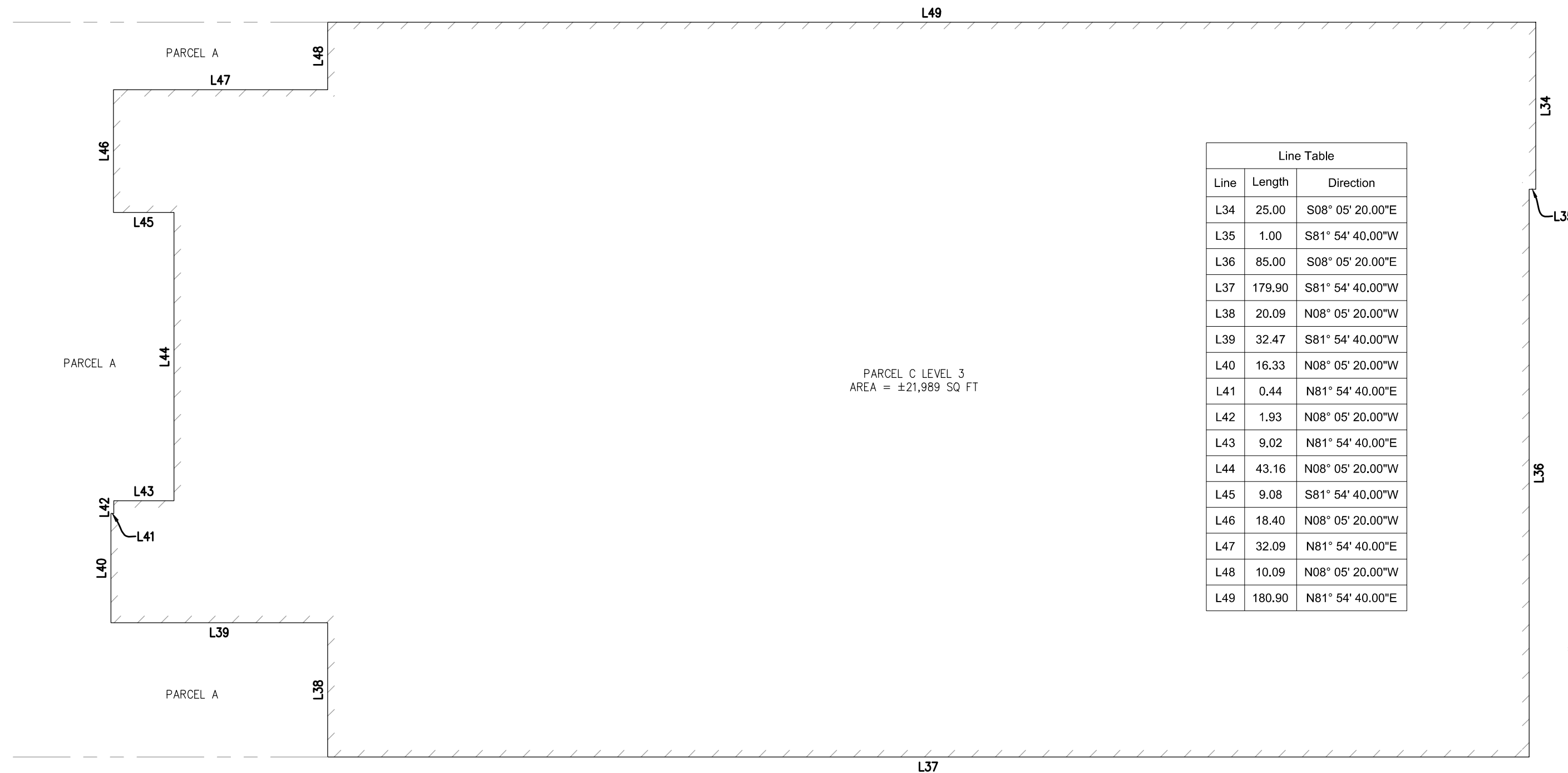
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF



SHOWN BELOW  
PARCEL C LEVEL 3 AND UP  
SCALE: 1"=16'



| Line Table |        |                  |
|------------|--------|------------------|
| Line       | Length | Direction        |
| L34        | 25.00  | S08° 05' 20.00"E |
| L35        | 1.00   | S81° 54' 40.00"W |
| L36        | 85.00  | S08° 05' 20.00"E |
| L37        | 179.90 | S81° 54' 40.00"W |
| L38        | 20.09  | N08° 05' 20.00"W |
| L39        | 32.47  | S81° 54' 40.00"W |
| L40        | 16.33  | N08° 05' 20.00"W |
| L41        | 0.44   | N81° 54' 40.00"E |
| L42        | 1.93   | N08° 05' 20.00"W |
| L43        | 9.02   | N81° 54' 40.00"E |
| L44        | 43.16  | N08° 05' 20.00"W |
| L45        | 9.08   | S81° 54' 40.00"W |
| L46        | 18.40  | N08° 05' 20.00"W |
| L47        | 32.09  | N81° 54' 40.00"E |
| L48        | 10.09  | N08° 05' 20.00"W |
| L49        | 180.90 | N81° 54' 40.00"E |

LEGEND

|                               |  |
|-------------------------------|--|
| BUILDING INTERIOR PARCEL LINE |  |
| ADJACENT PARCEL LINE          |  |
| PARCEL TIE LINE               |  |
| LOT LINE                      |  |

**PARCEL MAP NO. 11051**

CONSISTING OF THREE AIR RIGHTS PARCELS  
BEING A RESUBDIVISION OF PORTIONS OF LOTS 46-54 OF  
"MAP OF COLLEGE TRACT", FILED ON JANUARY 31, 1880, IN MAP BOOK 9, PAGE 46  
ALAMEDA COUNTY RECORDS AND THE WESTERN 1 FOOT OF LOT 55.

CITY OF BERKELEY COUNTY OF ALAMEDA

SEPTEMBER, 2019

CONSISTING OF 11 SHEETS

**SANDIS** CIVIL ENGINEERS  
SURVEYORS  
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SILICON VALLEY TRI-VALLEY CENTRAL VALLEY SACRAMENTO EAST BAY/SF





Item Removed From  
Agenda

This item has been removed from the agenda by the City Manager.

If you have questions regarding this report, please contact the person noted on the agenda.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**

<http://www.cityofberkeley.info/citycouncil/>





Human Resources Dept.

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director, Human Resources

Subject: Classification and Salary: Establish Mental Health Nurse Classification Series

### RECOMMENDATION

Adopt a Resolution amending Resolution No. 68,626 -N.S. Classification and Salary Resolution for SEIU Local 1021 CSU & PTRLA to establish the classifications of Mental Health Nurse with a monthly salary range of \$9,348.02 - \$11,363; Senior Mental Health Nurse with a monthly salary range of \$9,815.87 - \$11,931.92; and amending Resolution No. 68,710–N.S. Classification and Salary Resolution for Public Employees Union Local to establish a Supervising Mental Health Nurse classification with a monthly salary range of \$10,307.24 - \$12,528.52 – effective January 21, 2020.

### FISCAL IMPACTS OF RECOMMENDATION

The estimated increased cost (salary and benefits) of this proposal is approximately \$41,994.59. The Health, Housing, and Community Services Department will fund the increased cost from the Health Fund and the Mental Health State Aid Fund, budget codes 316-51-503-521-2007-000-451-511110 and 158-51-503-521-2007-000-451-511110.

### CURRENT SITUATION AND ITS EFFECTS

The Acting Interim Director of the Health, Housing and Community Services (HHCS) requested that the Human Resources Department propose solutions to address the recruitment and retention challenges of the Registered Nurse classification in the Mental Health Division.

The City has had difficulties in recruiting and retaining Registered Nurses in Mental Health. The Registered Nurse Classification was established in October 1988 and was initially housed only in the Public Health Division. Subsequent to the creation of the Registered Nurse classification, the Mental Health Division has used Registered Nurses to serve the severely and persistently mentally ill patients of Berkeley and Albany. The Mental Health Division currently has three full-time, and two part-time Registered Nurse positions. An additional full-time nurse will be added in FY 2020 for the Homeless Outreach & Treatment Team.

The Human Resources Department recommends the creation of a Mental Health Nurse classification series in order to address recruitment and retention challenges, to align the

level of the position based on the current and future needs of the Health, Housing, and Community Services Department (HHCS). This is needed to ensure that the City remains competitive in the demanding labor market for this profession and continue providing essential health services to support one of the City Council's top priorities related to homelessness.

The City takes pride in having a Mental Health Division to provide the critical and competitive mental health services to an extremely vulnerable, sensitive, and at-risk population and employees in this classification are essential to provide these services. Mental Health Nurses are in high demand in both the private and public sector. The City must be able to recruit in an expeditious manner by streamlining the recruitment process and removing delays, which are sometimes caused by sharing the Registered Nurse list with the Public Health Division.

Staff completed a comprehensive review and analysis of the existing nursing classification series and conducted an updated salary survey for Registered Nurses with experience and training in mental health in the 8 surrounding Bay Area counties.

Currently, City Registered Nurses with experience and training in mental health and assigned to the Mental Health Division earn 24% below the market median of the 8 Bay Area counties. The nationwide and local shortage of Mental Health Nurses is problematic, and many public and private organizations are competing for a small pool. The proposal will align the salary to the current market base median.

The proposed classification series has been reviewed by Public Employees Union Local One and SEIU Local 1021 CSU & PTRLA and both unions concurred with the recommendations and salaries.

## BACKGROUND

The Personnel Board discussed the proposal at its December 2, 2019 meeting and voted (Yes: Wenk, Kidd, Bartlow, Dixon, Frankel, Gilbert; Absent: Lacey) to recommend the following to City Council.

1. Establish the classifications of Mental Health Nurse, Senior Mental Health Nurse, and Supervising Mental Health Nurse effective January 21, 2020. The Mental Health Nurse and Senior Mental Health Nurse classifications will be non-exempt from the overtime provisions of the Fair Labor Standards act (FLSA). The Supervising Mental Health Nurse classification will be exempt from the overtime provisions of the Fair Labor Standards act (FLSA) and eligible for Administrative Leave. The Mental Health Nurse and Senior Mental Health Nurse classifications will be represented by SEIU Local 1021 CSU with monthly salaries ranges of \$9,348.02 \$9,815.42 \$10,306.19 \$10,821.50 \$11,363.00 and \$9,815.87 \$10,306.66 \$10,821.99 \$11,363.09 \$11,931.92 respectively. The Supervising Mental Health Nurse will be represented by Local 1, with a monthly salary range of \$10,307.24 \$10,822.6 \$11,363.73 \$11,931.92 \$12,528.52

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

It has been the policy of the City to maintain and revise the classification and salary schedule on a regular basis to accommodate assignment of new duties and responsibilities, reflect programmatic changes, maintain competitive salaries and, when applicable, comply with regulatory requirements.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Jeffrey F. Johns, Supervising Psychiatrist, HHCS, (510) 981-7615

Attachments:

- 1: Class Specification – Mental Health Nurse
- 2: Class Specification – Senior Mental Health Nurse
- 3: Class Specification – Supervising Mental Health Nurse
- 4: Resolution and Exhibit A – Salary Schedule



# Mental Health Nurse

Class Code:  
24820

Bargaining Unit: Service Employees International Union,  
Local 1021 (Comm Svcs & PT Rec Leaders)

CITY OF BERKELEY  
Established Date: January 21, 2020

## SALARY RANGE

\$53.94 - \$65.56 Hourly  
\$4,315.20 - \$5,244.46 Biweekly  
\$9,348.00 - \$11,363.00 Monthly  
\$112,176.20 - \$136,356.00 Annually

## DESCRIPTION: DEFINITION

Under general supervision, provides a full range of Mental Health Nursing services including case management, crisis intervention, health assessment, health education, and counseling in homes, clinics, and in the field to patients with severe mental illness; performs related work as assigned.

## CLASS CHARACTERISTICS

This classification represents the entry level of the Mental Health Nursing series. A Mental Health Nurse, following an initial period of orientation, is expected to function at the fully qualified professional level assuming broad responsibilities requiring independence and professional judgment in utilizing mental health nursing intervention skills to treat individuals with severe mental illness. The Mental Health Nurse is distinguished from Senior Mental Health Nurse in that the latter reviews and assigns patients to Mental Health Nurses and provides direction to a nursing team and coordinates special projects and programs. Medical and administrative direction is received from the Senior Mental Health Nurse and the Supervising Mental Health Nurse.

## EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Provides professional nursing care to psychiatric patients on an assigned case load in the clinic, at homes and on field visits (including encampments);
2. Collaborates on a multidisciplinary mental health team with other professionals and para-professionals in the delivery of specialized mental health services and in treatment planning;
3. Evaluates the needs of those with severe mental illness, substance use disorders, and co-morbid general medical conditions utilizing observation, patient interview, physical examination, mental status examination, and record review;
4. Observes, assesses, records, and reports the patient's behavior, condition, and response to care before, during, and after treatment and utilizes this information to re-assess and revise plan of care;
5. Develops psychiatric nursing care plans and provides nursing case management;
6. Plans strategies for solving patient care problems, establishes priorities, and coordinates activities needed to implement patient care plans;
7. Provides crisis intervention, psychoeducation, and counseling;
8. Dispenses, administers, and supervises patients' psychotropic and non-psychotropic medication and provides medication education and adherence support services;
9. Gives immunizations;
10. Explains treatment procedures to patients and provides support before, during, and after treatment;
11. Provides teaching relating to disease prevention, health promotion, treatment maintenance and rehabilitation;
12. Utilizes nursing intervention skills to prevent disease, promote healthy behavior and alleviate conditions adversely affecting the health and safety of individuals, families and the community;

13. Acts as patient liaison and advocate to external and internal medical providers and other community resources;
14. Follows up on treatment recommendations with patient and other involved agencies to ensure effective care and guidance to individuals and families;
15. Performs selected diagnostic tests under standardized procedures;
16. Assists in developing plans for teaching patients and families about the multiple requirements of proper home care. (e.g., medications, follow-up care, health resources, etc.);
17. Teaches patients and families how to follow psychiatric and non-psychiatric treatments after discharge (eg: medication reactions, dietary changes, etc.)
18. Teaches families to recognize signs/symptoms of decompensation and appropriate interventions in the event that this occurs in the psychiatric patient;
19. Accompanies patients to medical appointments and emergency departments as needed to assist in navigating the health care system;
20. Orders medication, controls medication inventory, reconciles medication lists, and prepares medication prior authorization requests;
21. Schedules and tracks laboratory blood draws and follows-up on results;
22. Coordinates the outpatient aspect of psychiatric and non-psychiatric hospital discharges;
23. Provides clinical supervision and training to allied health professionals and para-professionals;
24. Provides essential nursing services to other City of Berkeley departments and divisions when required to respond to a needed surge in staffing (natural disasters, outbreaks etc.);
25. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, practices, methods, and techniques of psychiatric nursing;
2. Basic psychotropic and other common drug indications, reactions, interactions, and contraindications;
3. Best practices for treating substance use disorders;
4. Treatment methods of common chronic and acute medical conditions;
5. Cultural competence in the application of mental health treatment;
6. Laws, rules, regulations, protocols, and requirements pertinent to psychiatric nursing;
7. Safety and infection control practices and procedures;
8. Counseling, interviewing, and crisis intervention techniques;
9. Environmental, sociological, and political problems related to mental health care;
10. Community medical and social agencies and resources;
11. Child and elder abuse and neglect and domestic violence reporting laws.

Skill in:

1. Managing a caseload and establishing priorities for case management, treatment, and referrals;
2. Performing mental health nursing assessments and selected diagnostic tests;
3. Administering prescribed treatments;
4. Exercising sound independent judgment within established guidelines;
5. Assessing health and behavior;
6. Developing effective treatment and referral plans;
7. Communicating clear and accurate information regarding patients to physicians, health providers and other health members;
8. Identifying the impact of cultural differences on community health care practices;
9. Preparing clear, complete and accurate documentation, reports, and other written correspondence;
10. Establish and maintain effective and productive relationships with those contacted during the course of work.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from a four-year accredited college or university, with major course work in nursing and one (1) year of mental health nursing experience or completion of a six-month senior preceptorship in mental health nursing. The relevant mental health nursing experience or preceptorship in mental health nursing must have been completed in the past five (5) years.

OTHER REQUIREMENTS

Must possess a valid license to practice as a Registered Nurse in the state of California.

CLASSIFICATION HISTORY:

|                            |            |
|----------------------------|------------|
| Mental Health Nurse        |            |
| Classification Code        | 24820      |
| Classification Established | 1/2020     |
| FLSA Status                | Non-Exempt |
| Admin Leave/Overtime       | Overtime   |
| Representation Unit        | G3         |
| Probationary Period        | 6 Months   |
| Workers' Comp Code         | XXXX       |





CITY OF BERKELEY  
Established Date: January 21, 2020

# Senior Mental Health Nurse

Class Code:  
24830

Bargaining Unit: Service Employees International Union,  
Local 1021 (Comm Svcs & PT Rec Leaders)

## SALARY RANGE

\$56.63 - \$68.84 Hourly  
\$4,530.40 - \$5,507.04 Biweekly  
\$9,815.87 - \$11,931.92 Monthly  
\$117,790.40 - \$143,183.04 Annually

## DESCRIPTION: DEFINITION

Under direction, performs Mental Health nursing duties in an assigned area and one or a combination of the following: serves as assistant supervisor for a team which includes other nurses and may also include para-professionals and/or office staff; and/or has charge of a specialized health care program; performs related work as assigned.

## CLASS CHARACTERISTICS

This class provides direct mental health nursing services and provides directional supervision for the work of professional nursing and para-professional staff on an assigned team and/or may have independent responsibility for a major specialized mental health program. This class is distinguished from the Supervising Mental Health Nurse in that the latter has primary supervisory responsibility for mental health nursing and is assigned specialized projects and programs. Medical and administrative direction is received from the Supervising Mental Health Nurse.

## EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Provides professional nursing care to psychiatric patients on an assigned case load in the clinic, at homes and on field visits (including encampments);
2. Collaborates on a multidisciplinary mental health team with other professionals and para-professionals in the delivery of specialized mental health services and in treatment planning;
3. Evaluates the needs of those with severe mental illness, substance use disorders, and co-morbid general medical conditions utilizing observation, patient interview, physical examination, mental status examination, and record review;
4. Observes, assesses, records, and reports the patient's behavior, condition, and response to care before, during, and after treatment and utilizes this information to re-assess and revise plan of care;
5. Develops psychiatric nursing care plans and provides nursing case management;
6. Plans strategies for solving patient care problems, establishes priorities, and coordinates activities needed to implement patient care plans;
7. Provides crisis intervention, psychoeducation, and counseling;
8. Dispenses, administers, and supervises patients' psychotropic and non-psychotropic medication and provides medication education and adherence support services;
9. Gives immunizations;
10. Explains treatment procedures to patients and provides support before, during, and after treatment;
11. Provides teaching relating to disease prevention, health promotion, treatment maintenance and rehabilitation;
12. Utilizes nursing intervention skills to prevent disease, promote healthy behavior and alleviate conditions adversely affecting the health and safety of individuals, families and the community;
13. Acts as patient liaison and advocate to external and internal medical providers and other community resources;
14. Follows up on treatment recommendations with patient and other involved agencies to ensure effective care and guidance to individuals and families;

15. Performs selected diagnostic tests under standardized procedures;
16. Acts as the team leader of a mental health nursing team with other professionals and para-professionals in the delivery of mental health nursing services;
17. Assigns patient cases and assists in the evaluation of nursing team staff;
18. Provides consultation and guidance to team members on difficult patient problems;
19. Assists in the training, orientation, supervision of nursing staff, allied health professionals, and para-professionals;
20. Coordinates division services with private, public and community voluntary health and social service agencies;
21. May conduct a specialized health care or training program or project;
22. Assists in planning and development of programs and preparation of funding proposals;
23. Monitors and evaluates programs, projects and special services and prepares a variety of periodic and special reports for appropriate management review;
24. Provides essential nursing services to other City of Berkeley departments and divisions when required to respond to a needed surge in staffing (natural disasters, outbreaks etc.);
25. Performs related duties as assigned.

**KNOWLEDGE AND ABILITIES:**

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, practices, methods, and techniques of psychiatric nursing;
2. Basic psychotropic and other common drug indications, reactions, interactions, and contraindications;
3. Best practices for treating substance use disorders;
4. Treatment methods of common chronic and acute medical conditions;
5. Cultural competence in the application of mental health treatment;
6. Laws, rules, regulations, protocols, and requirements pertinent to psychiatric nursing;
7. Safety and infection control practices and procedures;
8. Counseling, interviewing, and crisis intervention techniques;
9. Environmental, sociological, and political problems related to mental health care;
10. Community medical and social agencies and resources;
11. Child and elder abuse and neglect and domestic violence reporting laws;
12. Basic supervisory principles and practices.

Skill in:

1. Managing a caseload and establishing priorities for case management, treatment, and referrals;
2. Performing mental health nursing assessments and selected diagnostic tests;
3. Administering prescribed treatments;
4. Exercising sound independent judgment within established guidelines;
5. Assessing health and behavior;
6. Developing effective treatment and referral plans;
7. Communicating clear and accurate information regarding patients to physicians, health providers and other health members;
8. Identifying the impact of cultural differences on community health care practices;
9. Preparing clear, complete and accurate documentation, reports, and other written correspondence;
10. Assisting in the evaluation of mental health nursing programs effectiveness;
11. Establish and maintain effective and productive relationships with those contacted during the course of work.

**MINIMUM QUALIFICATIONS:**

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from a four-year accredited school of nursing and two (2) years of mental health nursing experience or a master's degree in psychology, nursing, or other relevant field. The relevant mental health nursing experience must have been completed in the past five (5) years.

**OTHER REQUIREMENTS**

Must possess a valid license to practice as a Registered Nurse in the state of California.

**CLASSIFICATION HISTORY:**

|                            |            |
|----------------------------|------------|
| Senior Mental Health Nurse |            |
| Classification Code        | 24830      |
| Classification Established | 1/2020     |
| FLSA Status                | Non-Exempt |
| Admin Leave/Overtime       | Overtime   |

Representation Unit  
Probationary Period  
Workers' Comp Code

G3  
6 Months  
XXXX



# Supervising Mental Health Nurse

Class Code:  
24840

Bargaining Unit: Public Employees Union, Local One

CITY OF BERKELEY  
Established Date: January 21, 2020

## SALARY RANGE

\$59.46- \$72.28 Hourly  
\$4,757.19- \$5782.39 Biweekly  
\$10,307.24- \$12,528.52 Monthly  
\$123,686.89- \$150,342.19 Annually

## DESCRIPTION: DEFINITION

Under general direction, supervises Mental Health Nursing and support staff who provide mental health services to community residents; performs related work as assigned.

## CLASS CHARACTERISTICS

This is the supervisory and highest level in the professional mental health nursing series with responsibility for nursing program planning, development, implementation, direction, supervision, and evaluation. This class is distinguished from the Senior Mental Health Nurse by its full supervisory responsibility over all mental health nursing activities and staff. Medical and administrative direction is received from the Supervising Psychiatrist.

## EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Plans, organizes, directs, assigns, reviews, and evaluates the work of mental health nursing and support staff;
2. Trains, orients, and supervises nursing staff, allied health professionals, and para-professionals;
3. Participates in the development and implementation of goals, objectives, policies, and procedures for mental health nursing activities;
5. Monitors and manages work load and productivity;
6. Participates in the preparation and administration of the budget;
8. Personally performs professional nursing direct care in the areas of program responsibility;
9. Participates in the selection of staff, and provides for their training and professional development;
11. Conducts or directs the preparation of analytical studies;
12. Prepares grant funding proposals to governmental agencies and other organizations;
13. Maintains established standards of mental health nursing and ensures services are rendered in conformance with

State standards for local health jurisdictions, and department policy and procedure;

14. Develops statistical information systems and analyzes data in support of program planning and development;
15. Assists in protocol development and updates Procedure and Protocol Manual;
16. Represents the City with community organizations, other agencies, and the general public;
17. Prepares a variety of periodic and/or special reports;
19. Evaluates mental health issue impacts on City programs and operations, and recommends policy and procedure improvements;
20. Provides essential nursing services to other City of Berkeley departments and divisions when required to respond to a needed surge in staffing (natural disasters, outbreaks etc.);
21. Performs related duties as assigned.

**KNOWLEDGE AND ABILITIES:**

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

**Knowledge of:**

1. Principles, practices, methods, and techniques of psychiatric nursing;
2. Basic psychotropic and other common drug indications, reactions, interactions, and contraindications;
3. Best practices for treating substance use disorders;
4. Treatment methods of common chronic and acute medical conditions;
5. Cultural competence in the application of mental health treatment;
6. Laws, rules, regulations, protocols, and requirements pertinent to psychiatric nursing;
7. Safety and infection control practices and procedures;
8. Counseling, interviewing, and crisis intervention techniques;
9. Environmental, sociological, and political problems related to mental health care;
10. Community medical and social agencies and resources;
11. Child and elder abuse and neglect and domestic violence reporting laws;
12. Principles and practices of effective employee supervision, including selection, training, evaluation and discipline;
13. Principles and practices of program development and management, including funding sources, grant proposal writing, program evaluation and fiscal management;
14. Principles and practices of budgetary preparation, administration and control;
15. Methods and procedures for developing and evaluating program quality control assurance and effectiveness;

**Skill in:**

1. Managing a caseload and establishing priorities for case management, treatment, and referrals;
2. Performing mental health nursing assessments and selected diagnostic tests;
3. Administering prescribed treatments;
4. Exercising sound independent judgment within established guidelines;
5. Assessing health and behavior;
6. Developing effective treatment and referral plans;
7. Communicating clear and accurate information regarding patients to physicians, health providers and other health members;
8. Identifying the impact of cultural differences on community health care practices;
9. Preparing clear, complete and accurate documentation, reports, and other written correspondence;
10. Assisting in the evaluation of mental health nursing programs effectiveness;
11. Identifying the impact of cultural differences on community health care practices;
12. Preparing clear, complete and accurate documentation, reports, and other written correspondence;
13. Plan, implement, coordinate, and evaluate the effectiveness of public health programs;
14. Plan, organize assign, review, evaluate and direct the work of assigned staff;
15. Identify program funding sources, and prepare grant application proposals, contracts and budgets;
16. Interpret, explain and apply laws, regulations and policies relating to public health nursing programs and practices;
17. Identify and understand cultural patterns influencing community health practices;
18. Represent the City with health officials, community organizations, other agencies, and the general public;
19. Establish and maintain effective and productive relationships with those contacted during the course of work.

**MINIMUM QUALIFICATIONS:**

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from a four-year accredited school of nursing and three years of mental health nursing experience or a master's degree in psychology, nursing, or other relevant field. The relevant mental health nursing experience must have been completed in the past five (5) years.

OTHER REQUIREMENTS

Must possess a valid license to practice as a Registered Nurse in the state of California.

CLASSIFICATION HISTORY:

|                                 |             |
|---------------------------------|-------------|
| Supervising Mental Health Nurse |             |
| Classification Code             | 24840       |
| Classification Established      | X/2019      |
| FLSA Status                     | Exempt      |
| Admin Leave/Overtime            | Admin Leave |
| Representation Unit             | P1          |
| Probationary Period             | 12 Months   |
| Workers' Comp Code              | XXXX        |

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

CREATION OF MENTAL HEALTH NURSE CLASSIFICATION AND AMENDING  
RESOLUTION NOS. 68,710-N.S. AND 68,626-N.S.

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, the Director of Health, Housing, and Community Services has recommended the creation of a Mental Health Nurse Job classifications; and

WHEREAS, the Director of Health, Housing, and Community Services has requested the Human Resources Department to research and propose solutions in an effort to address recruitment and tension issues for Nurses in the Mental Health Division; and

WHEREAS, the Human Resources Department has completed a comprehensive classification review and an updated salary survey; and

WHEREAS, the Personnel Board recommended on December 2, 2019 the establishment of a Mental Health Nurse job classification, eligible for the overtime provision of the Fair Labor Standards Act (FLSA), in Representation Unit G3 (Career Professional Nursing Classifications), to a month 5-step salary range of \$9,348.02 \$9,815.42 \$10,306.19 \$10,821.50 \$11,363.00, effective January, 21, 2020; and

WHEREAS, the Personnel Board recommended on December 2, 2019 the establishment of a Senior Mental Health Nurse job classification, exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and eligible for Administrative Leave, in Representation Unit G3 (Career Professional Nursing Classifications), to a month 5-step salary range of \$9,815.87 \$10,306.66 \$10,821.99 \$11,363.09 \$11,931.92, effective January 21, 2020; and

WHEREAS, the Personnel Board recommended on December 2, 2019 the establishment of a Supervising Mental Health Nurse job classification, eligible for the overtime provision of the Fair Labor Standards Act (FLSA), in Representation Unit P1 (Professional), to a month 5-step salary range of \$10,307.24 \$10,822.6 \$11,363.73 \$11,931.92 \$12,528.52, effective January 21, 2020; and

WHEREAS, Berkeley Mental Health patients deserve Mental Health treatment; and

WHEREAS, providing Nurses who are skilled in providing Mental Health services is the standard of care.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 68,710-N.S., Classifications and Salary Resolutions for Public Employees Union Local One and Resolution No. 68,626-N.S., SEIU Local 1021 CSU & PTRLA, is

amended to create the Mental Health Nurse series and to set the salaries for the three classifications with salary ranges as shown in Exhibit A, effective January 21, 2020.



## EXHIBIT A

| SALARY SCHEDULE |                                 |          |      |             |             |             |             |             |                |
|-----------------|---------------------------------|----------|------|-------------|-------------|-------------|-------------|-------------|----------------|
| Job Code        | Classification Title            | Rep Unit | FLSA | Step A      | STEP B      | STEP C      | STEP D      | STEP 5      | Effective Date |
| #####           | Mental Health Nurse             | G3       | N    | \$9,348.02  | \$9,815.42  | \$10,306.19 | \$10,821.50 | \$11,363.00 | 21-Jan-20      |
| #####           | Senior Mental Health Nurse      | G3       | N    | \$9,815.87  | \$10,306.66 | \$10,821.99 | \$11,363.09 | \$11,931.92 | 21-Jan-20      |
| #####           | Supervising Mental Health Nurse | P1       | E    | \$10,307.24 | \$10,822.60 | \$11,363.73 | \$11,931.92 | \$12,528.52 | 21-Jan-20      |

| Job Code | Classification Title            | Rep Unit | FLSA | Step A      | STEP B      | STEP C      | STEP D      | STEP 5      | Effective Date |
|----------|---------------------------------|----------|------|-------------|-------------|-------------|-------------|-------------|----------------|
| #####    | Mental Health Nurse             | G3       | N    | \$9,348.02  | \$9,815.42  | \$10,306.19 | \$10,821.50 | \$11,363.00 | 21-Jan-20      |
| #####    | Senior Mental Health Nurse      | G3       | N    | \$9,815.87  | \$10,306.66 | \$10,821.99 | \$11,363.09 | \$11,931.92 | 21-Jan-20      |
| #####    | Supervising Mental Health Nurse | P1       | E    | \$10,307.24 | \$10,822.60 | \$11,363.73 | \$11,931.92 | \$12,528.52 | 21-Jan-20      |





Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: 2020 Fee Assessment – State of California Self-Insurance Fund  
(Workers' Compensation Program)

RECOMMENDATION

Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2020 for administering the Workers' Compensation Program, in an amount not to exceed \$285,609.15.

FISCAL IMPACTS OF RECOMMENDATION

The annual fee assessed by the Department of Industrial Relations for Fiscal Year 2020 is \$285,609.15. The 2020 fee is based on state wide total indemnity benefits. Funding for this annual fee is included in the Workers' Compensation Self-Insurance Fund, Budget Code 676-99-900-900-0000-000-479-682110.

BACKGROUND

The State of California Department of Industrial Relations regulates the Workers' Compensation Insurance Industry. Under California Labor Code Sections 62.5 and 62, every year, each City is assessed a fee by the Department of Industrial Relations to support the administration of the State's Workers' Compensation Program. The assessments provide a stable funding source to support operations of the courts to resolve claims more quickly and improve the overall operation of the state workers' compensation system; to ensure safe and healthy working conditions on the job; to ensure the enforcement of labor standards and requirements for workers' compensation coverage.

Labor Code Sections 62.5 and 62.6 require allocation of the total assessment between insured and self-insured employers in proportion to payroll for the most recent year available. The City's total assessment is calculated by multiplying Self-Insured Employer Assessment Factors for each assessment by the total indemnity paid by the City.

This year's assessment is associated with a number of administrative costs. In 2019, the Department of Industrial Relations (DIR) aggregate assessments were \$941.8 million. DIR has indicated for 2020 that the agency needs \$1.1 billion to support enforcement by

pursuing employers who break employment laws; employers who fail to carry workers' compensation coverage for their workforce and workplace safety across the state.

The largest percentage increase for 2020 in the aggregate amount is the Subsequent Injury Benefits Trust Fund which increased by 31% to \$140.3 million from the \$106.9 million collected from California self-insured employers in 2019. This fund pays a portion of the permanent disability benefits owed to injured employees who suffer a second injury, when combined with the effects of a pre-existing condition results in permanent disability rating of at least 70%.

The City's share is calculated by multiplying the six self-insured employer assessment factors listed below by the total indemnity paid in the previously reported fiscal year. For fiscal year 2018-2019, the City reported to the Office of Self-Insurance Plans annual program statistics which include indemnity costs. The total City paid indemnity cost for 2018-2019 was \$3,417,999. In 2017-2018, the total indemnity costs were \$2,494,150. During program year 2018-2019, the City settled one significant compromise and release death claim which contributed to increased indemnity costs.

The City's share for the Fiscal Year 2020 assessment authorized under Labor Code Sections 62.5 and 62.6 for our self-insurance plan will be broken down as follows:

- I. Workers' Compensation Administration Revolving Fund Assessment
- II. Uninsured Employers Benefits Trust Fund Assessment
- III. Subsequent Injuries Benefits Trust Fund Assessment
- IV. Occupational Safety and Health Fund Assessment
- V. Workers' Compensation Fraud Account Assessment
- VI. Labor Enforcement and Compliance Fund

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Required annual funding is for the State of California, Department of Industrial Relations.

ALTERNATIVE ACTIONS CONSIDERED

None. This is a state-mandated fee assessment.

CONTACT PERSON

LaTanya Bellow, Director of Human Resources, 981-6807  
July Cole, Associate Human Resources Analyst, 981-6816

Attachments:

1: Resolution

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

AUTHORIZING PAYMENT TO THE STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS FOR FISCAL YEAR 2020 FEES IN AN AMOUNT NOT TO EXCEED \$285,609.15 (WORKERS' COMPENSATION PROGRAM)

WHEREAS, the City of Berkeley is Self-Insured for Workers' Compensation since 1979; and

WHEREAS, the Workers' Compensation Insurance Industry is administered and regulated by the State of California, Department of Industrial Relations; and

WHEREAS, the State of California, under California Labor Code Section 62.5 and 62.6, authorizes the Department of Industrial Relations to assess fees to employers for costs of administering the Workers' Compensation Program; and

WHEREAS, the City of Berkeley is assessed each year by the Department of Industrial Relations to support the state program; and

WHEREAS, for Fiscal Year 2020, the City's share of assessments authorized by Labor Code Sections 62.5 and 62.6 is not expected to exceed \$285,609.15; and

WHEREAS, funds are available in the current budget in the Workers' Compensation Fund, budget code 676-99-900-900-0000-000-479-682110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to pay the State of California, Department of Industrial Relations, Self-Insurance Plans invoice for Fiscal Year 2020 for Workers' Compensation Administration Revolving Fund Assessment; Uninsured Employers Benefits Trust Fund Assessment; Subsequent Injuries Benefits Trust Fund Assessment; Occupational Safety and Health Fund Assessment; Labor Enforcement and Compliance Fund; and Workers' Compensation Fraud Account Assessment in an amount not to exceed \$285,609.15.



Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Savita Chaudhary, Director, Department of Information Technology  
Subject: Contract No. 9791 Amendment: Environmental Systems Research Institute, Inc. (ESRI) for Enterprise Graphical Information Systems (GIS) Software License Maintenance and Support

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) for Enterprise GIS software license maintenance and support increasing the amount by \$225,000 for a not-to-exceed total of \$621,000 for the period of July 1, 2020 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding is allocated in the Department of Information Technology’s Cost Allocation Budget and is subject to Council’s approval of the proposed citywide Budget and Annual Appropriation Ordinances:

- \$75,000 FY 2021: Software Maintenance  
Budget Code: 680-35-362-376-0000-000-472-613130  
(General Fund, Information Technology, Software Maintenance)
- \$75,000 FY 2022: Software Maintenance  
Budget Code: 680-35-362-376-0000-000-472-613130  
(General Fund, Information Technology, Software Maintenance)
- \$75,000 FY 2023: Software Maintenance  
Budget Code: 680-35-362-376-0000-000-472-613130  
(General Fund, Information Technology, Software Maintenance)

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**\$225,000 Total FY 2021-2023 Software Maintenance**

### CURRENT SITUATION AND ITS EFFECTS

Environmental Systems Research Institute, Inc. provides essential Geographic Information System (GIS) services and software to City staff and community members through internal and external websites. Esri is an international supplier of GIS services and software and their ArcGIS software is an open and interoperable technology platform that provides mapping, analysis, and data management.

Currently the City uses GIS addresses in many aspects of our daily operations such as:

- Reviewing and approving development related projects that require the issuance of building permits.
- Identifying addresses to send out information about community programs and events.
- Sending out bills, submitting property tax assessment data to Alameda County and for business license renewals.
- Responding to service calls and fire inspections.

The City uses Esri services and software to provide layers of authoritative data, map services and web applications. Esri map services are integrated into essential business applications including public safety dispatch, licensing, permitting, asset management, CRM, and vehicle routing. Use of Esri products by City staff is on the rise across departments to create custom mapping, data analysis including crime analysts, planners, engineers, and solid waste supervisors. Numerous staff members across departments use web-based Esri GIS solutions in their daily work including permit center counter staff, customer service representatives and public safety dispatchers.

The City's current GIS enterprise license agreement (ELA) with Esri expires June 30, 2020. This contract will continue use of Esri's online GIS services as well as renew enterprise GIS software license, which includes maintenance and support for the period of July 1, 2020 through June 30, 2023.

### BACKGROUND

City staff began using Esri GIS software in 2000. Initially, this use was confined to single projects on a few desktops. Often, GIS gave staff better tools for analyzing land use when preparing a general plan and as the benefits of GIS became more widely known, GIS services expanded to other departments such as Public Safety, Public Works, Planning and Development.

In 2005, the Department of Information Technology (IT) began using Esri data and web server software to build the city's current Enterprise GIS, making GIS technology accessible throughout the organization.

In 2008, IT consolidated various departmental Esri software maintenance agreements into an enterprise license agreement (ELA), the Small Municipal and County Government



ELA program. Enterprise license agreement allows unlimited number of users to use Esri GIS products and services.

In 2015, the City launched the Open Data Portal that uses GIS data in Esri format, including parcels, streets, council districts, police beats, bikeways and City trees. The data is available for download from the City's Open Data portal.

In 2016, IT migrated its Enterprise GIS data from a legacy data model to Esri's "Local Government Information Model" (LGIM) in order to leverage generic services, applications, and workflows made available by Esri for deployments that use the LGIM.

In 2019, IT launched the GIS Community Portal (<https://www.cityofberkeley.info/gisportal/>). This portal features a custom widget that allows community members to enter an address and receive regulation information for the entered property.

Additionally, the City uses Esri services and software to provide GIS solutions to the Berkeley community including a parcel conditions viewer, redistricting maps and data, zoning maps and numerous other maps. The Esri online GIS site, ArcGIS Online, hosts the city's story maps for capital improvement projects and City parks, as well as web maps for bicycle parking, tobacco retailer's restricted areas and solar installations.

The City's Pedestrian Master Plan update process began in 2018 and continued through 2019. The Transportation Division is soliciting feedback via an interactive GIS based wikimap, <http://wikimapping.com/wikimap/Berkeley-Pedestrian-Master-Plan.html#.W1EIL9hKiys>. They invite the community to show us where and why you walk in Berkeley by drawing and commenting on the map.

#### ENVIRONMENTAL SUSTAINABILITY

Esri GIS provides the technological and scientific support necessary to create programs and processes that increase environmental sustainability. Public Works uses Esri desktop software to increase the efficiency of fleet vehicles by optimizing standard routes and subsequently reducing fuel consumption. Planning uses Esri's ArcGIS Online to promote investment in solar energy. The GIS Community Portal allows residents, businesses, city officials, and developers the ability to better understand what zoning and land use policies apply to properties of interest to them, without the need to call staff necessarily.

Esri GIS services and software support the city's digital map room. This reduces paper usage and the need for community members to visit the City to purchase paper maps.

RATIONALE FOR RECOMMENDATION

GIS is integral to City operations, decision making, and communication. Esri GIS services and software provide geographic information to analysts, decision makers, field staff, and the public through mobile, Web, and desktop clients. Esri's ELA program provides a cost-effective way to deploy GIS into city operations and business processes such as permitting, licenses, CRM, asset management and public safety dispatch. The ELA program provides numerous benefits including:

- A lower cost per unit for licensed software and substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under the agreement
- Complete flexibility to deploy software products when and where needed
- ArcGIS for Desktop software and extensions including ArcGIS Spatial Analyst and 3D Analyst, ArcGIS for Server software for interactive mapping and data management, and ArcGIS Online subscription (Esri's online GIS site for hosted mapping, routing and demographics analyses)
- 4 user conference passes for staff, and Web Training
- Authorized Technical Support Callers

ALTERNATIVE ACTIONS CONSIDERED

Staff considered not renewing Esri's licenses; however, Esri retains exclusive rights to their software. Esri is an industry leader of GIS software who has developed a platform that includes an expansive network of third party software solutions that the City utilizes. These solutions include but are not limited to Accela, RouteSmart, and New World computer aided dispatch (CAD). Furthermore, Esri software is used by most jurisdictions in the region, which offers potential GIS data sharing for regional coordination initiatives.

CONTACT PERSON

Savita Chaudhary, Director, Department of Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 9791 AMENDMENT: ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI), FOR GIS ENTERPRISE SOFTWARE LICENSE MAINTENANCE AND SUPPORT

WHEREAS, the City of Berkeley's current enterprise license agreement with Esri expires June 30, 2020; and

WHEREAS, Esri provides essential GIS services and software to City staff and community members; and

WHEREAS, the City of Berkeley has identified the need to continue use of Esri's GIS professional services and software; and

WHEREAS, the Esri licensing agreement, the Small Municipal and County Government Enterprise License Agreement program provides a cost-effective way to deploy GIS into the city operations and business processes; and

WHEREAS, the contract scope of services and payment will coincide with an Esri licensing agreement, the Small Municipal and County Government Enterprise License Agreement program; and

WHEREAS, funding has been identified in the Department of Information Technology's Fiscal Year 2021 Cost Allocation Budget and the funding for FY 22 and FY 23 is subject to Council's approval of the proposed citywide Fiscal Year 2022 and Fiscal Year 2023 Budget and Annual Appropriation Ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) for online Geographic Information System (GIS) software license maintenance and support increasing the amount by \$225,000 for a not-to-exceed total of \$621,000 for the period of July 1, 2020 through June 30, 2023.





Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Savita Chaudhary, Director, Information Technology  
Subject: Contract No. 10264B Amendment: ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Certification Training

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No 10264B with ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Workshops for an amount not to exceed \$73,658, and a total contract value not to exceed \$329,061 from May 1, 2016 through June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

One time funding for this project is allocated in the Department of Information Technology's FY2020 Information Technology Cost Allocation Fund as follows:

|                 |                                                                                                                                                                                               |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| \$46,538        | ThirdWave Corp. Digital Strategic Plan Refresh<br>FY 2020 Budget Code: 680-35-361-000-0000-000-472-612990<br>(Information Technology Cost Allocation, Professional Services)                  |
| \$27,120        | ThirdWave Corp. RapidWorkflow® Workshops Certification Training<br>FY 2020 Budget Code: 680-35-361-000-0000-000-472-612990<br>(Information Technology Cost Allocation, Professional Services) |
| <b>\$73,658</b> | <b>Total FY 2020 Professional Services</b>                                                                                                                                                    |

CURRENT SITUATION AND ITS EFFECTS

ThirdWave Corporation established the City's Digital (IT) Strategic Plan (DSP) that defines technology initiatives and objectives that align with the City's Strategic Plan. This DSP also improves the balance between demand for more and better technology, and available City resources, including, staff and capital and operating funds. In November 2016, the Council adopted the DSP which included many critical projects such as FUND\$ Replacement, Website Upgrade, New World CAD (Dispatch 911) Upgrade and various

other initiatives to improve efficiencies across the organization. Department of Information Technology (DoIT) has accomplished success in completing many of these initiatives since the deployment of DSP. The staff plans to identify the progress of DSP (projects completed, in progress and cancelled) in the last 4 years, identify the efficiencies achieved and refresh the DSP to develop a new roadmap for the next 3 years.

ThirdWave conducted a series of RWPM Workshops with various departments to map out business processes, identify pain points, brainstorm potentials solutions, and outline benefits of those solutions to bring improved efficiency, consistency, and increased customer service. Because this process was both extremely effective and well received by citywide staff, the DoIT plans to provide the certification training on the RWPM Tool so the staff can continue to provide support on business analysis for various technology projects.

#### BACKGROUND

In February 2016, the City issued a Request for Proposal (RFP) for a Citywide Digital Strategic Plan and Cost Allocation Plan under Specification No. 16-11013-C. Of the eleven responses received, ThirdWave Corporation's proposal best met the City's operational, technological, and fiscal requirements.

In November 2016, ThirdWave completed the Citywide Digital Strategic Plan, and in January 2017, Council formally approved implementation of the Digital Strategic Plan ([http://www.cityofberkeley.info/Clerk/City\\_Council/2017/01\\_Jan/Documents/2017-01-24\\_Item\\_14\\_Digital\\_Strategic\\_Plan.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2017/01_Jan/Documents/2017-01-24_Item_14_Digital_Strategic_Plan.aspx)). This plan prioritizes citywide technology projects for the next five years.

RWPM is a patent owned by ThirdWave Corporation to provide these process improvement workshops. ThirdWave will provide the DoIT staff the certification training on the RWPM Tool so the staff can continue to provide support on business analysis for various technology projects. The initial certification training provided to DoIT staff in 2017. There are eleven new staff members, which can benefit from this training to provide ongoing support to the City departments with the technology project deployments. ThirdWave will also provide refresher training to the existing staff who received training in 2017.

#### ENVIRONMENTAL SUSTAINABILITY

ThirdWave Corporation conducts a portion of their work remotely. When on-site visits are required for face-to-face meetings, they will cluster those visits over multiple days to minimize travel costs and greenhouse gas emissions related to travel. Additionally, by identifying cumbersome business practices the City is able to maintain an environmentally sound technology infrastructure.

#### RATIONALE FOR RECOMMENDATION

ThirdWave's RWPM Workshops have proven to be an effective and efficient way of documenting business processes and identifying pain points and areas for improvement.

ThirdWave's patented RWPM workshops was a critical tool that assisted in the development of the Citywide Digital Strategic Plan. Participating in certification training with ThirdWave will continue to increase efficiency, consistency, and customer service.

ALTERNATIVE ACTIONS CONSIDERED

ThirdWave Corporation holds the patent for RWPM, they have the extensive experience required to provide the City with as-is and to-be processes and provide the certification training to city staff.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 10264A AMENDMENT: THIRDWAVE CORPORATION FOR DIGITAL STRATEGIC PLAN REFRESH AND RAPIDWORKFLOW® PROCESS MODELING (RWPM) SERVICES

WHEREAS, on February 19, 2016, the City issued a Request for Proposal (RFP) for a Citywide Digital (IT) Strategic Plan and Cost Allocation Plan with Specification No. 16-110-13-C and the RFP review committee determined that ThirdWave Corporation's proposal best met the City's operational, technological, and fiscal requirements; and

WHEREAS, ThirdWave's patented RWPM workshops is a critical tool that assisted in the development of the Citywide Digital Strategic Plan and have proven to be an effective and efficient way of documenting business processes and identifying pain points and areas for improvement; and

WHEREAS, ThirdWave provides certification training on the RWPM Tool for staff to be able to provide support on business analysis for various technology projects; and

WHEREAS, the City desires to amend the existing contract with ThirdWave to refresh the DSP to develop a new roadmap for next 3 fiscal years; and

WHEREAS, funding for this one-time project is available in the Department of Information Technology's Cost Allocation Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 10264A with ThirdWave Corporation for RapidWorkflow® Process Modeling Services, for an amount not to exceed \$73,658, and a total contract value not to exceed \$329,061 from May 1, 2016 through June 30, 2021.





Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Information Technology

Subject: Contract No. 10988 Amendment: Presidio Network Solutions, LLC: Develop and Deliver a roadmap for Cyber Resilience Plan (CRP)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No 10988 with Presidio Network Solutions (“Presidio”) for an amount not to exceed \$28,620 and a total contract value not to exceed \$128,620 from September 21, 2018 through June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

One time funding for this project allocated in the Department of Information Technology’s FY2020 Information Technology Cost Allocation Fund as follows:

|                 |                                                                                                                                                           |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| \$28,620        | FY20 Professional Services<br>FY 2020 Budget Code: 680-35-363-382-0000-000-472-612990<br>(Information Technology Cost Allocation , Professional Services) |
| <b>\$28,620</b> | <b>Total FY 2020 Professional Services</b>                                                                                                                |

CURRENT SITUATION AND ITS EFFECTS

Presidio assessed the current state of the City’s cyber-resilience and identified the projects, objectives, and requirements needed over the next five years to improve the City’s cyber-resilience posture across “five focus areas”:

- Data Transparency
- Data Privacy and Data Security
- Program Functional Design
- Policy and Rationale, Monitoring, Response & Mitigation
- Training and Culture

This contract amendment for supplemental work will organize the delivered recommendations, projects, objectives, and requirements into ten (10) to thirteen (13) large-scale priorities/categories with estimated level of effort and timeframe for

implementing each plan of action and milestone. Presidio will also be providing more in depth documentation for each priority/category. This additional work aligns with the City's vision of reducing cyber-risk exposure, maturing cyber-security capabilities, technologies and systems, and effecting efficient regulatory compliance. The new CRP will specify ways in which recommended solutions will improve the City of Berkeley's operations and overall service delivery, streamline operations to achieve cost efficiencies and increased productivity, and support open and transparent governance.

### BACKGROUND

In March 2018, the City issued a Request for Proposal (RFP) for a Cyber-Resilience Assessment and Plan under Specification No. 18-11195-C and received 14 qualifying vendor responses. Presidio's proposal best met the City's functional and fiscal requirements.

In May 2019, Presidio completed the "as is" assessment and delivered their recommended projects, objectives, and requirements for the next five years. These recommendations include various technology implementations, creating and updating new policies and procedures to enhance cyber security, and developing criteria for implementing training programs for City employees.

In reviewing this large set of recommendations, the City discovered that many of the action items across the five focus areas should be organized into large-scale priorities/categories in order to leverage resources and mitigate dependencies, improve efficiencies by reducing the duplicate effort caused by other similar work efforts, and the total workload and costs.

### ENVIRONMENTAL SUSTAINABILITY

Presidio Network Solutions, LLC will be conducting their work remotely. Additionally, through identifying large-scale groupings of projects and investments, the City is able to maintain environmentally sound cyber-resilience.

### RATIONALE FOR RECOMMENDATION

Staff recommends that working with Presidio to further organize and leverage scale to map out the recommendations will ensure the most economical, efficient and ecological approach to improving the City's cyber-resilience. It would be most beneficial to obtain an outside perspective that provides industry best practices and experience working with other local municipalities to help establish a framework that the City can use for the next three years and beyond.

### ALTERNATIVE ACTIONS CONSIDERED

Staff considered developing the Cyber Resilience Plan roadmap internally, however Staff determined it would be most beneficial to take advantage of the work Presidio has completed with its assessment and help establish a framework that the City can use for the next three years and beyond. Hiring another consultant to conduct the work to be completed would require a similar cost simply to produce the report itself. It would also

involve additional time and expenses to become familiar with the City's current status, the City's template format, Presidio's "as is" assessment, the various sources involved (e.g., each Department's Directors and staff responsible for and impacting cyber-resilience), and Presidio's full set of recommended projects, objectives, and requirements.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 10988 AMENDMENT: PRESIDIO NETWORK SOLUTIONS, LLC:  
PRODUCE AND DELIVER A CYBER RESILIENCE PLAN (CRP)

WHEREAS, on March 2, 2018, the City issued a Request for Proposal (RFP) for a Cyber-Resilience Assessment and Plan (CRP) with Specification No. 18-11195-C and the RFP review committee determined that Presidio Network Solutions, LLC's proposal best met the City's functional and fiscal requirements; and

WHEREAS, Presidio's assessment and plan has resulted in a large set of recommendations, projects, objectives, and requirements that are best organized in a manner that leverages resources and mitigates dependencies, improves efficiencies by reducing the duplicate effort caused by other similar work efforts, and the total workload and costs; and

WHEREAS, the City desires to amend the existing contract with Presidio to develop a roadmap to implement the CRP that will include organizing the existing CRP into ten (10) to thirteen (13) large-scale priorities/categories with estimated level of effort and timeframe for implementing each plan of action and milestone while providing more in depth documentation for each priority/category; and

WHEREAS, one time funding for this project allocated in the Department of Information Technology's FY2020 Information Technology Cost Allocation Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 10988 Presidio Network Solutions, LLC for Professional Services, for an amount not to exceed \$28,620, and a total contract value not to exceed \$128,620 from September 21, 2018 through June 30, 2021.



Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at Cesar Chavez Park in memory of Michael H. Weiss

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Michael H. Weiss.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2020.

CURRENT SITUATION AND ITS EFFECTS

The family of Michael H. Weiss wishes to donate a memorial bench in their memory to be placed at Cesar Chavez Park at the Berkeley Marina with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

ENVIRONMENTAL SUSTAINABILITY

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, (510) 981-6737

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT CESAR CHAVEZ PARK AT THE BERKELEY MARINA IN MEMORY OF MICHAEL H. WEISS

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the family of Michael H. Weiss wishes to donate a memorial bench in their memory to be placed at Cesar Chavez Park at the Berkeley Marina with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Michael H. Weiss is hereby accepted.







Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Amendment to Contract No. 32000034 with Bellingham to Replace Additional Finger Docks at the Berkeley Marina

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend Contract No. 32000034 with Bellingham Inc. to replace damaged finger docks at the Berkeley Marina by increasing the construction contract amount by \$60,000 for a not-to-exceed amount of \$384,335.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the construction contract amendment in the amount of \$60,000 will be included in the Second Amendment to the FY 2020 Annual Appropriations Ordinance , from the Marina Fund account code 608-52-545-000-0000-000-473-663110- as follows:

Current construction contract

|                                        |           |
|----------------------------------------|-----------|
| Current amount .....                   | \$324,355 |
| Proposed amendment .....               | \$60,000  |
| <hr/>                                  |           |
| Total construction contract cost ..... | \$384,335 |

CURRENT SITUATION AND ITS EFFECTS

The City has a current construction contract with Bellingham Inc. to remove and replace damaged finger docks at the Berkeley Marina. To date, 13 damaged finger docks have been replaced, and an additional 24 damaged finger docks are scheduled for replacement in the Spring. Since the contract was amended in July 2019, two additional existing finger docks have failed, including a large 60' finger dock; and additional unforeseen damage was found at the existing finger dock connections that are receiving the replacement finger docks. Additional funds are needed to fix these problems. The construction contract for this work must be amended in order to proceed.

BACKGROUND

On April 10, 2019, the City issued an Invitation for Bid (IFB) for the construction work to remove and replace damaged finger docks at the Berkeley Marina (Spec No. 19-11306-

C). On May 22, 2019, the City determined that Bellingham was the lowest responsive and responsible bidder. On August 16, 2019, the City executed a contract with Bellingham for this project. On July 16, 2019, the City Council authorized an amendment to the contract increasing the amount by \$215,000 to fund the replacement of additional damaged finger docks at the Berkeley Marina.

ENVIRONMENTAL SUSTAINABILITY

The construction contract includes requirements to comply with the City’s Environmentally Preferable Purchasing Policy. The project involves the repair and replacement of existing docks and therefore will not negatively affect natural habitat.

RATIONALE FOR RECOMMENDATION

There is an immediate need to replace damaged finger docks, including dock sections that have failed in recent months. Bellingham is currently under contract to replace damaged finger docks. They have successfully completed work on 13 finger docks, and are making preparations for the next phase of 24 finger docks, which will begin in Winter/Spring, 2020. The City does not have the in-house labor or equipment resources to remove and replace damaged finger docks.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Ali Endress, Waterfront Manager, 981-6737  
Sean Crothers, Acting Waterfront Supervisor, 981-6744

Attachments:  
1: Resolution

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

AMENDMENT TO CONTRACT NO. 32000034 WITH BELLINGHAM INC TO REPLACE  
ADDITIONAL FINGER DOCKS AT THE BERKELEY MARINA

WHEREAS, on April 10, 2019, the City issued an Invitation For Bid (IFB) for the construction work to remove and replace damaged finger docks at the Berkeley Marina (Spec No. 19-11306-C). On May 22, 2019, the City determined that Bellingham was the lowest responsive and responsible bidder, and on August 16, executed a contract with Bellingham for this project; and

WHEREAS, on July 16, 2019, the City Council authorized an amendment to the contract increasing the amount by \$215,000 to fund the replacement of additional damaged finger docks at the Berkeley Marina, for an amount not to exceed \$324,335; and

WHEREAS, since the contract was amended in July 2019, two additional existing finger docks have failed, including a large 60' finger dock; and additional unforeseen damage was found at the existing finger dock connections that are receiving the replacement finger docks. Additional funds are needed to fix these problems; and

WHEREAS, funding for the construction contract amendment in the amount of \$60,000 is available in the Marina Fund, and will be included in the Second Amendment to the FY 2020 Annual Appropriations Ordinance account code 608-52-545-000-0000-000-473-663110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000034 with Bellingham Inc. to replace finger docks at the Berkeley Marina, increasing the contract amount by \$60,000 for a total amount not to exceed \$384,335. A record signature copy of the contract and any amendments to be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: Contract No. 31900207 Amendment: Recruiting, Advertising, and Marketing Strategy for the Berkeley Police Department

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 31900207 with Epic Recruiting, to provide additional recruiting and advertising services for police and professional staff vacancies. This amendment would add \$90,000 for a total contract amount not to exceed \$190,000, and extending the term through April 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

The amendment will add \$90,000 to cover the continuation of the police recruiting campaign through FY 2021. Funds for this contract in FY 2021 will be allocated in General Fund Budget Code: 011-71-704-816-0000-000-421-612990.

CURRENT SITUATION AND ITS EFFECTS

On February 19, 2019, the City Council adopted Resolution No. 68,758 authorizing the City Manager to execute a contract with Epic Recruiting to provide a digital marketing campaign in support of recruiting police and professional staff for the Berkeley Police Department. The contract has provided the Police Department with a professional recruiting website; cinema quality recruitment video production; branding design and photography; search engine optimization, development and launch of recruiting social media accounts; strategic ad placement campaigns using sites such as Google, YouTube, Facebook, and Instagram; assistance with posting and engaging on social media; website data analytics; a job fair booth banner, 500 recruiting pamphlets and monthly performance reports since the launch of the digital marketing campaign in September 2019.

The Berkeley Police Department must continue to be diligent and creative with its recruiting efforts in order to fill current and anticipated police and professional staff vacancies. The advertising campaign has not yet been live long enough for a thorough assessment of the effectiveness of our new recruiting strategies; however, recruitment team members have reported numerous prospects have mentioned Epic's digital marketing campaign as a significant factor in considering employment at BPD.

## BACKGROUND

On December 7, 2018 the City of Berkeley issued Request for Proposal No. 19-11276 for a Recruiting Advertising and Marketing Strategy for the Berkeley Police Department. After receiving four bidders, staff selected Epic Recruiting as the proposal that best met the criteria contained in the RFP.

Epic Recruiting is a digital marketing firm, and recently focuses their work towards providing online police organization recruiting services. Unlike other recruiting agencies, Epic targets the next generation of law enforcement and supports our efforts to improve and modernize existing hiring strategies. Epic uses online technologies and strategies such as online search, recruitment videos, and social networking. Professional recruitment videos for both sworn and professional employees produced by Epic can be placed on electronic billboards and on social media for a good return on investment.

This contract is a Strategic Plan Priority Project, advancing our goal to attract and retain a talented and diverse City government workforce.

The Scope of Services for the existing contract will be fulfilled in February 2020 at the conclusion of the six month digital marketing campaign. Additional services are required in order to continue to support recruiting efforts through an online media presence.

## ENVIRONMENTAL SUSTAINABILITY

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

## RATIONALE FOR RECOMMENDATION

The law enforcement job market is extremely competitive, with agencies across the region, state, and country aggressively recruiting the best qualified candidates from a limited pool of applicants. The Berkeley Police Department has become far more competitive and agile in its recruitment efforts, in no small part due to improved recruiting efforts by using the specialty services of Epic Recruiting. Innovative Police Officer and Public Safety Dispatcher recruiting strategies are the cornerstone for reaching and soliciting potential candidates. By continuing our digital marketing and social media advertising campaigns, the department will have a greater chance to share unique aspects of our department and our community, and highlight professional and desirable opportunities for those considering joining the department. We will remain highly competitive in our recruitment and hiring efforts, with the ultimate goal of attracting highly qualified individuals whose interests and ambitions resonate with the messages we convey. By extending the contract to April 30, 2021 staff will also have additional time to evaluate the effectiveness of the overall recruiting and retention campaign. Success will be measured by recruiting, retention, and vacancy rates.

Contract No. 31900207 Amendment: Epic Recruiting for  
Recruiting Advertising and Marketing Strategy for the  
Berkeley Police Department

CONSENT CALENDAR  
January 21, 2020

ALTERNATIVE ACTIONS CONSIDERED

Do not extend the contract, which would leave Police Department staff without strategic advertising placement, and require staff to navigate and manage social media channels and our recruiting website without the specialized support of a professional marketing firm. There would be no digital marketing or strategic ad placement, thereby returning recruiting strategies to the less effective means used in the past.

CONTACT PERSON

Jen Tate, Sergeant, Police, 510-981-5734

Attachments:

1: Resolution

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

CONTRACT NO 31900207 AMENDMENT: EPIC RECRUITING FOR RECRUITING,  
ADVERTISING, AND MARKETING STRATEGY FOR THE BERKELEY POLICE  
DEPARTMENT

WHEREAS, Epic Recruiting has provided professional, cinema quality recruiting videos, developed social media and recruiting products, and provides specialized online police recruiting services for the Berkeley Police Department; and

WHEREAS, the Berkeley Police Department has had an increase in the number of potential applicant contacts through Epic Recruiting's branding and marketing strategies; and

WHEREAS, in 2018, four prospective vendors submitted proposals in response to the RFP to provide Recruiting Advertising and Marketing Strategies; and

WHEREAS, Epic Recruiting was ranked highest by the selection panel as the vendor that best met the criteria listed in the RFP; and

WHEREAS, June 17, 2019, the City entered into a contract with Epic Recruiting to provide the Berkeley Police Department with web design, video production, photography, branding, and social media/digital marketing with the goal of increasing the number of qualified recruit and lateral applicants for an amount not to exceed \$100,000; and

WHEREAS, the Scope of Services for the contract will be fully met on February 29, 2020, and is approaching the authorized not to exceed amount of \$100,000, and additional advertising and recruiting services are required to fill Police Department vacancies; and

WHEREAS, funds for the additional Scope of Work in the amount of \$90,000 will be provided from the following General Fund Budget Code: 011-71-704-816-0000-000-421-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute an amendment, and any follow up amendments to Contract No. 31900207 with Epic Recruiting in an amount of \$90,000 for a total contract amount not-to-exceed \$190,000 for continued recruiting, advertising and marketing strategies and extending the term through April 30, 2021.





Office of the City Manager

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip Harrington, Director, Public Works

Subject: Contract No. 10645 Amendment: Recology Blossom Valley Organics - North for the Hauling and Processing of Organic (Compostable) Materials

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10645 for a five (5) year term with Recology, Inc.'s Blossom Valley Organics - North facility for the hauling and processing of organic (compostable green and food waste) materials through February 28, 2025 increasing the amount by \$13,600,000 for a total amount not-to-exceed \$26,661,930.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2020 Zero Waste Fund (601) budget. Funding for FY 2021 - FY 2025 is subject to appropriation.

|                                    |              |
|------------------------------------|--------------|
| Original contract amount for       | \$13,061,930 |
| Proposed increase (this amendment) | \$13,600,000 |
| Total New Contract Amount          | \$26,661,930 |

This contract has been assigned Vendor Contract Number 10645.

CURRENT SITUATION AND ITS EFFECTS

The City currently contracts with Recology Inc.'s Blossom Valley Organics – North facility (Recology) for the hauling and composting of organic (compostable green and food waste) materials. This contract will expire February 29, 2020.

The current contract provides the City and Recology a mutual option to amend the contract for an additional five (5) year term. Recology has proposed a first year rate for the contract amendment that includes keeping the current base rate of \$55.26 per ton for composting (processing) and a revised \$24.09 per ton fee for hauling organic (compostable) materials from the City's Transfer Station to Recology's Blossom Valley – North composting (processing) facility. The current contract hauling rate is \$17.26 per ton plus fuel cost escalator. The proposed hauling rate for the contract amendment

reflects current marketplace tractor-trailer transportation costs. The overall contract amount of net change (processing plus hauling) of the contract amendment is estimated to be \$538,070 or 4.1%. As with the current contract, this contract amendment includes a non-fuel cost annual increase keyed to the San Francisco Bay Area All Consumer Price Index (CPI) and a fuel cost escalator based on the Energy Information Administration Oil Price Information Service Index<sup>1</sup>.

In addition and based on the weight of organic materials delivered to Recology, the contract requires Recology to deliver end products (up to 5% by weight of average monthly delivered tons), such as, finished compost, to a City designated location for community members' use at no cost. During the months of February to October, free compost is made available to City of Berkeley residents.

### BACKGROUND

In January 2010, Department of Public Works released a Request for Proposals (RFP) for composting organic (compostable) materials with a hauling option that required the vendor to deliver five percent (5%) of the finished compost product to the City for use by Berkeley community members. In May 2010, Council approved Contract No. 8389 with Recology Inc. - Grover Environmental Products for a three year term ending July 31, 2013. That contract included two (2) one year extensions requiring mutual consent of the parties and it expired July 31, 2015. The contract with Recology was further amended by letter and extended through January 31, 2017.

In June 2016, the City released a RFP for hauling and composting of organic (compostable) materials delivered to the City's Transfer Station. Of the three responses received at that time, East Bay Municipal Utility District (EBMUD) and Napa Recycling were deemed non-responsive as their facilities would not become operational by the required contract start date of January 31, 2017. Recology Blossom Valley Organics – North (formerly Recology Grover Environmental Products) was deemed the most responsive and responsible bidder and at the conclusion of the RFP process, the City entered into negotiations with Recology. On January 31, 2017, the City Council authorized the City Manager to enter in a contract with Recology, Inc. for \$13,061,930 by Resolution No. 67,827–N.S<sup>2</sup> including one (1) five year mutual extension.

This contract amendment authorization would allow the City to continue to support the City's goal of Zero Waste and its Strategic Plan goal of being a global leader in addressing climate change and protecting the environment.

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<sup>1</sup> [https://www.eia.gov/dnav/pet/pet\\_pri\\_refoth\\_dcu\\_nus\\_m.htm](https://www.eia.gov/dnav/pet/pet_pri_refoth_dcu_nus_m.htm)

<sup>2</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/01\\_Jan/Documents/01-31\\_Annotated.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/01_Jan/Documents/01-31_Annotated.aspx)

ENVIRONMENTAL SUSTAINABILITY

The ongoing and successful efforts to compost the City's organic (both green and food waste) materials into a useful and beneficial soil amendments, such as, finished compost, and diverting Berkeley's organic (compostable) waste from the refuse and its permanent disposal in landfills, is an essential component of fulfilling the City's Zero Waste Goal and its 2009 Climate Action Plan.

RATIONALE FOR RECOMMENDATION

City Staff's review of recent RFPs issued by Bay Area agencies reveal limitations of facilities that may or could accept both green and food waste materials. EBMUB is still a small pilot program<sup>3</sup>, and Sonoma County Integrated Waste Management Authority's proposed food waste digesters are not operational. Both Waste Management Inc.'s Redwood Compost and Napa Recycling have food waste acceptance permit restrictions either by type or daily tonnage.

Since 2016, Recology has provided quality reliable service to the City and a reputation for delivering a high quality end products to the City's community members. Diversion of organic (compostable) materials plays a significant role in meeting the City's Climate Action Plan and waste diversion goals.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, Public Works, (510) 981-6359.

Attachments:

1: Resolution

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<sup>3</sup> <https://www.ebmud.com/wastewater/recycling-water-and-energy/food-scraps-recycling>

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

CONTRACT NO. 10645 AMENDMENT: RECOLOGY, INC.'S BLOSSOM VALLEY ORGANICS - NORTH FOR HAULING AND PROCESSING OF ORGANIC (COMPOSTABLE) MATERIALS

WHEREAS, the City of Berkeley's Zero Waste Management Division currently collects approximately 33,000 tons of organic (compostable - green and food waste) materials per year; and

WHEREAS, the City in 2016 conducted a competitive request for proposals process for the hauling and processing (composting) services for the City's organic (compostable) materials; and

WHEREAS, Recology Inc.'s Blossom Valley Organics - North, Inc. was deemed the most responsive, qualified bidder, and meets all other contract requirements for a contract amendment; and

WHEREAS, on January 31, 2017, by Resolution No. 66,827 – N.S., the City Council authorized Contract No. 10645 with Recology Inc. for the hauling and processing of organic (compostable) materials in an amount not to exceed \$13,061,930 for the period of March 1, 2016 to February 29, 2020; and

WHEREAS, diverting organic (compostable) materials from Berkeley's landfilled waste is an essential component of meeting the City's waste reduction, zero waste and greenhouse gas reduction goals; and

WHEREAS, funding for this contract extension available in the FY 2020 Zero Waste Fund 601 budget; funding for FY 2021 - FY 2025 is subject to appropriation; and this contract has been assigned Contract Vendor Number 10645.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract amendment with Recology Inc.'s Blossom Valley Organics - North for the hauling and processing of organic (compostable green and food waste) materials through February 28, 2025 in an amount not-to-exceed \$26,661,930.



Mental Health Commission

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: boona cheema, Chairperson, Mental Health Commission  
 Subject: Appointments of Maria Moore, Edward Opton and Farzaneh Izadi to the Mental Health Commission

RECOMMENDATION

Adopt a Resolution approving the appointment of Maria Moore as a representative of the Special Public Interest Category; Edward Opton, as a representative of the General Public Interest Category; and Farzaneh Izadi as a representative of the Special Public Interest Category to the Mental Health Commission, for three year terms beginning January 22, 2020 and ending January 21, 2023.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

Approval of the recommended action will allow the Commission to move one step closer to having a full and diverse complement of commissioners.

BACKGROUND

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

Currently, the Mental Health Commission consists of the following: two Berkeley Special Public Interest Commissioners; three Berkeley General Public Interest Commissioners; one Albany General Public Interest Commissioner; and one Mayoral appointee.

At the September 26, 2019 meeting, the Mental Health Commission interviewed Maria Moore who works as a Human Resource Analyst but has previously worked as a case manager and a mental health counselor in the bay area. She is involved in numerous community groups and has a passion to work with the mental health population. The secretary has determined that Ms. Moore is eligible for the Berkley Special Interest seat on the Mental Health Commission.

On September 26, 2019 the Mental Health Commission passed the following motion:

Interview and vote on nomination of Maria Moore to the Mental Health Commission M/S/C (Castro, Davila) \*Motion to nominate Maria Moore by the Mental Health Commission in order to send to Berkeley City Council for appointment.  
Ayes: Castro, cheema, Davila, Fine, Heda, Kealoha-Blake, Prichett; Noes: None; Abstentions: None; Absent: None.

Also at the September 26, 2019 meeting the Mental Health Commission interviewed Edward Opton for the General Public Interest seat. Mr. Opton is a retired attorney and has a Ph.D in clinical psychology and has volunteered at the National Center for Youth Law to improve mental health treatment for children in foster care. Mr. Opton has also been active in the community working on numerous issues that affect the community.

On September 26, 2019 the Mental Health Commission passed the following motion:

Interview and vote on nomination of Edward Opton to the Mental Health Commission M/S/C (Davila, Prichett) \*Motion to nominate Edward Opton by the Mental Health Commission in order to send to Berkeley City Council for appointment.  
Ayes: Castro, cheema, Davila, Fine, Heda, Kealoha-Blake, Prichett; Noes: None; Abstentions: None; Absent: None.

At the October 24, 2019 meeting the mental Health Commission interviewed Farzaneh Izadi who is a mental health consumer of Berkeley Mental Health. She is also an immigrant who came to the US in 2006. She was formally a teacher and a business owner.

On October 24, 2019 the Mental Health Commission passed the following motion:

Interview and vote on nomination of Farzaneh Izadi to the Mental Health Commission M/S/C (Davila; Kealoha-Blake) Motion to nominate Farzaneh Izadi and send to city council for appointment to the Mental Health Commission.  
Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Prichett; Noes: None; Abstentions: None; Absent: Heda

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

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

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, (510) 981-7721

Attachments:

1: Resolution

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

APPOINTMENTS OF MARIA MOORE AND FARZANEH IZADI TO THE MENTAL HEALTH COMMISSION AS REPRESENTATIVES OF THE SPECIAL PUBLIC INTEREST CATEGORY; AND EDWARD OPTION AS A REPRESENTATIVE OF THE GENERAL PUBLIC INTEREST CATEGORY

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (or designee), six special public interest appointments, two appointments of residents of Albany (one of which shall be a representative of the special public interest category), and four general public interest appointments; and

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

WHEREAS, the Mental Health Commission, at the September 26, 2019 meeting recommended the appointment of Maria Moore and Edward Opton and at October 24, 2019 the Mental Health Commission also recommended the appointment of Farzaneh Izadi to the Mental Health Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Maria Moore, to the Mental Health Commission, as representative of special public interest category. Edward Opton, to the Mental Health Commission, as representative of the general public interest category and Farzaneh Izadi, to the Mental Health Commission, as representative of the special public interest category, for a three year term beginning January 22, 2020 and ending January 21, 2023.





Office of the City Manager

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Berkeley Peace & Justice Commission

Submitted by: Igor Tregub, Chairperson

Subject: Resolution: Oppose the new U.S. base construction in Henoko-Oura Bay of Okinawa

RECOMMENDATION

Adopt a resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

A new U.S. military base is being constructed in the Pacific Ocean, in Okinawa's Oura Bay in the Henoko region of Okinawa. Oura Bay is one of the most bio-diverse ecosystems on the planet with over 5,300 species and world-renowned coral reef systems. Fully 262 of the species in Oura Bay are endangered, including the dugong, a medium-sized marine mammal, which have been closely monitored internationally by environmental groups due to its diminishing numbers as well as its status as a designated of indigenous historical value.

The construction of this base has been repeatedly opposed by the Okinawan people. Most recently on February 24, 2019, over 70% of Okinawans voted in opposition to the construction of this U.S. Marine Corps base.

At its regular meeting on November 4, 2019, the Peace and Justice Commission recommended that the Council of the City of Berkeley adopt a resolution opposing the new U.S. base construction in Henoko-Oura Bay of Okinawa. The vote for the attached resolution was as follows:

M/S/C: Bohn/Meola  
 Ayes: Askary, Bohn, Lippman, Maran, Meola, Morizawa, Pancoast, Pierce, Rodriguez  
 Noes: None  
 Abstain: None  
 Absent: al-Bazian, Gussman, Tregub  
 Excused: None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report. This resolution is a statement against U.S. involvement in grave environmental destruction in the Pacific Ocean off the coast of Okinawa.

RATIONALE FOR RECOMMENDATION

The Japanese government, in partnership with the U.S. government, is causing irreversible harm to the ecosystem by dropping concrete blocks on top of precious coral and suffocating the marine habitat. The construction is already adversely impacting the region, contributing to species collapse and furthering environmental damage already sustained from rapid climate change.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Nina Goldman, Commission Secretary, City Manager's Office (510) 981-7537

Attachment:

1. Resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa

RESOLUTION NO. ##,###-N.S.  
OPPOSE THE NEW U.S. BASE CONSTRUCTION IN HENOKO-OURA BAY OF  
OKINAWA

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, a new U.S. military base is being constructed in the Pacific Ocean, in Okinawa's Oura Bay,<sup>i</sup> in the Henoko region of Okinawa. Oura Bay is one of the most bio-diverse ecosystems on the planet with over 5,300 species and world-renowned coral reef systems. 262 of the species in Oura Bay are endangered, including the dugong, a medium-sized marine mammal, which have been closely monitored internationally by environmental groups due to its diminishing numbers as well as its status as a designated cultural property<sup>ii</sup> of indigenous historical value; and

WHEREAS, the Japanese government, in partnership with the U.S. government, is causing irreversible harm to the ecosystem by dropping concrete blocks on top of precious coral and suffocating the marine habitat with dirt and concrete. The construction is already adversely impacting the region, contributing to species collapse and furthering environmental damage already sustained from rapid climate change; and

WHEREAS, the construction of this base has been repeatedly opposed by the Okinawan people.<sup>iii</sup> Most recently on February 24, 2019, over 70% of Okinawans voted in opposition to the construction of this particular U.S. Marine Corps base; and

WHEREAS, Okinawa has already been forced to host nearly 70% of U.S. military facilities in Japan<sup>iv</sup> despite consisting of only 0.6% of Japan's national landmass; and

WHEREAS, this treatment of Okinawa as a colonial military outpost has continued since the Japanese annexation of the once sovereign nation of the Ryūkyū Kingdom. Then during WWII, Okinawan land was destroyed in a war between U.S. and Japan, killing almost a third of the entire Okinawan population. From there, the U.S. construction of military bases began against the will of the Okinawan people and continues today;<sup>v</sup> and

WHEREAS, the Okinawan people have employed all legal and peaceful means of opposing this new base from being forced upon them – from elders staging nonviolent protests and sit-ins to Okinawan governors challenging the Japanese government through the legal system, only to be disregarded in Tokyo and Washington, D.C. Okinawan Diaspora members of Global Uchinanchu Alliance (GUA)<sup>vi</sup> have come together to reach out for support in this international crisis; and

WHEREAS, the City of Berkeley has expressed its solidarity with the Okinawan people by passing a resolution in support of the immediate halting of new U.S. military base

construction at Henoko, Okinawa, passed by the Berkeley City Council on September 9, 2015.<sup>vii</sup>

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley that the City stands in solidarity with the people of Okinawa in demanding the immediate and complete halt of the U.S. Marine Corps base construction and ocean destruction in Henoko, Okinawa.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley ask the City Clerk to send a copy of this resolution to Representative Barbara Lee and Senators Dianne Feinstein and Kamala Harris, and to the chairs of the U.S. House and Senate Committees on Armed Services.

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<sup>i</sup> “Expansion of US Military base puts endangered Henoko Bay Dugong at risk on Okinawa, Japan”, May, 1, 2019 (last update), <https://ejatlas.org/conflict/henoko-bay-dugong-or-us-base-for-okinawa>

<sup>ii</sup> “Okinawa Dugong Lawsuit Judge asks why US govt did not consult with environmental experts and Okinawans about Landfill, Construction Impact on Okinawa Dugong Cultural Heritage”, June 28, 2018, <https://tenthousandthingsfromkyoto.blogspot.com/2018/06/okinawa-dugong-lawsuit-judge-asks-why.html>

<sup>iii</sup> “We shall overcome (戦場ぬ止み Ikusaba Nu Tudumi)” Trailer, YouTube video, October 3, 2015, [https://www.youtube.com/watch?v=FEc\\_D\\_meOBY&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=20&t=0s](https://www.youtube.com/watch?v=FEc_D_meOBY&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=20&t=0s)

<sup>iv</sup> Okinawa Prefectural Government, September 2011, “US Military Base Issues in Okinawa.” <https://www.pref.okinawa.jp/site/chijiko/kichitai/documents/us%20military%20base%20issues%20in%20okinawa.pdf>

<sup>v</sup> “Message to Obama from a Veteran in Okinawa,” YouTube video, February 29, 2016, <https://www.youtube.com/watch?v=6p5kXBod1gg&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=4&t=11s>

<sup>vi</sup> [Global Uchinānchu Alliance, https://uchinanchu.com/](https://uchinanchu.com/)

<sup>vii</sup> Resolution in support of the immediate halting of new U.S. military base construction at Henoko, Okinawa, passed through the Berkeley City Council on September 9, 2015: [https://www.cityofberkeley.info/...Council/.../2017-05-30\\_Item\\_34\\_Support\\_the\\_Immediate\\_Halting.aspx](https://www.cityofberkeley.info/...Council/.../2017-05-30_Item_34_Support_the_Immediate_Halting.aspx)

CONSENT CALENDAR

January 21, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín and Councilmember Ben Bartlett  
Subject: YMCA of the East Bay Youth & Government Program

RECOMMENDATION

Adopt a Resolution approving the D-13 expenditure of \$1,500 in an amount not to exceed \$300 per Councilmember, to the YMCA of the East Bay's Youth & Government program.

BACKGROUND

The YMCA of the East Bay provides two different programs in Youth & Government. The Model United Nations provides middle schoolers an opportunity to build leadership skills while gaining knowledge about the world around them and different cultures. The Model Legislature & Court gives high schoolers hands-on civic engagement through a five-day trip to Sacramento and the State Capitol, providing extensive knowledge of California's state government and courts system. Both these programs encourages these students to think critically, strengthen interpersonal communication skills, and raise awareness and engagement in community issues.

To help low-income youth participate in the program, they are requesting donations that will be used to cover expenses that may be financially out of reach for some families.

FINANCIAL IMPLICATIONS

\$300 from the Mayor's D-13 account and other Councilmembers who wish to contribute.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR THE YMCA OF THE EAST BAY'S YOUTH & GOVERNMENT PROGRAM

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

WHEREAS, a California non-profit tax exempt corporation YMCA of the East Bay seeks funds in the amount of \$1500 to provide the following public services: Providing low-income youth financing for their Youth & Government program; and

WHEREAS, the Youth & Government program provides middle and high school students with invaluable hands-on experience in critical thinking, communication, and community engagement through the lens of government and democracy.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$300 per office shall be granted to YMCA of the East Bay.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Ben Bartlett

Subject: Berkeley Youth Alternatives (BYA) 16th Crab Feed on Thursday, February, 27, 2020: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$120 from Councilmember Cheryl Davila, to support Berkeley Youth Alternatives, for their [16<sup>th</sup> Annual Crab Feed Fundraiser](#) on Thursday, February 27, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Cheryl Davila and Mayor or any other Councilmembers who would like to contribute.

BACKGROUND

Berkeley Youth Alternatives (BYA) is community based 501(c) 3 organization that was established in 1969 as a runaway youth shelter. BYA has since expanded its operations to include support for youth and families, with an emphasis on education, health/well-being and economic self-sufficiency. BYA provides quality services such as mental health, case management, academic support, mentoring, health education, sports, fitness, recreation, job training and youth internships. BYA is also certified Small, Local, and Emerging Business (SLEB) vendor, #13-00074, with Alameda County.

We are proposing that the City Council make a minimum grant of \$120 to the Berkeley Youth Alternatives 16th Crab Feed on Thursday, February, 27, 2020, from 7 PM to 9 PM, located at 1255 Allston Way. The funds raised at this event are used to provide services to approximately 1,200 youth and their families per year through a variety of activities.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$120 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

ENVIRONMENTAL SUSTAINABILITY

Supporting our youth is itself an act of environmental sustainability.

CONTACT PERSON

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

ATTACHMENT:

1. [Berkeley Youth Alternatives 16th Crab Feed](#) on Thursday, February 27, 2020
2. Resolution

(Limited seating available)



# BYA 16th CRAB FEED



## Thursday, February 27, 2020

**Location: 1255 Allston Way, Berkeley, CA**

(Directions: Take University Avenue, between San Pablo Avenue and Sacramento Street, turn onto Bonar Street, left onto Allston Way.)

**Dinner- 7:00pm to 9:00pm**  
**ALL TICKETS \$60**

Come Early  
No Host Wine  
Bar 6:00 pm

Reserve table for 6. Add \$40.00 to the overall reservation.  
(ex: Table for six \$400.00) Check has to be written by one person to reserve a table.

**ONLY 200 TICKETS AVAILABLE!**



NO  
TICKETS  
AT THE  
DOOR

To order tickets please contact BYA at (510) 845-9010 ext 201 or send payment to:

**BYA, 1255 Allston Way, Berkeley, CA 94702**

Purchase online at <https://donatenow.networkforgood.org/byacrabfeed>



I would like to purchase \_\_\_\_\_ ticket(s) to the event at \$60 each.

I would like to reserve a table at the event \_\_\_\_\_.

I enclose a check payable to **BYA** for

\$ \_\_\_\_\_



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY AUTHORIZING 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 Cheryl Davila has surplus funds in her office expenditure account (budget code 011-11-102-000-0000-000-411); and

WHEREAS, a California non-profit tax-exempt corporation Berkeley Youth Alternatives, a community-serving non-profit is seeking donations of support in the amount of \$120 for their 16th Crab Feed on Thursday, February, 27, 2020, from 7 PM to 9 PM, located at 1255 Allston Way; and

WHEREAS, Berkeley Youth Alternatives provides broad support to Berkeley youth and their families to achieve academic success, sound health and well-being, and economic self-sufficiency;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per office shall be granted to Berkeley Youth Alternatives 16th Crab Feed.





Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** January 21, 2020

**Item Description:** Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report and resolution to reflect the actions from December 5, 2019 Council Facilities, Infrastructure, Transportation, Environment and Sustainability Committee meeting:

Send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item. Also, the committee took action to amend the recommendations:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”
2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.
3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020  
~~December 3, 2019~~

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Ben Bartlett

Subject: Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 day~~

**RECOMMENDATION**

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

- ~~1. Establishment of a new department - Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~
- ~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~
- ~~2. External Community Engagement - Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~
- ~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. A Report from the City Manager within 90 days regarding: The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

### POLICY COMMITTEE RECOMMENDATION

On December 5, 2019, the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item.

Amend the recommendation to read as follows:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”.
2. A Report from the City Manager within 90 days regarding: The resources needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding.
3. Recommend that all staff reports address climate change in addition to environmental sustainability.

Vote: All Ayes.

### BACKGROUND

The Berkeley City Council unanimously passed the Climate Emergency Declaration June 12, 2018. Since then, Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations. There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step.

As unprecedented winter wildfires are impacting our City with fierce urgency, we must begin to prepare for our future in these times of climate disruption. Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth’s climate. To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters.

While the wildfires and mudslides demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impact lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South. Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen this after hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable people have been left to fend for themselves.

The City must therefore aggressively move to reduce and remove greenhouse gas emissions, adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyans can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity.

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation “the establishment of a new department” in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”. (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

FISCAL IMPACTS OF RECOMMENDATION

To be determined.

ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, it is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

CONTACT PERSON

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

ATTACHMENTS:

1. Resolution
2. Track changes from original Council item

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY TO ESTABLISH A NEW CITY DEPARTMENT CALLED CLIMATE EMERGENCY MOBILIZATION DEPARTMENT

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa

Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step; and

WHEREAS, The Climate Emergency Declaration was the first step, and creating the Climate Emergency Mobilization Department is the next step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, abnormal wildfires, tornadoes, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyan can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation "the establishment of a new department" in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities". (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council



reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs a Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:  
1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:~~

~~1. Establishment of a new department – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~

~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~

~~2. External Community Engagement – Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~

~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. A Report from the City Manager within 90 days regarding: The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

BE IT FURTHER RESOLVED, that the City Council directs the City Planning Department to report back on opportunities for radical greenhouse gas emissions reductions and carbon drawdown and removal opportunities through the City’s General Plan and Community Plan Updates, including on metrics which can prioritize climate-adaptive land use planning.

BE IT FURTHER RESOLVED, that the City Council directs the City Manager or Designee to report back on opportunities and funding to address climate emergencies and mitigation through existing hazard mitigation programs.

BE IT FURTHER RESOLVED, that the City Council direct the City Clerk to work with the City Manager to include greenhouse gas impact statements and greenhouse gas removal or reduction statements in all relevant Council motions, much as it currently includes fiscal impact statements.



Cheryl Davila  
Councilmember  
District 2

## REVISED AGENDA MATERIAL

**Meeting Date:** January 21, 2020

**Item Description:** Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

**Submitted by:** Councilmember Cheryl Davila

Updated agenda report and resolution to reflect the actions from December 5, 2019 Council Facilities, Infrastructure, Transportation, Environment and Sustainability Committee meeting:

Send the item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation, the establishment of a new department, in the committee as a discussion item. Also, the committee took action to amend the recommendations:

1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”
2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.
3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
January 21, 2020  
~~December 3, 2019~~

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Ben Bartlett

Subject: Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability

~~Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 day~~

**RECOMMENDATION**

~~Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee:~~

~~1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”~~

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- ~~1. Establishment of a new department - Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~
- ~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~
- ~~2. External Community Engagement - Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.” As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~
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## BACKGROUND

The Berkeley City Council unanimously passed the Climate Emergency Declaration June 12, 2018. Since then, Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations. There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step.

As unprecedented winter wildfires are impacting our City with fierce urgency, we must begin to prepare for our future in these times of climate disruption. Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate. To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters.

While the wildfires and mudslides demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impact lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South. Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen this after hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable people have been left to fend for themselves.

The City must therefore aggressively move to reduce and remove greenhouse gas emissions, adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyans can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity.

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation "the establishment of a new department" in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities". (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

## FISCAL IMPACTS OF RECOMMENDATION

To be determined.

## ENVIRONMENTAL SUSTAINABILITY

The Berkeley City Council unanimously passed the Climate Emergency Declaration in June 2018, it is important, now more than ever to take the next step to insure that we are prepared and ready for the climate crisis we will face.

CONTACT PERSON

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

ATTACHMENTS:

1. Resolution
2. [Track changes from original Council item](#)

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY TO ESTABLISH A NEW CITY DEPARTMENT CALLED CLIMATE EMERGENCY MOBILIZATION DEPARTMENT

WHEREAS, The Berkeley City Council unanimously passed the Climate Emergency Declaration on June 12, 2018; and

WHEREAS, the cities of Richmond, Oakland, Hayward, Alameda, El Cerrito, Chico, Fairfax, Healdsburg, Davis, Arcata, Cloverdale, Malibu, Petaluma, San Jose, San Mateo County, Santa Cruz City & County, Sonoma County and Windsor have also passed Climate Emergency Declarations; and

WHEREAS, There are over 48 cities throughout the United States who have declared, as well as over 1,146 governments and 22 countries throughout the world. The declaration is the first step; and

WHEREAS, The Climate Emergency Declaration was the first step, and creating the Climate Emergency Mobilization Department is the next step; and

WHEREAS, As unprecedented winter wildfires and ensuing mudslides destroyed parts of our City and region, a climate emergency mobilization of our City has never been more fiercely urgent; and

WHEREAS, Such an effort must end to the maximum extent technically feasible city-wide greenhouse gas emissions in every sector by 2025 and begin a large-scale effort to safely and justly remove carbon from the atmosphere; and

WHEREAS, Without an immediate and drastic change from the status quo, humans will cause irreversible and ever-worsening damage to the Earth's climate; and

WHEREAS, To act too late, or to be too cautious in our vision and do too little, carries the risk of condemning the City and its residents to an increasingly uninhabitable climate and potentially catastrophic economic losses caused by worsening disasters; and

WHEREAS, abnormal wildfires, tornadoes, mudslides and other demonstrate that the climate emergency threatens everyone, the disasters wrought by an abruptly destabilizing climate have so far most devastatingly impacted lower-income communities of color first and worst. Drought, famine, and instability have devastated countries in the Global South; and

WHEREAS, Millions of climate refugees have already left their homes in search of a safe place to live. In the United States, we have seen after Hurricanes Katrina, Sandy, Harvey, Irma and Maria how environmentally and economically vulnerable have been generally left to fend for themselves; and

WHEREAS, The City must therefore aggressively move to reduce and remove greenhouse gas emissions and adapt and restore ecosystems by rapidly adopting legislation to mandate such efforts Citywide and by doing so in such a way that lower-income and frontline communities of color benefit first from mitigation and adaptation funds. The City can thereby create a model for other cities to follow and use its global climate leadership standing to lead the way. By doing so, Berkeleyan can trigger a global mobilization to restore a safe climate, thereby creating the conditions for a future, not of chaos and misery, but of community and dignity; and

At the December 5, 2019 meeting of the Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Council Committee, the committee requested to send this item, as amended, back to the City Council with a Positive Recommendation and to keep the first recommendation “the establishment of a new department” in the FITES committee as a discussion item. Also, the committee took action to amend the recommendations: (1) Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities”. (2) Short Term Referral to the City Manager to report back and identify the resources and funding needed to adequately implement these efforts, including different organizational structure options; and recommendations for funding. (3) Implement and require all City Council reports/items, and staff reports include Climate Impacts in addition to Environmental Sustainability.

NOW, THEREFORE IT BE RESOLVED, that the Berkeley City Council directs a Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect “marginalized and front-line communities.”

Short Term Referral to the City Manager on how to establish a New Department: Climate Emergency Mobilization Department within 90 days with the following actions:

1. Establishment of a new department – Create a Climate Emergency Mobilization Department (CEMD) and transition existing city staff (current Chief Sustainability and Resilience Officers) into the new department. The CEMD is proposed to have oversight authority of existing departments and boards regarding planning and coordination of the City’s response to climate change, including public education and outreach. In addition, the

~~CEMD would measure and track ongoing greenhouse gas emissions and pollutants, develop an annual climate emissions budget and identify grant funding.~~

~~2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding.~~

~~2. *External Community Engagement* - Provide a timeline for regular on-going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities." As part of this process, the proposal further recommends that community capacity building in the form of training and education be provided, and that potential pilot projects be considered which could be tested in these communities.~~

~~3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability.~~

~~3. *A Report from the City Manager within 90 days regarding:* The number of positions to adequately implement and operate the CEM department; and recommendations for funding in the upcoming fiscal year budget.~~

BE IT FURTHER RESOLVED, that the City Council directs the City Planning Department to report back on opportunities for radical greenhouse gas emissions reductions and carbon drawdown and removal opportunities through the City's General Plan and Community Plan Updates, including on metrics which can prioritize climate-adaptive land use planning.

BE IT FURTHER RESOLVED, that the City Council directs the City Manager or Designee to report back on opportunities and funding to address climate emergencies and mitigation through existing hazard mitigation programs.

BE IT FURTHER RESOLVED, that the City Council direct the City Clerk to work with the City Manager to include greenhouse gas impact statements and greenhouse gas removal or reduction statements in all relevant Council motions, much as it currently includes fiscal impact statements.





Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Budget Referral to Conduct an Equal Pay Audit

RECOMMENDATION

1. Refer to the June 2020 Budget Process \$20,000 to pay for an Equal Pay Audit for City of Berkeley employees. The audit would include pay band analyses and analyses of job segregation and glass ceilings.
2. Issue an RFP to complete the Equal Pay Audit

BACKGROUND

In January 2016, the Commission on the Status of Women (COSOW) formed an equal pay subcommittee in response to a referral from Councilmember Worthington. A year later in April 2017, COSOW made a three-part recommendation to the City Council that included a gender pay audit for city employees.

In the May 2017 Re-weighted Range Voting (RRV) process, the City Council voted to make an equal pay audit the second highest priority<sup>1</sup>. Two years later, COSOW brought the item back to Council with the recommendation that it be performed by an outside vendor, Dr. Martha Burk, because it remained incomplete despite high prioritization. Dr. Burk conducted a similar audit in New Mexico and gave a presentation on it to the Berkeley COSOW. The City Council approved funding for this presentation at the July 9, 2019 meeting<sup>2</sup>.

The Council expressed interest in the audit but did not approve the request, because the request was made outside the regular budgeting process and no RFP was completed. This referral intends to complete the work that was already approved and prioritized.

The audit intends to examine pay equity among City of Berkeley employees by looking at three different metrics: job segregation, pay band analyses and glass ceilings. Job segregation is a count of the number of male and female employees in each department. Pay band analyses examine the grouping of employees within a certain salary range in a

<sup>1</sup> Item 1, May 30, 2017 Berkeley City Council Special Meeting, "2017 City Council Referral Prioritization Process Using Re-Weighted Range Voting (RRV)".

<sup>2</sup> Item 9, July 9, 2019 Berkeley City Council Meeting, "Gender Pay Equity Salary Negotiation Workshop".

given department, irrespective of job titles. A glass ceiling analysis determines whether men or women are concentrated in lower-paying jobs.

This audit is meant to be a preliminary examination that will indicate whether a more thorough examination is needed (including a comparison of different classifications in different departments).

The final report will include:

1. The number of pay bands examined
2. Number of pay bands segregated by gender
3. Bands containing both genders
4. Bands with no gender wage gap
5. Bands with a gap that favors women
6. Bands with a gap that favors men

#### FISCAL IMPLICATIONS

The audit will require \$20,000 for surveilling and processing data from the different departments.

#### RATIONALE FOR RECOMMENDATION

The gender pay gap runs contrary to the values of the City of Berkeley and our Strategic Plan goal of championing social justice. This audit will inform the City whether further action is required to close any gender pay gap among City employees.

After a recommendation has been approved by Council and prioritized highly, its timely completion builds trust in local government.

#### ENVIRONMENTAL SUSTAINABILITY

No impact.

#### CONTACT PERSON

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

**SOPHIE HAHN**

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 Berkeley, CA 94704  
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 shahn@cityofberkeley.info

CONSENT CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Sophie Hahn, Mayor Jesse Arreguin, and  
 Councilmember Ben Bartlett  
 Subject: National Zero Waste Conference: City Sponsorship and Relinquishment of  
 Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

1. Adopt a resolution co-sponsoring the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.
2. Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn, to the National Recycling Coalition, the fiscal sponsor of the conference, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.

BACKGROUND

The National Zero Waste Conference is a two day educational and networking event organized by the National Recycling Coalition (NRC) as their contribution to Zero Waste Week. The upcoming National Zero Waste Conference will be held at UC Berkeley.

NRC is a non-profit organization that is focused on the promotion and enhancement of recycling in the U.S. NRC is composed of 23 affiliated recycling organizations, with a network of more than 6,000 members that extends across waste reduction, reuse, recycling, and composting. The organization works to maintain a prosperous and productive recycling system that is committed to accelerating the conservation of natural resources, as well as sustainable approaches to the management of discarded materials.

The upcoming National Zero Waste Conference will be held at the ASUC Student Union: Martin Luther King Jr. Building, 2495 Bancroft Way, at UC Berkeley on March 18-19, 2020. More information can be found at <https://zwconference.org/>.

FISCAL IMPACTS

A total of up to \$4,500 from Councilmembers' discretionary budgets.

ENVIRONMENTAL SUSTAINABILITY

This item is consistent with the City's vision on sustainability.

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

ATTACHMENTS:

- 1: Resolution on City Sponsorship
- 2: Resolution on Expenditure of Surplus Funds

RESOLUTION #####-N.S.

CITY SPONSORSHIP OF THE NATIONAL ZERO WASTE CONFERENCE  
TO BE HELD AT UC BERKELEY, MARCH 18-19, 2020

WHEREAS, the National Recycling Coalition (NRC) is a non-profit organization that is focused on the promotion and enhancement of recycling in the U.S., made up of 23 affiliated recycling organizations, with a network of more than 6,000 members that extends across waste reduction, reuse, recycling, and composting.

WHEREAS, NRC works to maintain a prosperous and productive recycling system that is committed to accelerating the conservation of natural resources, as well as sustainable approaches to the management of discarded materials.

WHEREAS, NRC is organizing a National Zero Waste Conference, a two day educational and networking event, to hear from national and international experts on the latest updates and best practices to get to Zero Waste.

WHEREAS, the City of Berkeley has a longstanding commitment to reducing and ultimately eliminating/diverting the waste that goes to landfills, and established one of the first municipal recycling programs in the nation.

WHEREAS, the City of Berkeley's new Single Use Foodware and Litter Reduction Ordinance, a component of the City's Zero Waste goal, is designed to reduce the use and disposal of single use foodware, including disposable cups, lids, utensils, straws, and clamshells, which are a major contributor to street litter, marine pollution, harm to wildlife, greenhouse gas emissions, and waste sent to landfills.

WHEREAS, the upcoming National Zero Waste Conference will be held at the ASUC Student Union: Martin Luther King Jr. Building, 2495 Bancroft Way, at UC Berkeley on March 18-19, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley hereby co-sponsors the National Zero Waste Conference, and the National Recycling Coalition has permission to use the City's name and logo in the conference's promotional materials and signage naming the City of Berkeley as a co-sponsor solely for the purpose of the City indicating its endorsement of the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.

BE IT FURTHER RESOLVED that this co-sponsorship does not: (1) authorize financial support, whether in the form of fee waivers, a grant or provision of City services for free; (2) constitute the acceptance of any liability, management, or control on the part of the City for or over the National Zero Waste Conference; or (3) constitute regulatory approval of the event.

RESOLUTION #####-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM  
THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS  
FOR A GRANT TO PROVIDE SUPPORT FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, the National Recycling Coalition (NRC) is a non-profit organization that is focused on the promotion and enhancement of recycling in the U.S., made up of 23 affiliated recycling organizations, with a network of more than 6,000 members that extends across waste reduction, reuse, recycling, and composting.

WHEREAS, NRC works to maintain a prosperous and productive recycling system that is committed to accelerating the conservation of natural resources, as well as sustainable approaches to the management of discarded materials.

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WHEREAS, the City of Berkeley has a longstanding commitment to reducing and ultimately eliminating/diverting the waste that goes to landfills, and established one of the first municipal recycling programs in the nation.

WHEREAS, the City of Berkeley's new Single Use Foodware and Litter Reduction Ordinance, a component of the City's Zero Waste goal, is designed to reduce the use and disposal of single use foodware, including disposable cups, lids, utensils, straws, and clamshells, which are a major contributor to street litter, marine pollution, harm to wildlife, greenhouse gas emissions, and waste sent to landfills.

WHEREAS, the upcoming National Zero Waste Conference will be held at the ASUC Student Union: Martin Luther King Jr. Building, 2495 Bancroft Way, at UC Berkeley on March 18-19, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by Councilmember Hahn of \$250 and any funds, up to \$500 per Council Office Budget, from the Mayor and other Councilmembers shall be granted to the National Recycling Coalition to fund the National Zero Waste Conference and to support its efforts to promote best practices to get to Zero Waste.



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CONSENT CALENDAR  
January 21, 2020

To: Honorable Members of the City Council  
From: Councilmember Sophie Hahn  
Subject: Small Business Listening Sessions

RECOMMENDATION

Refer to the City Council's Land Use, Housing & Economic Development policy committee to establish regular Small Business/Enterprise Listening Sessions.

BACKGROUND

Berkeley has over 40 community Boards and Commissions, but none dedicated to addressing the needs of small businesses, not for profits and other small and local enterprises. At the same time, these entities are regulated and taxed by the City and depend on the Office of Economic Development (OED) and the Planning Department, among others, for technical assistance and support.

The recent establishment of City Council-level policy committees, including the Land Use, Housing & Economic Development (LUHED) committee, provides a new and welcome opportunity for Berkeley's small enterprises to connect with the City, to share their perspectives, and to comment on policies and programs affecting small businesses. This item formalizes that opportunity by establishing regular Small Business/Enterprise Listening Sessions at the Council's LUHED committee.

Berkeley's unique character is owed in large part to the presence of small businesses and not for profits (including arts organizations). These enterprises contribute significantly to our economic and cultural vitality, but face significant challenges due to increasing costs, space constraints and, in the case of small businesses, growing competition from online stores and chain retailers.

The OED, Chamber of Commerce, and other business organizations in Berkeley host well-attended networking events, seminars and listening sessions for small businesses and not for profits, and work with them one-on-one. Through participation at these events, conversations with the Director of Economic Development and Chamber and Business Improvement District leaders, and following email and online conversations, it is clear that Berkeley's small enterprises are eager to communicate with the Council and Mayor on a wide variety of topics.

This item requests that the LUHED committee establish a recurring agenda item, approximately once per quarter, to give small business owners and not for profits a focused opportunity to address and engage with the Council. Listening sessions could be focused on one or several topics, with additional time allocated for general comments. Committee members, the OED, business associations, business/not for profit leaders and members of the public could recommend topics, which might include exploring the costs of doing business, challenges in finding affordable and appropriate space, and permitting challenges. Timing, frequency and topics of listening sessions should be determined by the LUHED committee, but it is recommended that sessions and topics be announced as far in advance as possible, to allow staff and community partners to undertake broad outreach.

#### ENVIRONMENTAL SUSTAINABILITY

This item supports the Berkeley General Plan goal to protect local and regional environmental quality, as small, local businesses help to sustain vibrant, compact, walkable town centers, which in turn are essential to reducing sprawl, automobile use, habitat loss, and air and water pollution.

#### FISCAL IMPACTS

Supporting small and local businesses/enterprises in Berkeley provides significant community and economic benefits. Committee meetings are already noticed, organized and staffed by the City. The only possible additional cost of implementing this item is minimal time for Economic Development staff to do outreach.

#### CONTACT INFORMATION

Councilmember Sophie Hahn, Council District 5, (510) 981-7150





Health, Life Enrichment, Equity,  
and Community Committee

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Health, Life Enrichment, Equity, and Community Committee  
 Subject: Recommendations Related to Code Enforcement and Receivership Actions

RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

CONTACT PERSON

Sophie Hahn, Councilmember, District 5, (510) 981-7150

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

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

Attachments:

- 1: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding (Housing Advisory Commission)
- 2: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants (Peace and Justice Commission)
- 3: Draft Plan for Public Meeting on Receivership (Councilmember Ben Bartlett)



Housing Advisory Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;

- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time.

#### CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

#### BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdeshahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

#### ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

#### RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See June 11, 2019 companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114



Peace and Justice Commission

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

#### POLICY COMMITTEE RECOMMENDATION

On June 11, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.



And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

#### CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

#### BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

**Action:** To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

**Motion** by: Lippman

**Seconded** by: Bohn

**Ayes:** al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

#### ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

#### RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

#### ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

#### CITY MANAGER

See June 11, 2019 companion report.

#### CONTACT PERSON

Nina Goldman, Commission Secretary, 981-7000

#### Attachments:

1. Letter to Judge Brand

**RESOLUTION  
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO  
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR  
HOMEOWNERS AND TENANTS**

**Whereas** Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

**Whereas** since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

**Whereas** the conversion from a duplex to a single family home was done without permits and inspections; and

**Whereas** several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

**Whereas** although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

**Whereas** since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

**Whereas** many more repairs were made than were requested, bringing the total costs to over \$600,000; and

**Whereas** the house is now certified by the City for occupancy; and

**Whereas** Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

**Whereas** Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

**Whereas** at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

**Action:** To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

**Motion** by: Lippman

**Seconded** by: Bohn

**Ayes:** al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast; and

; and

**Whereas** the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

**Whereas** PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

**Now, Therefore, Be it Resolved** that the Berkeley City Council adopt the actions recommended by the PJC.

[Month] [Day], 2019

The Honorable Jeffrey Brand  
Judge, Alameda County Superior Court  
24405 Amador Street, Department 511  
Hayward, California 94544

Fax: (510) 690-2824  
Email: [dept511@alameda.courts.ca.gov](mailto:dept511@alameda.courts.ca.gov)

Re: **Mr. Leonard Powell - Alameda County Case No. RG1576267**  
**1911 Harmon Street**  
**Berkeley, California**

Dear Judge Brand:

The Berkeley City Council writes to express concern over the case of Mr. Leonard Powell, a longtime resident, homeowner and valued member of our community. We write to thank you for the fairness and justice of your recent decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and for allowing Mr. Powell and his friends and family time to make the necessary financial arrangements. We hope to see a speedy and just resolution to this longtime case.

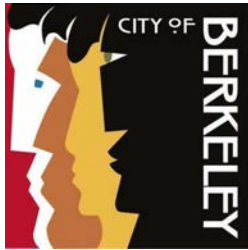
This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to more than \$700,000, threatening Mr. Powell and his family with the loss of their home, loss of the inheritance, loss of their equity and security.

While we understand that the court appointed a receiver to correct the outstanding code violations, the work appears to have exceeded the original purpose and now the outstanding fines are too much for Mr. Powell to pay. Certainly Mr. Powell should not have let conditions deteriorate to the point of requiring such drastic action. However, given his age and limited income, we hope that you continue to exercise your discretion toward an outcome that is in the interest of justice.

Thank you for your time and consideration.

Sincerely,

Jesse Arreguin  
Mayor, City of Berkeley  
On behalf of the Berkeley City Council



Councilmember Ben Bartlett

Attachment 3

City of Berkeley, District  
2180 Milvia Street, 5<sup>th</sup> Floor  
Berkeley, CA 94704  
PHONE: 510-981-7130  
EMAIL: [bbartlett@cityofberkeley.info](mailto:bbartlett@cityofberkeley.info)

September 23rd, 2019

Draft Plan for Public Meeting on Receivership

Format of the Public Meeting:

1. Community Panel discussing their experience
2. Take Public Comments
3. Presentation from City Staff/ Departments
4. Councilmembers make comments
5. Take questions from Public
  - a. 5-10 questions at a time
6. City/Panel answers questions
7. Councilmembers make comments
8. A second round of questions if time permits

Goals for the meeting and what's to be presented:

- Understand how receivership works
- City of Berkeley's role in receivership
- Who ends up under receivership
  - Circumstances leading to receivership
- Opportunities/Challenges
  - Listening session: Hear from the community

**Potential invites**

**Departments:**

Planning/ Code-Enforcement Department  
City Manager/ City Attorney Office  
City Finance Department

**City Staff (from Community Input):**

Greg Daniel – Director of Code Enforcement  
Mark Adams – Berkeley City Inspector  
Alex Roshal – Official in Berkeley Housing Dept.  
Raquel Molina – Official in Berkeley Housing Dept.  
Shallon Allen – Official in Berkeley Finance Dept.  
Brent Nelson – Housing Dept. Inspector  
Zach Cowan – Berkeley City Attorney  
Savith Iyengar – Deputy City Attorney  
Laura McKinney – Deputy City Attorney  
Dee Williams-Ridley – Berkeley City Manager  
Farimah Brown – City Attorney

**Community members (from Community Input):**

Leonard Powell – Owner of the house  
Roland Powell – Mr. Powell's son  
Audrey Shields – Current Attorney for Mr. Powell  
Gerard Keena – Court-appointed receiver  
Nathaniel Marston – Attorney for Mr. Keena  
Steve Martinot – Writer, reporter on the affair, member of Friends of Adeline  
Willie Phillips – Community Organizer, Member of Friends of Adeline  
Eugene Turitz – Writer on the affair, Member of Friends of Adeline  
Mr. Willis and members of the Probate Court protest group  
Manuel Juarez – Attorney for Mr. Powell

POLICY COMMITTEE RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action:

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Vote: All Ayes.







Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Wengraf and Bartlett  
Subject: Co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall

RECOMMENDATION

That the City of Berkeley co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall to be held on February 20, 2020 from 5:30 – 7 PM at the Ed Roberts Campus. By co-sponsoring, the Mayor and Councilmembers pledge to publicize and promote the Town Hall to their constituents, and attend themselves if possible.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Alameda County Supervisor Keith Carson is holding a number of Town Halls in his district. This Town Hall is specifically for the City of Berkeley.

Council has shown its support for a successful 2020 Census count. On September 10, 2019<sup>th</sup> the City Council unanimously approved Resolution 69-072-N.S. recognizing the Importance of the 2020 Census and encouraging residents of the City of Berkeley to promote and complete the Census to ensure a fair and complete count. Council also met for a Work Session on Census 2020 on October 22<sup>nd</sup>, 2020.

The City has formed a Census 2020 Complete Count Committee which consists of representatives throughout the organization, and dedicated a new temporary position to work on Census outreach efforts and coordination in Berkeley.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution 69-072-N.S

RESOLUTION NO. 69,072-N.S.

A RESOLUTION RECOGNIZING THE IMPORTANCE OF THE 2020 CENSUS AND ENCOURAGING RESIDENTS OF THE CITY OF BERKELEY TO PROMOTE AND COMPLETE THE CENSUS TO ENSURE A FAIR AND COMPLETE COUNT

WHEREAS, the U.S. Census Bureau is required by Article I, Section 2 of the U.S. Constitution to conduct an accurate count of the population every ten years; and

WHEREAS, the next enumeration will be April 1, 2020 and the 2020 Census will be the first to rely heavily on online responses; and

WHEREAS, the primary and perpetual challenge facing the U.S. Census Bureau is the undercount of certain population groups; and

WHEREAS, that challenge is amplified in California, given the size of the state and the diversity of communities; and

WHEREAS, California has a large percentage of individuals that are considered traditionally hard to count; and

WHEREAS, these diverse communities and demographic populations are at risk of being missed in the 2020 Census; and

WHEREAS, California receives nearly \$77 billion in federal funding that relies, in part, on census data; and

WHEREAS, a complete and accurate count of California's population is essential; and

WHEREAS, the data collected by the decennial Census determines the number of seats each state has in the U.S. House of Representatives and is used to distribute billions of dollars in federal funds to state and local governments; and

WHEREAS, the data is also used in the redistricting of state legislatures, county boards of supervisors and city councils; and

WHEREAS, the decennial census is a massive undertaking that requires cross-sector collaboration and partnership in order to achieve a complete and accurate count; and

WHEREAS, California's leaders have dedicated a historic amount of funding and resources to ensure every Californian is counted once, only once and in the right place; and

WHEREAS, this includes coordination between tribal, city, county, state governments, community-based organizations, education, and many more; and

WHEREAS, the U.S. Census Bureau is facing several challenges with Census 2020, including constrained fiscal environment, rapidly changing use of technology, declining response rates, increasingly diverse and mobile population, thus support from partners and stakeholders is critical; and

WHEREAS, the City of Berkeley is committed to ensuring a complete and accurate count by partnering with other local governments, the State, businesses, schools, and community organizations; and

WHEREAS, the City of Berkeley has committed resources to perform and implement outreach and communication strategies to not only raise community awareness but to ensure that the City's the hardest-to-count individuals are counted.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley recognizes the importance of the 2020 U.S. Census and encourages residents to promote and complete the Census to ensure a complete, fair, and accurate count.

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2019 by the following vote:

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

Noes: None.

Absent: None.

Jesse Arreguin, Mayor



Attest:   
Mark Numainville, City Clerk





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Wengraf, Hahn, Bartlett and Mayor Arreguin  
 Subject: Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmembers Wengraf, Hahn and Bartlett and Mayor Arreguin, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf, Hahn, Bartlett and Mayor Arreguin's discretionary Council Office Budgets, and all other Councilmembers who would like to contribute, allows the City of Berkeley to hold the City's 18<sup>th</sup> Annual Holocaust Remembrance Day program. All are invited to attend on Sunday, April 19<sup>th</sup>, 11:30 AM at the Magnes Collection of Jewish Art and Life.

FINANCIAL IMPLICATIONS

No General Fund impact: up to \$500 is available from contributing Councilmember's and the Mayor's Office Budget discretionary accounts.

BACKGROUND

The City of Berkeley's 18<sup>th</sup> Annual Holocaust Remembrance Day program includes a candle lighting ceremony, a Holocaust Survivor's story, an artist presentation, a grandchild's story, live cultural music, and refreshments afterwards. The community event invites attendees to enjoy Jewish history, honor those who survived and perished in the Holocaust and strengthen convictions to never let the Holocaust happen again.

Expenses for this event, including rental rates and auxiliary costs, have increased dramatically over the last few years. We are asking for Councilmember's generous support.

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160

Attachments: 1: Resolution

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

AUTHORIZING 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, Councilmembers Susan Wengraf, Sophie Hahn, Ben Bartlett and Mayor Arreguin have surplus funds in their office expenditure account and will contribute \$500 each, and invite other Councilmembers to join them in contributing; and

WHEREAS, a California non-profit tax exempt corporation, The Jewish Community Center, serves as the fiscal sponsor of the Holocaust Remembrance day and will receive funds in an amount up to \$500 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust, and unity among Berkeley residents. The grants provide a spacious venue, video documentation, and light refreshments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget, up to \$500 per office, shall be granted to the Jewish Community Center to fund the City of Berkeley's 18<sup>th</sup> Annual Holocaust Remembrance Day program on April 19<sup>th</sup>, 2020.



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Susan Wengraf, Sophie Hahn, and Cheryl Davila  
Subject: Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 47<sup>th</sup> anniversary of its passage.

FINANCIAL IMPLICATIONS

None

BACKGROUND

On January 22, 1973, the U.S. Supreme Court announced its decision in Roe v. Wade, a challenge to a Texas statute that made it a crime to perform an abortion unless a woman's life was at stake. The case had been filed by "Jane Roe," an unmarried woman who wanted to safely and legally end her pregnancy. Siding with Roe, the court struck down the Texas law. In a ruling, the court recognized for the first time that the constitutional right to privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (Roe v. Wade, 1973).

Roe has come to be known as the case that legalized abortion nationwide. At the time the decision was handed down, nearly all states outlawed abortion. Roe rendered these laws unconstitutional, making abortion services safer and more accessible to women throughout the country.

The Guttmacher Institute, a global leader in advancing sexual and reproductive health and rights, claimed in its December 2019 Policy Analysis report that U.S. State Policy Trends in 2019 brought "A wave of Abortion Bans."<sup>1</sup> The authors also reported that some states are fighting back with policies that protect abortion rights, expand access to contraceptive services and to sex education. This is a new strategy states are taking on to combat regulatory restrictions on abortion and narrow the gap between abortion restrictions enacted vs. protections enacted. Berkeley's steadfast commitment to a woman's right to reproductive health choices continues to be critically important.

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<sup>1</sup> [Guttmacher Institute Dec 2019 Policy Analysis Nash,E; Mohammed,L; Cappello,O; Naide,S](#)

This past summer a Catholic mission attempted to narrow insurance coverage of abortion in California. Thankfully, a state appeals court threw the case out, ruling that abortion must be covered by health plans sold in California.<sup>2</sup> Attacks on abortion rights in other parts of the country, however, are sticking. In 2019, 25 new abortion bans were enacted in 12 states, primarily in the South and Midwest. 58 new abortion restrictions potentially resulting in clinic closures and lost access to abortions were also enacted.<sup>3</sup> The state of Missouri, for example, had five abortion providers in 2011, but just one in 2019 due to abortion restrictions. The provider, Planned Parenthood, is currently in battle with the state for their renewed license. In May Missouri's Governor, Republican Mike Parson, signed a bill banning abortions on or beyond the eighth week of pregnancy without exceptions in cases of rape or incest.<sup>45</sup>

January 22, 2020 will be the 47<sup>th</sup> anniversary of the decision that effectively legalized abortion in the United States. The City has traditionally marked the anniversary with a proclamation recognizing the anniversary. The City continually passes resolutions denouncing the fraudulent media campaigns against Planned Parenthood and has expressed continued support for access to all reproductive healthcare services and all reproductive healthcare providers. The City also adopted a resolution against proposed funding cuts to the Title X Family Planning program, the only federal program dedicated solely to providing low income women and men with comprehensive family planning and related preventive health services.

ENVIRONMENTAL SUSTAINABILITY

N/A

CONTACT PERSON

Councilmember Susan Wengraf, Council District 6, 510-981-7160

Attachments:

1: Resolution

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<sup>2</sup> [LA Times Aug 22, 2019 Hiltzik,M](#)

<sup>3</sup> [Guttmacher Institute Dec 2019 Policy Analysis Nash,E; Mohammed,L; Cappello,O; Naide,S](#)

<sup>4</sup> [CBS News Oct 28, 2019 Chuck.E](#)

<sup>5</sup> [The Nation's Health APHA Sept 2019 Krisberg,K](#)



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

REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO ROE V. WADE

WHEREAS, January 21, 2020 marks the 47<sup>th</sup> anniversary of the historic Supreme Court decision, Roe v. Wade, which legalized abortion and recognized women's freedom of reproductive choice as essential to the lives, rights, health and equality of women; and

WHEREAS, Prior to 1973, the year when Roe v. Wade was enacted, women faced significant obstacles to safe reproductive health services, resulting in widespread loss of life and serious illness; and

WHEREAS, In 2019, 25 new abortion bans were enacted in 12 states. 58 new abortion restrictions, potentially resulting in clinic closures and lost access to abortions, were also enacted.

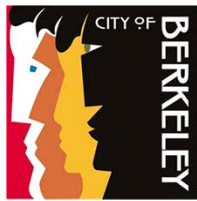
WHEREAS, The right to safe, legal and accessible abortion continues to be undermined by various federal initiatives, threatening the health and safety of women's lives, including the most marginalized women: low-income women, women of color, refugee and immigrant women.

WHEREAS, Throughout the Bay Area, hundreds of health care workers have devoted their careers to ensuring that the women of the Bay Area have access to safe and legal reproductive health services, while often putting their own safety at great risk due to harassment and violent opposition; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that we RECOGNIZE AND CELEBRATE THE 47<sup>th</sup> ANNIVERSARY OF ROE V. WADE and praise the perilous and self-sacrificing work of the healthcare providers who face threats and violence for providing safe and legal health services to women throughout the Bay Area.

NOW FURTHER BE IT RESOLVED that the City of Berkeley re-affirms its commitment to the human rights afforded to all women under Roe v. Wade, regardless of socioeconomic, ethnic, racial, cultural or religious background, age or sexual orientation and to opposing any laws or regulations that pose a threat to abortion, reproductive rights, sexual freedom and/or self-determination.





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson, Kate Harrison, Mayor Jesse Arreguin,  
 and Councilmember Cheryl Davila  
 Subject: No War With Iran

RECOMMENDATION

Adopt a resolution:

1. Condemning the Trump administration's assassination of a foreign government official, an act of war not authorized by Congress.
2. Endorsing the resolution by Senator Sanders and Representative Khanna to block funding for any military actions against or in Iran without prior Congressional authorization.
3. Endorsing the resolution by Representative Omar and Representative Lee directing the removal of all Armed Forces from hostilities with Iran and requiring that all future actions be explicitly authorized by Congress.

BACKGROUND

On January 3rd, 2020, General Qassem Soleimani was killed in an American drone strike in Baghdad.<sup>1</sup> General Soleimani headed the Revolutionary Guards Quds Force, an elite military force not unlike American Navy SEALs. A statement by the Pentagon described the strike as "defensive action",<sup>2</sup> but a UN experts has said that the assassination violated international law.<sup>3</sup>

Regardless of the legality, the strike is an act of war and may initiate further escalation in the region. The United States is currently involved with wars or interventions in Iraq,<sup>4</sup> Afghanistan,<sup>5</sup> Syria,<sup>6</sup> Yemen,<sup>7</sup> and Somalia<sup>8</sup> and the addition of conflicts in Iran will be deadly, costly, and contrary to Berkeley's values of peace and justice. This act of war is also illegal given Article I, Section 8, Clause 11 of the United States Constitution which

<sup>1</sup> <https://www.cnn.com/2020/01/06/middleeast/iraq-us-iran-tensions-intl-hnk/index.html>

<sup>2</sup> <https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense/>

<sup>3</sup> <https://www.jurist.org/news/2020/01/un-rights-expert-us-assassination-of-iranian-official-violated-international-human-rights-laws/>

<sup>4</sup> <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/1720980/coalition-forces-support-iraqi-security-forces-with-airstrike-against-isis/>

<sup>5</sup> <https://www.cfr.org/timeline/us-war-afghanistan>

<sup>6</sup> <https://www.aljazeera.com/news/2019/10/timeline-intervention-syria-war-2011-191007190255685.html>

<sup>7</sup> <https://www.vox.com/2019/3/13/18263894/yemen-war-senate-sanders-murphy-lee>

<sup>8</sup> <https://www.nytimes.com/2019/03/15/magazine/somalia-shabab-airstrikes-newsletter.html>

unambiguously grants the power to declare war only to the Congress of the United States.<sup>9</sup> The United States Congress has never declared war against Iran and, hopefully, never will. However, given that President Trump has now repeatedly<sup>10</sup> threatened<sup>11</sup> to commit war crimes by intentionally bombing Iranian civilian and cultural targets in direct violation of the Geneva Conventions<sup>12</sup> and the Convention for the Protection of Cultural Property<sup>13</sup> it is extremely important that individuals, jurisdictions and institutions opposed to war in Iran wholly and clearly condemn all further military actions.

This assassination is only the latest in a series of counterproductive and antagonizing escalations that the Trump administration has taken towards Iran, highest amongst them the US withdrawal from the Joint Comprehensive Plan of Action (JPOA), commonly known as the Iran Deal.

In response to the assassination of General Soleimani, two resolutions are being introduced in the House of Representatives and the Senate to oppose all further military actions. Representative Khanna and Senator Sanders have introduced legislation that would block funding for any offensive military force in or against Iran without prior Congressional approval. Similarly, Representatives Lee and Omar and Senator Kaine have introduced legislation that directs the removal of all Armed Forces from hostilities in Iran that have not received prior Congressional approval. The two resolutions together would, in effect, end all ongoing hostilities and acts of war between the United States and Iran.

In March 2007, the Berkeley City Council approved Resolution No. 63,611-N.S., expressing opposition to United States military intervention in Iran. Similar to the Resolution introduced by Senator Sanders and Representative Khanna, the 2007 Resolution expressed support for HR 770, which would have prohibited the use of funds for military use of force against Iran without Congressional approval. The Resolution also reiterates that under Section I, Article 8 of the U.S. Constitution, only Congress has the authority to declare war. While tensions in 2007 between the United States and Iran were mostly driven through inflammatory rhetoric relating to Iran's nuclear program, such concerns had been resolved through the 2015 Iran nuclear deal. However, in 2018, President Trump ordered the U.S. to back out of the deal, and on January 5th, 2020, Iran announced it is no longer abiding to the restrictions placed in the deal. With

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<sup>9</sup> <https://history.house.gov/Institution/Origins-Development/War-Powers/>

<sup>10</sup> <https://www.usatoday.com/story/news/politics/2020/01/05/iran-trump-mocks-congress-war-powers-act-notification-over-action/2818355001/>

<sup>11</sup> [https://www.washingtonpost.com/politics/trumps-threats-against-iranian-sites-raise-questions-about-the-potential-for-war-crimes/2020/01/05/c03d8de8-2ff2-11ea-898f-eb846b7e9feb\\_story.html](https://www.washingtonpost.com/politics/trumps-threats-against-iranian-sites-raise-questions-about-the-potential-for-war-crimes/2020/01/05/c03d8de8-2ff2-11ea-898f-eb846b7e9feb_story.html)

<sup>12</sup> [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/International\\_Services/International\\_Humanitarian\\_Law/IHL\\_SummaryGenevaConv.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf)

<sup>13</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html)

tensions between the U.S. and Iran possibly exceeding that in 2007, it is essential to reestablish calls for peace and diplomacy.

#### FINANCIAL IMPLICATIONS

No direct financial implications. The monstrous cost of war drains federal funds from all manner of other productive, domestic expenditures, many of which would directly benefit the City of Berkeley.

#### ENVIRONMENTAL SUSTAINABILITY

War is an incredibly environmentally destructive activity.<sup>14</sup> Opposition to war is directly in line with Berkeley's climate goals.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

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<sup>14</sup> <https://www.lenntech.com/environmental-effects-war.htm>

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

CONDEMNING TRUMPS ILLEGAL ASSASSINATION AND ACT OF WAR

WHEREAS, on January 3, 2020 the US Military, at the direction of President Trump, assassinated Qassem Soleimani, the commander of Iran's Quds Force, via bombing at the Baghdad International Airport in Iraq;<sup>15</sup> and

WHEREAS, this assassination was unlawful under both domestic<sup>16</sup> and international<sup>17</sup> law, and amounts to an act of warfare; and

WHEREAS, Article I, Section 8, Clause 11 of the United States Constitution unambiguously grants the power to declare war to the Congress of the United States,<sup>18</sup> which has not declared war against Iran and hopefully never will; and

WHEREAS, on May 8th, 2018 President Trump withdrew the US from the Joint Comprehensive Plan of Action (JCPOA), commonly known as the Iran Deal;<sup>19</sup> and

WHEREAS, the JCPOA was an effective agreement that limited Iran's nuclear capabilities while steering the US and Iran away from military confrontation and towards diplomatic solutions;<sup>20</sup> and

WHEREAS, on June 15th, 2017 the US Senate approved new, draconian sanctions against Iran in a bipartisan vote of 98-2, with only Vermont Senator Bernie Sanders and Kentucky Senator Rand Paul voting No;<sup>21</sup> and

WHEREAS, President Trump has now repeatedly<sup>22</sup> threatened<sup>23</sup> to commit war crimes by intentionally bombing Iranian civilian and cultural targets in direct violation of the Geneva Conventions<sup>24</sup> and the Convention for the Protection of Cultural Property;<sup>25</sup> and

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<sup>15</sup> <https://apnews.com/5597ff0f046a67805cc233d5933a53ed>

<sup>16</sup> <https://www.archives.gov/federal-register/codification/executive-order/12333.html#2.11>

<sup>17</sup> [https://www.cnn.com/middleeast/live-news/baghdad-airport-strike-live-intl-hnk/h\\_f4d89b41ef9e19a716edc8047bf923df](https://www.cnn.com/middleeast/live-news/baghdad-airport-strike-live-intl-hnk/h_f4d89b41ef9e19a716edc8047bf923df)

<sup>18</sup> <https://history.house.gov/Institution/Origins-Development/War-Powers/>

<sup>19</sup> <https://www.nytimes.com/2018/05/08/world/middleeast/trump-iran-nuclear-deal.html>

<sup>20</sup> <https://www.theatlantic.com/international/archive/2017/07/iran-nuclear-deal-two-years/533556/>

<sup>21</sup> [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=115&session=1&vote=00147](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=1&vote=00147)

<sup>22</sup> <https://www.usatoday.com/story/news/politics/2020/01/05/iran-trump-mocks-congress-war-powers-act-notification-over-action/2818355001/>

<sup>23</sup> [https://www.washingtonpost.com/politics/trumps-threats-against-iranian-sites-raise-questions-about-the-potential-for-war-crimes/2020/01/05/c03d8de8-2ff2-11ea-898f-eb846b7e9feb\\_story.html](https://www.washingtonpost.com/politics/trumps-threats-against-iranian-sites-raise-questions-about-the-potential-for-war-crimes/2020/01/05/c03d8de8-2ff2-11ea-898f-eb846b7e9feb_story.html)

<sup>24</sup> [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/International\\_Services/International\\_Humanitarian\\_Law/IHL\\_SummaryGenevaConv.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf)

<sup>25</sup> [http://portal.unesco.org/en/ev.php-URL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html)

WHEREAS, the US military now plans to deploy approximately 3,000 more troops to Iraq;<sup>26</sup> and

WHEREAS, the US spends, by some calculations, as much as \$1.25 Trillion annually on war and the national security state,<sup>27</sup> with \$5.9 Trillion having been spent on the wars in Afghanistan, Pakistan, and Iraq alone;<sup>28</sup> and

WHEREAS, in 2017 Congress approved a military budget that despite being significantly larger than requested by the Trump White House was supported by 65% of House Democrats, 96% of House Republicans,<sup>29</sup> 88% of Senate Democrats, and 92% of Senate Republicans;<sup>30</sup> and

WHEREAS, in December of 2019 Congress approved a \$738 Billion military budget, the largest in world history, supported by 81% of House Democrats, 96% of House Republicans,<sup>31</sup> 79% of Senate Democrats, and 92% of Senate Republicans;<sup>32</sup> and

WHEREAS, the Berkeley City Council approved Resolution No. 63,611-N.S. in March 2007, expressing opposition to United States military intervention in Iran; and

WHEREAS, Barbara Lee, who has served as Berkeley's Congressional representative since 1998, was the sole vote against the Authorization for Use of Military Force against Terrorists (2001), warning her colleagues against all open-ended wars without exit strategies or clear targets.<sup>33</sup>

NOW, THEREFORE BE IT RESOLVED that the Council of the City of Berkeley opposes war in Iran, and all wars, now and forever, as "every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed."<sup>34</sup> and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley condemns the assassination of General Soleimani and the reckless and unproductive push towards hostilities with Iran, and condemns the actions of President Trump and the failed

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<sup>26</sup> <https://www.nbcnews.com/news/military/u-s-sending-thousands-more-troops-mideast-after-baghdad-attack-n1110081>

<sup>27</sup> <https://truthout.org/articles/the-us-is-spending-1-25-trillion-annually-on-war/>

<sup>28</sup> <https://watson.brown.edu/costsofwar/costs/economic>

<sup>29</sup> <http://clerk.house.gov/evs/2017/roll631.xml>

<sup>30</sup> [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=115&session=1&vote=00199#state](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=1&vote=00199#state)

<sup>31</sup> <http://clerk.house.gov/evs/2019/roll672.xml>

<sup>32</sup> [https://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=116&session=1&vote=00188](https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=1&vote=00188)

<sup>33</sup> <https://theintercept.com/2016/09/11/barbara-lees-lone-vote-on-sept-14-2001-was-as-prescient-as-it-was-brave-and-heroic/>

<sup>34</sup> <https://www.nps.gov/features/eise/jrranger/quotes2.htm>

bipartisan consensus on war that has cost millions of lives and trillions of dollars over the past 20 years; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley endorses the resolution authored by Representative Khanna in the House and Senator Sanders in the Senate to block funding from any military force against Iran that has not been authorized by Congress; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley endorses the resolution authored by Representatives Lee and Omar in the House and authored by Senator Kaine in the Senate to remove Armed Forces from all hostilities in and against Iran that have not been authorized by Congress; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley thanks Representative Lee for her lifelong leadership opposing war and laudes her for her continued service; and

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Senator Kamala Harris, Senator Tim Kaine, Senator Bernie Sanders, Senator Dianne Feinstein, Representative Barbara Lee, Representative Ro Khanna, Representative Ilhan Omar and President Trump.





Office of the City Manager

PUBLIC HEARING

January 21, 2020

*(Continued from December 10, 2019)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip Harrington, Director, Public Works

Subject: Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street

RECOMMENDATION

Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25N by adding a subsection to implement Residential Preferential Parking (RPP) on the 1500 block of Lincoln Street in RPP Area N.

FISCAL IMPACTS OF RECOMMENDATION

Funding of \$2,000 for RPP street signage installation is available in the FY 2020 budget in General Fund 011-54-622-664-0000-000-431-513110- and 011-54-622-664-0000-000-431-642990-.

CURRENT SITUATION AND ITS EFFECTS

Within the past few months, residents on the 1500 block of Lincoln Street, which is an RPP-eligible area, submitted a petition to join the RPP Program. The area that would join the Program is shown in Attachment 3:

1. In Area N: Both sides of Lincoln Street between Sacramento Street and California Street.

In accordance with Berkeley Municipal Code (BMC) Section 14.72.050(A)(1), staff verified that residents submitted signatures on a qualifying petition representing a numerical majority of dwellings wishing to “opt-in” to the RPP for the street section listed in the attached Resolution. Staff verified that at least 75% of the curb spaces were occupied during mid-morning and mid-afternoon observation periods at the location.

The addition of one block in Area N should have a minimal impact on enforcement capabilities. Each new addition to the RPP Program, however, tends to result in slightly diminished enforcement for all other existing permit areas, due to parking enforcement officers having slightly larger areas to patrol.

### BACKGROUND

The RPP Program was instituted in 1980 (1) to protect Berkeley residential neighborhoods from an influx of non-resident vehicles and related traffic; (2) to assure continued quality of life for residents; and (3) to provide neighborhood parking for residents. The Program limits parking for vehicles not displaying an RPP permit in most RPP areas to two hours, and reserves available daytime parking for residents, between 9:00 a.m. and 7:00 p.m. Monday through Friday, and on some blocks Saturday.

The RPP Program currently allows residents to petition the City to “opt-in” or “opt-out” of the Program. The process to install RPP controls requires submittal of a petition signed by residents (including tenants of rental properties) of at least 51% of dwellings sited along the affected block, and a parking survey of those blocks that shows at least 75% of available on-street parking spaces are occupied during the mid-morning and mid-afternoon time periods. In addition, residents of a block petitioning to opt-in should be included in existing residential Study Area boundaries covered by the EIR.

### ENVIRONMENTAL SUSTAINABILITY

Expansion of the RPP Program to include additional blocks may have a minor beneficial environmental effect. It may reduce greenhouse gases generated by commuters searching for parking who “cold start” their vehicles (i.e., moving a car without warming up the engine), or by drivers moving their cars to new locations after the two-hour parking limit expires. Incremental expansion of the RPP Program may also make alternative transportation options more attractive. A modal shift by commuters to walking, bicycling, public transportation, or carpooling may also lead to a decrease in greenhouse gasses.

### RATIONALE FOR RECOMMENDATION

Because the required number of households on the subject blocks have signed a petition, and as parking surveys show more than 75% occupancy of curbside parking, these blocks meet the requirements set forth by the BMC for inclusion into the RPP Program.

### ALTERNATIVE ACTIONS CONSIDERED

Council may allow unrestricted parking to remain on these streets. However, Council has previously approved the “opting in” of blocks where the requisite number of households signed a petition requesting RPP control, and where the parking utilization exceeds 75%.

### CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works (510) 981-7010  
Matthew Cotterill, Assistant Planner, Public Works (510) 981-6433

Implement Residential Preferential Parking (RPP) Program on the  
1500 Block of Lincoln Street

PUBLIC HEARING  
January 21, 2020

Attachments:

1. Resolution
2. Public Hearing Notice
3. Map of Street Section Opting Into Program

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

IMPLEMENT RESIDENTIAL PREFERENTIAL PARKING (RPP) PROGRAM ON 1500  
BLOCK OF LINCOLN

WHEREAS, Berkeley Municipal Code Section 14.72.050.A.1, Designation of a Residential Preferential Parking (RPP) Area, allows residents to petition the City to "opt-in" or "opt-out" of the program and requires submittal of a petition containing signatures of residents of at least 51% of dwellings on the affected block; and

WHEREAS, residents of at least 51% of the dwellings on the following block have petitioned to "opt-in" to Residential Preferential Parking:

1. Both sides of the 1500 block of Lincoln Street between Sacramento Street and California Street; and

WHEREAS, staff has conducted field observations and determined at least 75% of available on-street parking spaces are occupied during the mid-morning and mid-afternoon time periods; and

WHEREAS, the designation of these blocks as a residential permit parking area will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing in the area designated; and

WHEREAS, the \$2,000 implementation cost is available in FY 2020 General Fund 011 for Transportation Traffic Maintenance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following subsections of Section 25 of Resolution No. 56,508-N.S. are hereby added to read as follows:

Section 25N LINCOLN STREET, both sides between Sacramento Street and California Street

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL  
SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET,  
BERKELEY**

**EXTEND RESIDENTIAL PREFERENTIAL PARKING PROGRAM**

**TUESDAY, JANUARY 21, 2020 AT 6:00 P.M.**

The Department of Public Works is proposing to conduct a public hearing and, if recommendations are approved, adopt a Resolution amending Section 25N of Resolution No. 56,508-N.S. by adding a subsection to extend residential preferential parking on both sides of the 1500 block of Lincoln Street between Sacramento Street and California Street.

The Residential Preferential Parking (RPP) Program allows for residents to petition the City to "opt-in" or "opt-out" of the Program. Complying with program requirements, residents of the block under consideration for opting into the RPP Program have submitted the qualifying signatures on a petition and also have at least 75% of the curb spaces occupied during the morning and mid-afternoon observation periods. Adding a block within the existing residential study area boundaries through evaluations by an EIR study certified on September 27, 1988, and in accordance with California Environment Quality Act (CEQA) guidelines, are categorically exempt as defined by Section 15.162(c).

The hearing will be held on January 21, 2020 at 6:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of January 9, 2020.

For further information, please contact Matthew Cotterill, Assistant Planner at (510) 981-6433.

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 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please**

**note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

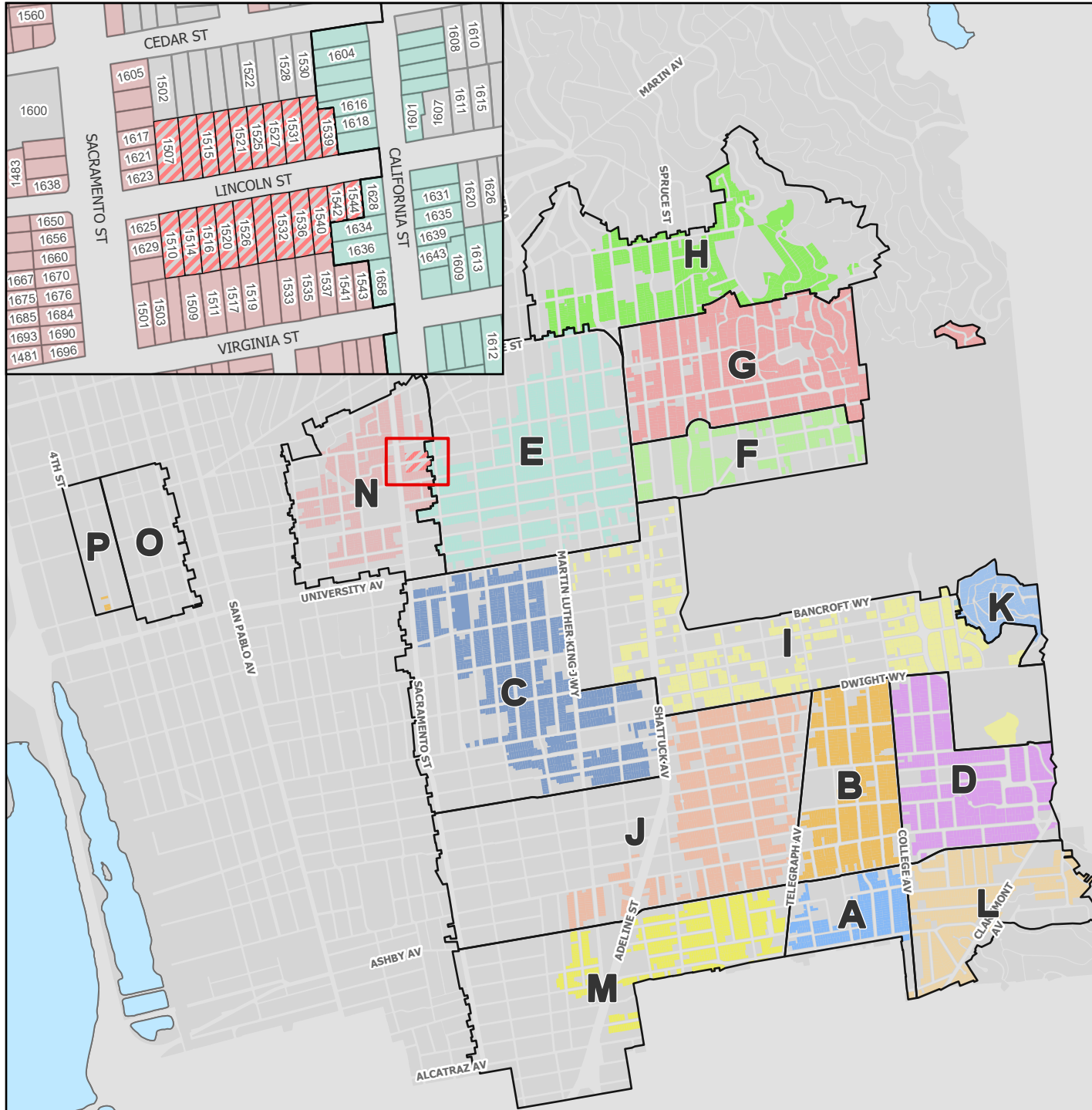
**Posted:** January 9, 2020

Pursuant to Berkeley Municipal Code Chapter 14.72

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 9, 2020.

Mark Numainville, City Clerk



ATTACHMENT 3

PARCELS OPTING IN

RPP AREAS

ELIGIBLE PARCELS

- ELIGIBLE AREA A PARCELS
- ELIGIBLE AREA B PARCELS
- ELIGIBLE AREA C PARCELS
- ELIGIBLE AREA D PARCELS
- ELIGIBLE AREA E PARCELS
- ELIGIBLE AREA F PARCELS
- ELIGIBLE AREA G PARCELS
- ELIGIBLE AREA H PARCELS
- ELIGIBLE AREA I PARCELS
- ELIGIBLE AREA J PARCELS
- ELIGIBLE AREA K PARCELS
- ELIGIBLE AREA L PARCELS
- ELIGIBLE AREA M PARCELS
- ELIGIBLE AREA N PARCELS
- ELIGIBLE AREA P PARCELS

This map is for reference purposes only.

Care was taken in the creation of this map, but it is provided "AS IS". Please contact the City of Berkeley to verify map information or to report any errors.
September 23, 2019



CITY OF BERKELEY
Transportation Division
1947 Center Street
Berkeley CA 94704



Office of the City Manager

PUBLIC HEARING

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Extension of the Urgency Ordinance Amending the Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development for a Period of 10 Months and 15 Days

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt an extension of the Urgency Ordinance (Number 7,683-N.S.) amending Berkeley's ADU Ordinance to comply with new State law, and extend limits on ADU development consistent with State Law for a period of 10 months and 15 days, pending further analysis and adoption of local regulations that ensure public safety in Fire Zones 2 and 3.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

[Assembly Bill 881¹](#) (AB 881) signed by Governor Newsom on October 9, 2019, amends California Government Code Section 65852.2, requiring local jurisdictions to relax or eliminate most restrictions on development of ADUs. New regulations go into effect on January 1, 2020, rendering non-compliant local ordinances null and void.

On December 10, 2019, City Council adopted an Urgency Ordinance amending Berkeley Municipal Code (BMC) Chapter 23C.24 (ADU Ordinance) to comply with State law and to establish interim limits on development. Specifically, the interim Urgency Ordinance prohibits ADUs in Fire Zone 3, and prohibits ADUs in Fire Zone 2 on roads that are less than 26 feet in width. Limits respond to local conditions and protect public safety for residents living in high fire hazard zones. For more information on adoption of the Urgency Ordinance, refer to the December 10, 2019 City Council report (see *Attachment 2*).

¹ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB881;

Note that only Section 1.5 of the Bill is in effect as of January 1, 2020.

Pursuant to California Government Code Section 65858(b), interim ordinances remain in effect for 45 days from the date of adoption, but may be extended for up to ten months and 15 days more, following notice and a public hearing. The Urgency Ordinance, which became effective on December 10, 2019, is set to expire on January 24, 2020 without Council adoption of this proposed extension.

Under California Government Code Section 65858(d), City Council is required to issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the interim ordinance ten days prior to its expiration. Attachment 3, a written report dated January 9, 2020 to satisfy that requirement, describes how the Planning Department and the Fire Department are actively analyzing new regulations in order to draft a permanent ADU ordinance that complies with State law and preserves public safety protections in Fire Zones 2 and 3. The following activities are underway:

- Analyzing AB 881 to understand new development standards for single family and multifamily homes, associated fees, expedited timelines, and opportunities for local ordinances to address public safety impacts;
- Conducting technical analysis with staff from departments involved in the development review process to explain AB 881 and develop procedures to ministerially process building permit applications while maintaining public safety protections;
- Collaborating with other jurisdictions and state and regional agencies to share knowledge and develop "best practice" standards that will inform development of a permanent ADU ordinance in Berkeley;
- Responding to numerous public inquiries regarding the interim Urgency Ordinance, the future permanent ordinance, and site-specific ADU development concepts; and
- Developing public information materials (e.g. FAQs, application forms, check lists) that explain new ADU regulations to the public and to staff in a clear and concise manner.

The primary reasons for extending the interim Urgency Ordinance are to provide additional time to:

- Receive and review California Department of Housing and Community Development's guidance documents (publication anticipated in January or February 2020);
- Draft permanent ADU Ordinance language that is compliant with State law and maintains protections for residents and homes in Fire Zones 2 and 3;

- Request input and review from the public, the Planning Commission, and the Disaster and Fire Safety Commission before the City Council considers permanent adoption; and
- Develop public information (including handouts, checklists, and FAQs) that clearly explain the new permanent ADU ordinance.

BACKGROUND

California's State Legislature has passed significant packages of housing-related laws in the last three legislative sessions in order to address the State's housing crisis. This year's housing package included more than 20 housing-focused bills that affect a variety of regulations throughout the BMC, including those pertaining to ADUs and Junior ADUs. In response to the new ADU regulations, the City Council adopted an Urgency Ordinance on December 10, 2019 to comply with new State law and to protect residents and homes in Fire Zones 2 and 3. The Urgency Ordinance is set to expire on January 24, 2020.

ENVIRONMENTAL SUSTAINABILITY

ADUs have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near campus, transit and jobs.

RATIONALE FOR RECOMMENDATION

Adoption of the proposed Urgency Ordinance on January 21, 2020 is needed to ensure public safety in the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

Council could take no action, in which case the Urgency Ordinance and public safety protections in Fire Zones 2 and 3 will expire on January 24, 2020.

CONTACT PERSON

Alene Pearson, Principal Planner, Department of Planning and Development, 510-981-7489

Attachments:

- 1: Ordinance
- 2: December 10, 2019 City Council Staff Report
- 3: Government Code Section 65858(d) Written Report
4. Public Hearing Notice

ORDINANCE NO. -N.S.

EXTENDING URGENCY ORDINANCE NO. 7,683-N.S. AMENDING ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO COMPLY WITH NEW STATE LAW AND ESTABLISH INTERIM LIMITS ON DEVELOPMENT

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

Section 1. Findings

- a. A severe housing crisis exists in the state with the demand for housing outpacing supply.
- b. Accessory dwelling units (ADUs) provide flexible opportunities for infill housing.
- c. On October 9, 2019, Governor Newsom signed into law Assembly Bill (AB) 881 which is intended to increase the state's supply of affordable housing by facilitating the construction of ADUs and Junior ADUs.
- d. AB 881 amends California Government Code Section 65852.2 and, among other limitations on local authority, requires cities, counties, and utility districts to significantly relax regulation of ADUs by requiring a 60-day ministerial approval of ADUs on all lots that allow residential uses. These amendments to California Government Code Section 65852.2 become effective January 1, 2020.
- e. California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.
- f. Berkeley's current ADU Ordinance, adopted by City Council on May 29, 2018, protects fire hazard areas by 1) prohibiting ADUs in the Environmental Safety-Residential District and 2) requiring discretionary review and approval by the Fire Department of ADUs in the Hillside Overlay. These measures were adopted in order to mitigate impacts to public safety.
- g. Amendments to Government Code section 65852.2, effective January 1, 2020, provide no protections for fire hazard areas and provide no mechanism for discretionary review. However, as amended, Government Code section 65852.2 will allow jurisdictions to prohibit ADUs from areas where their allowance would create an impact to public safety.
- h. Because Government Code section 65852.2 takes effect on January 1, 2020, ADUs would be permitted in high fire risk zones without discretionary review unless the City adopts an ADU ordinance that limiting the construction of ADUs in such zones that complies with the requirements of Government Code section 65852.2 before its effective date. The potential for construction of ADUs in high fire risk zones without discretionary review creates a current and immediate threat to the public health, safety, and welfare, and the approval of Zoning Certificates or building permits in such high fire risk zones would result in such an immediate threat to public health, safety, and welfare.

Section 2. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

Chapter 23.34 Accessory Dwelling Units

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

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~~[23C.24.070](#) Findings~~

23C.24.010 Applicability of Regulations

The provisions of this Chapter apply to all lots that are ~~occupied by one legally established Single Family Dwelling zoned for residential use,~~ except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.

23C.24.020 Purposes

The purposes of this Chapter are to:

A. Implement California Government Code Section [65852.2](#) and [65852.22](#) ~~as it may be amended from time to time.~~

B. Increase overall supply and range of housing options in Berkeley ~~while maintaining residential character of neighborhoods.~~

~~C. Minimize impacts of new Accessory Dwelling Units on neighboring properties.~~

DC. Expedite small-scale infill development ~~on lots with Single Family Dwellings, particularly where development potential is otherwise limited.~~

~~ED.~~ Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.

~~FE.~~ Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.

23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this Chapter if all requirements of Section 23C.24.050 and other applicable requirements of this Title are met. The Zoning Officer may approve an Administrative Use Permit to establish an Accessory Dwelling Unit that is not in compliance with Section 23C.24.050.A or Sections 23C.24.050.C through F, subject to the findings in Section 23C.24.070. (Ord. 7599 NS § 2 (part), 2018)~~

~~23C.24.040 Special Provisions~~

~~A.—An Accessory Dwelling Unit may be created as follows:~~

- ~~1.—Conversion of Existing Space: Within the existing dimensions of the exterior walls and/or roof of a Primary Dwelling Unit or an existing legally established Accessory Structure or Accessory Building (e.g., the building envelope does not change), in which case Sections 23C.24.050.C through F do not apply.~~
- ~~2.—Expansion of Existing Space: By extending the existing dimensions of the exterior walls and/or roof of a Primary Dwelling Unit or an existing legally established Accessory Structure or Accessory Building (e.g., the building envelope changes). Section 23C.24.040.A.1 applies to conversion of nonconforming existing space.~~
- ~~3.—New Building: By constructing a new detached building or by constructing a new Primary Dwelling Unit with an Accessory Dwelling Unit.~~

~~B.—Only one Accessory Dwelling Unit is allowed on a lot.~~

~~C.—An Accessory Dwelling Unit may not be subdivided, whether by land or air rights, condominium or other mechanism, and may not be sold, transferred, or otherwise conveyed separately or independently from the Primary Dwelling Unit or other portions of the property.~~

~~D.—The owner of a property that has an Accessory Dwelling Unit must reside in either the Primary Dwelling Unit or the Accessory Dwelling Unit. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, that makes any transfer of the property specifically subject to the restrictions contained in this Chapter and requires that either the Primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy by an owner for periods of up to three years is allowed before the property will be found to be in noncompliance with this requirement.~~

~~E.—Accessory Dwelling Units are not subject to Design Review.~~

~~F.—Verification of neighbor preapplication contact is required for Accessory Dwelling Units subject to an Administrative Use Permit. Signatures must be collected from all adjacent and abutting lots that have residential occupants, regardless of zoning district.~~

~~G.—Accessory Dwelling Unit projections allowed into yards are subject to Main Building development standards set forth in Table 23D.04.030.~~

~~H.—An Accessory Dwelling Unit is not required to be equipped with fire sprinklers if sprinklers are not required for the Primary Dwelling Unit, consistent with California Government Code Section 65852.2.~~

~~I.—An Accessory Dwelling Unit is not considered a new residential use for the purposes of calculating utility connection fees or capacity charges, consistent with California Government Code Section 65852.2. (Ord. 7599-NS § 2 (part), 2018)~~

~~23C.24.050 Development Standards~~

~~A.—Fire Access Requirement: An Accessory Dwelling Unit is not allowed on a lot with frontage on a roadway with less than 26 feet in pavement width, unless an~~

~~Administrative Use Permit is approved, subject to the findings specified in Section 23C.24.070 A.~~

~~B.—Unit Size: The Gross Floor Area of an Accessory Dwelling Unit may be no greater than 850 square feet.~~

~~C.—Height: An Accessory Dwelling Unit that is created by New Building or by Expansion to an Accessory Structure or Accessory Building or by Expansion of a Primary Dwelling Unit cannot exceed the following height limits:~~

~~1.—14 feet Maximum Height.~~

~~2.—18 feet Maximum Height with an Administrative Use Permit.~~

~~3.—14 feet Average Height in the Hillside Overlay District with an Administrative Use Permit.~~

~~4.—18 feet Average Height in the Hillside Overlay with an additional Administrative Use Permit.~~

~~D.—Setbacks:~~

~~1.—An Accessory Dwelling Unit must be located outside the required front yard setback.~~

~~2.—An Accessory Dwelling Unit must be set back at least 4 feet from the rear and side property lines unless an Administrative Use Permit is approved.~~

~~3.—An Accessory Dwelling Unit constructed above a garage shall have a required rear and side setback of no less than five feet, subject to the provisions in Chapters 23C.04 and 23C.08.~~

~~E.—Usable Open Space: The subject lot shall meet the usable open space requirements of the applicable zoning district unless an Administrative Use Permit is approved.~~

~~F.—Lot Coverage: The subject lot shall meet the lot coverage requirements of the applicable zoning district unless an Administrative Use Permit is approved.~~

~~G.— Parking Requirements:~~

- ~~1.— Parking is not required for an Accessory Dwelling Unit.~~
- ~~2.— If creation of an Accessory Dwelling Unit requires the removal of a required off-street parking space for the Primary Dwelling Unit, a replacement off-street parking space must be provided.~~
- ~~3.— Replacement parking is not subject to the applicable standards of Section 23D.12.050 nor Section 23D.12.080, and may be located within the required front and side setbacks when located within an existing driveway that does not comply with these standards. (Ord. 7599-NS § 2 (part), 2018)~~

~~23C.24.060 Modification of Development Standards with an Administrative Use Permit~~
~~An Accessory Dwelling Unit that does not conform to the development standards in Section 23C.24.050.C through F may be permitted with an Administrative Use Permit subject to the applicable findings in Section 23C.24.070. (Ord. 7599-NS § 2 (part), 2018)~~

~~23C.24.070 Findings~~

~~A.— In order to approve an Administrative Use Permit under Section 23C.24.050.A to allow an Accessory Dwelling Unit on a lot with frontage on a roadway with less than 26 feet of pavement width, the Zoning Officer must be provided with evidence that the Fire Chief has determined that the project will meet minimum fire safety requirements.~~

~~B.— In order to approve an Administrative Use Permit under Section 23C.24.050.C through F, the Zoning Officer must find on the basis of substantial evidence that the Accessory Dwelling Unit would not be detrimental to the residential character of the neighborhood, would not unreasonably obstruct sunlight, air, or views, and would not introduce unreasonable privacy impacts to the immediate neighbors. (Ord. 7599-NS § 2 (part), 2018)~~

Section 3. Votes Required, Immediate Effectiveness

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the

City of Berkeley and must therefore go into effect immediately. This ordinance shall go into effect immediately upon a four-fifths vote of the City Council, in satisfaction of the Charter of the City of Berkeley and Government Code Section 65858.



Office of the City Manager

ACTION CALENDAR
December 10, 2019

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Timothy Burroughs, Director, Department of Planning and Development
 Subject: Urgency Ordinance Amending Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development; Amending BMC Chapter 23C.24

RECOMMENDATION

Adopt an urgency ordinance amending Berkeley Municipal Code Chapter 23C.24 (Accessory Dwelling Units) to comply with new State law and establish interim limits on ADU development pending further analysis, deliberation and adoption of local regulations, in order to help ensure public safety.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

[Assembly Bill 881¹](#), (see *Attachment 2*) signed by Governor Newsom on October 9, 2019, requires local jurisdictions to relax or eliminate restrictions on the development of accessory dwelling units (ADUs). The intent behind the new law is to increase statewide production of ADUs by requiring every jurisdiction to ministerially approve projects, apply only a specific set of development standards identified in the State law, and implement shortened permitting timelines. New regulations go into effect on January 1, 2020. A local ordinance will be null and void if it is not in compliance with new State law. The new State law effectively means that as long as an ADU application meets the development standards included in AB 881, the application must be approved over the counter with a Zoning Certificate.

Like cities throughout California, Berkeley's existing ADU Ordinance (<https://www.codepublishing.com/CA/Berkeley/>), found in Berkeley Municipal Code (BMC) Chapter 23C.24, does not conform to new State law. The Planning Commission began the standard process for adopting permanent Zoning Ordinance amendments to bring the BMC into compliance with State requirements, receiving a briefing from staff on the new regulations at its November 6, 2019 meeting (see *Attachment 3*). However,

¹ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB881;
 Note that only Section 1.5 of the Bill is in effect as of January 1, 2020.

the new law is complex and will require additional meetings and public input, including a public hearing, prior to recommending amendments to the City Council, a process expected to take up to six months.

Since the City does not have time to complete this process prior to January 1, 2020, absent an urgency ordinance, State law would govern Berkeley's land use regulation as it relates to ADUs. Among other implications, this would mean that Berkeley's current prohibition on ADUs in certain areas of the city, due to health and safety concerns, would no longer be in effect.

This is of particular concern in Berkeley Fire Zones 2 and 3 (*see Attachment 4*), especially in consideration of recent PG&E Public Safety Power Shutoff events and heightened awareness of fires in California. Updates to the [2019 Local Hazard Mitigation Plan²](#) and adopted City Council referrals regarding development in the wildland-urban interface and ADU parking requirements in the hills directly reflect concern for evacuation planning and public safety in the event of a natural disaster.

Existing and new State ADU regulations³ acknowledge the importance of these concerns, allowing cities to designate areas where ADUs are restricted based on potential impacts to traffic flow and public safety. In Berkeley's existing ordinance, ADUs are not allowed in the ES-R (Environmental Safety – Residential) District (Berkeley Fire Zone 3) due to fire hazards and limited emergency access/egress. Similarly, ADUs located in the Hillside Overlay, which includes almost all of Berkeley Fire Zone 2 (*see Attachment 5*), currently require an Administrative Use Permit (AUP) and approval by the Fire Department on lots that front on a street with less than 26 feet of pavement width. The Planning Commission and staff in the Planning and Fire Departments have begun and will continue to discuss Zoning Ordinance amendments that both address local conditions and are in compliance with new State law. However, these amendments will not be adopted by January 1, 2020.

After January 1, 2020, Berkeley will not have the authority to apply discretionary standards such as AUP requirements on ADU locations. Therefore, the proposed urgency ordinance would temporarily impose non-discretionary restrictions in order to maximize public safety.

State law allows a jurisdiction to adopt urgency ordinances to protect the public health, safety and welfare of its residents. The proposed urgency ordinance would continue to meet the health and safety goals of Berkeley's existing protections by prohibiting ADUs in Berkeley Fire Zone 3, and on roads in Berkeley Fire Zone 2 that are less than 26 feet in width. This urgency ordinance would foster public safety for the following reasons:

² https://www.cityofberkeley.info/uploadedFiles/Fire/Level_3_-_General/City%20of%20Berkeley%202019%20Final%20Draft%20LHMP%20-%20COMPLETE%2009-19-19%20Reduced.pdf

³ See California Government Code Section 65852.2(a)(1)(A)

- Berkeley's current ordinance already prohibits ADUs in Berkeley's Fire Zone 3. This area is exceptionally vulnerable to fire and earthquake hazards and is characterized by substandard vehicular access, steep slopes, inadequate water pressure, proximity to the Hayward Fault, and proximity to vegetated wildlands. It is also within the State's Very High Fire Hazard Severity Zone (see *Attachment 6*).
- Many of the City's narrow streets fall within the boundaries of Berkeley's Fire Zone 2 (see *Attachment 4*). The existing AUP requirement for ADUs in Berkeley's Fire Zone 2 was implemented in consultation with the Fire Department to address accessibility challenges on narrow and curving roads. Fire response requires deployment of hoses and other equipment that restrict vehicle and pedestrian movement along roads. Roads narrower than 26 feet are likely to be obstructed by the operations required by fire and emergency medical responses.

In addition, Fire Department operations are impacted by increased density in Fire Zones 2 and 3 because:

- Increased density translates to an increased number of people that may need assistance in the event of an emergency and increased numbers of people trying to evacuate narrow and windy roads. Berkeley does not want to replicate conditions experienced in the Oakland firestorm of 1991.
- Accessibility issues could be exacerbated by increased density if new residents own cars and park on the street. This is a likely outcome, as off-street parking is not required for ADUs, and replacement off-street parking for primary dwelling units will not be required as of January 1, 2020.

The existing AUP requirement for ADUs in Fire Zone 2 has allowed the Fire Department to require mitigations that protect public safety. Since these protections are discretionary and are not part of new State law, Berkeley will need to amend its Zoning Ordinance to add these requirements to a ministerial review process. As the Planning Commission begins working on such permanent Zoning Ordinance amendments, staff will consult with the California Department of Housing and Community Development (HCD) and the City Attorney to propose a set of objective standards that meet the Fire Department's needs and provide clarity to applicants who live in Fire Zone 2.

In the interim, City Council is asked to adopt this urgency ordinance to maximize public safety in Fire Zones 2 and 3. The new regulations would take effect immediately upon adoption, pursuant to California Government Code Section 65858. As drafted, it would apply prospectively to projects submitted after January 1, 2020. California Government Code [Section 65858](#) provides that urgency ordinances expire forty-five (45) days following their adoption unless the Council adopts an extension for up to a total of one year during that initial period. Staff would return to the Council meeting of January 21,

2020 for this purpose. An urgency ordinance and an extension thereof requires eight affirmative votes of a nine member legislative body to be adopted.

BACKGROUND

California's State Legislature has passed significant packages of housing-related laws in the last three legislative sessions in order to address the State's housing crisis. This year's housing package included over 20 housing-focused bills that affect a variety of regulations throughout the Berkeley Municipal Code (BMC) including those pertaining to ADUs and Junior ADUs.

ENVIRONMENTAL SUSTAINABILITY

ADUs have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near campus, transit and jobs.

RATIONALE FOR RECOMMENDATION

Adoption of the proposed urgency ordinance on January 1, 2020 is needed to ensure public safety in the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

Council could take no action and allow the development standards for ADUs imposed by AB 881 go into effect on January 1, 2020.

CONTACT PERSON

Alene Pearson, Principal Planner, Department of Planning and Development, 510-981-7489

Attachments:

- 1: Draft Ordinance
- 2: Section 1.5 of Assembly Bill (AB) 881
- 3: Planning Commission Staff Report on New ADU Legislation (November 2019)
- 4: Berkeley Fire Zone Map
- 5: Hillside Overlay and Fire Zone 3 Map
- 6: Berkeley Hillside Conditions Map

ORDINANCE NO. -N.S.

URGENCY ORDINANCE AMENDING ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO COMPLY WITH NEW STATE LAW AND ESTABLISH INTERIM LIMITS ON DEVELOPMENT; BERKELEY MUNICIPAL CODE CHAPTER 23C.24

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

Section 1. Findings

- a. A severe housing crisis exists in the state with the demand for housing outpacing supply.
- b. Accessory dwelling units (ADUs) provide flexible opportunities for infill housing.
- c. On October 9, 2019, Governor Newsom signed into law Assembly Bill (AB) 881 which is intended to increase the state's supply of affordable housing by facilitating the construction of ADUs and Junior ADUs.
- d. AB 881 amends California Government Code Section 65852.2 and, among other limitations on local authority, requires cities, counties, and utility districts to significantly relax regulation of ADUs by requiring a 60-day ministerial approval of ADUs on all lots that allow residential uses. These amendments to California Government Code Section 65852.2 become effective January 1, 2020.
- e. California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.
- f. Berkeley's current ADU Ordinance, adopted by City Council on May 29, 2018, protects fire hazard areas by 1) prohibiting ADUs in the Environmental Safety-Residential District and 2) requiring discretionary review and approval by the Fire Department of ADUs in the Hillside Overlay. These measures were adopted in order to mitigate impacts to public safety.
- g. Amendments to Government Code section 65852.2, effective January 1, 2020, provide no protections for fire hazard areas and provide no mechanism for discretionary review. However, as amended, Government Code section 65852.2 will allow jurisdictions to prohibit ADUs from areas where their allowance would create an impact to public safety.
- h. Because Government Code section 65852.2 takes effect on January 1, 2020, ADUs would be permitted in high fire risk zones without discretionary review unless the City adopts an ADU ordinance that limiting the construction of ADUs in such zones that complies with the requirements of Government Code section 65852.2 before its effective date. The potential for construction of ADUs in high fire risk zones without discretionary review creates a current and immediate threat to the public health, safety, and welfare, and the approval of Zoning Certificates or building permits in such high fire risk zones would result in such an immediate threat to public health, safety, and welfare.

Section 2. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

Chapter 23C.24 Accessory Dwelling Units

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

~~[23C.24.040](#) Special Provisions~~

~~[23C.24.050](#) Development Standards~~

~~[23C.24.060](#) Modification of Development Standards with an Administrative Use Permit~~

~~[23C.24.070](#) Findings~~

23C.24.010 Applicability of Regulations

The provisions of this Chapter apply to all lots that are ~~occupied by one legally established Single Family Dwelling~~ zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U) ; and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.

23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#), ~~as it may be amended from time to time.~~
- B. Increase overall supply and range of housing options in Berkeley ~~while maintaining residential character of neighborhoods.~~
- ~~C. Minimize impacts of new Accessory Dwelling Units on neighboring properties.~~
- C. Expedite small-scale infill development ~~on lots with Single Family Dwellings, particularly where development potential is otherwise limited.~~

D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.

E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.

23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this Chapter if all requirements of Section 23C.24.050 and other applicable requirements of this Title are met. The Zoning Officer may approve an Administrative Use Permit to establish an Accessory Dwelling Unit that is not in compliance with Section 23C.24.050.A or Sections 23C.24.050.C through F, subject to the findings in Section 23C.24.070. (Ord. 7599 NS § 2 (part), 2018)~~

~~23C.24.040 Special Provisions~~

~~A. An Accessory Dwelling Unit may be created as follows:~~

- ~~1. Conversion of Existing Space: Within the existing dimensions of the exterior walls and/or roof of a Primary Dwelling Unit or an existing legally established Accessory Structure or Accessory Building (e.g., the building envelope does not change), in which case Sections 23C.24.050.C through F do not apply.~~
- ~~2. Expansion of Existing Space: By extending the existing dimensions of the exterior walls and/or roof of a Primary Dwelling Unit or an existing legally established Accessory Structure or Accessory Building (e.g., the building envelope changes). Section 23C.24.040.A.1 applies to conversion of nonconforming existing space.~~
- ~~3. New Building: By constructing a new detached building or by constructing a new Primary Dwelling Unit with an Accessory Dwelling Unit.~~

~~B. Only one Accessory Dwelling Unit is allowed on a lot.~~

~~C.—An Accessory Dwelling Unit may not be subdivided, whether by land or air rights, condominium or other mechanism, and may not be sold, transferred, or otherwise conveyed separately or independently from the Primary Dwelling Unit or other portions of the property.~~

~~D.—The owner of a property that has an Accessory Dwelling Unit must reside in either the Primary Dwelling Unit or the Accessory Dwelling Unit. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, that makes any transfer of the property specifically subject to the restrictions contained in this Chapter and requires that either the Primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy by an owner for periods of up to three years is allowed before the property will be found to be in noncompliance with this requirement.~~

~~E.—Accessory Dwelling Units are not subject to Design Review.~~

~~F.—Verification of neighbor preapplication contact is required for Accessory Dwelling Units subject to an Administrative Use Permit. Signatures must be collected from all adjacent and abutting lots that have residential occupants, regardless of zoning district.~~

~~G.—Accessory Dwelling Unit projections allowed into yards are subject to Main Building development standards set forth in Table 23D.04.030.~~

~~H.—An Accessory Dwelling Unit is not required to be equipped with fire sprinklers if sprinklers are not required for the Primary Dwelling Unit, consistent with California Government Code Section 65852.2.~~

~~I.—An Accessory Dwelling Unit is not considered a new residential use for the purposes of calculating utility connection fees or capacity charges, consistent with California Government Code Section 65852.2. (Ord. 7599-NS § 2 (part), 2018)~~

~~23C.24.050 Development Standards~~

~~A.—Fire Access Requirement: An Accessory Dwelling Unit is not allowed on a lot with frontage on a roadway with less than 26 feet in pavement width, unless an Administrative Use Permit is approved, subject to the findings specified in Section 23C.24.070 A.~~

~~B.— Unit Size: The Gross Floor Area of an Accessory Dwelling Unit may be no greater than 850 square feet.~~

~~C.— Height: An Accessory Dwelling Unit that is created by New Building or by Expansion to an Accessory Structure or Accessory Building or by Expansion of a Primary Dwelling Unit cannot exceed the following height limits:~~

~~1.— 14 feet Maximum Height.~~

~~2.— 18 feet Maximum Height with an Administrative Use Permit.~~

~~3.— 14 feet Average Height in the Hillside Overlay District with an Administrative Use Permit.~~

~~4.— 18 feet Average Height in the Hillside Overlay with an additional Administrative Use Permit.~~

~~D.— Setbacks:~~

~~1.— An Accessory Dwelling Unit must be located outside the required front yard setback.~~

~~2.— An Accessory Dwelling Unit must be set back at least 4 feet from the rear and side property lines unless an Administrative Use Permit is approved.~~

~~3.— An Accessory Dwelling Unit constructed above a garage shall have a required rear and side setback of no less than five feet, subject to the provisions in Chapters 23C.04 and 23C.08.~~

~~E.— Usable Open Space: The subject lot shall meet the usable open space requirements of the applicable zoning district unless an Administrative Use Permit is approved.~~

~~F.— Lot Coverage: The subject lot shall meet the lot coverage requirements of the applicable zoning district unless an Administrative Use Permit is approved.~~

~~G.— Parking Requirements:~~

~~1.— Parking is not required for an Accessory Dwelling Unit.~~

~~2. If creation of an Accessory Dwelling Unit requires the removal of a required off-street parking space for the Primary Dwelling Unit, a replacement off-street parking space must be provided.~~

~~3. Replacement parking is not subject to the applicable standards of Section 23D.12.050 nor Section 23D.12.080, and may be located within the required front and side setbacks when located within an existing driveway that does not comply with these standards. (Ord. 7599-NS § 2 (part), 2018)~~

~~23C.24.060 Modification of Development Standards with an Administrative Use Permit~~

~~An Accessory Dwelling Unit that does not conform to the development standards in Section 23C.24.050.C through F may be permitted with an Administrative Use Permit subject to the applicable findings in Section 23C.24.070. (Ord. 7599-NS § 2 (part), 2018)~~

~~23C.24.070 Findings~~

~~A. In order to approve an Administrative Use Permit under Section 23C.24.050.A to allow an Accessory Dwelling Unit on a lot with frontage on a roadway with less than 26 feet of pavement width, the Zoning Officer must be provided with evidence that the Fire Chief has determined that the project will meet minimum fire safety requirements.~~

~~B. In order to approve an Administrative Use Permit under Section 23C.24.050.C through F, the Zoning Officer must find on the basis of substantial evidence that the Accessory Dwelling Unit would not be detrimental to the residential character of the neighborhood, would not unreasonably obstruct sunlight, air, or views, and would not introduce unreasonable privacy impacts to the immediate neighbors. (Ord. 7599-NS § 2 (part), 2018)~~

Section 3. Votes Required, Immediate Effectiveness

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This ordinance shall go into effect immediately upon a four-fifths vote of the City Council, in satisfaction of the Charter of the City of Berkeley and Government Code Section 65858.

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Date Published: 10/10/2019 09:00 PM

Assembly Bill No. 881

CHAPTER 659

An act to amend, repeal, and add Section 65852.2 of the Government Code, relating to housing.

[Approved by Governor October 09, 2019. Filed with Secretary of State
October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 881, Bloom. Accessory dwelling units.

(1) The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Existing law requires the ordinance to designate areas where accessory dwelling units may be permitted and authorizes the designated areas to be based on criteria that includes, but is not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

This bill would instead require a local agency to designate these areas based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. The bill would also prohibit a local agency from issuing a certificate of occupancy for an accessory dwelling unit before issuing a certificate of occupancy for the primary residence.

(2) Existing law requires an ordinance providing for the creation of accessory dwelling units, as described above, to impose standards on accessory dwelling units, including, among other things, lot coverage. Existing law also requires such an ordinance to require that the accessory dwelling units be either attached to, or located within, the living area of the proposed or existing primary dwelling, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

This bill would delete the provision authorizing the imposition of standards on lot coverage and would prohibit an ordinance from imposing requirements on minimum lot size. The bill would revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or an accessory structure, as defined.

(3) Existing law prohibits a local agency from requiring a setback for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. Existing law requires that an accessory dwelling unit that is constructed above a garage have a setback of no more than 5 feet.

This bill would instead prohibit a setback requirement for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. The bill would also instead require a setback of no more than 4 feet for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(4) Existing law provides that replacement offstreet parking spaces, required by a local agency when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, may be located in any configuration on the same lot as the accessory dwelling unit, except as provided.

This bill would instead prohibit a local agency from requiring the replacement of offstreet parking spaces when a garage, carport, or covered parking structure is demolished or converted, as described above.

(5) Existing law requires a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit within 120 days of receiving the application.

This bill would instead require a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. The bill would authorize the permitting agency to delay acting on the permit application if the permit application is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, as specified.

(6) Existing law prohibits a local agency from utilizing standards to evaluate a proposed accessory dwelling unit on a lot that is zoned for residential use that includes a proposed or existing single-family dwelling other than the criteria described above, except, among one other exception, a local agency may require an applicant for a permit to be an owner-occupant of either the primary or accessory dwelling unit as a condition of issuing a permit.

This bill, until January 1, 2025, would prohibit a local agency from imposing an owner-occupant requirement, as described above.

(7) Existing law authorizes a local agency to establish minimum and maximum unit size limitations on accessory dwelling units, provided that the ordinance permits an efficiency unit to be constructed in compliance with local development standards.

This bill would prohibit a local agency from establishing a minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit, as defined. The bill would also prohibit a local agency from establishing a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than 850 square feet, and 1,000 square feet if the accessory dwelling unit contains more than one bedroom. The bill would also instead prohibit a local agency from establishing any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size for either attached or detached dwelling units that prohibits at least an 800 square foot accessory dwelling unit that is at least 16 feet in height and with a 4-foot side and rear yard setbacks.

(8) Existing law prohibits a local agency from imposing parking standards for an accessory dwelling unit if, among other conditions, the accessory dwelling unit is located within $\frac{1}{2}$ mile of public transit.

This bill would make that prohibition applicable if the accessory dwelling unit is located within $\frac{1}{2}$ mile walking distance of public transit, and would define public transit for those purposes.

(9) Existing law requires a local agency to ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single family lot of the unit that is contained within the existing space of a single-family residence or accessory structure when specified conditions are met, including that the side and rear setbacks are sufficient for fire safety.

This bill would instead require ministerial approval of an application for a building permit within a residential or mixed-use zone to create the following: (1) one accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if certain requirements are met; (2) a detached, new construction accessory dwelling unit that meets certain requirements and would authorize a local agency to impose specified conditions relating to floor area and height on that unit; (3) multiple accessory dwelling units within the portions of an existing multifamily dwelling structure provided those units meet certain requirements; or (4) not more than 2 accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to certain height and rear yard and side setback requirements.

(10) Existing law prohibits a local agency, special district, or water corporation from considering an accessory dwelling unit to be a new residential use for purposes of calculating fees or capacity charges.

This bill would establish an exception from the above-described prohibition in the case of an accessory dwelling unit that was constructed with a new single-family home.

(11) Existing law requires a local agency to submit a copy of the adopted ordinance to the Department of Housing and Community Development and authorizes the department to review and comment on the ordinance.

This bill would instead authorize the department to submit written findings to the local agency as to whether the ordinance complies with the statute authorizing the creation of an accessory dwelling unit, and, if the department finds that the local agency's ordinance does not comply with those provisions, would require the department to notify the local agency within a reasonable time. The bill would require the local agency to consider the department's findings and either amend its ordinance to comply with those provisions or adopt it without changes and include specified findings. If the local agency does not amend its ordinance or does not adopt those findings, the bill would require the department to notify the local agency and authorize it to notify the Attorney General that the local agency is in violation of state law, as provided. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the provisions authorizing accessory dwelling units.

(12) Existing law defines the term "accessory dwelling unit" for these purposes to mean an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons.

This bill would revise the definition to additionally require an accessory dwelling unit be located on a lot with a proposed or existing primary residence in order for the provisions described above to apply.

(13) This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by SB 13 to be operative only if this bill and SB 13 are enacted and this bill is enacted last.

(14) By increasing the duties of local agencies with respect to land use regulations, this bill would impose a state-mandated local program.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(16) This bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SEC. 1.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

- (1) The accessory dwelling unit was built before January 1, 2020.
- (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: November 6, 2019

TO: Members of the Planning Commission

FROM: Alene Pearson, Principal Planner
Katrina Lapira, Assistant Planner

SUBJECT: 2019 State Housing Legislation

BACKGROUND

California's State Legislature has passed significant packages of housing-related laws in the last three legislative sessions in order to address the State's housing crisis. This year's housing package included over 20 housing-focused bills that affect a variety of regulations including Accessory Dwelling Units (ADUs), density bonus, and streamlined permitting.

Jurisdictions across the State are working to understand new regulations, many of which take effect on January 1, 2020. Berkeley staff are consulting with the City Attorney and other municipalities to understand requirements. A number of land use law firms have provided summaries¹ of the new legislation (*see Attachments 1 through 3*) and guidance documents from California Department Housing and Community Development (HCD) are forthcoming. This report provides an initial analysis, identifies areas where the Planning Commission will be making recommendations, and discusses overlap with Council Referrals.

Laws affect land use policies, implementation procedures and specific zoning standards. Planning Commission will ultimately recommend Zoning Ordinance (ZO) amendments to City Council for consideration. This report summarizes four important bills (*see Attachments 4 through 7*) affecting housing policies and practices:

- AB-881 -- Accessory Dwelling Units
- AB-1763 -- Density Bonuses
- AB-1485 -- Streamlining
- SB-330 -- Housing Crisis Act of 2019

¹ Summaries are provided for informational purposes only. The City of Berkeley has not consulted with authors or firms about content or analysis.

AB-881 -- Accessory Dwelling Units

As of January 1, 2020, a new set of ADU regulations take effect statewide. Local ordinances are superseded by these regulations, except where noted. The list below outlines main points of the new law – providing references to some Government Code sections (GC) and highlighting opportunities to refine local ordinances.

1. **Allowable Lots:** ADUs are allowed in all districts that allow residential uses. ADUs would be allowed on lots that include a proposed or existing dwelling unit.

Local ordinances can restrict ADUs from areas 1) without adequate water and sewer service and 2) in areas where ADUs create impacts to traffic flow and public safety. GC 65852.2 (a)(1)(A)

2. **Approval Process:** Jurisdictions must ministerially approve or disapprove building permit applications for ADUs within 60-days of receiving a complete application. If an ADU building permit is associated with an application for a new primary dwelling unit, ministerial approval of the ADU can be delayed until there is an action on the permit for the primary dwelling unit.

3. **Development Standards:** ADUs will have to adhere to and can impose only the following development standards (unless modified by local ordinance as set forth in italics below):

- o Maximum height of 16 feet
- o Rear and side setbacks of 4 feet
- o Maximum size:
 - A detached ADU shall not exceed 1200 square feet
 - An attached ADU shall not exceed 50% of the floor area of an existing or proposed primary dwelling unit. GCS 65852.2 (a)(1)(D)(iv)

Local ordinances can reduce maximum ADU size to no less than 850 square feet for a studio and 1-bedroom ADU and no less than 1000 square feet for ADUs with more than one bedroom.

Local ordinances can impose development standards on ADUs that prevent adverse impacts to any real property listed in the California Register of Historic Resources. GC 65852.2 (a)(1)(B)(i)

Local ordinances can impose development standards for lot coverage and open space as long as those standards allow for at least an 800 square foot ADU that is 16 feet in height. GC 65852.2 (c)(2)(C).

4. **Parking:** Replacement parking for the primary dwelling unit is not required if the ADU physically replaces the location of an existing garage, carport or covered parking structure.

5. Sprinklers: Fire sprinklers are required for the ADU if they are required for the primary dwelling unit.

6. Fees

- a. No **impact fees** may be levied on ADUs that are less than 750 square feet. For ADUs larger than 750 square feet, impact fees must be **proportional** to the square footage of the primary dwelling unit. GC 65852.2 (f)(3)
- b. ADUs shall not be considered new residential uses for the purposes of calculating **connection fees or capacity charges** for utilities, unless the ADU is created with a newly constructed primary dwelling unit. GC 65852.2 (f)(2).
- c. ADUs carved out of existing dwelling units shall not require new or separate **utility hook-ups**. All other ADUs may require new hook-ups and will be charged **utility fees** proportionate to its size and/or burden. GC 65852.2 (f)(4),(5).

Local Ordinance: Cities can charge fees to cover costs associated with meeting the new 60-day timeline. Fees can include costs incurred adopting new ADU ordinances. GC 65852.2 (a)(3)

7. Owner Occupancy, Rental and Sale of ADUs: Properties with ADUs cannot require owner-occupancy of the ADU or the primary dwelling unit. ADUs can be rented separate from the primary dwelling unit, but the rental term shall be for 30-days or more. GC 65852.2 (e)(4). ADUs may not be sold separately from primary dwelling unit. GC 65852.2 (a)(1)(D)(i)

8. Number of ADUs

- a. **Single Family (Primary) Dwelling Unit:** One ADU is allowed on all lots with one primary dwelling unit. The ADU can be attached to the primary dwelling unit or can be a detached structure. In addition, the lot can have a Junior ADU (J-ADU) attached to either the ADU or the primary dwelling unit.
- b. **Multifamily Dwelling Units**
Attached: Multiple ADUs can be created within existing areas of multifamily dwellings that are not used as livable space (i.e. storage rooms, basements, garages, attics). At a minimum, one ADU is allowed. At a maximum, the number of ADUs cannot exceed 25% of the number of multifamily dwelling units. GC 65852.2 (e)(1)(C)(i),(ii)
Detached: There can be no more than two detached ADUs on lots with multifamily dwellings, subject to the abovementioned development standards. GC 65852.2 (e)(1)(D)

9. Non-conforming Structures: If an ADU is constructed in the same location and to the same dimensions as an existing non-conforming structure, it does not have to comply with the rear and side setbacks. GC 65852.2 (a)(1)(D)(vii). Additionally, the jurisdiction cannot require the correction of nonconforming zoning conditions in order to ministerially approve an ADU. GC 65852.2 (e)(2).

Berkeley Context:

- *Planning Commission Action:* As of January 1, 2020, Berkeley's ADU Ordinance will be considered null and void. Until Berkeley's ADU Ordinance is updated to reflect new law, State regulations will be in effect. Staff is working on amendments for Planning Commission consideration. As part of this effort, a J-ADU Ordinance will be adopted.
- *Referrals:* Listed below are requests from City Council referrals that pertain to ADUs (see Attachment 8). Some requests have been resolved with the passage of AB-881, others are included in AB-881 – but need additional consideration and refinement from the City -- and some topics are not included in AB-881. Over the next few months, Planning Commission will be considering these items while developing Berkeley's new ADU Ordinance.

AB-881 Dictates Action with New Regulations:

- Reconsider the owner-occupancy requirements (May 15, 2018)
- Rectify ADU regulations for demolition and conversion of legally non-confirming structures (May 15, 2018)
- Consider allowing multiple ADUs on a lot (May 15, 2018)
- Consider allowing ADUs for multifamily dwellings (May 15, 2018)
- Clarify regulations for ADUs created through residential additions (Sept 13, 2018)

AB-881 Provides Guidance and Requires City Action:

- Adopt a J-ADU ordinance (May 2, 2017)
- Consider public safety issues in the Very High Fire Zone (Feb 27, 2018)
- Reconsider off-street parking regulations on narrow roads (Sept 13, 2018)

These are not included in AB-881:

- Consider incentives for affordability restrictions (May 15, 2018)
- Consider incentives for universal design (September 13, 2018)
- Require signed receipt of information on rent control, tenant protections and short term rental rules when ADU permits are issued (Sept 13, 2018)

AB-1763 -- Density Bonuses

AB-1763 modifies GC 65915 to include 100% affordable housing projects². Under the new law, projects that provide 20% of their units to moderate income households³ and 80% of their units to lower income households⁴ will be eligible for State Density Bonus. Under this program, 100% affordable projects do not have to provide off-street parking. Projects that are more than half a mile from major transit stops⁵ receive an 80% density bonus. Projects that are within half a mile of major transit stop have no maximum density,

² 100% affordable housing projects include all (base and bonus) units, except manager's unit(s)

³ Moderate income households: 120-80% of the Area Median Income (AMI)

⁴ Lower income households: Less than 80% of the AMI

⁵ Major transit is defined as fixed rail service or a bus stop for a rapid line or a line with 15 minute headways at commute hours, per Public Resources Code 21155.

receive four incentives or concessions, and are provided an additional three stories or 33 feet in height.

Berkeley Context:

- *Planning Commission Action:* No action is required. In March 2019, City Council adopted a new Density Bonus Ordinance (Chapter 23C.14) that points to GC 65915. This was done intentionally to ensure that as State law evolved, Berkeley's ZO would not need to be amended.
- *Referrals:* The Planning Commission and its Subcommittee on Affordable Housing developed a multi-phase approach to address six Density Bonus referrals. The approach included 1) adopting a new Density Bonus Ordinance; 2) developing a local density incentive program that would result in affordable housing production in excess State Density Bonus requirements; and 3) recommending density standards. AB-1763 directly responds to the second phase of the outlined approach.

AB-1485 – Streamlining

AB-1485 modifies SB-35, which was signed by Governor Brown in the fall of 2017. SB-35 requires streamlined permit processing for qualified housing developments in cities that have not met their Regional Housing Needs Allocation (RHNA) targets and/or have not submitted their Housing Element Annual Progress Reports. AB-1485 provides additional options for developers (i.e. percentage of units at different affordability levels) requesting streamlining. AB-1485 clarifies project approval timelines taking into consideration length of potential litigation and/or construction. Furthermore, AB-1485 requires jurisdictions to ministerially process subsequent permits needed for a project that has received its SB-35 approval. Finally, AB-1485 explains how to calculate the percentage of a project that is residential (e.g. exclude underground space such as parking garages and basements).

Berkeley Context:

- *Planning Commission Action:* No action is required.
- *Referrals:* On December 5, 2017 City Council adopted a referral to allow ministerial approval of housing projects that receive Housing Trust Fund monies and/or housing projects that have more than 50% below market rate units with 20% of the BMR units designated for those earning up to 50% AMI (extremely low and very low income households). Affordability levels in this referral are deeper than those required by SB-35. Additionally, the referral asks for design review and a community meeting as part of ministerial review.

SB-330 -- Housing Crisis Act of 2019

SB-330 places a moratorium on regulations that limit housing development. It dictates a new project intake process – requiring a preliminary application -- and freezes applicable

regulations and fees at the time the preliminary application is submitted. It shortens timelines to approve projects and limits the number of allowable project hearings⁶ to five. SB-330 primarily affects permit processing procedures, but it also restricts jurisdictions from adopting new zoning regulations or policies that limit housing or density. This includes objective standards and invalidates any regulations adopted after January 1, 2018 that reduce allowable density or restrict development.

Berkeley Context:

- *Planning Commission Action:* As new ZO amendments are considered, Planning Commission and staff will have to evaluate if proposals are reducing density or restricting development.
- *Referrals:* N/A

NEXT STEPS

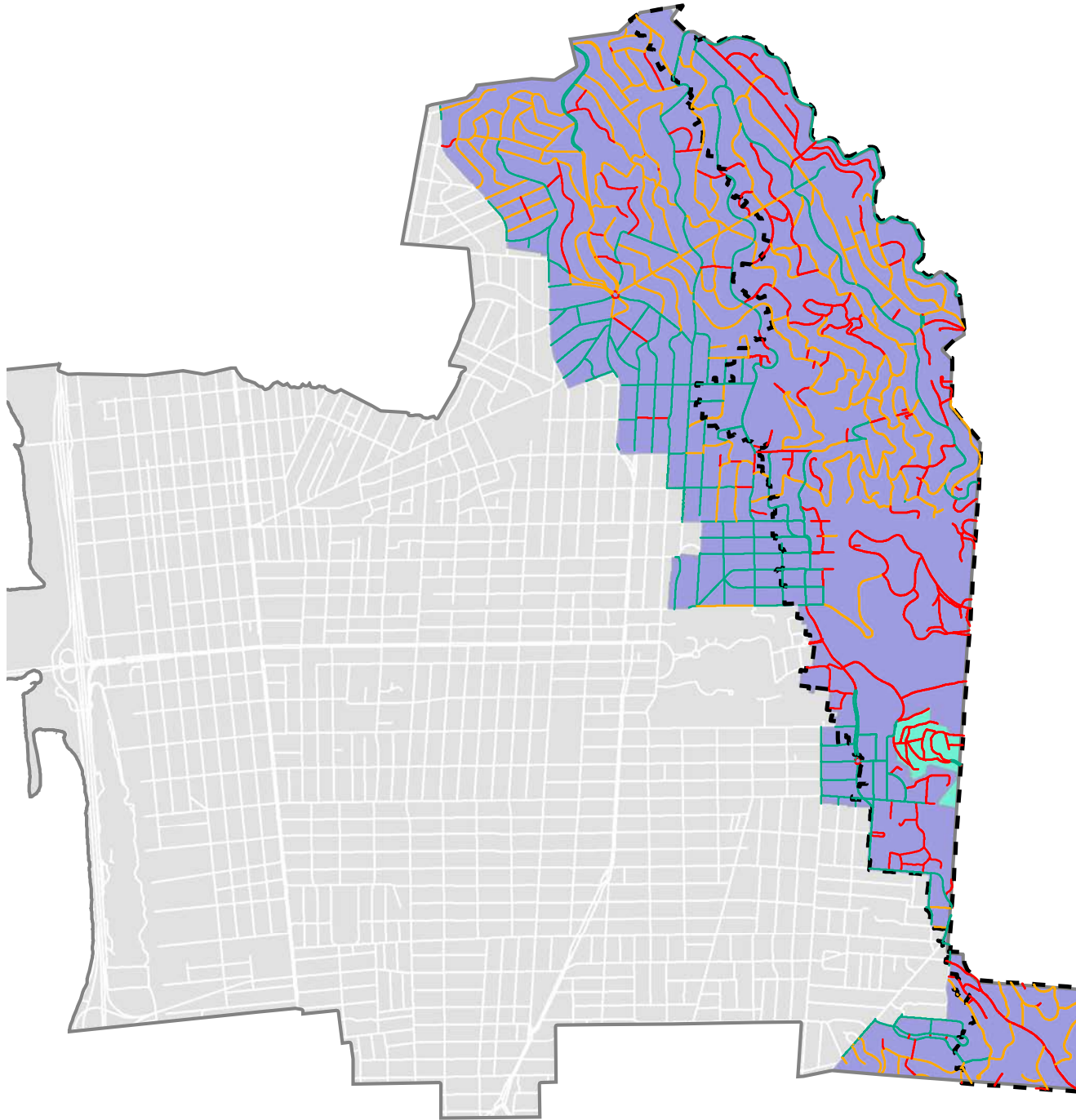
Staff will continue to work with the City Attorney and HCD to evaluate the interpretations presented in this staff report. Planning Commission is asked to provide feedback on this summary, with particular attention to the analysis of AB-881.

Attachments:


1. [New California Housing Laws by Best, Best and Kreiger](#)
2. [California's 2020 Housing Laws: What You Need to Know by Holland and Knight](#)
3. [California Housing Law Update by Meyers and Nave](#)
4. AB-881 -- Accessory Dwelling Units
5. AB-1763 -- Density Bonuses
6. AB-1485 – Streamlining (SB-35)
7. SB-330 – Housing Crisis Act of 2019
8. ADU Referrals

⁶ A project hearing is broadly defined as a city-held meeting, workshop, work session, commission meeting, public hearing, subcommittee meeting, appeal or departmental meeting.

City of Berkeley Fire Zone Map



Legend


 CA Very High Hazard Severity Zone


 Berkeley Fire Zone 2

 Berkeley Fire Zone 3

 Berkeley Boundary

Pavement Width

 Less than or equal to 20 feet

 21 to 26 feet

 Greater than 27 feet

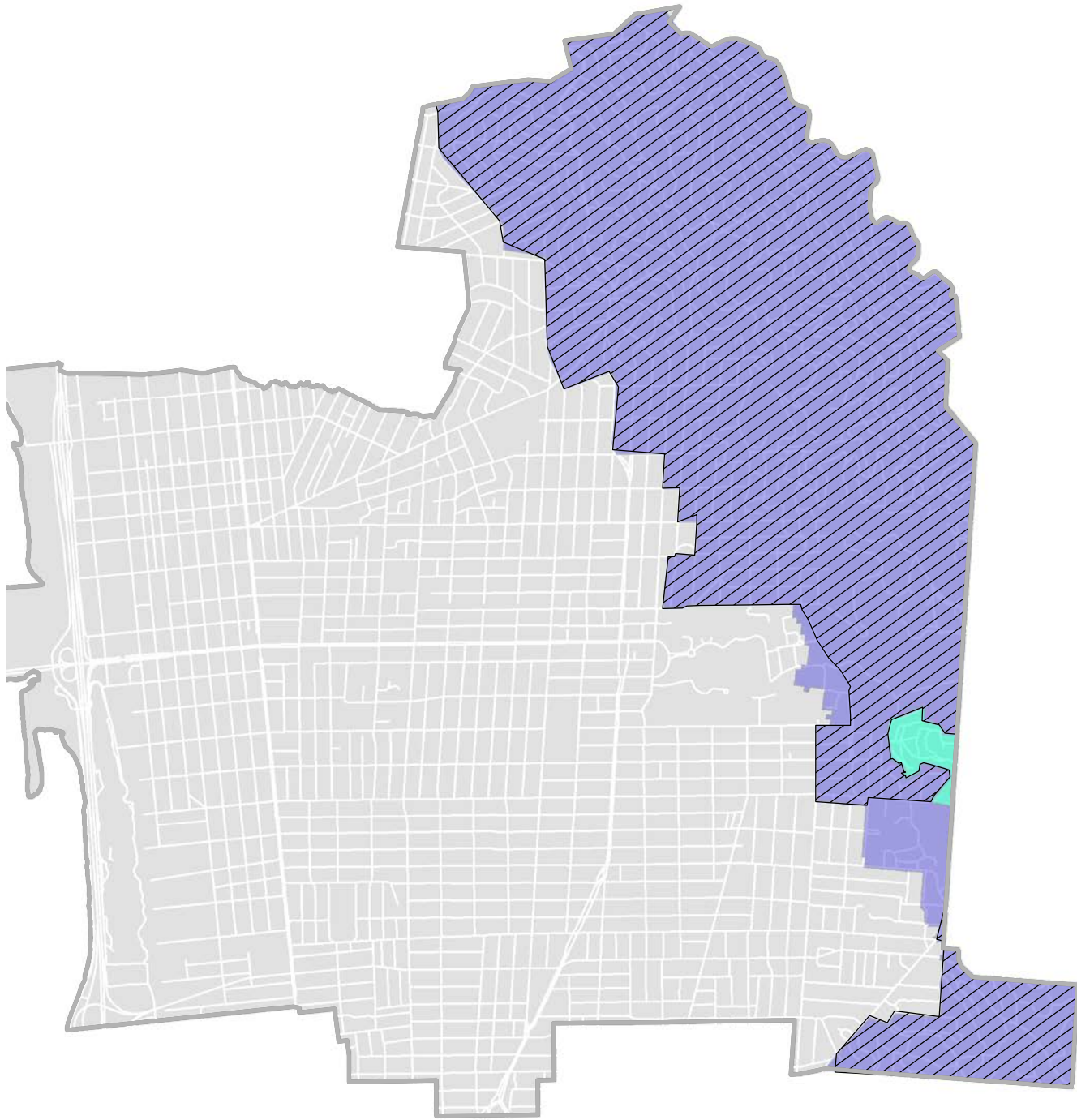
Updated:
November 14, 2019






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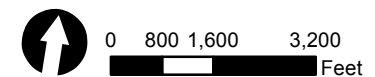
CITY OF BERKELEY
Land Use Planning Division
Dep.t of Planning & Development
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704



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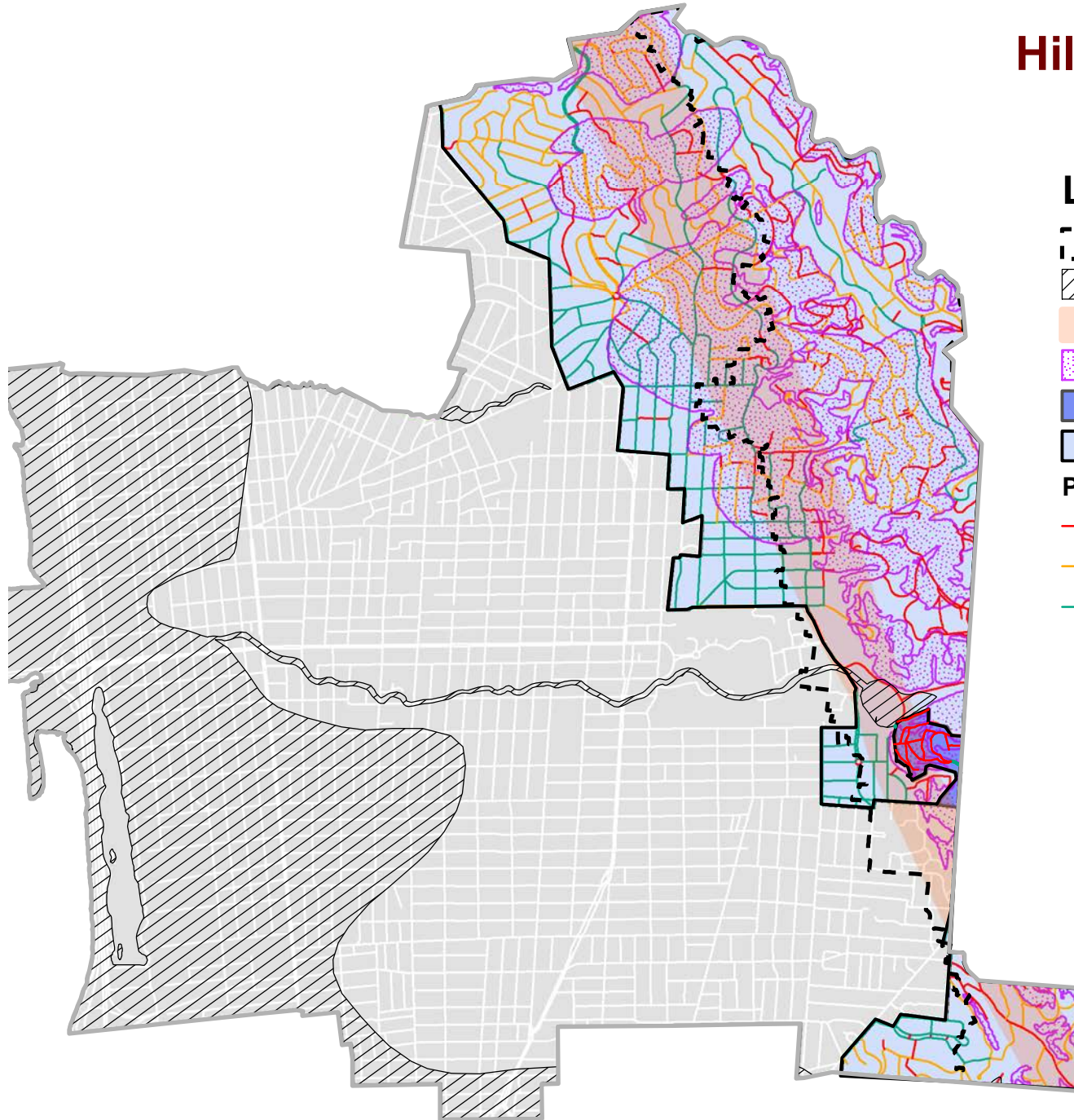
-  Hillside Overlay
-  Berkeley Fire Zone 2
-  Berkeley Fire Zone 3

Updated:
November 14, 2019



 **CITY OF BERKELEY**
Land Use Planning Division
Dep.t of Planning & Development
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704

City of Berkeley Hillside Conditions Map



Legend

- Very High Hazard Severity Zone
- CGS Seismic Hazard Zone: Liquefaction
- CGS Seismic Hazard Zone: Earthquake Fault
- CGS Seismic Hazard Zone: Landslide
- ES-R Zoning District
- Hillside Overlay

Pavement Width

- Less than or equal to 20 feet
- 21 to 26 feet
- Greater than 27 feet

Updated:
November 14, 2019



0 800 1,600 3,200
Feet



CITY OF BERKELEY
Land Use Planning Division
Dep.t of Planning & Development
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704



ATTACHMENT 3

REPORT ISSUED PURSUANT TO GOVERNMENT CODE SECTION 65858(d)

DATE: JANUARY 10, 2020

SUBJECT: REPORT ON MEASURES TAKEN FOLLOWING THE ADOPTION OF INTERIM URGENCY ORDINANCE NUMBER 7,683-N.S. ESTABLISHING LIMITATION ON DEVELOPMENT OF ACCESSORY DWELLING UNITS IN FIRE ZONES 2 AND 3

BACKGROUND

On December 10, 2019, the City Council adopted Urgency Ordinance Number 7,683-N.S., which imposed an interim 45-day Urgency Ordinance for Accessory Dwelling Units (ADUs) that limits ADU development in certain areas of the City. Specifically, the interim Urgency Ordinance prohibits ADUs in Fire Zone 3 and prohibits ADUs in Fire Zone 2 on roads that are less than 26 feet in width.

Pursuant to California Government Code § 65858(b), interim ordinances remain in effect for 45 days from the date of adoption, but may be extended for ten months and 15 days following notice and a public hearing. Under California Government Code § 65858(d), the City Council is required to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the interim ordinance ten days prior to the expiration of an interim ordinance. Ordinance Number 7,683-N.S. is set to expire on January 24, 2020. The City Council is scheduled to consider an extension of Ordinance Number 7,683-N.S. on January 21, 2020. Issuance of this report satisfies the requirements of California Government Code § 65858(d).

DISCUSSION

The Planning Department and the Fire Department are actively analyzing new regulations in order to draft a permanent ADU ordinance that complies with State law and preserves public safety protections in Fire Zones 2 and 3. The following specific activities are currently being undertaken:

- Analyzing AB 881 to understand new development standards for single family and multifamily homes, associated fees, expedited timelines, and opportunities for local ordinances to address public safety impacts;
- Conducting technical analysis with staff from departments involved in the development review process to explain AB 881 and develop procedures to

ministerially process building permit applications while maintaining public safety protections;

- Collaborating with other jurisdictions and state and regional agencies to share knowledge and develop "best practice" standards that will inform development of a permanent ADU ordinance in Berkeley;
- Responding to numerous public inquiries regarding the interim Urgency Ordinance, the future permanent ordinance and site-specific ADU development concepts; and
- Developing public information materials (e.g. FAQs, application forms, check lists) that explain new ADU regulations to the public and to staff in a clear and concise manner.

The above reflects the actions taken during this short period necessary to extend the interim urgency ordinance currently in effect. An opportunity for full public comment on the draft extension of the Urgency Ordinance will be provided at the City Council's Public Hearing to be held on January 21, 2020 at 6:00 PM at the School District Board Room, 1231 Addison Street, Berkeley, California. The City will publish notice for this meeting pursuant to Government Code § 65090.

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

DATE/TIME: TUESDAY, JANUARY 21, 2020 – 6:00 P.M.
LOCATION: BUSD Board Room, 1231 Addison Street, Berkeley

EXTENDING URGENCY ORDINANCE NO. 7,683-N.S. AMENDING ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO COMPLY WITH NEW STATE LAW AND ESTABLISH INTERIM LIMITS ON DEVELOPMENT

The proposed amendments extend the Urgency Ordinance Amending the Accessory Dwelling Units Chapter of the Berkeley Municipal Code (BMC 23C.12.24) to comply with new State ADU laws and maintain public safety protections in Fire Zone 2 and 3. City Council adopted the initial 45-day Urgency Ordinance at its meeting on December 10, 2019. This extension will provide necessary time to receive guidance from the State, draft amendments, receive and consider public input, allow review and discussion by the Planning Commission and Disaster and Fire Safety Commission, and allow review and adoption by City Council. Changes would apply Citywide in all zoning districts where residential development is allowed.

Changes to be considered are as follows:

Chapter 23C.24 Accessory Dwelling Units

23C.24.010 Applicability of Regulations

The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U) ; and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.

23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2 and 65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.

23C.24.030 Permit Procedures

Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2 and 65852.22](#).

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of January 9, 2020.

For further information, please contact Alene Pearson at 510-981-7489. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: Friday, January 10, 2020 – The Berkeley Voice

Noticing per California Government Code Sections 65090

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on January 9, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



Public Works Commission

ACTION CALENDAR

January 21, 2020

*(Continued from December 10, 2019)*

To: Honorable Mayor and Members of the City Council

From: Public Works Commission

Submitted by: Ray Yep, Chair, Public Works Commission

Subject: Public Works Commission Recommendation for the Five-Year Paving Plan

RECOMMENDATION

Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.

SUMMARY

This Report to Council is comprised of three sections:

1. Recommendations on the City's Proposed 5-Year Paving Plan
2. Report to Council on requested actions from 2017 and 2018
3. Recommendation from the Public Works Commission (PWC) to address the on-going paving condition deficit through the creation and implementation of a Long-Term Paving Master Plan.

The City of Berkeley's Street Rehabilitation and Repair Policy (Street Policy) requires that a 5-year paving plan be reviewed each year and adopted formally by the City Council, with advice from the PWC. The Rehabilitation Plan (commonly called the Paving Plan) for FY 2020 to FY 2024 has been reviewed by the PWC and it is recommending adoption of all five years of the plan.

At their meetings in December 2017 and 2018, City Council directed Staff to coordinate with the PWC on the items outlined in their motions. A progress report on the action items was submitted to Council on July 24, 2018. All of the action items have been worked on and this report highlights the status.

Berkeley's streets are in an "at-risk" condition, far from the City's target of having our streets in "good" condition, and continue to decline year on year. The PWC recommends that a master plan be prepared to understand the funding and resources needed to improve Berkeley's streets to a "good" condition.

FISCAL IMPACTS OF RECOMMENDATION

This Paving Plan is based on the Adopted Biennial Budget for Fiscal Years 2020 & 2021, and on the following estimated available funding levels from all sources, including State Transportation (Gas) Tax, Measure B, Measure BB, Measure F, and the General Fund.

| Five-Year Paving Program Funding Sources by Year, in \$ |                  |                  |                  |                  |                  |
|---------------------------------------------------------|------------------|------------------|------------------|------------------|------------------|
| Fund Description                                        | FY 2020          | FY 2021          | FY 2022          | FY 2023          | FY 2024          |
| State Transportation Tax                                | 495,303          | 495,303          | 495,303          | 495,303          | 495,303          |
| State Transportation Tax –SB1                           | 1,500,000        | 1,700,000        | 1,700,000        | 2,000,000        | 2,000,000        |
| Measure B - Local Streets & Roads                       | 700,000          | 1,000,000        | 700,000          | 0                | 0                |
| Measure BB – Local Streets & Roads                      | 2,200,000        | 1,700,000        | 2,000,000        | 2,700,000        | 2,700,000        |
| Measure F Vehicle -Registration Fee                     | 155,000          | 155,000          | 155,000          | 155,000          | 155,000          |
| Capital Improvement Fund                                | 1,925,000        | 1,925,000        | 1,925,000        | 1,925,000        | 1,925,000        |
| <b>TOTAL</b>                                            | <b>6,975,303</b> | <b>6,975,303</b> | <b>6,975,303</b> | <b>7,272,303</b> | <b>7,272,303</b> |

In addition to the City's program funding, additional grant and bond funding has been made available for paving in FY 2020 and 2021, summarized below.

| Other Funding for Paving by Year, in \$ |                   |                  |          |          |          |
|-----------------------------------------|-------------------|------------------|----------|----------|----------|
| Funding Source                          | FY 2020           | FY 2021          | FY 2022  | FY 2023  | FY 2024  |
| Measure T1 approved                     | 7,500,000         | 1,000,000        | 0        | 0        | 0        |
| Grants                                  | 2,777,000         | 1,200,000        | 0        | 0        | 0        |
| <b>TOTAL</b>                            | <b>10,277,000</b> | <b>2,200,000</b> | <b>0</b> | <b>0</b> | <b>0</b> |

The PWC is recommending the preparation of a Long-Term Paving Master Plan. This is currently not budgeted and a request to fund the work needs to be prepared and submitted.

CURRENT SITUATION AND ITS EFFECTS

In December 2017 and 2018, the PWC made recommendations on the 5-year paving plan and provided a detailed analysis of Berkeley's street condition in our reports to Council. Based on the city-wide Pavement Condition Index (PCI), Berkeley's streets continue to be evaluated as "at risk," and do not meet the City's target to be in "good" condition. Council requested certain analysis and action be taken.

This report addresses the following topics:

1. Recommendations on the City's Proposed 5-Year Paving Plan
2. Report to Council on requested actions from 2017 and 2018

3. Recommendation from the Public Works Commission (PWC) to address the on-going paving condition deficit through the creation and implementation of a Long-Term Paving Master Plan.

#### Review of 5-year Paving Plan

A significant amount of street paving was done in the summer of 2019. This includes the paving delayed from 2018, the paving approved for 2019, and paving the Panoramic Hill area.

Staff prepared a list of paving projects for the new 5-year planning period (FY 2020 – 2024). This was prepared using guidance from Berkeley’s Street Rehabilitation Policy, StreetSaver program analysis, knowledge of what has been accomplished in recent years, and available funding. The proposed plan is summarized as follows.

|                                        | FY2020         | FY2021         | FY2022         | FY2023         | FY2024         | Total            | % of Total |
|----------------------------------------|----------------|----------------|----------------|----------------|----------------|------------------|------------|
| <b><u>Square Footage of Paving</u></b> |                |                |                |                |                |                  |            |
| Arterials, sq. ft.                     | 84,360         | 0              | 77,580         | 6,600          | 0              | 168,540          | 6          |
| Collectors, sq. ft.                    | 400,480        | 6,900          | 58,810         | 63,250         | 163,170        | 754,710          | 26         |
| Residential, sq. ft.                   | 284,758        | 477,584        | 474,528        | 366,739        | 365,668        | 1,969,277        | 68         |
| <b>Total sq. ft.</b>                   | <b>769,598</b> | <b>546,584</b> | <b>610,918</b> | <b>436,589</b> | <b>528,838</b> | <b>2,892,527</b> | <b>100</b> |
| <b><u>Miles</u></b>                    |                |                |                |                |                |                  |            |
| Arterials, miles                       | 0.32           | 0.00           | 0.41           | 0.04           | 0.00           | 0.77             | 5          |
| Collectors, miles                      | 1.77           | 0.51           | 0.23           | 0.62           | 0.81           | 3.94             | 24         |
| Residential, miles                     | 1.58           | 3.33           | 2.39           | 2.17           | 1.93           | 11.40            | 71         |
| <b>Total miles</b>                     | <b>3.67</b>    | <b>3.84</b>    | <b>3.03</b>    | <b>2.83</b>    | <b>2.74</b>    | <b>16.11</b>     | <b>100</b> |
| <b><u>Cost</u></b>                     |                |                |                |                |                |                  |            |
| Arterials, \$millions                  | \$0            | \$0            | \$0.896        | \$0.078        | \$0            | \$0.974          | 3          |
| Collectors, \$millions                 | \$2.521        | \$0.881        | \$0.956        | \$1.290        | \$1.946        | \$7.594          | 24         |
| Residential, \$millions                | \$3.744        | \$5.041        | \$2.996        | \$3.252        | \$3.957        | \$18.990         | 60         |
| Discretionary, \$millions              | \$0            | \$1.046        | \$1.046        | \$1.091        | \$1.091        | \$4.274          | 13         |
| <b>Total cost, \$millions</b>          | <b>\$6.265</b> | <b>\$6.968</b> | <b>\$5.894</b> | <b>\$5.711</b> | <b>\$6.994</b> | <b>\$31.832</b>  | <b>100</b> |

The above summary does not include \$7.5 million in FY 2020, and \$1 million in FY 2021 from Measure T1 funding. It also does not include \$3.98 million in grant funding in FY2020 and FY2021.

The PWC paving subcommittee discussed the plan with Public Works Department staff and we have the following comments.

1. The Paving Plan uses asphalt paving technology. As such, the plan is not contributing to reducing greenhouse gas emissions. The PWC encourages staff to use greener and more sustainable technologies to help meet our climate action

goals. One suggestion is to start calling this a “street surface treatment plan” and not paving plan.

2. Staff prepared a process flow diagram that describes the inputs used to prepare the 5-year paving plan. This document provides a high-level overview of all the work that staff puts into the development of the paving plan and it has been very informative for the PWC. This has been included as Attachment 3 to this report for Council’s review.
3. Many of the City’s streets with the lowest PCI are residential streets. The proposed plan by staff shifts more focus of the paving plan to residential streets. While this is outside of the City’s Paving Policy for allocation of paving funds by street type, this plan helps address the roads that are in the greatest need and will do the most to improve the City-wide average PCI. The PWC believes that on a long-term basis, the Paving Policy is still valid to prioritize funding for arterials, collectors, bike routes, and bus routes. The following is a breakdown as compared to the Paving Policy:

|                     | <b>Cost Breakdown<br/>Per Paving Policy</b> | <b>Cost Breakdown<br/>Per 5-Year Paving Plan<br/>(FY2020-2024)</b> |
|---------------------|---------------------------------------------|--------------------------------------------------------------------|
| Arterial streets    | 10%                                         | 3%                                                                 |
| Collector streets   | 50%                                         | 24%                                                                |
| Residential streets | 25%                                         | 60%                                                                |
| Discretionary       | 15%                                         | 13%                                                                |

4. The plan was reviewed with the City of Berkeley’s Bicycle Plan 2017. Of the total length of streets to be paved, 5.8 miles (36%) are current or future bike routes. However, of those 5.8 miles, 1.6 miles (27%) are on Hopkins or Cedar and just doing the pavement does not bring the streets to the requirements of the Berkeley Bicycle Plan. To complete the bikeways on these streets, additional funding is needed from the Transportation Division and a project is needed prior to paving beginning on these streets. The plan was also reviewed with the Transportation Commission and with their concerns about bike routes.
5. The PWC has reviewed the plan for contiguous streets and that the work is bundled for cost effective implementation. This is balanced with having the paving work be spread across all Council Districts of the City. Over the 5-year Paving Plan, the cost is distributed between 7% to 16% for each District.
6. The PWC agrees with including the streets that were approved under Phase 1 of Measure T1. However, the PWC recommends that bond funds be used only for work that will last for at least as long as the duration of the bond repayment period (this would be 40 years in the case of projects funded by Measure T-1 bond proceeds). Road treatments that match this recommendation only include full street reconstruction work, as other standard maintenance may extend the life of these assets beyond the duration of the bond repayment period. Maintenance work, such

as overlays, cape and slurry seals, should be funded from the Paving Program funds or the General Fund.

7. Specific attention should be given to the Adeline Corridor Specific Plan and its proposed changes to the street alignment. The street will be repaved using Measure T1 funds. This means that changes to the street may occur before the debt financing is paid off.
8. The PWC agrees that 15% of the available funding should be reserved for discretionary and/or demonstration projects. The PWC is in the process of developing a recommendation for criteria to help prioritize projects to be funded with the discretionary reserve.

#### Progress with Council Requested Actions

At their meetings in December 2017 and 2018, City Council directed Staff to coordinate with the PWC on the items outlined in their motions. A progress report on the action items was submitted to Council on July 24, 2018. Progress continues to be made on the action items and we would like to highlight the following.

1. Use of life cycle cost analysis – The City received a grant from the Metropolitan Transportation Commission (MTC) for technical assistance to evaluate life cycle cost analysis for street paving technologies. The MTC has retained Pavement Engineering Inc. (PEI) to conduct the analysis. The PWC paving sub-committee is working closely with PEI and staff on the study. The study will evaluate the life cycle cost of asphalt and alternative technologies, including permeable pavement, and will consider multiple benefits from each. These benefits, called externalities, include considerations for attenuating storm water peak flows, improving water quality, reducing traffic speeds, enhanced public safety, and reducing greenhouse gas emissions. PEI's analysis is projected to be completed in fall 2019.
2. Use of 15% discretionary and demonstration funds – The PWC paving sub-committee is working with staff to identify potential sites for permeable pavement projects or alternative durable pavement technologies. We are developing a matrix of criteria and candidate locations. The criteria include current condition, soil permeability, constructability, location attributes, life cycle cost analysis, and other factors. An allocation of 15% discretionary and demonstration funds has been included in FY2021-2024.
3. Work with consultants who have experience with long-lasting innovative technologies – The City retained several new on-call civil engineering consultants in 2018. The consultants include Bellecci and Associates, Harrison Engineering Inc., Pavement Engineering Inc., and Mark Thomas Company. All of these firms have demonstrated experience with long-lasting innovative and green infrastructure.
4. Report to Council on funding sources for scheduled and completed paving – A report to Council was made on September 10, 2019 on the breakdown of paving costs.

5. Annual report to Council on Measure M – The Public Works Department staff will prepare a report on the performance of Measure M at the completion of the 2019 paving season and the completion of the Woolsey Street stormwater cistern project.
6. Consult with Transportation Commission – Members from the Transportation Commission have participated at the PWC’s paving sub-committee meetings and a presentation of the 5-year paving plan was given to the Transportation Commission on June 20, 2019.

Master Plan to Improve the Condition of Berkeley’s Streets

The current citywide average PCI is 58 on a scale of 100, and is firmly in the “at risk,” category. Streets in this category tend to degrade at a more accelerated rate than those in a “good” or “fair” condition. Under the proposed paving plan, the PCI is estimated to dip to 52 by 2023. This is far from the City’s target of having our streets in “good” condition (PCI of 70 -79), and it is clear that action is needed to reverse this trend before our road fall into “failing” condition. Below is a summary of the current conditions of Berkeley’s streets by road type. This information was prepared by staff and PEI.

| Section/Area        | PCI in 2019 |
|---------------------|-------------|
| Overall system      | 58          |
| Arterial streets    | 66          |
| Collector streets   | 64          |
| Residential streets | 55          |
| Bus routes          | 66          |
| Bike lanes          | 62          |

The PWC recommends that a master plan be prepared to understand the funding and resources needed to improve Berkeley’s streets to a “good” condition. The master plan should represent street paving priorities that align with the values of the city and should consider the following:

1. Update the Street Policy – The policy was last updated in 2009. The policy should be reviewed and updated to incorporate current thinking about using life cycle cost analysis, Vision Zero, equity, sustainable multi-benefit technologies, the Bicycle Plan recommendations, Climate Action Plan, Resilience Strategy, Local Hazard Mitigation Plan, and other factors. With these considerations in mind, the updated policy should include new performance metrics that capture the diverse objectives the City holds for our road network.
2. A long-term paving capital plan – The Master Plan should include a 40-year paving or road surfacing plan to help the City identify the most efficient path to move the current PCI from “at risk” to “good.” This approach spans two cycles of typical asphalt roads expected useful life, and allows for decisions on street surfacing to be



optimized for the greatest bang for our buck over the full life of our assets, rather than the current short-term approach.

3. Equity -- The City's Street Policy calls for street paving to be equitably allocated among the City's nine districts. This is a worthy goal; however, the policy stops there and does not provide a clear method for how to evaluate equity. Should it be measured by dollars spent, miles paved, miles treated, the average PCI in a district, and should this equity be for each year of the paving plan over the full five years of the paving plan, or measured retrospectively? The Master Plan will propose a more definitive metric that will provide a clear directive to staff moving forward and provide the community with enhanced transparency in the City's paving decisions.
4. Financing Strategy -- Lack of funding for street paving plays a major role in the overall condition of the City's streets. As part of the Master Plan, the work should include a long-term funding gap analysis, a financial plan to address the funding gap, a cost-of-service rate study to develop recommended rates needed to sustainably finance the Paving Program, and an impact fee analysis to allow the City to recoup the cost of accelerated wear on our roads imposed by heavy vehicles. We also recommend the master plan include an evaluation of grant funding opportunities.
5. Public Engagement -- Public feedback is critical to the successful implementation of any City Plan. The Master Plan should provide guidance for public engagement strategies that will allow the collection and synthesis of public feedback regarding the future of the City streets.

The recommendation to approve both the 5-year paving plan and the recommendation for a Paving Master Plan and to forward it to Council was discussed by the Public Works Commission at its July 11, 2019 meeting.

Action: M/S/C (Schueler/Dominguez)

Vote: (8 Ayes: Yep, Schueler, Dominguez, Hitchen, Constantine, Krpata, Erbe, Freiberg; 0 Noes; 1 Absent: McGrath; 0 Abstain)

#### ENVIRONMENTAL SUSTAINABILITY

Permeable pavers provide a way of reducing the volume of storm water entering the City storm drain system; improving the quality of urban runoff from the roadway that is conveyed to local creeks and the Bay; and reducing greenhouse gas emissions by installing a durable product that requires less maintenance than traditional asphalt concrete.

Full Depth Reclamation (FDR), a cost-effective alternative to traditional street reconstruction methods, is planned for use in several of the streets selected for rehabilitation. It recycles much of the existing pavement on site, and incorporates it into the pavement subgrade, thereby reducing truck trips to and from construction sites.

In addition, the Paving Plan includes repair of the City's deteriorating storm drain infrastructure that minimizes degradation of water quality in local creeks and the Bay. These repairs are consistent with the City of Berkeley's 2011 Watershed Management Plan. Furthermore, the Paving Plan also proposes approximately 5.8 miles of improvements to bicycle routes, and improvements to sidewalk and curb ramps adopted from the Bicycle and Pedestrian Plans. These steps result in lower emissions of greenhouse gases into the environment, which is consistent with the goals of the 2009 Berkeley Climate Action Plan.

RATIONALE FOR RECOMMENDATION

It is the policy of the City of Berkeley that there shall be a Five-year Street Rehabilitation Plan for the entire City to be adopted by the City Council. Further, the proposed plan provides for much needed street infrastructure improvements that are consistent with the City's Street Policy.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER REPORT

See companion report.

CONTACT PERSON

Ray Yep, Chair, Public Works Commission (510) 318-4894

Nisha Patel, Manager of Engineering (510) 981-6406

Joe Enke, Supervising Civil Engineer (510) 981-6411

Attachments:

1. Resolution

Exhibit A: Five-Year Street Rehabilitation Plan Update to Council, July 24, 2018

2. 5-Year Paving Plan Process Flow Diagram

Attachment 1

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

APPROVAL OF THE FIVE-YEAR PAVING PLAN FOR FY 2020 TO FY2024 AND  
RECOMMENDATION FOR THE CREATION OF A LONG-TERM PAVING MASTER  
PLAN

WHEREAS, the Street Rehabilitation Policy, Resolution No. 55,384-N.S. approved on May 22, 1990, requires there be a Five-Year Street Paving Plan for the entire City to be adopted by the City Council, and

WHEREAS, the City Council requests advice from the Public Works Commission on the Five-Year Paving Plan; and

WHEREAS, on July 11, 2019, the Public Works Commission voted to approve submitting the FY 2020 to FY2024 Five-year Paving Plan to City Council, attached as Exhibit A;

WHEREAS, the condition of Berkeley's streets are at an "at risk" condition and a long-term strategy is needed to improve the condition to the "good" level,

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the FY 2020 to FY2024 Five-Year Paving Plan attached as Exhibit A hereof and the request to create a long-term paving master plan, are hereby adopted.

Exhibit A: Five-Year Paving Plan for FY2020 to FY2024

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From              | To                    | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P   | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|-------------------|-----------------------|-------|------------------------------|--------------------|----------|-----|---------|-------------|---------------|----------|----------------------------|
| 2020        | 321100    | 30         | CEDAR ST          | 6TH ST            | SAN PABLO AVE         | C     | Reconstruct                  | \$ 1,239,036       | 1        | 3C* | 0.31    | 27          | 10/1/1994     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 320685    | 10         | MARINA BLVD       | SPINNAKER WAY     | UNIVERSITY AVE        | C     | Heavy Mtce                   |                    | 1        | N   | 0.43    | 58          | 9/1/1986      | A - AC   | OVERLAY                    |
| 2020        | 735382    | 60         | MILVIA ST         | BLAKE ST          | RUSSELL ST            | R     | Heavy Rehab                  | \$ 764,300         | 3        | 3E  | 0.44    | 28          | 9/1/1993      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 516492    | 75         | ROSE ST           | LE ROY AVE        | LA LOMA AVE           | R     | Reconstruct                  | \$ 205,000         | 6        | N   | 0.14    | 0           |               | A - AC   |                            |
| 2020        | 319525    | 35         | SANTA FE AVE      | GILMAN ST         | CORNELL AVE & PAGE    | R     | Heavy Rehab                  | \$ 409,600         | 1        | 3C* | 0.27    | 49          | 7/1/1995      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2020        | 319525    | 30         | SANTA FE AVE      | NORTH CITY LIMIT  | GILMAN ST             | R     | Light Mtce                   | \$ 37,355          | 1        | 3C* | 0.11    | 60          | 8/31/2004     | O -      | MILL AND THIN OVERLAY      |
| 2020        | 115532    | 77         | SHASTA RD         | GRIZZLY PEAK BLVD | PARK GATE             | C     | Heavy Rehab                  | \$ 86,667          | 6        | N   | 0.05    | 14          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 115532    | 79         | SHASTA RD         | PARK GATE         | EAST CITY LIMIT (GOLF | C     | Reconstruct                  | \$ 234,789         | 6        | N   | 0.11    | 10          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 320686    | 10         | SPINNAKER WAY     | BREAKWATER DR     | MARINA BLVD           | R     | Reconstruct                  | \$ 1,000,000       | 1        | N   | 0.28    | 24          | 8/1/1991      | A - AC   | OVERLAY                    |
| 2020        | 213386    | 22         | MONTEREY AVE      | THE ALAMEDA       | HOPKINS ST            | C     | Heavy Rehab                  | \$ 960,667         | 5        | 2A  | 0.57    | 54          | 11/30/2011    | A - AC   | MILL AND OVERLAY           |
| 2020        | 933653    | 40         | WARD ST           | SAN PABLO AVE     | ACTON ST              | R     | Reconstruct                  | \$ 1,328,400       | 2        | N   | 0.31    | 20          | 9/1/1991      | A - AC   | MILL AND OVERLAY W/FABRIC  |
| 2020        | 320620    | 15         | UNIVERSITY AVE    | MARINA BLVD       | WEST FRONTAGE RD      | C     | Reconstruct                  |                    | 1, 2     | N   | 0.30    | 0           | 12/1/1989     | A - AC   | OVERLAY                    |
| 2020        | 729533    | 55         | SHATTUCK AVE      | CENTER ST         | ALLSTON WAY           | A     | Reconstruct                  |                    | 4        |     | 0.06    | 2           | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729533    | 57         | SHATTUCK AVE (SB) | CENTER ST         | UNIVERSITY AVE        | A     | Reconstruct                  |                    | 4        |     | 0.13    | 12          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729007    | 64         | ADDISON ST        | SHATTUCK AVE      | SHATTUCK AVE          | R     | Heavy Rehab                  |                    | 4        |     | 0.03    |             |               |          |                            |
| 2020        | 729051    | 52         | BERKELEY SQUARE   | ADDISON ST        | CENTER ST             | A     | Heavy Rehab                  |                    | 4        |     | 0.06    |             |               |          |                            |
| 2020        | 729535    | 50         | SHATTUCK SQUARE   | UNIVERSITY AVE    | ADDISON               | A     | Heavy Rehab                  |                    | 4        |     | 0.07    | 28          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
|             |           |            |                   |                   |                       |       |                              | \$ 6,265,814       |          |     | 3.69    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From               | To                | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P         | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|--------------------|-------------------|-------|------------------------------|--------------------|----------|-----------|---------|-------------|---------------|----------|----------------------------|
| 2021        | 940005    | 70         | ACTON ST          | ASHBY ST           | 66TH ST           | R     | Light Mtce                   | \$ 83,640          | 2        | N         | 0.23    | 60          | 8/29/2007     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 516020    | 30         | ARCADE AVE        | GRIZZLY PEAK BLVD  | FAIRLAWN DR       | R     | Heavy Rehab                  | \$ 63,378          | 6        | N         | 0.06    | 7           | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 628042    | 78         | BANCROFT WAY      | BOWDITCH ST        | COLLEGE AVE       | C     | Heavy Mtce                   | \$ 161,036         | 7        | 3C*       | 0.13    | 62          | 12/1/1990     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 627042    | 80         | BANCROFT WAY      | COLLEGE AVE        | PIEDMONT AVE      | C     | Heavy Rehab                  | \$ 254,076         | 7        | 3C*       | 0.13    | 57          | 12/1/1990     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 829102    | 60         | CENTER ST         | MARTIN LUTHER KING | MILVIA ST         | R     | Heavy Rehab                  | \$ 315,645         | 4        |           | 0.13    | 59          | 7/1/1991      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 729102    | 63         | CENTER ST         | MILVIA ST          | SHATTUCK          | R     | Heavy Rehab                  | \$ 564,000         | 4        | 2A*       | 0.13    | 72          | 7/1/1991      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 111127    | 10         | CRESTON RD        | GRIZZLY PEAK BLVD  | SUNSET LANE       | R     | Heavy Mtce                   | \$ 93,378          | 6        | N         | 0.36    | 67          | 6/1/1995      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115127    | 20         | CRESTON RD        | SUNSET LANE        | GRIZZLY PEAK BLVD | R     | Heavy Mtce                   | \$ 116,258         | 6        | N         | 0.36    | 64          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 728140    | 50         | DANA ST           | BANCROFT WAY       | DWIGHT WAY        | R     | Heavy Rehab                  | \$ 467,400         | 7        | 2A to 2B* | 0.25    | 51          | 12/1/1989     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 739141    | 70         | DEAKIN ST         | ASHBY AVE          | PRINCE ST         | R     | Light Mtce                   | \$ 45,920          | 3        | N         | 0.16    | 76          | 4/3/2008      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 736141    | 68         | DEAKIN ST         | RUSSELL ST         | ASHBY AVE         | R     | Light Rehab                  | \$ 109,200         | 3        | N         | 0.10    | 57          | 7/1/1988      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 940148    | 70         | DOHR ST           | ASHBY AVE          | PRINCE ST         | R     | Heavy Rehab                  | \$ 176,569         | 2        | N         | 0.14    | 53          | 10/1/1992     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115344    | 80         | LATHAM LANE       | MILLER AVE         | GRIZZLY PEAK      | R     | Heavy Mtce                   | \$ 38,500          | 6        | N         | 0.10    | 61          | 6/1/1994      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115380    | 70         | MILLER AVE        | HILLDALE AVE       | SHASTA RD         | R     | Light Rehab                  | \$ 425,880         | 6        | N         | 0.66    | 58          | 6/1/1994      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 830491    | 58         | ROOSEVELT AVE     | CHANNING WAY       | DWIGHT WAY        | R     | Light Rehab                  | \$ 172,480         | 4        | N         | 0.13    | 65          | 12/1/1989     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 728584    | 50         | TELEGRAPH AVE     | BANCROFT WAY       | DWIGHT WAY        | C     | Heavy Rehab                  | \$ 473,060         | 7        | 3C*       | 0.25    | 52          | 7/1/1988      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 931657    | 55         | WEST ST           | BANCROFT WAY       | DWIGHT WAY        | R     | Heavy Mtce                   | \$ 263,822         | 2        | N         | 0.25    | 65          | 10/1/1994     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 320528    | 47         | 2ND ST            | DELAWARE ST        | HEARST AVE        | R     | Reconstruct                  | \$ 775,833         | 1        | N         | 0.09    | 2           | NA            |          |                            |
| 2021        | 320528    | 48         | 2ND ST            | HEARST AVE         | UNIVERSITY AVE    | R     | Heavy Rehab                  | \$ 762,222         | 1        | N         | 0.09    | 46          | NA            |          |                            |
| 2021        | 920528    | 50         | 2ND ST            | UNIVERSITY AVE     | ADDISON ST        | R     | Heavy Rehab                  | \$ 560,000         | 2        | N         | 0.09    | 0           | 8/27/1997     |          | MILL AND OVERLAY W/FABRIC  |
| 2021        |           |            | 15% DISCRETIONARY |                    |                   |       |                              | \$ 1,046,295       |          |           |         |             |               |          |                            |
|             |           |            |                   |                    |                   |       |                              | \$ 6,968,593       |          |           | 3.84    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From         | To               | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P   | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                   |
|-------------|-----------|------------|-------------------|--------------|------------------|-------|------------------------------|--------------------|----------|-----|---------|-------------|---------------|----------|------------------------------|
| 2022        | 931073    | 50         | BROWNING ST       | ADDISON ST   | DWIGHT WAY       | R     | Heavy Rehab                  | \$ 911,600         | 2        | N   | 0.50    | 63          | 10/1/1995     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 638115    | 70         | COLLEGE AVE       | ASHBY AVE    | SOUTH CITY LIMIT | A     | Heavy Rehab                  | \$ 896,480         | 8        | N   | 0.41    | 51          | 8/23/2000     | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        | 729152    | 60         | DURANT AVE        | MILVIA ST    | SHATTUCK AVE     | C     | Reconstruct                  | \$ 693,355         | 4        | N   | 0.13    | 0           | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 729152    | 64         | DURANT AVE        | SHATTUCK AVE | FULTON ST        | C     | Heavy Rehab                  | \$ 262,880         | 4        | N   | 0.10    | 28          | 8/12/1997     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 728180    | 50         | ELLSWORTH ST      | BANCROFT WAY | DWIGHT WAY       | R     | Reconstruct                  | \$ 422,400         | 7        | N   | 0.25    | 20          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 736180    | 60         | ELLSWORTH ST      | DWIGHT WAY   | WARD ST          | R     | Light Mtce                   | \$ 129,360         | 7        | N   | 0.38    | 83          | 5/11/2011     | A - AC   | RECONSTRUCT SURFACE (AC)     |
| 2022        | 736180    | 65         | ELLSWORTH ST      | WARD ST      | ASHBY AVE        | R     | Light Mtce                   | \$ 99,307          | 3        | N   | 0.29    | 87          | 5/11/2011     | A - AC   | RECONSTRUCT SURFACE (AC)     |
| 2022        | 736227    | 60         | FULTON ST         | DWIGHT WAY   | BLAKE ST         | R     | Heavy Mtce                   | \$ 76,128          | 3        | 3E* | 0.06    | 61          | 6/1/1993      | O -      | MEDIUM AC OVERLAY (2 INCHES) |
| 2022        | 736227    | 61         | FULTON ST         | BLAKE ST     | PARKER ST        | R     | Heavy Mtce                   | \$ 27,840          | 3        | 3E* | 0.07    |             |               |          |                              |
| 2022        | 736227    | 63         | FULTON ST         | PARKER ST    | STUART ST        | R     | Heavy Mtce                   | \$ 321,592         | 3        | 3E* | 0.25    | 61          | 2/1/1992      | O -      | THIN AC OVERLAY(1.5 INCHES)  |
| 2022        | 835431    | 65         | OTIS ST           | RUSSELL ST   | ASHBY AVE        | R     | Heavy Rehab                  | \$ 224,000         | 3        | N   | 0.13    | 61          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        | 736561    | 70         | STUART ST         | FULTON ST    | HILLEGASS AVE    | R     | Heavy Rehab                  | \$ 784,000         | 7        | N   | 0.46    | 54          | 11/13/1998    | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        |           |            | 15% DISCRETIONARY |              |                  |       |                              | \$ 1,046,295       |          |     |         |             |               |          |                              |
|             |           |            |                   |              |                  |       |                              | \$ 5,895,237       |          |     | 3.03    |             |               |          |                              |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From            | To              | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P     | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|-----------------|-----------------|-------|------------------------------|--------------------|----------|-------|---------|-------------|---------------|----------|----------------------------|
| 2023        | 729042    | 65         | BANCROFT WAY      | SHATTUCK AVE    | FULTON ST       | C     | Heavy Rehab                  | \$ 277,778         | 4        | 4*    | 0.09    | 32          | 8/7/1997      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 729042    | 60         | BANCROFT WAY      | MILVIA WAY      | SHATTUCK AVE    | C     | Heavy Rehab                  | \$ 359,836         | 4        | N     | 0.13    | 28          | 12/1/1989     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 736140    | 65         | DANA ST           | BLAKE ST        | WARD ST         | R     | Light Rehab                  | \$ 454,080         | 7        | 3E*   | 0.25    | 45          | 7/30/2008     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 739186    | 60         | EMERSON ST        | ADELINE ST      | SHATTUCK AVE    | R     | Light Rehab                  | \$ 180,320         | 3        | N     | 0.15    | 65          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 839191    | 60         | ESSEX ST          | ADELINE ST      | TREMONT ST      | R     | Heavy Mtce                   | \$ 76,160          | 3        | N     | 0.06    | 76          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 739191    | 62         | ESSEX ST          | TREMONT ST      | SHATTUCK AVE    | R     | Light Rehab                  | \$ 129,920         | 3        | N     | 0.11    | 62          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 637217    | 80         | FOREST AVE        | COLLEGE AVE     | CLAREMONT BLVD  | R     | Heavy Rehab                  | \$ 600,000         | 8        | N     | 0.36    | 50          | 8/1/1996      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 516340    | 36         | LA LOMA AVE       | ROSE ST         | BUENA VISTA WAY | C     | Heavy Rehab                  | \$ 248,827         | 6        | N     | 0.16    | 36          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 516340    | 38         | LA LOMA AVE       | BUENA VISTA WAY | CEDAR ST        | C     | Heavy Rehab                  | \$ 221,340         | 6        | N     | 0.14    | 51          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 834371    | 65         | MC GEE AVE        | DERBY ST        | RUSSELL ST      | R     | Light Rehab                  | \$ 461,992         | 3        | N     | 0.25    | 60          | 12/10/1998    | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 834371    | 60         | MC GEE AVE        | DWIGHT WAY      | DERBY ST        | R     | Light Rehab                  | \$ 302,400         | 3        | N     | 0.26    | 59          | 7/1/1988      | O -      | THIN OVERLAY w/FABRIC      |
| 2023        | 319293    | 47         | HOPKINS ST        | GILMAN ST       | SACRAMENTO ST   | R     | Heavy Rehab                  | \$ 203,942         | 5        | 3A, C | 0.10    | 0           | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 213293    | 50         | HOPKINS ST        | HOPKINS CT      | MONTEREY AVE    | C     | Light Rehab                  | \$ 75,193          | 5        | 3A, C | 0.05    | 54          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 213293    | 52         | HOPKINS ST        | MONTEREY AVE    | MC GEE AVE      | C     | Heavy Rehab                  | \$ 107,167         | 5        | 2A, C | 0.05    | 71          | 12/1/1989     |          | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 319293    | 45         | HOPKINS ST        | NORTHSIDE AVE   | PERALTA AVE     | R     | Light Mtce                   | \$ 233,587         | 1        | N     | 0.10    | 78          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 46         | HOPKINS ST        | PERALTA AVE     | GILMAN ST       | R     | Heavy Mtce                   | \$ 433,031         | 1, 5     | N     | 0.27    | 64          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 49         | HOPKINS ST        | SACRAMENTO ST   | HOPKINS CT      | A     | Heavy Rehab                  | \$ 77,755          | 5        | 3A, C | 0.04    | 30          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 40         | HOPKINS ST        | SAN PABLO AVE   | STANNAGE AVE    | R     | Light Mtce                   | \$ 19,188          | 1        | N     | 0.09    | 73          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 42         | HOPKINS ST        | STANNAGE AVE    | NORTHSIDE AVE   | R     | Heavy Mtce                   | \$ 157,658         | 1        | N     | 0.17    | 80          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        |           |            | 15% DISCRETIONARY |                 |                 |       |                              | \$ 1,091,295       |          |       |         |             |               |          |                            |
|             |           |            |                   |                 |                 |       |                              | \$ 5,711,469       |          |       | 2.86    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From               | To                   | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P         | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                  |
|-------------|-----------|------------|-------------------|--------------------|----------------------|-------|------------------------------|--------------------|----------|-----------|---------|-------------|---------------|----------|-----------------------------|
| 2024        | 729014    | 63         | ALLSTON WAY       | MILVIA ST          | SHATTUCK AVE         | R     | Heavy Rehab                  | \$ 228,800         | 4        | N         | 0.14    | 19          | 11/1/1990     | O -      | MILL AND THIN OVERLAY       |
| 2024        | 729014    | 65         | ALLSTON WAY       | SHATTUCK AVE       | OXFORD ST            | R     | Reconstruct                  | \$ 344,036         | 4        | N         | 0.11    | 10          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 729104    | 63         | CHANNING WAY      | MILVIA ST          | SHATTUCK AVE         | R     | Heavy Rehab                  | \$ 267,640         | 4        | 2A to 2B* | 0.13    | 27          | 9/1/1991      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 829104    | 60         | CHANNING WAY      | MARTIN LUTHER KING | MILVIA ST            | R     | Reconstruct                  | \$ 462,920         | 4        | 2A to 2B* | 0.13    | 10          | 5/1/1995      | O -      | THIN AC OVERLAY(1.5 INCHES) |
| 2024        | 322142    | 48         | DELAWARE ST       | ACTON ST           | SACRAMENTO ST        | C     | Heavy Mtce                   | \$ 78,175          | 1        | 4*        | 0.13    |             |               |          |                             |
| 2024        | 636146    | 78         | DERBY ST          | HILLEGASS AVE      | COLLEGE AVE          | R     | Reconstruct                  | \$ 498,560         | 8        | 3E*       | 0.14    |             |               |          |                             |
| 2024        | 627155    | 85         | DWIGHT WAY        | HILLSIDE AVE       | DEAD END ABOVE       | R     | Reconstruct                  | \$ 406,204         | 8        | N         | 0.11    | 0           | 9/1/1993      | A - AC   | RECONSTRUCT SURFACE (AC)    |
| 2024        | 627155    | 83         | DWIGHT WAY        | PIEDMONT AVE       | HILLSIDE AVE         | R     | Reconstruct                  | \$ 526,688         | 7, 8     | N         | 0.14    | 3           | 9/1/1993      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 111249    | 17         | GRIZZLY PEAK BLVD | KEELER AVE         | MARIN AVE            | C     | Reconstruct                  | \$ 843,578         | 6        | 3C*       | 0.27    |             |               |          |                             |
| 2024        | 920275    | 40         | HEINZ AVE         | 7TH ST             | SAN PABLO AVE        | R     | Reconstruct                  | \$ 897,408         | 2        | 3E        | 0.26    |             |               |          |                             |
| 2024        | 739285    | 70         | HILLEGASS AVE     | ASHBY AVE          | CITY LIMIT (WOOLSEY) | R     | Light Mtce                   | \$ 68,400          | 8        | 3E        | 0.16    | 83          | 7/28/2003     | A - AC   | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 736285    | 60         | HILLEGASS AVE     | DWIGHT WAY         | ASHBY AVE            | R     | Light Mtce                   | \$ 256,000         | 8        | 3E        | 0.61    | 83          | 5/31/2000     | A - AC   | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 213293    | 53         | HOPKINS ST        | MC GEE AVE         | CARLOTTA AVE         | C     | Heavy Rehab                  | \$ 149,680         | 5        | 2A, C     | 0.06    | 47          | 12/1/1989     |          | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 213293    | 55         | HOPKINS ST        | CARLOTTA AVE       | JOSEPHINE ST         | C     | Heavy Rehab                  | \$ 874,580         | 5        | 2A, C     | 0.35    | 60          | 12/1/1989     |          | MILL AND OVERLAY            |
| 2024        |           |            | 15% DISCRETIONARY |                    |                      |       |                              | \$ 1,091,295       |          |           |         |             |               |          |                             |
|             |           |            |                   |                    |                      |       |                              | \$ 6,993,964       |          |           | 2.74    |             |               |          |                             |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.



FISCAL YEAR 2020 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 6,265,814</b> | <b>3.67 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.32    | 1                   | 0.69              | \$1,685,991 |
| COLLECTORS                            | 1.77    | 2                   | 0.31              | \$1,328,400 |
| RESIDENTIALS                          | 1.58    | 3                   | 0.44              | \$764,300   |
|                                       | 3.67    | 4                   | 0.03              | \$0         |
|                                       |         | 5                   | 0.57              | \$960,667   |
|                                       |         | 6                   | 0.30              | \$526,456   |
|                                       |         | 7                   | 0.00              | \$0         |
|                                       |         | 8                   | 0.00              | \$0         |
| <hr/>                                 |         | Arterial/PRW        | 1.33              | \$1,000,000 |
|                                       |         |                     | 3.67              | \$6,265,814 |
|                                       |         |                     |                   | 6975303     |

FISCAL YEAR 2021 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 6,968,593</b> | <b>3.84 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.00    | 1                   | 0.18              | \$1,538,055 |
| COLLECTORS                            | 0.51    | 2                   | 0.71              | \$1,084,031 |
| RESIDENTIALS                          | 3.33    | 3                   | 0.26              | \$155,120   |
|                                       | 3.84    | 4                   | 0.39              | \$1,052,125 |
|                                       |         | 5                   | 0.00              | \$0         |
|                                       |         | 6                   | 1.54              | \$737,394   |
|                                       |         | 7                   | 0.76              | \$1,355,572 |
|                                       |         | 8                   | 0.00              | \$0         |
|                                       |         | 15%                 |                   | \$1,046,295 |
| <hr/>                                 |         |                     | 3.84              | \$6,968,592 |
|                                       |         |                     |                   | 6975303     |

FISCAL YEAR 2022 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 5,895,237</b> | <b>3.03 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.41    | 1                   | 0.00              | \$0         |
| COLLECTORS                            | 0.23    | 2                   | 0.50              | \$911,600   |
| RESIDENTIALS                          | 2.39    | 3                   | 0.80              | \$748,867   |
|                                       | 3.03    | 4                   | 0.23              | \$956,235   |
|                                       |         | 5                   | 0.00              | \$0         |
|                                       |         | 6                   | 0.00              | \$0         |
|                                       |         | 7                   | 1.09              | \$1,335,760 |
|                                       |         | 8                   | 0.00              | \$0         |
| <hr/>                                 |         | Arterial            | 0.41              | \$896,480   |
|                                       |         | 15%                 |                   | \$1,046,295 |
|                                       |         |                     | 3.03              | \$5,895,237 |
|                                       |         |                     |                   | 6975303     |

FISCAL YEAR 2023 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 5,711,469</b> | <b>2.83 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.04    | 1                   | 0.50              | \$626,949   |
| COLLECTORS                            | 0.62    | 2                   | 0.00              | \$0         |
| RESIDENTIALS                          | 2.17    | 3                   | 0.83              | \$1,150,792 |
|                                       | 2.83    | 4                   | 0.22              | \$637,614   |
|                                       |         | 5                   | 0.34              | \$602,817   |
|                                       |         | 6                   | 0.30              | \$470,167   |
|                                       |         | 7                   | 0.25              | \$454,080   |
|                                       |         | 8                   | 0.36              | \$600,000   |
|                                       |         | Arterial            | 0.04              | \$77,755    |
|                                       |         | 15%                 |                   | \$1,091,295 |
|                                       |         |                     | 2.83              | \$5,711,469 |
|                                       |         |                     |                   | 7275303     |

FISCAL YEAR 2024 TOTALS

**Total Estimated Cost and Miles**

|              | MILEAGE |
|--------------|---------|
| ARTERIALS    | 0.00    |
| COLLECTORS   | 0.81    |
| RESIDENTIALS | 1.93    |
|              | 2.74    |

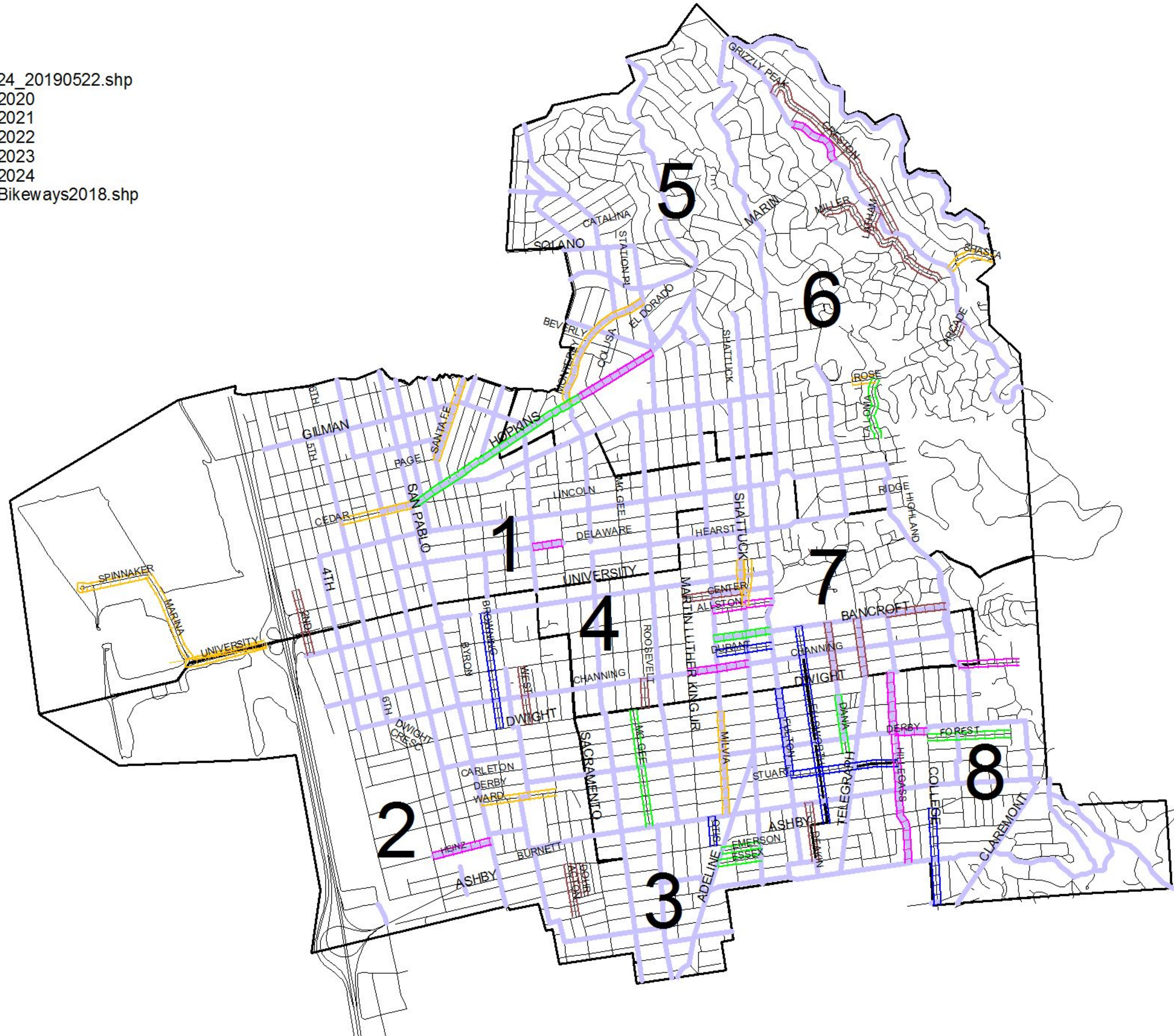
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|                     | District | Miles             | Cost        |         |
|---------------------|----------|-------------------|-------------|---------|
| <b>\$ 6,993,964</b> |          | <b>2.74 miles</b> |             |         |
|                     | 1        | 0.13              | \$78,175    |         |
|                     | 2        | 0.26              | \$897,408   |         |
|                     | 3        | 0.00              | \$0         |         |
|                     | 4        | 0.51              | \$1,303,396 |         |
|                     | 5        | 0.41              | \$1,024,260 |         |
|                     | 6        | 0.27              | \$843,578   |         |
|                     | 7        | 0.00              | \$0         |         |
|                     | 8        | 1.16              | \$1,755,852 |         |
|                     | Arterial | 0.00              | \$0         |         |
|                     | 15%      |                   | \$1,091,295 |         |
|                     |          | 2.74              | \$6,993,964 | 7275303 |

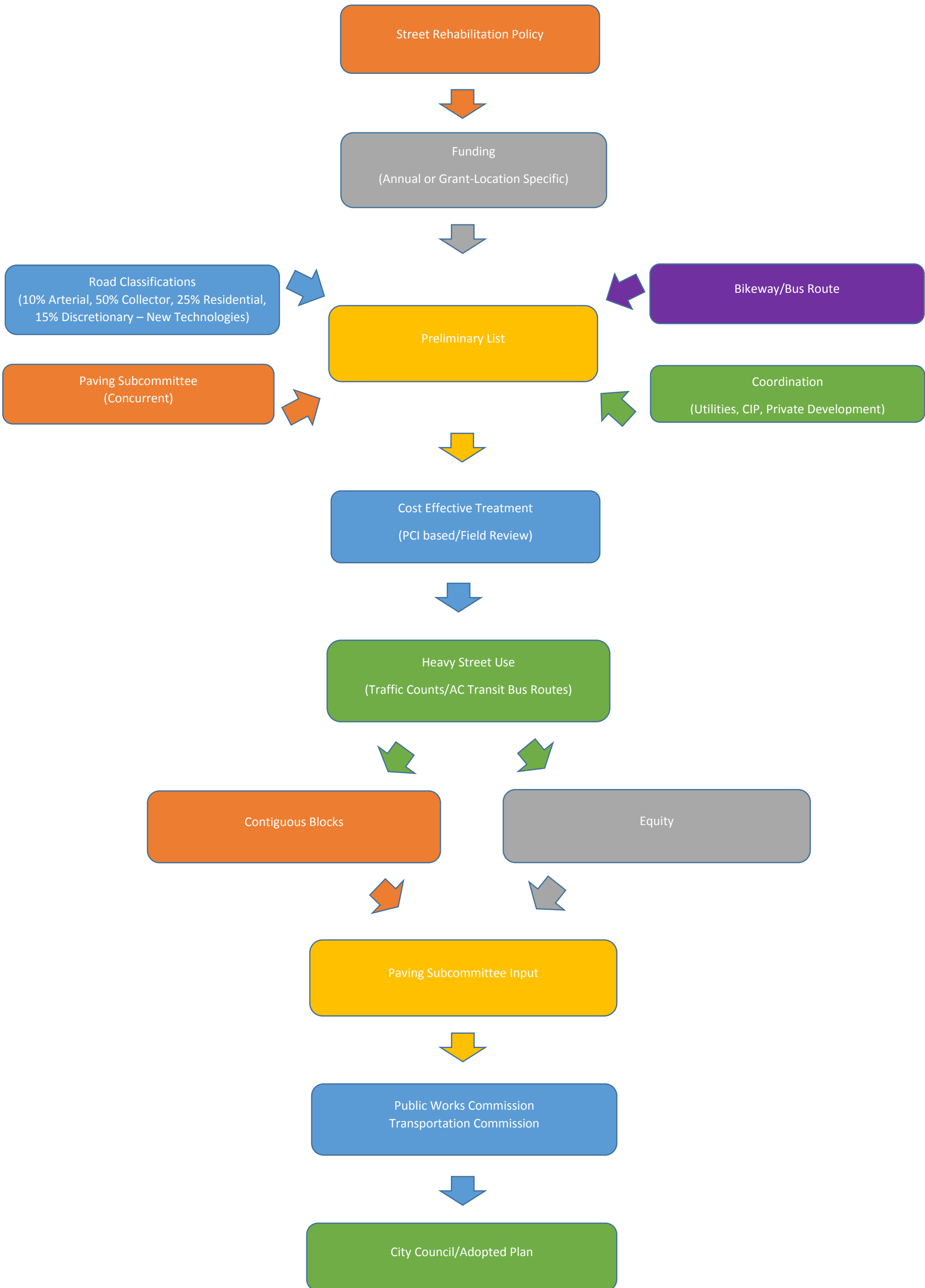
FISCAL YEAR 2020 to 2024 TOTALS

| Total Estimated Cost and Miles |         |      |        |        | \$ 31,835,077 | 16.11 miles |              |
|--------------------------------|---------|------|--------|--------|---------------|-------------|--------------|
|                                | MILEAGE | %    | % COST | % MILE | District      | Miles       | Cost         |
| ARTERIALS                      | 0.77    | 5%   | 12%    | 9%     | 1             | 1.50        | \$3,929,170  |
| COLLECTORS                     | 3.94    | 24%  | 13%    | 11%    | 2             | 1.78        | \$4,221,439  |
| RESIDENTIALS                   | 11.40   | 71%  | 9%     | 14%    | 3             | 2.33        | \$2,819,079  |
|                                | 16.11   | 100% | 12%    | 9%     | 4             | 1.38        | \$3,949,370  |
|                                |         |      | 8%     | 8%     | 5             | 1.32        | \$2,587,744  |
|                                |         |      | 8%     | 15%    | 6             | 2.41        | \$2,577,595  |
|                                |         |      | 10%    | 13%    | 7             | 2.10        | \$3,145,412  |
|                                |         |      | 7%     | 9%     | 8             | 1.52        | \$2,355,852  |
|                                |         |      | 6%     | 11%    | Arterial/PRW  | 1.78        | \$1,974,235  |
|                                |         |      | 13%    | 0%     | 15%           |             | \$4,275,180  |
|                                |         |      | 100%   | 100%   |               | 16.11       | \$31,835,076 |
|                                |         |      |        |        |               |             | \$35,476,515 |

- 5vr1924\_20190522.shp
- 2020
- 2021
- 2022
- 2023
- 2024
- Bikeways2018.shp



5-Year Paving Plan Process Flow Diagram







Office of the City Manager

ACTION CALENDAR

January 21, 2020

*(Continued from December 10, 2019)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan

RECOMMENDATION

Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024 and refer to the City Manager consideration of a Long-Term Paving Master Plan to be started after the completion of the public process of T1 Phase 2. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.

SUMMARY

In Part A, Section 1, the City of Berkeley's Street Rehabilitation Policy<sup>1</sup> (Policy) states, "It is the policy of the City of Berkeley that there shall be a Five-Year Street Rehabilitation Plan (Rehabilitation Plan, otherwise referred to as the "Paving Plan") for the entire City to be adopted by the City Council." The Public Works Commission (PWC) is charged by the Policy with reviewing and advising on that Rehabilitation Plan. Staff has carefully considered the PWC's advice, and recommends the City Council: 1.) approve the Five Year Street Rehabilitation Plan, and 2.) postpone the preparation of a Long-Term Paving Master Plan.

The City updates its Pavement Management System every two years providing the most current information for the City's pavement condition which staff bases decisions for development of the Rehabilitation Plan. The PWC is recommending addressing the pavement condition through the creation and implementation of a long-term paving plan. Staff believes that until additional funding, potentially from the second phase of Measure T1, can be identified to address the significant funding shortfall, consideration of the development of a longer term paving plan should be deferred until after the community process for selecting projects for the second phase of T1. The public process and community outreach as part of the second phase of the T1 bond measure will provide information and input on what is most important to the residents of Berkeley. This information is an essential first step before starting the development of a longer term paving plan. The input will help prioritize selection of improvements and define possible revisions to the Policy about the distribution of funds to bicycle routes, residential streets,

<sup>1</sup> [https://www.cityofberkeley.info/Public\\_Works/Sidewalks-Streets-Utility/Street\\_Rehabilitation\\_and\\_Repair\\_Policy\\_updated\\_March\\_2009.aspx](https://www.cityofberkeley.info/Public_Works/Sidewalks-Streets-Utility/Street_Rehabilitation_and_Repair_Policy_updated_March_2009.aspx)

green infrastructure and Vision Zero improvements. The City's PCI has been declining and was projected to be 57. The current PCI of 59.7 reflects a slight increase, and with increased funding support, the City could see additional improvement.

#### FISCAL IMPACTS OF RECOMMENDATION

This Rehabilitation Plan is based on the adopted biennial budget for Fiscal Years 2020 and 2021, and the estimated available funding levels from all sources, including State Transportation (Gas) Taxes, Measure B, Measure BB, County Measure F, and the General Fund. Similarly, the street rehabilitation programs for future years are based on projected budgets and estimated available funding levels. The funding allocations for street rehabilitation in the next five fiscal years FY 2020 - 2024 are provided in the Table below.

| <b>Table 1: Current Year and Five-Year Paving Program Funding Source Allocations by Year, in \$</b> |                  |                  |                  |                  |                  |
|-----------------------------------------------------------------------------------------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Fund Description</b>                                                                             | <b>FY 2020</b>   | <b>FY 2021</b>   | <b>FY 2022</b>   | <b>FY 2023</b>   | <b>FY 2024</b>   |
| <b>State Transportation Tax</b>                                                                     | 495,303          | 495,303          | 495,303          | 495,303          | 495,303          |
| <b>Measure B - Local Streets &amp; Roads</b>                                                        | 700,000          | 1,000,000        | 700,000          | 0                | 0                |
| <b>Measure BB – Local Streets &amp; Roads</b>                                                       | 2,200,000        | 1,700,000        | 2,000,000        | 2,700,000        | 2,700,000        |
| <b>Measure F Vehicle - Registration Fee</b>                                                         | 155,000          | 155,000          | 155,000          | 155,000          | 155,000          |
| <b>Capital Improvement Fund</b>                                                                     | 1,925,000        | 1,925,000        | 1,925,000        | 1,925,000        | 1,925,000        |
| <b>Road Repair and Accountability Act of 2017</b>                                                   | 1,500,000        | 1,700,000        | 1,700,000        | 2,000,000        | 2,000,000        |
| <b>TOTAL</b>                                                                                        | <b>6,975,303</b> | <b>6,975,303</b> | <b>6,975,303</b> | <b>7,275,303</b> | <b>7,275,303</b> |

City bond measures and grants shown in the table below have also been sources of funding for the street rehabilitation program. However, these funds are not guaranteed annual fund sources. Approximately \$8.5 million of Phase 1 Measure T1 bond funds will be spent on street improvements in Fiscal Years 2020 and 2021. An extensive community process to identify and vet potential projects to be delivered with Phase 2 of T1 bond funds is scheduled to start in in early 2020. Phase 2 of T1 bond funds will not be available until after Council approves the Phase 2 Measure T1 projects, which is anticipated to occur in March 2021. Federal grant funds were secured for the Shattuck Reconfiguration Project in the amount of \$2.78 million dollars, and the funds will be spent in Fiscal Year 2020. Federal grant funds in the amount of \$1.2 million were also secured for street rehabilitation in association with the Southside Complete Streets project to be spent in Fiscal Year 2021.

| <b>Table 2: Other Funding Source Allocations by Year, in \$</b> |                |                |                |                |                |
|-----------------------------------------------------------------|----------------|----------------|----------------|----------------|----------------|
| <b>Fund Description</b>                                         | <b>FY 2020</b> | <b>FY 2021</b> | <b>FY 2022</b> | <b>FY 2023</b> | <b>FY 2024</b> |
| <b>Measure T1</b>                                               | 7,500,000      | 1,000,000      | 0              | 0              | 0              |
| <b>Grants</b>                                                   | 2,777,000      | 1,200,000      | 0              | 0              | 0              |

### CURRENT SITUATION AND ITS EFFECTS

The City has performed a significant amount of street paving this past year. With all of the recent work, the City street network Pavement Condition Index (PCI) has increased slightly from a PCI of 57 in 2017 to a PCI of 59.7. Even though this represents a slight change, it is a positive change in the right direction.

The current PCI is a result of historical funding levels appropriated to the City's street rehabilitation program and decades of deferred maintenance. In addition to pavement maintenance and rehabilitation, street paving projects incorporate many other improvements as part of a "complete streets" approach that repairs or replaces street infrastructure such as curb ramps, curbs, gutters, sidewalks, drainage inlets and pipes, signage and striping. These non-pavement construction costs average about 35% of the available funding levels. Projects soft costs such as design, construction management and inspection, survey, and material testing average about 15% of the available funding levels. Together, these non-pavement related expenses represent approximately 50% of the available funding levels for the Rehabilitation Plan.

City maintenance forces have also significantly increased pavement maintenance efforts in recent years to include a robust crack sealing program and an expanded program to address potholes, localized base failure repairs, thermoplastic striping, and sidewalk repairs.

Per the Policy, funds allocated for street rehabilitation are recommended to be used as follows:

- 10% for Arterial Streets
- 50% for Collector Streets
- 25% for Residential Streets
- 15% for Discretionary and Demonstration Projects

Per the above distribution guidelines, residential streets (generally low speed, low traffic volume streets serving neighborhoods) have historically received lower funding levels, and as a result, have more pavement rehabilitation needs than arterials (serve major activity centers with highest traffic volumes) and collectors (transfer traffic from residential streets to arterials).

For this Rehabilitation Plan, staff and the PWC collectively agreed to propose a greater distribution toward residential streets as follows:

- Approximately 3% to Arterial Streets
- Approximately 24% for Collector Streets
- Approximately 60% for Residential Streets

The PWC is in the process of developing a recommendation for criteria to assist with prioritizing projects to be funded with the approximately 15% of funding discretionary reserve. Previously funding for discretionary and demonstration projects have been spent on projects such as the Allston Way Permeable Paver project. However, consideration could also be given to using these funds on other beneficial improvements related to vision zero or bicycle master plans. Staff concurs with the PWC that the Policy should be reviewed and updated to reflect changes since the last update in 2009.

A review of the Allston Way project showed that project costs were approximately \$1,500,000 or about \$485/square yard (SY). The estimated cost of an asphalt surface reconstruction would have been approximately \$150,000 or about \$49/SY. In April of 2019, approximately 4-1/2 years after the initial paver installation, City maintenance workers had to replenish the gravel joint filler material that helps holds the pavers in place. Replenishment of bedding material was originally projected to be required at year 10 (2024). The cost to replenish the joint filler was approximately \$42,000 or about \$14/SY. The recommended maintenance treatment for the asphalt pavement would be an \$8/SY slurry seal at year 8 (2022) at an estimated cost of \$25,000. It is expected that regular replenishment of the filler material will be required along with a more significant effort to relevel several areas that that have experienced excessive settlement. The Allston project also involved a full road closure for nearly 4 months. The asphalt pavement option limits construction impacts to normal working hours for a few weeks.

In addition to the distribution of funding by street classification, the Policy requires consideration of other items in street selection process for the Rehabilitation Plan which are depicted in the 5-Year Paving Plan Process Flow Diagram (Attachment 3).

**Bikeways / Bus Route:** Staff coordinated with Bike East Bay and also considered comments from Walk Bike Berkeley. Staff also reviewed the City's Bicycle Plan and the Pedestrian Plan to incorporate pedestrian mobility improvements and improvements to bicycle routes into the Rehabilitation Plan. The Rehabilitation Plan includes several streets in the bicycle plan, including Milvia Street, Cedar Street, Santa Fe Avenue, and Hopkins Street, and several streets that are also bus routes including Monterey Avenue, Bancroft Way, Center Street, Dana Street and Telegraph Avenue.

**Utility Coordination:** The Rehabilitation Plan has also been coordinated with future sewer projects, with East Bay Municipal Utility District (EBMUD) pipeline replacement, and with planned gas and electric line relocations by Pacific Gas and Electric. The City is currently working with EBMUD to have Ellsworth Street from Bancroft Way to Ashby Avenue and Stuart Street from Fulton to Hillegass Avenue pavement rehabilitation in FY 2022 incorporated into their Wildcat Aqueduct Pipeline Improvement Project construction.

**Equity:** Although not explicitly relayed in the Street Rehabilitation Policy staff tries to balance equity among the districts and to rehabilitate contiguous streets.

From Fiscal Years 2020 to 2024 the City will pave a total of 16.11 miles of streets, as described in Exhibit A, at a cost of \$27.6 million. The total includes 11.40 miles of residential streets, 0.77 miles of arterials, and 3.04 miles of collectors.

Pavement Engineering Inc. (PEI) updated the City's Pavement Management System using the Metropolitan Transportation Commission's (MTC) Streetsaver® program. The purpose of the Pavement Management System, a pavement assessment of the entire City's street network, is to track inventory, store work history, and furnish budget estimates to optimize funding for improving the City's pavement system.

The updated Pavement Management System showed that the City's current overall average PCI is 59.7. The breakdown by functional classification of street is provided in the table below. Residential streets which are the largest category of streets in the City, have the lowest PCI of 56.

| <b>FUNCTIONAL CLASS</b> | <b>CENTERLINE MILES (CL)</b> | <b>AREA (SQUARE FEET)</b> | <b>PERCENT OF SYSTEM</b> | <b>AVERAGE PCI</b> |
|-------------------------|------------------------------|---------------------------|--------------------------|--------------------|
| Arterial                | 22                           | 5,688,148                 | 14%                      | 67.9               |
| Collector               | 37                           | 6,966,432                 | 18%                      | 65.4               |
| Residential             | 156                          | 26,385,401                | 68%                      | 56.4               |
| <b>TOTAL</b>            | <b>215</b>                   | <b>39,039,981</b>         | <b>100%</b>              | <b>59.7</b>        |

The breakdown by mileage and PCI by Council District for the entire street network is provided in Table 4. It shows that the percent of pavement area per District ranges from 5.1% to 18.4%, and the PCI ranges from 50 to 62. The centerline miles in each District varies as well, from 9.4 to 36.5 miles.

The Rehabilitation Plan proposes to rehabilitate pavement such that the percentage of funds are distributed among the Districts as shown in the far right two columns of Table 4. The percentage of funds spent on rehabilitation per District ranges from 8% to 14%. The centerline miles of pavement rehabilitated per District ranges from 1.50 to 2.41 miles. The percentage of funds to be spent in each district is based on the total estimated street rehabilitation costs.

| <b>Table 4: Council District Mileage, PCI, Rehabilitation Plan</b> |           |         |           |     |                            |          |
|--------------------------------------------------------------------|-----------|---------|-----------|-----|----------------------------|----------|
| <b>Mileage &amp; PCI By District</b>                               |           |         |           |     | <b>Rehabilitation Plan</b> |          |
|                                                                    | Area (SF) | Mileage | % of area | PCI | % Funds*                   | Mileage* |
| District 1                                                         | 7,189,018 | 36.5    | 18.4%     | 57  | 9%                         | 1.50     |
| District 2                                                         | 5,923,823 | 31.5    | 15.2%     | 50  | 11%                        | 1.78     |
| District 3                                                         | 4,987,344 | 23.7    | 12.8%     | 58  | 14%                        | 2.33     |
| District 4                                                         | 3,510,446 | 16.1    | 9.0%      | 55  | 9%                         | 1.38     |
| District 5                                                         | 6,313,826 | 37.3    | 16.2%     | 62  | 8%                         | 1.32     |
| District 6                                                         | 4,946,098 | 36.6    | 12.7%     | 60  | 15%                        | 2.41     |
| District 7                                                         | 1,997,809 | 9.4     | 5.1%      | 62  | 13%                        | 1.52     |
| District 8                                                         | 4,179,713 | 23.6    | 10.7%     | 60  | 9%                         | 1.78     |

\* does not include arterial or waterfront streets or discretionary funding.

The breakdown by mileage and PCI for bikeways and bus routes is provided in Table 5 below. It shows that bikeways and bus routes are a significant portion the City's roadways. The PCI is 66 for bus routes, which is higher than the system wide average PCI of 59.7. This is a reflection of focus and funding spent on arterials and collectors.

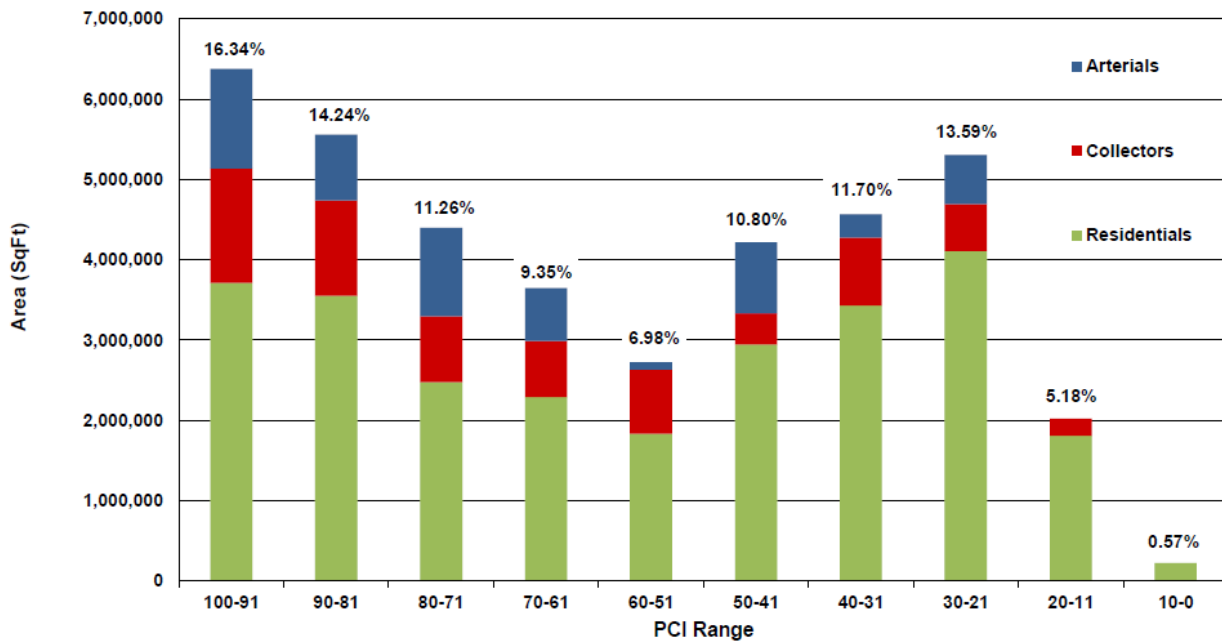
| <b>Table 5: Bikeway / Bus Route Mileage and PCI</b> |            |         |     |     |
|-----------------------------------------------------|------------|---------|-----|-----|
|                                                     | Area (SF)  | Mileage | %   | PCI |
| Bikeway                                             | 13,415,581 | 65      | 34% | 61  |
| Bus Route                                           | 9,167,372  | 40      | 23% | 66  |

The table below shows the breakdown of the system into PCI Condition Categories.

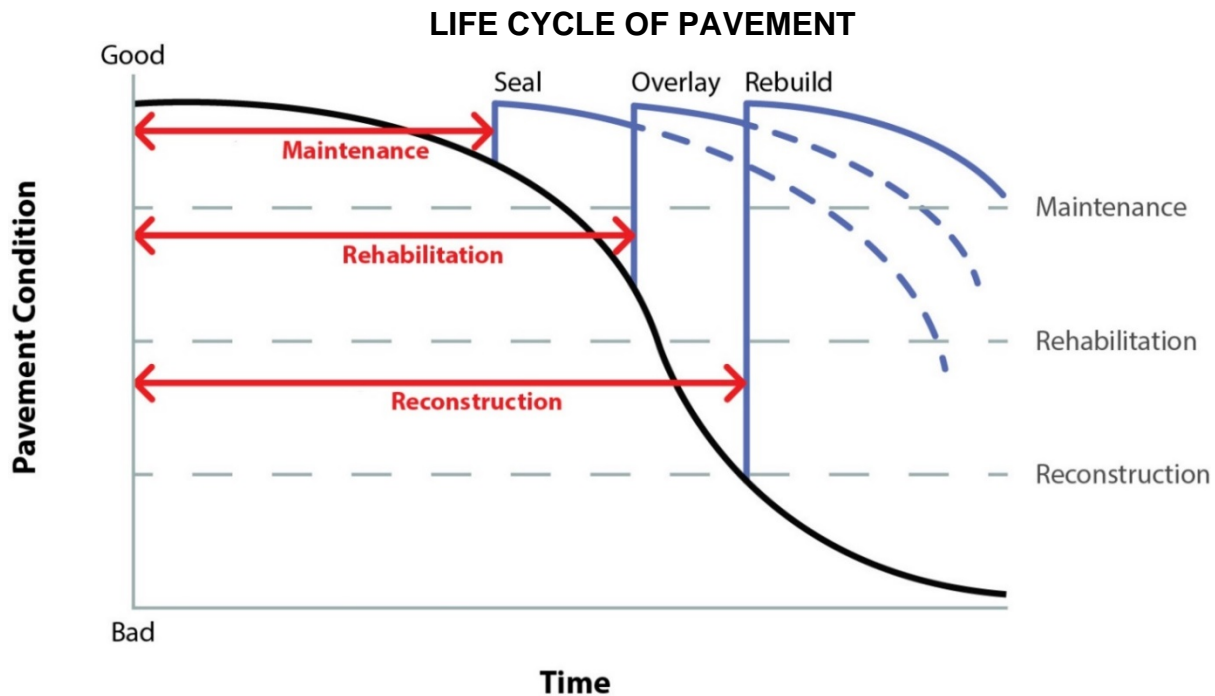
| <b>Table 6: PCI Condition Categories</b> |           |             |                   |            |
|------------------------------------------|-----------|-------------|-------------------|------------|
| CONDITION                                | PCI RANGE | % OF TOTAL  | SQUARE FEET       | CL MILES   |
| EXCELLENT                                | 100-91    | 16%         | 6,378,721         | 34         |
| GOOD                                     | 90-71     | 26%         | 9,957,142         | 53         |
| FAIR                                     | 70-51     | 16%         | 6,373,028         | 37         |
| POOR                                     | 50-31     | 23%         | 8,784,629         | 48         |
| FAILED                                   | 30-0      | 19%         | 7,546,461         | 43         |
|                                          |           | <b>100%</b> | <b>39,039,981</b> | <b>215</b> |

The analysis shows that **42%** of the City's pavement is in **Excellent to Good** condition and that **39%** of the City's pavement is in **Fair to Poor** condition. This is further illustrated in the bar graph below shows a breakdown of the system into 10pt PCI ranges, by Functional Classification. This shows that while the overall PCI is 59.7, the pavement system needs require a mix of both maintenance treatments and rehabilitation treatments. Maintenance treatments include slurry and cape seals, and thin overlays. Costs for these treatments range from \$8 to \$27 per square yard. Rehabilitation treatments include thick overlays, pavement milling/filling, and full depth reclamation. Costs for these treatments range from \$52 to \$104 per square yard.

**Berkeley Total System by Functional Class by PCI**



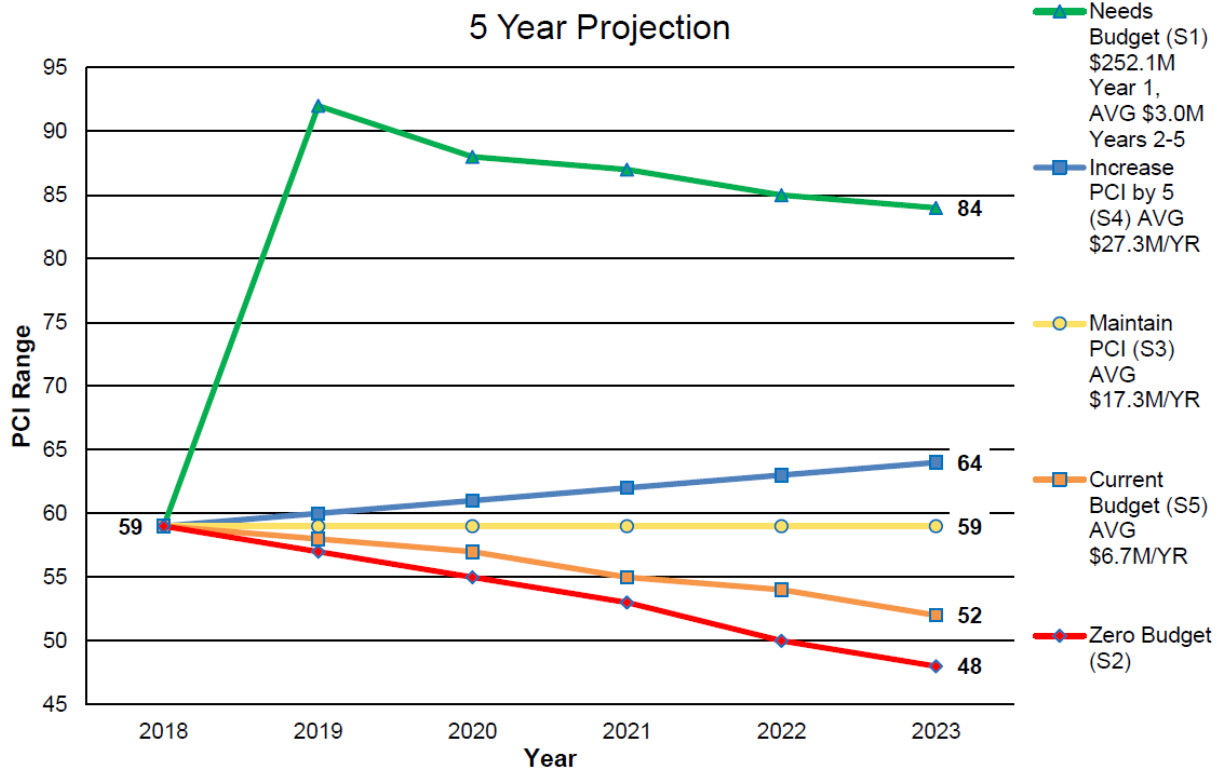
The graph below shows the life cycle or deterioration curve of pavement over time. The City's overall PCI of 59.7 is in the steepest part of the curve. This shows that the pavement can progress from good (able to be rehabilitated) to bad (in need of a total reconstruction) in a short period of time. The treatment (blue) lines on the graph show this, the importance of applying the right treatment at the right time to maximize the service life of the road.



- PEI analyzed the following pavement rehabilitation scenarios: Unconstrained budget needs for next 5 years
- Amount of funds needed to maintain current PCI
- Impact of the current funding amount (5 Year Plan)
- Budget needed to increase the overall PCI level by 5 points
- Result if zero dollars are spent on the City's street system



For each of these scenarios, PEI performed 5-year projections, represented by the graph below.



An explanation of the 5-year scenarios and their result are as follows:

- Scenario 1 (S1):** Represents the budget required based on the “Needs” of the system. Assumes all pavements are treated at their optimum timing. With an initial investment of \$252.1M in year one and an average of \$3.0M in years 2-5, the PCI increases from 59 to 84.
- Scenario 2 (S2):** Represents the impact to the PCI if Zero dollars are spent.
- Scenario 3 (S3):** Amount of funding to maintain the current PCI of 59 - \$17.3M/Yr. (Avg.)
- Scenario 4 (S4):** Budget to increase overall PCI by 5 points – \$27.3M/Yr. Avg. (Raises the PCI from 59 to 64).
- Scenario 5 (S5):** Impact of the current 5 Year Plan (averaging \$6.7M/Yr.) The overall system PCI would be 52.

The City is currently budgeting an average of \$7 million of baseline funding annually. At this funding level, the PCI is expected to drop to 52 by the year 2023. If the City would like to maintain the current PCI of 59, it needs to invest an additional \$10 million annually into the street Capital Improvement Program. If the City would like increase the PCI 5 points to a PCI of 64, it will need to invest \$27 million each year, an increase of \$20 million over

current funding levels. In order to improve the PCI from the “at risk” category to the “good” category (PCI 70 to 79) the City will need to invest over \$30 million annually.

This resolution updating the Five Year Street Rehabilitation Plan for FY 2020 – FY2024 advances the City’s strategic goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

It is the policy of the City of Berkeley that there shall be a Five-Year Street Rehabilitation Plan for the entire City to be adopted by the City Council. To the extent practicable, this Rehabilitation Plan shall be consistent with the priorities of the City’s Street Rehabilitation Policy. The primary purpose of the Policy is to maintain a safe surface conveyance system in the public right-of-way for vehicles, bicycles, transit, and pedestrians alike. Per the Policy, the Rehabilitation Plan shall strive to identify and implement integrated solutions that address the multiple demands on the street infrastructure, that are designed for safety, environmental sustainability and economic efficiency over the long run.

Each year, the PWC reviews the Rehabilitation Plan for consistency with the City’s current Policy, and the Plan is subsequently presented to the City Council for adoption.

### ENVIRONMENTAL SUSTAINABILITY

The City includes environmental sustainability in the development of its Rehabilitation Plan. In accordance with the street rehabilitation policy, the City set aside 15% of its funds towards demonstration or discretionary projects such as street rehabilitation which provides environmental benefits. In Fiscal Year 2020, a demonstration project the City plans to construct includes the use of permeable concrete in the parking lanes. The Public Works Commission is currently identifying additional green infrastructure projects in FY 2021 to 2024 to be funded by the discretionary and demonstration funds.

In addition, environmentally conscious pavement treatments are incorporated in the paving projects such as Full Depth Reclamation (FDR). FDR is being used as a cost-effective alternative to traditional street reconstruction methods. It recycles much of the existing pavement on site, and incorporates it into the pavement subgrade, thereby reducing truck trips to and from construction sites.

The Rehabilitation Plan also includes repair of the City’s deteriorating storm drain infrastructure that minimizes degradation of water quality in local creeks and the Bay. These repairs are consistent with the City of Berkeley’s 2011 Watershed Management Plan. Furthermore, the Plan also proposes approximately 5.8 miles of improvements to bicycle routes, and improvements to sidewalk and curb ramps adopted from the Bicycle and Pedestrian Plans. These steps result in lower emissions of greenhouse gases into the environment, which is consistent with the goals of the 2009 Berkeley Climate Action Plan.

### RATIONALE FOR RECOMMENDATION

It is the policy of the City of Berkeley that there shall be a Five-year Street Rehabilitation Plan for the entire City to be adopted by the City Council. Further, the proposed plan

provides for much needed street infrastructure improvements that are consistent with the City's Street Rehabilitation Policy.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

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Joe Enke, Supervising Civil Engineer, Public Works (510) 981-6411

Attachments:

1. Resolution  
Exhibit A: 5-Year Street Rehabilitation Plan for FY 2020 to FY 2024
2. Map of the 5-Year Street Rehabilitation Plan, FY 2020 to FY 2024
3. 5-Year Paving Plan Process Flow Diagram

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

APPROVAL OF THE FIVE-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO  
FY 2024

WHEREAS, the Street Rehabilitation Policy, Resolution No. 55,384-N.S. approved on May 22, 1990, requires a Five-Year Street Rehabilitation Plan for the entire City be adopted by the City Council; and

WHEREAS, the Five-Year Street Rehabilitation Plan shall be reviewed and updated annually by the City Council, with advice from the Public Works Commission; and

WHEREAS, the Street Rehabilitation Policy, proposes distribution of funds to be used for street rehabilitation as follows: 10% for arterial streets; 50% for collector streets; 25% for residential streets; 15% for discretionary and demonstration projects; and

WHEREAS, residential streets have historically received lower funding levels and as a result have more pavement rehabilitation needs than the other street classifications; and

WHEREAS, Department of Public Works staff recommends more funding to be distributed to residential streets and less to the other street classifications as proposed in the FY 2020 to FY 2024 Five-Year Street Rehabilitation Plan, attached as Exhibit A; and

WHEREAS, Department of Public Works staff recommends Council adopt the FY 2020 to FY 2024 Five-Year Street Rehabilitation Plan.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the FY 2020 to FY 2024 Five-Year Street Rehabilitation Plan, attached as Exhibit A hereof, is hereby adopted.

Exhibit A: Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From              | To                 | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P   | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|-------------------|--------------------|-------|------------------------------|--------------------|----------|-----|---------|-------------|---------------|----------|----------------------------|
| 2020        | 321100    | 30         | CEDAR ST          | 6TH ST            | SAN PABLO AVE      | C     | Reconstruct                  | \$ 1,239,036       | 1        | 3C* | 0.31    | 23          | 10/1/1994     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 320685    | 10         | MARINA BLVD       | SPINNAKER WAY     | UNIVERSITY AVE     | C     | Heavy Mtce                   |                    | 1        | N   | 0.43    | 56          | 9/1/1986      | A - AC   | OVERLAY                    |
| 2020        | 735382    | 60         | MILVIA ST         | BLAKE ST          | RUSSELL ST         | R     | Heavy Rehab                  | \$ 764,300         | 3        | 3E  | 0.44    | 26          | 9/1/1993      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 516492    | 75         | ROSE ST           | LE ROY AVE        | EAST END           | R     | Reconstruct                  | \$ 205,000         | 6        | N   | 0.14    | 8           |               | A - AC   |                            |
| 2020        | 319525    | 35         | SANTA FE AVE      | GILMAN ST         | CORNELL AVE & PAGE | R     | Heavy Rehab                  | \$ 409,600         | 1        | 3C* | 0.27    | 41          | 7/1/1995      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2020        | 319525    | 30         | SANTA FE AVE      | NORTH CITY LIMIT  | GILMAN ST          | R     | Light Mtce                   | \$ 37,355          | 1        | 3C* | 0.11    | 93          | 8/31/2004     | O -      | MILL AND THIN OVERLAY      |
| 2020        | 115532    | 77         | SHASTA RD         | GRIZZLY PEAK BLVD | PARK GATE          | C     | Heavy Rehab                  | \$ 86,667          | 6        | N   | 0.05    | 28          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 115532    | 79         | SHASTA RD         | PARK GATE         | EAST CITY LIMIT    | C     | Reconstruct                  | \$ 234,789         | 6        | N   | 0.11    | 26          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2020        | 320686    | 10         | SPINNAKER WAY     | BREAKWATER DR     | MARINA BLVD        | R     | Reconstruct                  | \$ 1,000,000       | 1        | N   | 0.28    | 22          | 8/1/1991      | A - AC   | OVERLAY                    |
| 2020        | 213386    | 22         | MONTEREY AVE      | THE ALAMEDA       | HOPKINS ST         | C     | Heavy Rehab                  | \$ 960,667         | 5        | 2A  | 0.57    | 47          | 11/30/2011    | A - AC   | MILL AND OVERLAY           |
| 2020        | 933653    | 40         | WARD ST           | SAN PABLO AVE     | ACTON ST           | R     | Reconstruct                  | \$ 1,328,400       | 2        | N   | 0.31    | 21          | 9/1/1991      | A - AC   | MILL AND OVERLAY W/FABRIC  |
| 2020        | 320620    | 15         | UNIVERSITY AVE    | MARINA BLVD       | WEST FRONTAGE RD   | C     | Reconstruct                  |                    | 1, 2     | N   | 0.30    | 9           | 12/1/1989     | A - AC   | OVERLAY                    |
| 2020        | 729533    | 55         | SHATTUCK AVE      | CENTER ST         | ALLSTON WAY        | A     | Reconstruct                  |                    | 4        |     | 0.06    | 18          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729533    | 57         | SHATTUCK AVE (SB) | CENTER ST         | UNIVERSITY AVE     | A     | Reconstruct                  |                    | 4        |     | 0.13    | 25          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729007    | 64         | ADDISON ST        | SHATTUCK AVE      | SHATTUCK AVE       | R     | Heavy Rehab                  |                    | 4        |     | 0.03    | 48          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729051    | 52         | BERKELEY SQUARE   | ADDISON ST        | CENTER ST          | A     | Heavy Rehab                  |                    | 4        |     | 0.06    | 34          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2020        | 729535    | 50         | SHATTUCK SQUARE   | UNIVERSITY AVE    | ADDISON            | A     | Heavy Rehab                  |                    | 4        |     | 0.07    | 30          | 7/1/1994      | O -      | MILL AND OVERLAY W/FABRIC  |
|             |           |            |                   |                   |                    |       |                              | \$ 6,265,814       |          |     | 3.69    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From               | To                | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P         | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|--------------------|-------------------|-------|------------------------------|--------------------|----------|-----------|---------|-------------|---------------|----------|----------------------------|
| 2021        | 940005    | 70         | ACTON ST          | ASHBY ST           | 66TH ST           | R     | Light Mtce                   | \$ 83,640          | 2        | N         | 0.23    | 79          | 8/29/2007     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 516020    | 30         | ARCADE AVE        | GRIZZLY PEAK BLVD  | FAIRLAWN DR       | R     | Heavy Rehab                  | \$ 63,378          | 6        | N         | 0.06    | 27          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 628042    | 78         | BANCROFT WAY      | BOWDITCH ST        | COLLEGE AVE       | C     | Heavy Mtce                   | \$ 161,036         | 7        | 3C*       | 0.13    | 56          | 12/1/1990     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 627042    | 80         | BANCROFT WAY      | COLLEGE AVE        | PIEDMONT AVE      | C     | Heavy Rehab                  | \$ 254,076         | 7        | 3C*       | 0.13    | 28          | 12/1/1990     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 829102    | 60         | CENTER ST         | MARTIN LUTHER KING | MILVIA ST         | R     | Heavy Rehab                  | \$ 315,645         | 4        |           | 0.13    | 49          | 7/1/1991      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 729102    | 63         | CENTER ST         | MILVIA ST          | SHATTUCK          | R     | Heavy Rehab                  | \$ 564,000         | 4        | 2A*       | 0.13    | 49          | 7/1/1991      | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 111127    | 10         | CRESTON RD        | GRIZZLY PEAK BLVD  | SUNSET LANE       | R     | Heavy Mtce                   | \$ 93,378          | 6        | N         | 0.36    | 63          | 6/1/1995      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115127    | 20         | CRESTON RD        | SUNSET LANE        | GRIZZLY PEAK BLVD | R     | Heavy Mtce                   | \$ 116,258         | 6        | N         | 0.36    | 64          | 11/1/1988     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 728140    | 50         | DANA ST           | BANCROFT WAY       | DWIGHT WAY        | R     | Heavy Rehab                  | \$ 467,400         | 7        | 2A to 2B* | 0.25    | 45          | 12/1/1989     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 739141    | 70         | DEAKIN ST         | ASHBY AVE          | PRINCE ST         | R     | Light Mtce                   | \$ 45,920          | 3        | N         | 0.16    | 79          | 4/3/2008      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 736141    | 68         | DEAKIN ST         | RUSSELL ST         | ASHBY AVE         | R     | Light Rehab                  | \$ 109,200         | 3        | N         | 0.10    | 55          | 7/1/1988      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 940148    | 70         | DOHR ST           | ASHBY AVE          | PRINCE ST         | R     | Heavy Rehab                  | \$ 176,569         | 2        | N         | 0.14    | 41          | 10/1/1992     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115344    | 80         | LATHAM LANE       | MILLER AVE         | GRIZZLY PEAK      | R     | Heavy Mtce                   | \$ 38,500          | 6        | N         | 0.10    | 59          | 6/1/1994      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 115380    | 70         | MILLER AVE        | HILLDALE AVE       | SHASTA RD         | R     | Light Rehab                  | \$ 425,880         | 6        | N         | 0.66    | 53          | 6/1/1994      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2021        | 830491    | 58         | ROOSEVELT AVE     | CHANNING WAY       | DWIGHT WAY        | R     | Light Rehab                  | \$ 172,480         | 4        | N         | 0.13    | 52          | 12/1/1989     | A - AC   | RECONSTRUCT SURFACE (AC)   |
| 2021        | 728584    | 50         | TELEGRAPH AVE     | BANCROFT WAY       | DWIGHT WAY        | C     | Heavy Rehab                  | \$ 473,060         | 7        | 3C*       | 0.25    | 39          | 7/1/1988      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 931657    | 55         | WEST ST           | BANCROFT WAY       | DWIGHT WAY        | R     | Heavy Mtce                   | \$ 263,822         | 2        | N         | 0.25    | 55          | 10/1/1994     | O -      | MILL AND OVERLAY W/FABRIC  |
| 2021        | 320528    | 47         | 2ND ST            | DELAWARE ST        | HEARST AVE        | R     | Reconstruct                  | \$ 775,833         | 1        | N         | 0.09    | 9           | NA            |          |                            |
| 2021        | 320528    | 48         | 2ND ST            | HEARST AVE         | UNIVERSITY AVE    | R     | Heavy Rehab                  | \$ 762,222         | 1        | N         | 0.09    | 33          | NA            |          |                            |
| 2021        | 920528    | 50         | 2ND ST            | UNIVERSITY AVE     | ADDISON ST        | R     | Heavy Rehab                  | \$ 560,000         | 2        | N         | 0.09    | 32          | 8/27/1997     |          | MILL AND OVERLAY W/FABRIC  |
| 2021        |           |            | 15% DISCRETIONARY |                    |                   |       |                              | \$ 1,046,295       |          |           |         |             |               |          |                            |
|             |           |            |                   |                    |                   |       |                              | \$ 6,968,593       |          |           | 3.84    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From         | To               | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P   | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                   |
|-------------|-----------|------------|-------------------|--------------|------------------|-------|------------------------------|--------------------|----------|-----|---------|-------------|---------------|----------|------------------------------|
| 2022        | 931073    | 50         | BROWNING ST       | ADDISON ST   | DWIGHT WAY       | R     | Heavy Rehab                  | \$ 911,600         | 2        | N   | 0.50    | 35          | 10/1/1995     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 638115    | 70         | COLLEGE AVE       | ASHBY AVE    | SOUTH CITY LIMIT | A     | Heavy Rehab                  | \$ 896,480         | 8        | N   | 0.41    | 42          | 8/23/2000     | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        | 729152    | 60         | DURANT AVE        | MILVIA ST    | SHATTUCK AVE     | C     | Reconstruct                  | \$ 693,355         | 4        | N   | 0.13    | 11          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 729152    | 64         | DURANT AVE        | SHATTUCK AVE | FULTON ST        | C     | Heavy Rehab                  | \$ 262,880         | 4        | N   | 0.10    | 32          | 8/12/1997     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 728180    | 50         | ELLSWORTH ST      | BANCROFT WAY | DWIGHT WAY       | R     | Reconstruct                  | \$ 422,400         | 7        | N   | 0.25    | 22          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC    |
| 2022        | 736180    | 60         | ELLSWORTH ST      | DWIGHT WAY   | WARD ST          | R     | Light Mtce                   | \$ 129,360         | 7        | N   | 0.38    | 92          | 5/11/2011     | A - AC   | RECONSTRUCT SURFACE (AC)     |
| 2022        | 736180    | 65         | ELLSWORTH ST      | WARD ST      | ASHBY AVE        | R     | Light Mtce                   | \$ 99,307          | 3        | N   | 0.29    | 92          | 5/11/2011     | A - AC   | RECONSTRUCT SURFACE (AC)     |
| 2022        | 736227    | 60         | FULTON ST         | DWIGHT WAY   | BLAKE ST         | R     | Heavy Mtce                   | \$ 76,128          | 3        | 3E* | 0.06    | 60          | 6/1/1993      | O -      | MEDIUM AC OVERLAY (2 INCHES) |
| 2022        | 736227    | 61         | FULTON ST         | BLAKE ST     | PARKER ST        | R     | Heavy Mtce                   | \$ 27,840          | 3        | 3E* | 0.07    | 69          | 6/1/1993      | O -      | MEDIUM AC OVERLAY (2 INCHES) |
| 2022        | 736227    | 63         | FULTON ST         | PARKER ST    | STUART ST        | R     | Heavy Mtce                   | \$ 321,592         | 3        | 3E* | 0.25    | 58          | 2/1/1992      | O -      | THIN AC OVERLAY(1.5 INCHES)  |
| 2022        | 835431    | 65         | OTIS ST           | RUSSELL ST   | ASHBY AVE        | R     | Heavy Rehab                  | \$ 224,000         | 3        | N   | 0.13    | 49          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        | 736561    | 70         | STUART ST         | FULTON ST    | HILLEGASS AVE    | R     | Heavy Rehab                  | \$ 784,000         | 7        | N   | 0.46    | 39          | 11/13/1998    | A - AC   | RECONSTRUCT STRUCTURE (AC)   |
| 2022        |           |            | 15% DISCRETIONARY |              |                  |       |                              | \$ 1,046,295       |          |     |         |             |               |          |                              |
|             |           |            |                   |              |                  |       |                              | \$ 5,895,237       |          |     | 3.03    |             |               |          |                              |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From            | To              | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P     | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                 |
|-------------|-----------|------------|-------------------|-----------------|-----------------|-------|------------------------------|--------------------|----------|-------|---------|-------------|---------------|----------|----------------------------|
| 2023        | 729042    | 65         | BANCROFT WAY      | SHATTUCK AVE    | FULTON ST       | C     | Heavy Rehab                  | \$ 277,778         | 4        | 4*    | 0.09    | 41          | 8/7/1997      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 729042    | 60         | BANCROFT WAY      | MILVIA WAY      | SHATTUCK AVE    | C     | Heavy Rehab                  | \$ 359,836         | 4        | N     | 0.13    | 34          | 12/1/1989     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 736140    | 65         | DANA ST           | BLAKE ST        | WARD ST         | R     | Light Rehab                  | \$ 454,080         | 7        | 3E*   | 0.25    | 65          | 7/30/2008     | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 739186    | 60         | EMERSON ST        | ADELIN ST       | SHATTUCK AVE    | R     | Light Rehab                  | \$ 180,320         | 3        | N     | 0.15    | 59          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 839191    | 60         | ESSEX ST          | ADELIN ST       | TREMONT ST      | R     | Heavy Mtce                   | \$ 76,160          | 3        | N     | 0.06    | 68          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 739191    | 62         | ESSEX ST          | TREMONT ST      | SHATTUCK AVE    | R     | Light Rehab                  | \$ 129,920         | 3        | N     | 0.11    | 64          | 4/1/2001      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 637217    | 80         | FOREST AVE        | COLLEGE AVE     | CLAREMONT BLVD  | R     | Heavy Rehab                  | \$ 600,000         | 8        | N     | 0.36    | 45          | 8/1/1996      | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 516340    | 36         | LA LOMA AVE       | ROSE ST         | BUENA VISTA WAY | C     | Heavy Rehab                  | \$ 248,827         | 6        | N     | 0.16    | 37          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 516340    | 38         | LA LOMA AVE       | BUENA VISTA WAY | CEDAR ST        | C     | Heavy Rehab                  | \$ 221,340         | 6        | N     | 0.14    | 49          | 6/1/1995      | O -      | MILL AND OVERLAY W/FABRIC  |
| 2023        | 834371    | 65         | MC GEE AVE        | DERBY ST        | RUSSELL ST      | R     | Light Rehab                  | \$ 461,992         | 3        | N     | 0.25    | 59          | 12/10/1998    | A - AC   | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 834371    | 60         | MC GEE AVE        | DWIGHT WAY      | DERBY ST        | R     | Light Rehab                  | \$ 302,400         | 3        | N     | 0.26    | 51          | 7/1/1988      | O -      | THIN OVERLAY w/FABRIC      |
| 2023        | 319293    | 47         | HOPKINS ST        | GILMAN ST       | SACRAMENTO ST   | R     | Heavy Rehab                  | \$ 203,942         | 5        | 3A, C | 0.10    | 32          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 213293    | 50         | HOPKINS ST        | HOPKINS CT      | MONTEREY AVE    | C     | Light Rehab                  | \$ 75,193          | 5        | 3A, C | 0.05    | 59          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 213293    | 52         | HOPKINS ST        | MONTEREY AVE    | MC GEE AVE      | C     | Heavy Rehab                  | \$ 107,167         | 5        | 2A, C | 0.05    | 47          | 12/1/1989     |          | RECONSTRUCT STRUCTURE (AC) |
| 2023        | 319293    | 45         | HOPKINS ST        | NORTHSIDE AVE   | PERALTA AVE     | R     | Light Mtce                   | \$ 233,587         | 1        | N     | 0.10    | 78          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 46         | HOPKINS ST        | PERALTA AVE     | GILMAN ST       | R     | Heavy Mtce                   | \$ 433,031         | 1, 5     | N     | 0.27    | 58          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 49         | HOPKINS ST        | SACRAMENTO ST   | HOPKINS CT      | A     | Heavy Rehab                  | \$ 77,755          | 5        | 3A, C | 0.04    | 38          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 40         | HOPKINS ST        | SAN PABLO AVE   | STANNAGE AVE    | R     | Light Mtce                   | \$ 19,188          | 1        | N     | 0.09    | 74          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        | 319293    | 42         | HOPKINS ST        | STANNAGE AVE    | NORTHSIDE AVE   | R     | Heavy Mtce                   | \$ 157,658         | 1        | N     | 0.17    | 69          | 9/13/2002     |          | MILL AND OVERLAY W/FABRIC  |
| 2023        |           |            | 15% DISCRETIONARY |                 |                 |       |                              | \$ 1,091,295       |          |       |         |             |               |          |                            |
|             |           |            |                   |                 |                 |       |                              | \$ 5,711,469       |          |       | 2.86    |             |               |          |                            |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.



EXHIBIT A  
5-YEAR STREET REHABILITATION PLAN FOR FY 2020 TO FY 2024

Revised: 05/22/2019

| Fiscal Year | Street ID | Section ID | Street Name       | From               | To                  | Class | Treatment (from StreetSaver) | Updated Total Cost | District | P         | Mileage | Current PCI | Last M&R Date | Last M&R | Last Paved                  |
|-------------|-----------|------------|-------------------|--------------------|---------------------|-------|------------------------------|--------------------|----------|-----------|---------|-------------|---------------|----------|-----------------------------|
| 2024        | 729014    | 63         | ALLSTON WAY       | MILVIA ST          | SHATTUCK AVE        | R     | Heavy Rehab                  | \$ 228,800         | 4        | N         | 0.14    | 37          | 11/1/1990     | O -      | MILL AND THIN OVERLAY       |
| 2024        | 729014    | 65         | ALLSTON WAY       | SHATTUCK AVE       | OXFORD ST           | R     | Reconstruct                  | \$ 344,036         | 4        | N         | 0.11    | 12          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 729104    | 63         | CHANNING WAY      | MILVIA ST          | SHATTUCK AVE        | R     | Heavy Rehab                  | \$ 267,640         | 4        | 2A to 2B* | 0.13    | 34          | 9/1/1991      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 829104    | 60         | CHANNING WAY      | MARTIN LUTHER KING | MILVIA ST           | R     | Reconstruct                  | \$ 462,920         | 4        | 2A to 2B* | 0.13    | 15          | 5/1/1995      | O -      | THIN AC OVERLAY(1.5 INCHES) |
| 2024        | 322142    | 48         | DELAWARE ST       | ACTON ST           | SACRAMENTO ST       | C     | Heavy Mtce                   | \$ 78,175          | 1        | 4*        | 0.13    | 61          | 10/1/1992     | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 636146    | 78         | DERBY ST          | HILLEGASS AVE      | COLLEGE AVE         | R     | Reconstruct                  | \$ 498,560         | 8        | 3E*       | 0.14    | 25          | 8/8/1997      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 627155    | 85         | DWIGHT WAY        | HILLSIDE AVE       | DEAD END ABOVE      | R     | Reconstruct                  | \$ 406,204         | 8        | N         | 0.11    | 22          | 9/1/1993      | A - AC   | RECONSTRUCT SURFACE (AC)    |
| 2024        | 627155    | 83         | DWIGHT WAY        | PIEDMONT AVE       | HILLSIDE AVE        | R     | Reconstruct                  | \$ 526,688         | 7, 8     | N         | 0.14    | 12          | 9/1/1993      | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 111249    | 17         | GRIZZLY PEAK BLVD | KEELER AVE         | MARIN AVE           | C     | Reconstruct                  | \$ 843,578         | 6        | 3C*       | 0.27    | 19          | 10/1/1992     | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 920275    | 40         | HEINZ AVE         | 7TH ST             | SAN PABLO AVE       | R     | Reconstruct                  | \$ 897,408         | 2        | 3E        | 0.26    | 22          | 11/1/1992     | O -      | MILL AND OVERLAY W/FABRIC   |
| 2024        | 739285    | 70         | HILLEGASS AVE     | ASHBY AVE          | CITY LIMIT (WOOLSEY | R     | Light Mtce                   | \$ 68,400          | 8        | 3E        | 0.16    | 76          | 7/28/2003     | A - AC   | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 736285    | 60         | HILLEGASS AVE     | DWIGHT WAY         | ASHBY AVE           | R     | Light Mtce                   | \$ 256,000         | 8        | 3E        | 0.61    | 78          | 5/31/2000     | A - AC   | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 213293    | 53         | HOPKINS ST        | MC GEE AVE         | CARLOTTA AVE        | C     | Heavy Rehab                  | \$ 149,680         | 5        | 2A, C     | 0.06    | 45          | 12/1/1989     |          | RECONSTRUCT STRUCTURE (AC)  |
| 2024        | 213293    | 55         | HOPKINS ST        | CARLOTTA AVE       | JOSEPHINE ST        | C     | Heavy Rehab                  | \$ 874,580         | 5        | 2A, C     | 0.35    | 50          | 12/1/1989     |          | MILL AND OVERLAY            |
| 2024        |           |            | 15% DISCRETIONARY |                    |                     |       |                              | \$ 1,091,295       |          |           |         |             |               |          |                             |
|             |           |            |                   |                    |                     |       |                              | \$ 6,993,964       |          |           | 2.74    |             |               |          |                             |

Note: Column P denotes presence of bike facility type (1 paved path, 2A 2B bike lane, 3A sign-only, 3C Sharrows, 3E bike blvd, 4 cycle track); C for bus route; and N for none.

\*Proposed bike facilities from 2017 Bike Plan.

FISCAL YEAR 2020 TOTALS

**Total Estimated Cost and Miles**

|              |         | <b>\$ 6,265,814</b> | <b>3.67 miles</b> |             |         |
|--------------|---------|---------------------|-------------------|-------------|---------|
|              | MILEAGE | District            | Miles             | Cost        |         |
| ARTERIALS    | 0.32    | 1                   | 0.69              | \$1,685,991 |         |
| COLLECTORS   | 1.77    | 2                   | 0.31              | \$1,328,400 |         |
| RESIDENTIALS | 1.58    | 3                   | 0.44              | \$764,300   |         |
|              | 3.67    | 4                   | 0.03              | \$0         |         |
|              |         | 5                   | 0.57              | \$960,667   |         |
|              |         | 6                   | 0.30              | \$526,456   |         |
|              |         | 7                   | 0.00              | \$0         |         |
|              |         | 8                   | 0.00              | \$0         |         |
|              |         | <u>Arterial/PRW</u> | 1.33              | \$1,000,000 |         |
|              |         |                     | 3.67              | \$6,265,814 | 6975303 |

FISCAL YEAR 2021 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 6,968,593</b> | <b>3.84 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.00    | 1                   | 0.18              | \$1,538,055 |
| COLLECTORS                            | 0.51    | 2                   | 0.71              | \$1,084,031 |
| RESIDENTIALS                          | 3.33    | 3                   | 0.26              | \$155,120   |
|                                       | 3.84    | 4                   | 0.39              | \$1,052,125 |
|                                       |         | 5                   | 0.00              | \$0         |
|                                       |         | 6                   | 1.54              | \$737,394   |
|                                       |         | 7                   | 0.76              | \$1,355,572 |
|                                       |         | 8                   | 0.00              | \$0         |
|                                       |         | 15%                 |                   | \$1,046,295 |
| <hr/>                                 |         |                     | 3.84              | \$6,968,592 |
|                                       |         |                     |                   | 6975303     |

FISCAL YEAR 2022 TOTALS

**Total Estimated Cost and Miles**

|              |         | <b>\$ 5,895,237</b> | <b>3.03 miles</b> |             |
|--------------|---------|---------------------|-------------------|-------------|
|              | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS    | 0.41    | 1                   | 0.00              | \$0         |
| COLLECTORS   | 0.23    | 2                   | 0.50              | \$911,600   |
| RESIDENTIALS | 2.39    | 3                   | 0.80              | \$748,867   |
|              | 3.03    | 4                   | 0.23              | \$956,235   |
|              |         | 5                   | 0.00              | \$0         |
|              |         | 6                   | 0.00              | \$0         |
|              |         | 7                   | 1.09              | \$1,335,760 |
|              |         | 8                   | 0.00              | \$0         |
| <hr/>        |         | <u>Arterial</u>     | 0.41              | \$896,480   |
|              |         | 15%                 |                   | \$1,046,295 |
|              |         |                     | 3.03              | \$5,895,237 |
|              |         |                     |                   | 6975303     |

FISCAL YEAR 2023 TOTALS

| <b>Total Estimated Cost and Miles</b> |         | <b>\$ 5,711,469</b> | <b>2.83 miles</b> |             |
|---------------------------------------|---------|---------------------|-------------------|-------------|
|                                       | MILEAGE | District            | Miles             | Cost        |
| ARTERIALS                             | 0.04    | 1                   | 0.50              | \$626,949   |
| COLLECTORS                            | 0.62    | 2                   | 0.00              | \$0         |
| RESIDENTIALS                          | 2.17    | 3                   | 0.83              | \$1,150,792 |
|                                       | 2.83    | 4                   | 0.22              | \$637,614   |
|                                       |         | 5                   | 0.34              | \$602,817   |
|                                       |         | 6                   | 0.30              | \$470,167   |
|                                       |         | 7                   | 0.25              | \$454,080   |
|                                       |         | 8                   | 0.36              | \$600,000   |
|                                       |         | Arterial            | 0.04              | \$77,755    |
|                                       |         | 15%                 |                   | \$1,091,295 |
| <hr/>                                 |         |                     | 2.83              | \$5,711,469 |
|                                       |         |                     |                   | 7275303     |

FISCAL YEAR 2024 TOTALS

**Total Estimated Cost and Miles**

|              | MILEAGE |
|--------------|---------|
| ARTERIALS    | 0.00    |
| COLLECTORS   | 0.81    |
| RESIDENTIALS | 1.93    |
|              | 2.74    |

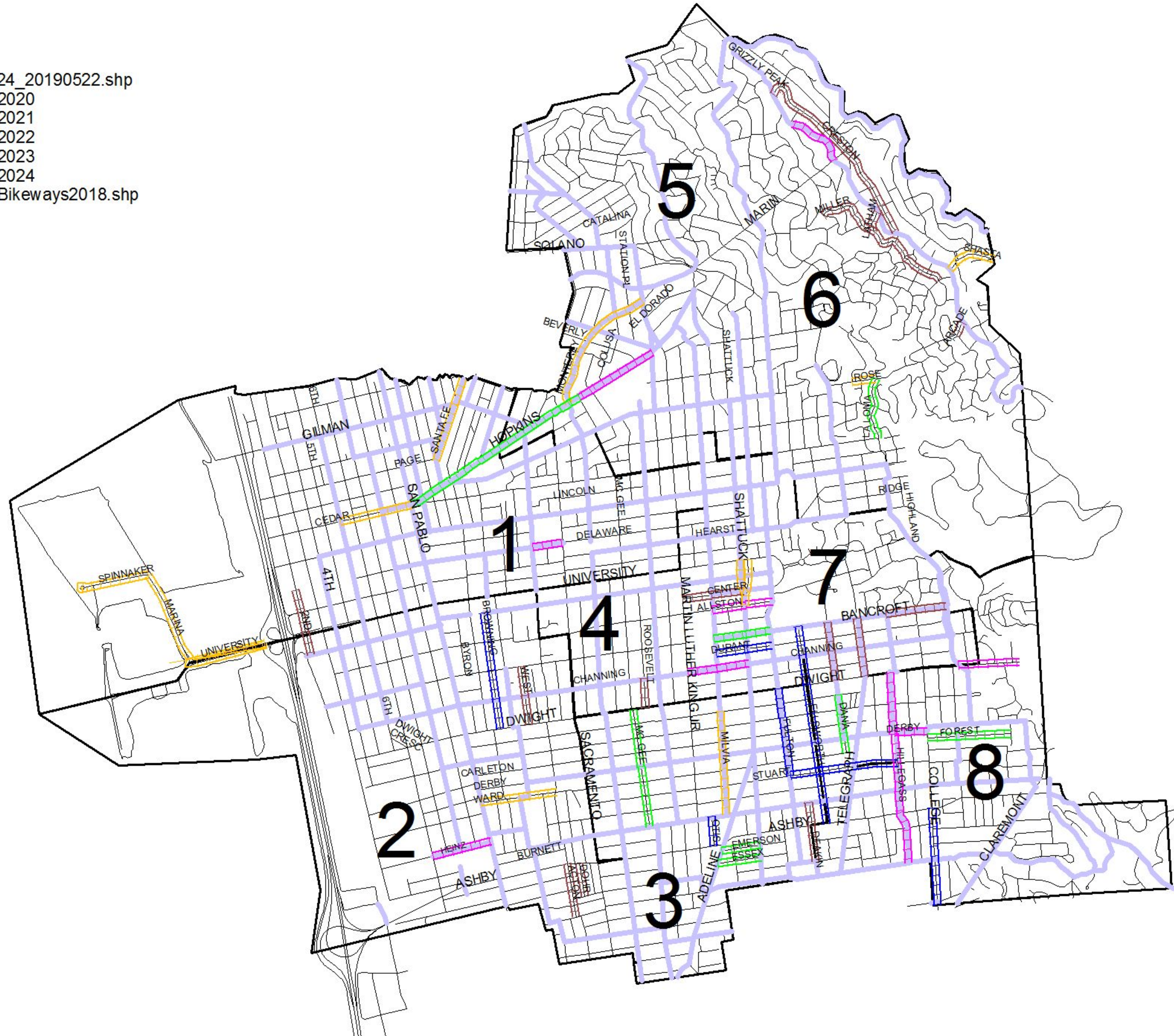
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|                     | District | Miles             | Cost        |         |
|---------------------|----------|-------------------|-------------|---------|
| <b>\$ 6,993,964</b> |          | <b>2.74 miles</b> |             |         |
|                     | 1        | 0.13              | \$78,175    |         |
|                     | 2        | 0.26              | \$897,408   |         |
|                     | 3        | 0.00              | \$0         |         |
|                     | 4        | 0.51              | \$1,303,396 |         |
|                     | 5        | 0.41              | \$1,024,260 |         |
|                     | 6        | 0.27              | \$843,578   |         |
|                     | 7        | 0.00              | \$0         |         |
|                     | 8        | 1.16              | \$1,755,852 |         |
|                     | Arterial | 0.00              | \$0         |         |
|                     | 15%      |                   | \$1,091,295 |         |
|                     |          | 2.74              | \$6,993,964 | 7275303 |

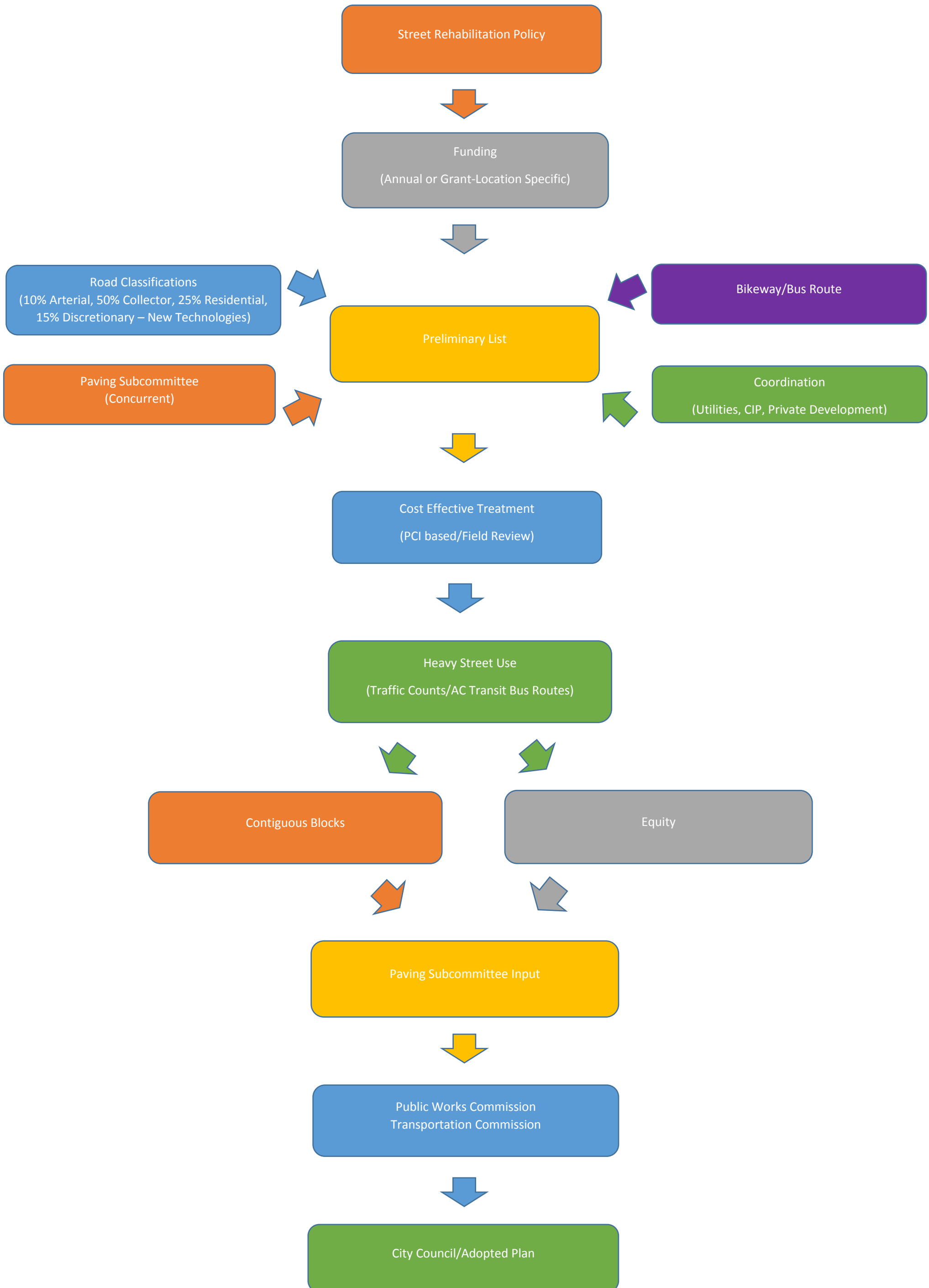
FISCAL YEAR 2020 to 2024 TOTALS

| Total Estimated Cost and Miles |         |      |        |        | \$ 31,835,077 | 16.11 miles |              |
|--------------------------------|---------|------|--------|--------|---------------|-------------|--------------|
|                                | MILEAGE | %    | % COST | % MILE | District      | Miles       | Cost         |
| ARTERIALS                      | 0.77    | 5%   | 12%    | 9%     | 1             | 1.50        | \$3,929,170  |
| COLLECTORS                     | 3.94    | 24%  | 13%    | 11%    | 2             | 1.78        | \$4,221,439  |
| RESIDENTIALS                   | 11.40   | 71%  | 9%     | 14%    | 3             | 2.33        | \$2,819,079  |
|                                | 16.11   | 100% | 12%    | 9%     | 4             | 1.38        | \$3,949,370  |
|                                |         |      | 8%     | 8%     | 5             | 1.32        | \$2,587,744  |
|                                |         |      | 8%     | 15%    | 6             | 2.41        | \$2,577,595  |
|                                |         |      | 10%    | 13%    | 7             | 2.10        | \$3,145,412  |
|                                |         |      | 7%     | 9%     | 8             | 1.52        | \$2,355,852  |
|                                |         |      | 6%     | 11%    | Arterial/PRW  | 1.78        | \$1,974,235  |
|                                |         |      | 13%    | 0%     | 15%           |             | \$4,275,180  |
|                                |         |      | 100%   | 100%   |               | 16.11       | \$31,835,076 |
|                                |         |      |        |        |               |             | \$35,476,515 |

- 5vr1924\_20190522.shp
- 2020
- 2021
- 2022
- 2023
- 2024
- Bikeways2018.shp











Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson  
 Subject: Establishing an Outdoor Emergency Shelter

RECOMMENDATION

1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required:
  - A. Climate-controlled, wind-resistant durable tents with wooden pallets for support.
  - B. Seeking an agency to manage and oversee the emergency shelter.
  - C. Portable toilet service and handwashing service.
  - D. Shower and sanitation services
  - E. Garbage pickup and safe needle disposal.
2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.
3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.<sup>1</sup>
4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.

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<sup>1</sup> For example, tents and membrane structures are required to sit at least four inches off the ground, have wooden or concrete floors, and be equipped with smoke alarms. Though all of these requirements are important to the health and safety of Berkeley residents, they are arduous requirements to meet. The purpose is to provide temporary accommodations.

**POLICY COMMITTEE RECOMMENDATION**

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Davila/Hahn) to send the item to Council with a positive recommendation and the following additional amendments made by the author:

1. Refer to the November budget process the costs of \$615,000 associated with establishing the outdoor emergency shelter to be considered with other Measure P Panel of Experts recommendations;
2. Referral to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley. This includes seeking an agency to manage and oversee the outdoor emergency shelter including amenities for trash pick-up, toilets, handwashing stations, showers services, and needle receptacles, as well as provide basic service levels including security, housing support services, and outreach coordinators.
3. Additionally, the committee recommends but does not require, that staff establish protocols based on existing application processes for eligibility allocation and that the eligibility criteria be less restrictive than the HUD criteria.

Vote: Ayes – Davila, Hahn; Noes – None; Abstain – Kesarwani; Absent – None.

**BACKGROUND**

According to the Alameda County Point In Time count (see Attachment 1), there are 1108 homeless people living in Berkeley, 813 of whom are unsheltered. Of the unsheltered people, 251 individuals are sleeping in a tent and 231 are sleeping on a street, sidewalk, or in a park. Roughly 500 people in Berkeley are sleeping in tents or without shelter altogether, whether officially sanctioned or not. Under current policy, many of these encampments do not have any trash, sanitary services, good neighbor policy, or engagement with services, creating unsanitary and unsafe circumstances for both the residents of the encampments and surrounding neighbors.

Over the past several years, Berkeley has made significant investments in affordable housing and supportive services, such as approving the Berkeley Way<sup>2</sup> project that will permanently house 59 people, and the Pathways STAIR Center which has already housed over 100<sup>3</sup> in a year of existence. In total, we are able to shelter about 295 people (not including the 40 emergency shelter beds at Old City Hall), and about 100 of those shelter beds have been added since 2016. We have also expanded mental health and crisis services, are working to find a location for a safe RV parking site, and have provided other homeless services. Our long-term investments are working, but in the short term, people are sleeping in tents and outdoors without durable shelter, a potentially dangerous situation with autumn smoke and winter rains approaching. In addition to the elements, transportation-related deaths were the third leading cause of death among the homeless in Los Angeles County in 2018.<sup>4</sup> Living by highway onramps increases the likelihood of a deadly collision by many factors. Within the next year, we want to provide people with

<sup>2</sup> <https://bfhp.org/news/berkeley-way/>

<sup>3</sup> "Pathways STAIR Center: First Year Data Evaluation and Results-Based Accountability Dashboard", Item 41, September 24, 2019 Berkeley City Council meeting.

<sup>4</sup> <https://www.theguardian.com/us-news/2019/oct/30/homeless-deaths-los-angeles-county>

permanent housing. In the next month, we want to prevent anyone from dying of exposure.

Emergency outdoor shelters should be seen only as a temporary fix. Berkeley must continue to build permanently affordable housing and provide comprehensive services to lift people out of homelessness, prevent displacement and move into homes. However, despite our recent gains, we are still unable to serve all homeless people in Berkeley simultaneously, and there are still gaps in service. An emergency outdoor shelter with durable tents and sanitation services is a short term option that is safer and cleaner than the status quo of unsanctioned camping throughout the City. The intention of this item is to create a limited number of sanctioned encampments operated in an organized fashion. The emergency outdoor shelter has a 180 day suggested length of stay. The goal is that no individual will remain for an extended period of time as placement in an indoor navigation center or permanent housing are more appropriate mid- and long-term options.

The state of California has declared a shelter emergency<sup>5</sup> as has the City of Berkeley.<sup>6</sup> Berkeley's shelter beds are at capacity just about every night. The demand for beds is great – according to the Point in Time count, 98% of survey respondents said that they want to find permanent housing. At present, the need far outweighs the available beds, and it is time to look at other, temporary options.

Establishing a limited number of emergency outdoor shelters would represent a positive step for the housed Berkeley community as well. Lack of sanitation services, garbage collection, and potable water can spread infection and disease. Currently, rather than investing in resources to address these important issues, significant resources are being spent on enforcement, simply moving the issues elsewhere in Berkeley. The benefit of an emergency outdoor shelter is the ability to choose the most appropriate location, and provide appropriate services, rather than current disorder.

At the September 10, 2019 City Council meeting, unhoused people and their advocates attended with signs<sup>7</sup> that read “Where Do We Go?” There is currently a community of about 100 individuals living in tents or on the street in the area surrounding the I-80 freeway entrance on University Avenue. People live on a combination of City of Berkeley parkland and CalTrans-owned medians. CalTrans police chase residents onto City land, then City land pushes residents back onto CalTrans property, and there are no locations in this vicinity where any number of people can sleep safely. Various public agencies regularly threaten the residents of this property with permanent eviction. Sleeping in parks has long been prohibited by BMC 6.32.020.

A possible location is at 611-639 University Ave, beneath the bridge connecting Fourth St and the Waterfront. It is a City-owned<sup>8</sup> lot surrounded by light industry manufacturing

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<sup>5</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB932](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB932)

<sup>6</sup> “Extension of Housing Crisis Declaration.” Item 10, October 31, 2017, Berkeley City Council meeting.

<sup>7</sup> [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=627e4d8c-d4ce-11e9-b703-0050569183fa](http://berkeley.granicus.com/MediaPlayer.php?publish_id=627e4d8c-d4ce-11e9-b703-0050569183fa)

<sup>8</sup> Attachment 4

to the North, South, and East, and I-80 and Eastshore Highway to the West, so located outside of residential or commercial zones. There are currently about 15 tents set up in an alley between the lot in question and an industrial plant at 1930 Second St. The 611-639 University lot is mostly empty, with some room used to store old pipes, shipping containers, and other disused pieces of construction equipment.

Regardless of current use, the lot has room for about 15 tents from east to west (judging by the number of tents that are already along the north side of the lot) and, by estimate, room for about 5-8 tents from north to south. Arranged into a grid, there is the potential for up to 75-120 tents on this parcel of City-owned but under-utilized property.

Beyond simply being owned by the City of Berkeley, there are other amenities that make it a strong candidate for the location of an emergency outdoor shelter. It is surrounded on all sides by MULI (light industrial manufacturing), so the emergency outdoor shelter will not disturb residential or commercial neighbors.<sup>9</sup> Moreover, is not visible from I-80. The lot is adjacent to areas where unhoused people are currently living, thus transferring to this location would permit this community to stay together. There is a water main about 15 feet from the lot line (see attached pictures). The location is three blocks away from the Pathways STAIR Center, about a mile away from Berkeley Mental Health, and accessible via University Avenue and San Pablo Avenue bus routes.<sup>10</sup> The location fits the needs of our unhoused community, and is currently housing only old pipes. It is a smart location for a City-managed emergency shelter.

Other locations should be considered as appropriate. Ideal locations would be owned and/or managed by the City of Berkeley in non-residential zones and be accessible by public transit.

Several other cities have already<sup>11</sup> established similar emergency shelters in response to this housing and homelessness crisis. In February, the City of Modesto<sup>12</sup> established several hundred tents under a bridge, where about 300-400 people sleep every night.<sup>13</sup> The project, called the Modesto Outdoor Emergency Shelter (MOES), has proven extremely successful. On September 7, 2019, Gavin Newsom's Homeless and Supportive Housing Advisory Task Force met in Modesto to "observe best practices firsthand."<sup>14</sup> MOES provides portable bathrooms, showers, and handwashing stations,

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<sup>9</sup> The Homeless Shelter Crisis Resolution specifies that no planning, zoning, building, or other permit requirements shall be required to the extent that compliance would prevent, hinder, or delay the effects of the shelter crisis. Nonetheless, the site's classification as mixed use light industrial is an advantage,

<sup>10</sup> The proximity to public transportation is a strength of the location though it, like other homeless service providers, would be stronger with dedicated transportation as is called for in Item 33, "Budget Referral: Transportation to Support Mobility-Impaired Individuals Experiencing Homelessness" from the 11/12/19 Berkeley City Council Meeting.

<sup>11</sup> [https://www.vice.com/en\\_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps](https://www.vice.com/en_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps)

<sup>12</sup> <https://www.modbee.com/news/local/article226465300.html>

<sup>13</sup> [https://www.youtube.com/watch?v=J\\_gQ54kZXmA&t=65s](https://www.youtube.com/watch?v=J_gQ54kZXmA&t=65s)

<sup>14</sup> <https://www.modbee.com/news/local/article234754707.html>

nonprofits and agencies bring food, medical, mental health, and rehousing services, and the encampment is fenced and monitored by a security guard. An editorial in the Modesto Bee applauded MOES for “easing some suffering, however temporary.”<sup>15</sup> The Modesto Outdoor Emergency Shelter is in the process of closing because they are transitioning residents indoors into a newly constructed homeless shelter.<sup>16</sup> The MOES was always intended to be temporary until long-term accommodations could be constructed, and now that Modesto and Stanislaus County have indoor accommodations for the unhoused, the MOES is being shut down.

The Sacramento Mayor and City Council are also looking at using Modesto’s model.<sup>17</sup> Sacramento, like Berkeley, is in the process of building new shelters and affordable housing developments, but “as the city enters another month in crisis, other alternatives are coming to the fore.”<sup>18</sup> Berkeley previously considered outdoor emergency shelters. At the February 13, 2018 Council meeting, the Council referred to the Homeless Commission a series of questions about what an outdoor emergency shelter may look like, including how many residents, who provides facilities, how rules are enforced, etc. (see Attachment 9). In the nearly two years since this referral, homelessness has increased, as has the need for City-designated encampments.

Modesto, Sacramento, and Governor Newsom have all recently concluded that outdoor emergency shelters are an appropriate temporary addendum, and that MOES models best practices for outdoor emergency shelters. Berkeley has the opportunity to learn from Modesto and MOES, and establish a similar outdoor emergency shelter.

### **Durable Tents**

Working with suppliers to provide durable, waterproof tents for those unhoused people who require shelter would be a major step toward improving the health, safety and quality of life of Berkeley’s homeless population. Nearly one third of Berkeley’s homeless population currently lives in tents or makeshift shelters, a number that has doubled in the past two years.<sup>19</sup> Creating a space with durable tents would allow this sizeable part of the homeless community to shift away from temporary and potentially unsafe, unsanitary and weather-prone tents.

Health and safety standards call for wood or concrete floors to raise tents off the ground. Providing wooden pallets underneath tents fulfills this requirement at a low price. If feasible, collecting pallets should be a part of establishing the emergency shelter.

In addition, a portable solar powered system for charging phones, wheelchairs, or other electronics should be provided. Generators are also a possibility, but can be dangerous

<sup>15</sup> <https://www.modbee.com/opinion/editorials/article234558672.html>

<sup>16</sup> <https://www.abc10.com/article/news/local/modesto/stanislaus-county-prepares-to-close-outdoor-shelter/103-c4b2b17e-e048-4b31-8627-a88fbd8214c2>

<sup>17</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>18</sup> *Ibid.*

<sup>19</sup> 2019 HIRD Report

around so many people. High-quality solar generators are a one-time expense of about \$500-800 but will last for years and can provide power to many people.

Modesto established an encampment that now houses approximately 400 people in 290 10x10ft waterproof tents,<sup>20</sup> donated by the Reno-based company Qamp.<sup>21</sup> These tents include a heavy-duty steal frame, screen door, and an insulating heat-reflective roof.<sup>22</sup> These tents are 150D polyester, which has a 200% lifespan compared with average camping tents.<sup>23</sup> Partnering with a local company to acquire similarly-sized tents would increase security, community wellbeing and order at the new encampment. Additionally, a 10x10ft space grants homeless individuals a larger, constant and secure location to fit their belongings, exceeding the 9 square feet allocation permitted by the Sidewalk Ordinance.

Other durable tents include those made by ShiftPod,<sup>24</sup> and Sweetwater Bungalows<sup>25</sup> produces larger tents intended for entire families. The purpose of this item is not to specify a vendor, but to lay out basic criteria for safe tents, including but not limited to:

- Insulation
- Wind resistance
- Solid (easy to set up and take down, but with a durable frame)

Since original submission of this item, local fundraising efforts from the unhoused and advocates have been able to replace and weatherize tents for many individuals. If individuals choose to keep their own tents, the City may not need to provide tents for anyone upon initial set-up, though they should be offered to those in need.

### **Staffing**

A successful emergency shelter will require the City or a qualified non-profit providing services its residents or providing referrals to other qualified agencies. All services or referrals to services will be offered but not required. Such services include but are not limited to:

- Coordination of safety and security 24 hours a day
- Governance of the community, including arrangement of the tents
- Coordination of volunteerism and donations
- Supportive services (such as case management and integration with existing homeless services)
- Rehabilitative opportunities to support the transition out homelessness

<sup>20</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

<sup>21</sup> <https://qamp.com/products/qamp-tent?variant=35987893763>

<sup>22</sup> *Ibid.*

<sup>23</sup> <https://www.goodcampingtents.com/tent-fabrics/>

<sup>24</sup> <https://shiftpod.com/shiftpod/shelter>

<sup>25</sup> <https://www.sweetwaterbungalows.com/>



Modesto partnered with Turning Point Community Programs to manage all of these services.<sup>2627</sup> The city also invited other charitable organizations like the Salvation Army<sup>28</sup> to assist with shelter management and food services. Berkeley could similarly work with local organizations specialized in such projects or expand existing city government services to the new shelter.

Having a team to supervise the camp and provide case management, psychological services, and job search support for those who choose to utilize them would ensure that the homeless residents have a shot at keeping their stay in the emergency shelter to a minimum. This could be handled similarly to the Pathways project, or through a mechanism similar to that of Modesto's outsourcing of most service responsibilities to non-profit organizations. The Pathways Center is a "low barrier" shelter with two key rules: no onsite drug or alcohol consumption, and a zero tolerance policy for abuse and harassment. These same rules would be applicable, and even more important given the close proximity of residents. Engagement with services is encouraged but is not a requirement for staying in the emergency outdoor shelter, as a low-barrier emergency shelter.

The emergency shelter should be open 24 hours a day. Unhoused people want to know where they can go, and if they are removed every morning, that question remains unanswered. Many unhoused people do not utilize traditional shelters because they work nights and need to sleep when the shelter is closed. However, most shelters have limited hours because they provide extensive services, meals, and other amenities, and do not have the resources to maintain this level of service all day. If there is a direct tradeoff between hours of operation and the depth of service, this referral prioritizes hours of operation.

A safe and secure environment is vital to the success of the project. A designated, limited space that would not allow extending tents on to surrounding streets is preferred. Setting up a fence and hiring a security team, as was done in Modesto,<sup>29</sup> would be one way to achieve this goal, though the lot at 611 University already has a fence surrounding it. Just as in Modesto, the need for security would have to be balanced with limited restrictions on entry and exit. Regulating permitted activities and items brought into the camp would also help ensure improved safety for its residents. Mobility around the camp can be ensured by capping the amount or size of possessions at what residents can fit in their own tents. A ban on bonfires would drastically reduce the risk to health and life of residents.

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<sup>26</sup> <https://www.tpcp.org/programs/moes/>

<sup>27</sup> <https://www.abc10.com/article/news/local/modesto/modesto-homeless-community-to-leave-beard-brook-for-new-location/103-622123290>

<sup>28</sup> <http://www.stancounty.com/bos/agenda/2019/20190226/DIS01.pdf>

<sup>29</sup> <https://www.sacbee.com/news/local/homeless/article234483397.html>

Staff should include one program and site manager to oversee the program, two outreach coordinators, and two housing navigators to assist the residents with finding permanent housing.

### **Toilets and Handwashing Stations**

The potential for disease in compact outdoor emergency shelters is significant, and decreases dramatically with adequate access to handwashing.<sup>30</sup> In 2017, three counties in California experienced an unprecedented hepatitis A outbreak that was primarily carried by the homeless population.<sup>31</sup> As part of the response, San Diego County implemented 160 new handwashing stations, which was highly influential in curbing the spread of the disease.<sup>32</sup> The Here/There encampment on Ashby and Adeline has a portable toilet and handwashing station that was donated by Friends of Adeline,<sup>33</sup> because proper sanitation for the homeless is beneficial to entire communities.

The City is making progress setting up public restrooms across the City, which is a positive development. However, restrooms spread throughout the City do not meet the needs of a single community. A highly concentrated group of people (as currently exists on CalTrans land) will have more intense restroom needs, and the City should establish restrooms to account for those needs.

There is a water pipe just northwest of the lot at 611-639 University (see Attachment 5) and while the toilet may be portable, there is the possibility to install a real handwashing station with running water, which would reduce the costs to refill a reservoir. Even if the City decides that both the toilet and handwashing station are to be portable, the proximity to potable water provides options.

### **Mobile Shower Services**

Berkeley has an ongoing partnership with Lava Mae, a mobile shower charity. Access to showers prevents disease and allows unhoused people to live in dignity. In addition to showers, Lava Mae and other organizations such as Dignity On Wheels also organize day-long “care villages” that provide dental care, haircuts, clothing, vaccinations, and other services. For several months Lava Mae has been operating at two pilot locations in near the STAIR Center and at the Progressive Baptist Church.<sup>34</sup> However, according to City staff, Lava Mae is relocating their South Berkeley location to West Oakland. The mobile shower program has been extremely successful and has improved quality of life for unhoused people in Berkeley. Rather than sending those services to Oakland, we

<sup>30</sup> <https://www.cdc.gov/handwashing/why-handwashing.html>

<sup>31</sup> <https://www.mercurynews.com/2017/10/02/california-scrambles-to-contain-deadly-hepatitis-a-outbreaks/>

<sup>32</sup> <https://www.sandiegocounty.gov/content/dam/sdc/cosd/SanDiegoHepatitisAOutbreak-2017-18-AfterActionReport.pdf>

<sup>33</sup> <https://www.berkeleyside.com/2017/07/18/homeless-camp-city-berkeley-want-bathroom>

<sup>34</sup> [file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20\(1\).pdf](file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20(1).pdf)

should expand them. Any sanctioned encampment will need some shower services for simple sanitary purposes, and by bringing them to Second and University, Berkeley can reinstate the previous practice of having mobile showers twice weekly, at two separate locations. Reinstating services at this location should not preclude finding other strategic locations for mobile shower services in Berkeley.

The City of Berkeley previously partnered with the Alameda County Mobile Healthcare for the Homeless<sup>35</sup> program which is on hiatus due to staffing shortages. The program brings primary care to homeless individuals free of charge. If the program resumes service in Berkeley, a partnership with them will help keep residents sanitary and healthy.

### **Trash Pickup**

On June 4, 2019 the Modesto City Council voted unanimously to perform garbage removal and disposable services for the Outdoor Emergency Shelter (see Attachment 2). Reliable garbage pickup is crucial to the success of any homeless services. Excessive garbage is highly detrimental to all City residents, as it is unsightly and can attract rodents and disease. Currently there is a rodent infestation at the encampments on University and Frontage Road negatively affecting quality of life for the residents and visitors to the Marina. To prevent this in the future, we need reliable garbage pickup. Housed Berkeleyans have their garbage removed and disposed of once a week. Unhoused people oscillate between having nothing, and having all of their belongings removed that do not fit in nine square feet, whether it is garbage or not.

As a part of regular refuse pickup, the City or coordinating agency should provide sharps containers or other forms of safe needle disposal. Approximately 8% of homeless adults in the United States have diabetes,<sup>36</sup> and there are many other diseases that require sharps to mediate, including arthritis, hepatitis, HIV/AIDS, blood clotting disorders, and others.<sup>37</sup> Regardless of why an individual may need a sharp, safe disposal is critical to prevent the spread of infection. Putting sharps in the garbage is insufficient and can harm zero waste employees.<sup>38</sup> Sharps boxes can be purchased at drugstores and are inexpensive, but are crucial to the health and safety of all involved.

There is enormous need for refuse services for the homeless population. Early reports on enforcement of the Sidewalk Ordinance indicate that thousands of pounds of refuse have already been removed, since implementation began six months ago. Many complaints regarding homelessness to Council offices and 311 are concerning garbage and illegal dumping. All residents of Berkeley deserve clean streets, and refuse removal will provide not only cleanliness and safety to homeless residents, but more harmony among the community at large as well.

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<sup>35</sup> <https://www.achch.org/mobile-health.html>

<sup>36</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318300/>

<sup>37</sup> <https://www.fda.gov/medical-devices/consumer-products/safely-using-sharps-needles-and-syringes-home-work-and-travel>

<sup>38</sup> *Ibid.*

Initiating refuse service is a process typically initiated by the property owner<sup>39</sup> and performed by the Customer Service Division. Because 611-639 University is owned by the City of Berkeley, this item refers the initiation of refuse services to the City Manager.

#### REVIEW OF EXISTING PLANS AND POLICIES

The Strategic Plan includes several goals and priorities that are in line with an emergency outdoor shelter, including creating housing support services for our most vulnerable community members and fostering a resilient and connected City. The purpose of an emergency outdoor shelter is to provide basic shelter needs to the most vulnerable as a City, not relying on private development to do so.

The 1000 Person Plan is a comprehensive plan to permanently end homelessness. It costs between \$16 million and \$20 million, depending on the depth of housing subsidies. The emergency outdoor shelter is not intended to supersede the 1000 Person Plan, but complement its goals and efforts. Finding 2 in the 1000 Person Plan says that our system is serving a progressively smaller percentage of the literally homeless population every year, and the emergency outdoor shelter is a low-barrier way to serve more literally homeless people.

#### ALTERNATIVES CONSIDERED

At roughly \$615,000 yearly, this proposal costs less than any aspect of the 1000 Person Plan except for outreach. Concentrating where people living on the streets makes outreach simpler and more cost effective.

With a goal of a 180 day stay, this shelter should serve about 150 people annually. This is equivalent to about \$4,100 per person or about two months' rent at the market rate. Direct subsidies are possible alternative, but direct subsidies cannot serve as many people for as long as an emergency outdoor shelter. In addition, there is currently limited market rate housing to be had.

#### FINANCIAL IMPLICATIONS

The costs below could be considered most appropriate coming from Measure P funds allocated for Shelter and Temporary Accommodations or the General Fund, with the possibility of future funding from Homeless Housing, Assistance, and Prevention (HHAP) funds or other funds.

Please see Attachments 6 and 7 for a full breakdown on cost. Health, Housing, and Community Services provided a cost estimate, and we removed a number of line items to reflect the needs laid out in the item above. The emergency outdoor shelter is intended as an emergency measure, less service-intensive than a navigation center, and thus does not include a community tent and significantly cuts down on staff members. In addition, in April of this year staff elected not to fund community meals through our standard homeless services programming. Furthermore, in the interim, some of the line items in

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<sup>39</sup>

[https://www.cityofberkeley.info/Custom\\_Service/Home/Refuse\\_Start\\_Stop\\_or\\_Change\\_Service.aspx](https://www.cityofberkeley.info/Custom_Service/Home/Refuse_Start_Stop_or_Change_Service.aspx)

the staff memo are being funded through other sources. The Clean and Livable Commons Initiative was funded and includes money for Port A Potties and dumpsters. Other Measure P monies were already allocated for rapid rehousing, thus we did not include that in the budget for this emergency shelter in particular.

In addition, this measure would reduce enforcement costs. The City expends significant resources in both the City Manager's office and the police force by moving unhoused individuals from place to place. By providing a place where people can go, this staff time can be directed back towards neighborhood services and curbing criminal behavior.

#### ENVIRONMENTAL SUSTAINABILITY

Regular refuse removal will decrease littering and illegal dumping, in line with the City's Zero Waste goals.

#### CONTACT PERSON

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

#### ATTACHMENTS

- 1: Summary of Point in Time Count, 2019.
- 2: Modesto City Ordinance 2019-254.
- 3: *City Officials Suddenly Support Homeless Tent Cities, Car Camps in Sacramento Neighborhoods*, Sacramento Bee, August 29, 2019.
- 4: Map of 2<sup>nd</sup> and University and surrounding areas.
- 5: Pictures of 2<sup>nd</sup> and University and surrounding areas.
- 6: Health, Housing, and Community Services Memo on potential costs
- 7: Edited HHCS Memo on Costs
- 8: BMC Article 9 Section 19.28.100 Section N106
- 9: Supplemental 3 to Item 38a, "First They Came For The Homeless Encampment" at February 13, 2018 Berkeley City Council Meeting.

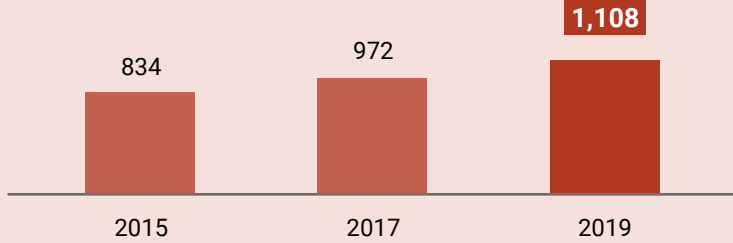
# City of Berkeley

## 2019 EveryOne Counts Homeless Point-in-Time Count & Survey

Every two years, during the last 10 days of January, communities across the country conduct comprehensive counts of people experiencing homelessness in order to measure the prevalence of homelessness in each local community.

The 2019 Alameda County EveryOne Home Point-in-Time Count was a community-wide effort conducted on January 30th, 2019. In the weeks following the street count, a survey was administered across Alameda County. In the city of Berkeley, 257 unsheltered and sheltered homeless individuals were surveyed in order to profile their experience and characteristics.

### Homeless Census Population



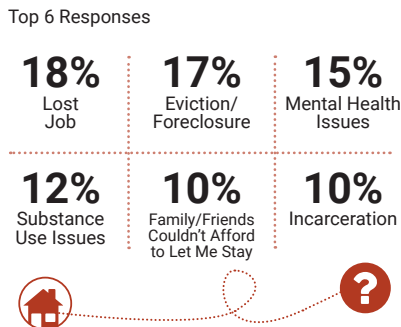
### Sheltered/ Unsheltered Population



### What Might Have Prevented Homelessness



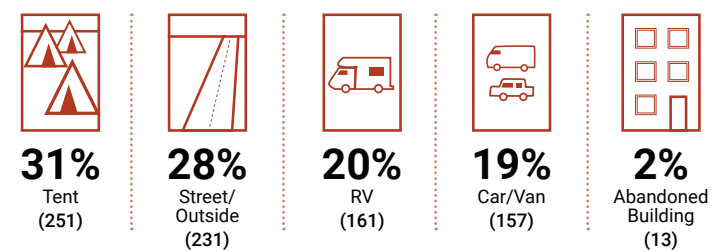
### Primary Causes of Homelessness



### Sheltered/Unsheltered Population by City

|            |               |                 |                |                        |                          |
|------------|---------------|-----------------|----------------|------------------------|--------------------------|
| Alameda    | 99 Sheltered  | 132 Unsheltered | Newark         | 30 Sheltered           | 59 Unsheltered           |
| Albany     | 0 Sheltered   | 35 Unsheltered  | Oakland        | 861 Sheltered          | 3,210 Unsheltered        |
| Berkeley   | 295 Sheltered | 813 Unsheltered | Piedmont       | 0 Sheltered            | 0 Unsheltered            |
| Dublin     | 0 Sheltered   | 8 Unsheltered   | Pleasanton     | 0 Sheltered            | 70 Unsheltered           |
| Emeryville | 0 Sheltered   | 178 Unsheltered | San Leandro    | 74 Sheltered           | 344 Unsheltered          |
| Fremont    | 123 Sheltered | 485 Unsheltered | Unincorporated | 28 Sheltered           | 321 Unsheltered          |
| Hayward    | 115 Sheltered | 372 Unsheltered | Union City     | 0 Sheltered            | 106 Unsheltered          |
| Livermore  | 85 Sheltered  | 179 Unsheltered | <b>Total</b>   | <b>1,710 Sheltered</b> | <b>6,312 Unsheltered</b> |

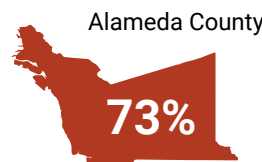
### Unsheltered Population by Location



### How New Money Should Be Spent



### Residence Prior to Homelessness



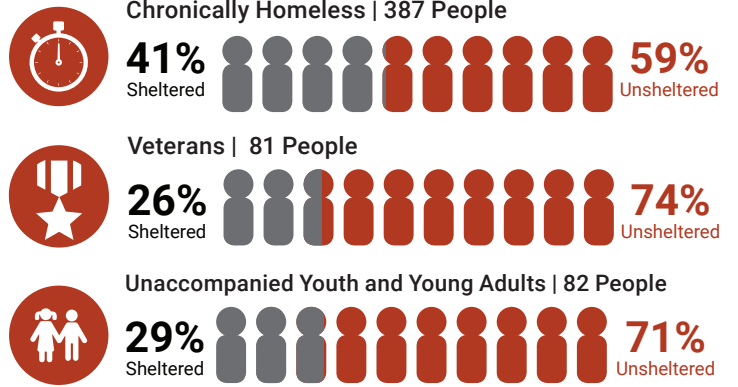
### Length of Time in Alameda County



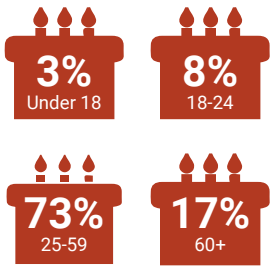
### Household Breakdown



### Subpopulations



### Age

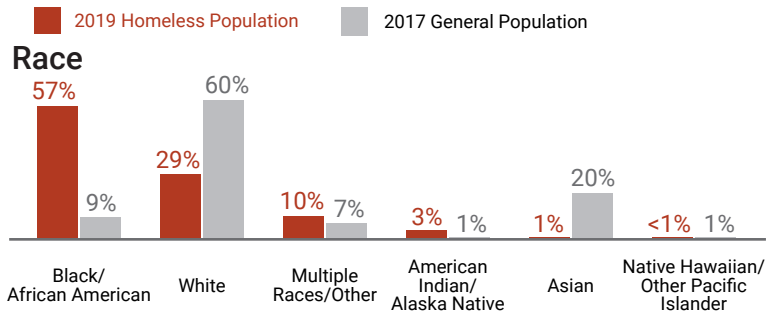


### LGBTQ+ Status

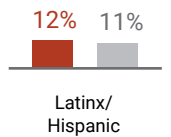
14% of survey respondents identified as LGBTQ+.



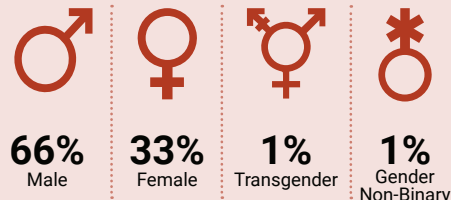
### Race and Ethnicity Compared to General Population



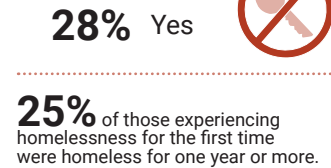
### Ethnicity



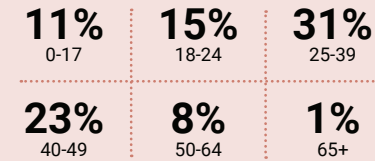
### Gender



### First Episode of Homelessness



### Age at First Episode of Homelessness



### Not Interested in Housing

2% of survey respondents said they were not interested in Independent, Affordable Rental Housing or Housing with Supportive Services.

### Health Conditions

Current health conditions reported by survey respondents.



### Disabling Conditions

41% of survey respondents reported having at least one disabling condition.



A disabling condition is defined by HUD as a developmental disability, HIV/AIDS, or a long-term physical or mental impairment that impacts a person's ability to live independently, but could be improved with stable housing.

**MODESTO CITY COUNCIL  
RESOLUTION NO. 2019-254**

**RESOLUTION APPROVING THE AGREEMENT WITH BERTOLOTTI  
MODESTO DISPOSAL INC., CERES, CA, TO PERFORM GARBAGE  
REMOVAL AND DISPOSAL SERVICES AT THE MODESTO OUTDOOR  
EMERGENCY SHELTER AND FOR HOMELESS ENCAMPMENT BLIGHT  
REMOVAL BY THE MODESTO POLICE DEPARTMENT BEAT HEALTH  
UNIT THROUGH MAY 31, 2021 FOR A TOTAL AMOUNT NOT TO EXCEED  
\$150,000; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,  
TO EXECUTE THE AGREEMENT**

WHEREAS, in response to an emerging and concentrated homeless population precipitated by recent legal developments and case law the City permitted a temporary homeless encampment at Beard Brook Park, and

WHEREAS, the Modesto Police Department (MPD) established a blight abatement team to assist with on-going City efforts in city-wide cleanup and the temporary encampment at Beard Brook Park, and

WHEREAS, the City established a temporary outdoor shelter underneath the 9<sup>th</sup> Street Bridge known as the Modesto Outdoor Emergency Shelter (MOES) to accommodate the growing number of homeless individuals which Beard Brook Park could no longer sustain, and

WHEREAS, the maintenance and cleanup of both encampments required extensive use of garbage and disposal services which nearly depleted the city-wide blanket purchase order, and

WHEREAS, the Finance Purchasing Division issued an emergency purchase agreement, not to exceed \$50,000, with Bertolotti Disposal designated to cover MOES expenses through December 31, 2019, and



WHEREAS, funding for the emergency purchase agreement has been exhausted,  
and

WHEREAS, the City and Bertolotti desire to enter into a new purchase agreement to include garbage and disposal services for MOES and for MPD's Beat Health expenses for illegal homeless camps and dumping to capture all costs related to encampment cleanup, and

WHEREAS, the total amount for MOES garbage and disposal services through December 31, 2019 is \$105,000, and

WHEREAS, the total amount for MPD's Beat Health homeless encampment blight removal through May 31, 2021 is \$45,000, and

WHEREAS, the total amount of the agreement with Bertolotti for both MOES and homeless encampment blight removal by MPD's Beat Health Unit is \$150,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Bertolotti Modesto Disposal Inc., Ceres, CA, to perform garbage removal and disposal services at the Modesto Outdoor Emergency Shelter and for MPD Beat Health homeless encampment blight removal by the Modesto Police Department Beat Health Unit through May 31, 2021 for a total amount not to exceed \$150,000.

BE IT FURTHER RESOLVED, that the City Manager or his designee is authorized to execute the Agreement, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of June, 2019, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST:   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
ADAM U. LINDGREN, City Attorney



As homeless men, women and children in Sacramento wait for three new large shelters to open, another model that local officials have repeatedly rejected over the years is now quickly gaining traction.

The “safe ground” model – essentially creating an area where homeless people can live safely in tent cities or in cars – has not been a part of Mayor Darrell Steinberg’s homeless plan. Steinberg has instead been pushing hard for large shelters with rehousing services. But as the city enters its fifth month without a city-run shelter, other alternatives are now coming to the fore.

Councilman Jeff Harris was previously opposed to the “safe ground” model, along with most of the council aside from Councilman Allen Warren. Now, Harris is proposing the city open a temporary homeless camp similar to one Modesto and Stanislaus County opened earlier this year.

TOP ARTICLES



“To get from today until we stand up more shelter beds, which we desperately need, I suggest we take a look at the safe ground model,” Harris said.

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Harris and city staff earlier this month traveled to Modesto to check out that model. He liked what he saw.

The camp, officially called [the Modesto Outdoor Emergency Shelter](#), opened underneath a bridge in a regional park in February. It holds roughly 400 campers who sleep in about 290 white and blue 10-foot-by-10-foot tents donated by a Reno company called Qamp, said Doug Halcomb, the camp’s operations manager.

Local officials provide portable bathrooms and wash stations, and nonprofits provide at least one meal a day, Halcomb said. The camp is fenced in and has two full-time security guards to ensure safety. Providers come to offer medical, mental health and rehousing services to campers. Sacramento-based organization Turning Point handles the day-to-day operations, Halcomb said.

“When I came back from Modesto, I went to the River District and there were more than 150 camps on one city block,” Harris said during a meeting earlier this month. “People were sleeping on the street, defecating in the open. I mean, it’s a mess. This is our city. And this is my district. And that’s what I saw when I came home and I thought, why don’t we do it? Why don’t we try a safe ground model and try to control some of these issues?”





Tents have been assembled in preparation for the new homeless camp under the Ninth Street Bridge at Gateway Park in Modesto, Calif., Tuesday, Feb. 19, 2019. Andy Alfaro  
AALFARO@MODBEE.COM

Opening a “safe ground” for campers could also be cost effective; Harris estimates well under \$1 million. By comparison, the two 100-bed shelters the council approved Tuesday will cost [more than \\$20 million to open and operate for two years](#).

Harris suggested the tent city open next month and close in the spring, after a shelter under the W/X freeway opens. He has a few location ideas in his district – which includes the American River, East Sacramento, South Natomas and part of north Sacramento – but is not sure if they will work.

“It’s not a solution. It’s a way to get from here to there and mitigate the deep impacts on the street in the short term and create safety and hygiene,” Harris said.

Harris previously proposed a [shelter site on Cal Expo property](#), but Cal Expo has not yet approved it.

City Hall has long debated the tent city model. In 2016, a delegation of 20 Sacramento officials [toured tent facilities in Seattle](#), where a network of camps has existed for years. Some officials expressed support for the Seattle model, but the issue was soon dropped.

Councilman Rick Jennings, also struggling to find a site for a large shelter in his south Sacramento district, is pushing for the city to open “safe parking zones,” essentially a safe ground model for car camping.

Volunteers canvassing the county in January found [four times the number of vehicles](#) where people were living than they counted in 2015. Researchers estimate people were sleeping in at least 340 vehicles in the county. This included approximately 100 children. Most of the vehicles were in the city of Sacramento.

The City Council on Tuesday asked staff to come back with a plan for both models. Jennings said he hopes staff can come back with a plan, including costs and potential sites for safe parking zones, within 30 days. He wants to start with a pilot program for about six months. If it goes well, he wants to open more.

“We’re going to look at every possibility within our district, from businesses to nonprofit partners to community centers to parks,” Jennings said Wednesday. “We’re going to look and see if there’s an opportunity at every single one to put a pilot in place so we can get some results.”

Steinberg is supportive of both ideas, he told The Sacramento Bee Wednesday.

“I applaud my colleagues who are working to find creative solutions to our community’s greatest challenge,” Steinberg said in a statement. “Our goal is to get people under a roof with the help they need as quickly as possible. I support any efforts to make their plight even a little better as we aggressively help people get inside.”

Crystal Sanchez, a homeless activist who visited the Modesto site earlier this year, has been urging local officials to replicate the model here. She and other activists, including civil rights attorney Mark Merin, urged Sacramento County Board of Supervisors members to create a safe ground at the former San Juan Motel lot on Stockton Boulevard, where Sacramento Sheriff's deputies [cleared out dozens of campers earlier this year](#). They didn't go for it.

"Modesto is utilizing what is already in place to help their homeless population," Sanchez said. "It is a full-scaled organized community ... It is cost effective and involves every aspect of the community. The local government and the community grassroots have been doing what they do to help."

The Sacramento Regional Coalition to End Homelessness also supports the model as a temporary response until there is enough affordable housing.

"Safe ground means that people experiencing homelessness can camp without fear of harassment from law enforcement and can come and go without the fear that all their possessions have been taken or destroyed," Bob Erlenbusch of SRCEH said. "Equally important is that they can get a good night's sleep without fear of violence from predators who prey on vulnerable people."

James "Faygo" Clark, a local well-known homeless activist, said he is in favor of a safe ground model that rotates locations periodically.

"It would allow people a place to begin to stabilize and move forward," Clark said. "They would need private security, access to trauma-informed services, access to water, sanitation, and trash pickup to succeed. We should also work to ensure that such encampments give the unhoused a voice in their operation."

Warren, [who proposed safe ground sites](#) on his property years ago, said he still supports the model.

"I started on this three years ago and the council wasn't prepared at that time," Warren said. "They seem more willing now."

Merin and other activists [in January 2017 proposed a "safe ground" site](#) near Sacramento Army Depot off Florin Perkins Road.

Councilman Eric Guerra, who represents that area, opposed it, and so did his colleagues.

Now, Guerra, also struggling to find a site for a large shelter, appears to be supportive of a safe parking zone in his south Sacramento district.

Guerra Tuesday suggested staff contact the nonprofit Power Inn Alliance to see if any parking lots could be used in the industrial area for nighttime car camping. A representative for the Power Inn group was unavailable for comment.

#### RELATED STORIES FROM SACRAMENTO BEE

[SACRAMENTO-TIPPING-POINT](#)

[100 kids live in cars in Sacramento. So do hundreds of homeless adults. How can we help them?](#)

AUGUST 08, 2019 5:30 AM

[HOMELESS](#)

[Large homeless shelters to open in Meadowview, North Oak Park. See when and where](#)

AUGUST 28, 2019 6:21 AM

[LOCAL](#)

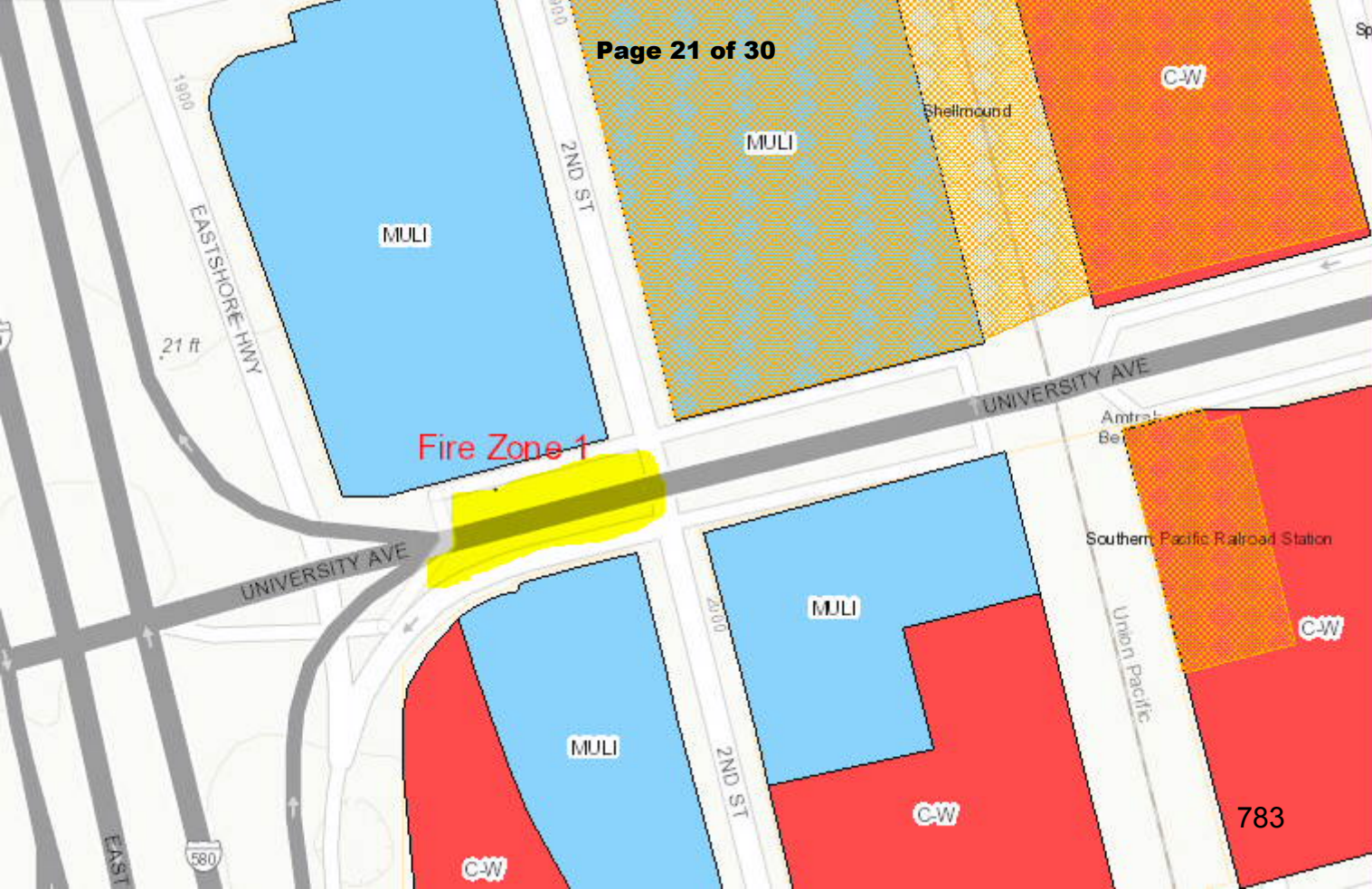
[Summer temperatures create health hazards for those at Modesto homeless encampment](#)

JUNE 25, 2019 3:58 PM

[LOCAL](#)

[Where will Modesto's homeless go when shelter opens and there's not enough room?](#)

MAY 17, 2019 5:39 PM



MULI

MULI

C-W

Fire Zone 1

MULI

MULI

C-W

C-W

783

1600

EASTSHORE HWY

21 ft

2ND ST

UNIVERSITY AVE

UNIVERSITY AVE

2ND ST

Southern Pacific Railroad Station

Union Pacific



EAST











|                     |     |
|---------------------|-----|
| # of People         | 50  |
| Intensive Services? | Yes |
| Self Governed?      | No  |

| MATERIALS (Start-up)         |                     |                  |                                                                                                                     |
|------------------------------|---------------------|------------------|---------------------------------------------------------------------------------------------------------------------|
| Item                         | Number/<br>Quantity | Cost             | Notes                                                                                                               |
| Tents                        | 50                  | \$22,000         | Assumes \$400 per unit Qamp tent, with none donated                                                                 |
| Pallets + Plywood            | 50                  | \$2,644          | Assumes 10'x10' wooden pallet foundation with plywood cover                                                         |
| Lighting                     | 6                   | \$6,600          | Purchased parking lot flood lamps for site lighting                                                                 |
| Generators                   | 2                   | \$12,000         | Power supply for site. Could be substituted for solar panels, though under-bridge site may complicate solar access. |
| Misc Supplies                |                     | \$10,000         | Toilet paper, linens and towels, cleaning supplies, tarps for rain, etc.                                            |
| Furniture/sleeping bags/etc. |                     | \$20,000         | Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.   |
| Staff Shelter                | 1                   | \$4,400          | 16'x10' shed that can house staff + desks, supplies                                                                 |
| Community tent               | 1                   | \$200            | for common space, meals, etc                                                                                        |
| Communications               |                     | \$2,000          | Staff laptops, cell phones                                                                                          |
| Drinking Water               | 12775               | \$30,660         | Assumes 0.7 gallons per person per day in water consumption. No City water connection.                              |
| 10'x12' sheds for storage    | 4                   | \$2,800          | For storage of client belongings                                                                                    |
| <b>TOTAL</b>                 |                     | <b>\$113,304</b> |                                                                                                                     |

| OPERATIONS                                |                     |                    |                                                                                                                               |
|-------------------------------------------|---------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Item                                      | Number/<br>Quantity | Cost               | Notes                                                                                                                         |
| Shower truck                              |                     | \$27,000           | Annual rental/365 days for a 24 ft, 6 stall shower trailer. Does not include water expense.                                   |
| Port-a-potties and handwashing (per each) | 4                   | \$52,000           | 1 toilet per 15 of each gender required per Berkeley Min Health and Safety Ordinance (2017). Assumes ADA with daily servicing |
| 20 yard dumpster and weekly service       |                     | \$39,840           | Berkeley Zero Waste annual fee for 20 yard dumpster with 1x/week trash collection                                             |
| Medical Waste/ sharps disposal            |                     | \$2,400            | Assumes monthly service with a qualified vendor                                                                               |
| Flex Funding/RRH                          | 100                 | \$600,000          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| 1 meal/day                                | 18250               | \$109,500          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| IT, facilities maintenance                |                     | \$10,000           | Budget for repairs and communications network maintenance                                                                     |
| Insurance                                 |                     | \$2,000            | Liability and property                                                                                                        |
| Indirects (@ .15)                         | 0.1                 | \$172,024          |                                                                                                                               |
| Generator operations                      |                     | \$72,000           | To power site/lighting plus shower trailer                                                                                    |
| <b>TOTAL</b>                              |                     | <b>\$1,086,764</b> |                                                                                                                               |

| STAFFING                 |     |                  |                                                               |
|--------------------------|-----|------------------|---------------------------------------------------------------|
| Position                 | FTE | Cost             | Notes                                                         |
| Program and Site Manager | 1   | \$75,000         | Oversees program and provides security                        |
| Program Coordinators     | 7   | \$350,000        | <i>Staffing level depends on program governance structure</i> |
| Housing Navigators       | 2   | \$120,000        | <i>Only applies if this is a service intensive program</i>    |
| Outreach Coordinators    | 2   | \$130,000        | Linked to encampment resolutions                              |
| Benefits (@30%)          | 0.3 | \$202,500        | Medical, dental, PTO                                          |
| <b>TOTAL</b>             |     | <b>\$877,500</b> |                                                               |

|                     |     |
|---------------------|-----|
| # of People         | 50  |
| Intensive Services? | Yes |
| Self Governed?      | No  |

| MATERIALS (Start-up)         |                     |                  |                                                                                                                     |
|------------------------------|---------------------|------------------|---------------------------------------------------------------------------------------------------------------------|
| Item                         | Number/<br>Quantity | Cost             | Notes                                                                                                               |
| Tents                        | 50                  | \$22,000         | Assumes \$400 per unit Qamp tent, with none donated                                                                 |
| Pallets + Plywood            | 50                  | \$2,644          | Assumes 10'x10' wooden pallet foundation with plywood cover                                                         |
| Lighting                     | 6                   | \$6,600          | Purchased parking lot flood lamps for site lighting                                                                 |
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| Furniture/sleeping bags/etc. |                     | \$20,000         | Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.   |
| Staff Shelter                | 1                   | \$4,400          | 16'x10' shed that can house staff + desks, supplies                                                                 |
| Community tent               | 1                   | \$200            | for common space, meals, etc                                                                                        |
| Communications               |                     | \$2,000          | Staff laptops, cell phones                                                                                          |
| Drinking Water               | 12775               | \$30,660         | Assumes 0.7 gallons per person per day in water consumption. No City water connection.                              |
| 10'x12' sheds for storage    | 4                   | \$2,800          | For storage of client belongings                                                                                    |
| <b>TOTAL</b>                 |                     | <b>\$113,304</b> |                                                                                                                     |

| OPERATIONS                                |                     |                    |                                                                                                                               |
|-------------------------------------------|---------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Item                                      | Number/<br>Quantity | Cost               | Notes                                                                                                                         |
| Shower truck                              |                     | \$27,000           | Annual rental/365 days for a 24 ft, 6 stall shower trailer. Does not include water expense.                                   |
| Port-a-potties and handwashing (per each) | 4                   | \$52,000           | 1 toilet per 15 of each gender required per Berkeley Min Health and Safety Ordinance (2017). Assumes ADA with daily servicing |
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| Medical Waste/ sharps disposal            |                     | \$2,400            | Assumes monthly service with a qualified vendor                                                                               |
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| 1 meal/day                                | 18250               | \$109,500          | <i>Only applies if this is a service-intensive program</i>                                                                    |
| IT, facilities maintenance                |                     | \$10,000           | Budget for repairs and communications network maintenance                                                                     |
| Insurance                                 |                     | \$2,000            | Liability and property                                                                                                        |
| Indirects (@ .15)                         | 0.1                 | \$172,024          |                                                                                                                               |
| Generator operations                      |                     | \$72,000           | To power site/lighting plus shower trailer                                                                                    |
| <b>TOTAL</b>                              |                     | <b>\$1,086,764</b> |                                                                                                                               |

| STAFFING                 |     |                  |                                                               |
|--------------------------|-----|------------------|---------------------------------------------------------------|
| Position                 | FTE | Cost             | Notes                                                         |
| Program and Site Manager | 1   | \$75,000         | Oversees program and provides security                        |
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| Housing Navigators       | 2   | \$120,000        | <i>Only applies if this is a service intensive program</i>    |
| Outreach Coordinators    | 2   | \$130,000        | Linked to encampment resolutions                              |
| Benefits (@30%)          | 0.3 | \$202,500        | Medical, dental, PTO                                          |
| <b>TOTAL</b>             |     | <b>\$877,500</b> |                                                               |

## Article 9. Emergency Housing

### 19.28.100 Emergency Housing and Emergency Housing Facilities.

HCD Appendix N of the 2016 [California Building Code](#) is adopted on an emergency basis and reproduced in its entirety subject to the modifications thereto which are set forth below:

#### APPENDIX N - EMERGENCY HOUSING

##### SECTION N106

##### TENTS AND MEMBRANE STRUCTURES

**N106.1 General.** Tents and membrane structures shall not be used to house occupants for more than 7 days unless such tents and membrane structures are maintained with tight wooden floors raised at least 4 inches (101.6 mm) above the ground level and are equipped with baseboards on all sides to a height of at least 6 inches (152.4 mm). Tents and membrane structures may be maintained with concrete slabs with the finished surface at least 4 inches (101.6 mm) above grade and equipped with curbs on all sides at least 6 inches (152.4 mm) high.

A tent or membrane structure shall not be considered a suitable sleeping place when it is found necessary to provide heating facilities in order to maintain a minimum temperature of 50 degrees Fahrenheit (10 degrees Celsius) within such tent or membrane structure during the period of occupancy.

Tents and membrane structures shall comply with Chapter 31 of the [California Fire Code](#) and shall not be erected for a period of more than 180 days within a 12 month period. Tents and membrane structures shall be limited to one level located at the level of Fire Department vehicle access road or lane. Tents and membrane structures complying with Chapter 31 of the [California Fire Code](#) shall not be subject to additional provisions of Sections N111 and N112 of this appendix.

Tents and membrane structures used for sleeping purposes shall be equipped with single station battery powered smoke alarms installed in accordance with Section 907.2.11 of the [California Fire Code](#).

## What would "Sanctioned Encampments" look like? A quick overview of some elements to consider

Chart reads from left to right only, not from top to bottom

|                                                                   |                                                                                                                                                    |                                      |                                                            |                                            |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|------------------------------------------------------------|--------------------------------------------|
| <b>LOCATION</b>                                                   | 100% Resident Discretion                                                                                                                           | City designated                      | One/Several locations                                      | Unlimited locations                        |
| <b>RESIDENTS</b><br><i>Who?</i>                                   | City/Agency Criteria                                                                                                                               | No Criteria                          | Resident Criteria                                          | Hybrid                                     |
| <b>RESIDENTS</b><br><i>How Many?</i>                              | No limit per Encampment                                                                                                                            | City/Agency determined limit         | Resident-determined limit (Who/how decided?)               | Variable/Stable                            |
| <b>RESIDENTS</b><br><i>Criteria?</i>                              | Resident-Determined                                                                                                                                | City/Agency determined               | Hybrid                                                     | Protected Class requirements for criteria? |
| <b>RESIDENTS</b><br><i>Duration</i>                               | Indefinite/Forever                                                                                                                                 | City/Agency specified – limited time | Resident specified – limited time                          |                                            |
| <b>Rules /Code of Conduct</b>                                     | Defined by residents                                                                                                                               | Defined by City/Agency               | Hybrid                                                     |                                            |
| <b>Governance</b>                                                 | Resident defined: any system desired, self-governing. What system?                                                                                 | City/Agency Defined                  | Jointly determined/different areas of governance for each? |                                            |
| <b>Enforcement of Rules</b>                                       | Residents                                                                                                                                          | City/Agency                          |                                                            |                                            |
| <b>Removal/exclusion of Individuals</b>                           | Decision and Action by Residents                                                                                                                   | Decision and Action by City/Agency   | No removal or exclusion                                    |                                            |
| <b>Engagement with Services</b> <i>Housing</i>                    | Not Necessary                                                                                                                                      | Required                             | Voluntary                                                  | Who decides?                               |
| <b>Engagement with Services</b> <i>Other (health, jobs, etc.)</i> | Not necessary                                                                                                                                      | Required                             | Voluntary                                                  | Who decides?                               |
| <b>Facilities</b><br><i>Provision</i>                             | Provided by community/Not for profits                                                                                                              | Provided by City                     | Hybrid/Mix                                                 |                                            |
| <b>Facilities</b><br><i>maintenance</i>                           | Residents                                                                                                                                          | City/Agency                          | Not for Profit Org.                                        | Shared responsibilities                    |
| <b>First Amendment issues</b>                                     | "Protest" camp – if City affirmatively sanctions/provides space, does this become sanctioning of one type of speech?<br>Code Pink – type concerns? |                                      |                                                            |                                            |
| <b>Self-Governance</b>                                            | What system?                                                                                                                                       | Who picks system?                    | Who ensures fairness?                                      | Recourse?                                  |
| <b>City/Agency</b>                                                | Which agency?                                                                                                                                      | Scope of Responsibility?             | Funding?                                                   |                                            |

RECEIVED AT  
 COUNCIL MEETING OF:  
 FEB 13 2018  
 OFFICE OF THE CITY CLERK  
 CITY OF BERKELEY



Office of the Mayor

Jesse Arreguín  
Mayor

ACTION CALENDAR  
January 21, 2020

To: Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021

RECOMMENDATION

Confirm the City Council's action taken on December 3, 2019 to allocate General Funds generated by the Measure P Transfer Tax increase for existing and new homeless programs and implementation for Fiscal Years 2020 and 2021. Detailed listing of approved expenditures is included in Attachment 1.

CURRENT SITUATION AND ITS EFFECTS

On December 3, 2019, the City Council approved the following expenditures:

## Staff Positions:

|                                                                                         | FY 2019 | FY 2020   | FY 2021   |
|-----------------------------------------------------------------------------------------|---------|-----------|-----------|
| Finance: Accountant II                                                                  |         | \$149,258 | \$154,482 |
| HHCS: Community Services Specialist II (Filled)<br>Approved by Council on June 25, 2019 |         | \$172,592 | \$178,633 |
| HHCS: 50% Senior Management Analyst (Requested)                                         |         | \$96,237  | \$99,605  |

## Non-Personnel Costs and Program Expenditures:

|                                                                                                                                                                           | FY 2019 | FY 2020     | FY 2021      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-------------|--------------|
| Non-Personnel Costs/ Program Expenses                                                                                                                                     | \$0     | \$2,059,495 | \$11,362,327 |
| Fire: 5150 Response & Transport<br>Approved by Council on June 25, 2019.<br>Estimated 45% of homeless served (2019 PIT)<br>City will look for alternative funding sources | 0       | 1,200,000*  | 2,400,000*   |
| Coordinated Entry System<br>Fill funding gap in FY 21 due to cuts in county funding                                                                                       | 0       | 0           | 1,400,414*   |
| Safe RV Parking Program (On-Street Permits)                                                                                                                               | 0       | 100,000     | 100,000      |
| Dorothy Day House Emergency Shelter (Veterans Bldg)                                                                                                                       | 0       | 0           | 300,000      |
| Dorothy Day House Daytime Drop-In (Veterans Bldg)                                                                                                                         | 0       | 0           | 21,340       |
| Pathways STAIR Center (existing)                                                                                                                                          | 0       | 0           | 2,415,000    |

|                                                                                                                                                                                                                                                                                                                                             |   |         |             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------|-------------|
| Pathways STAIR Center Expansion (new)                                                                                                                                                                                                                                                                                                       | 0 |         | 705,000     |
| Berkeley Daytime Drop-In Center Locker Program                                                                                                                                                                                                                                                                                              | 0 | 0       | 50,000      |
| Lifelong Medical Care Street Medicine Program<br>Funding set aside, to be allocated following HHCS review and AAO #2 approval                                                                                                                                                                                                               | 0 | 251,829 | 454,239     |
| Youth Spirit Artworks Tiny Home Case Management<br>To fund 11 Berkeley youth. Youth must be engaged with housing navigation services and YSA to report outcomes.                                                                                                                                                                            | 0 | 39,000  | 78,000      |
| Downtown Berkeley Association - Homeless Outreach Worker<br>Fund half-time of current outreach worker                                                                                                                                                                                                                                       | 0 | 20,000  | 40,000      |
| Downtown Streets Team Expansion                                                                                                                                                                                                                                                                                                             | 0 | 75,000  | 150,000     |
| Outdoor Shelter Program                                                                                                                                                                                                                                                                                                                     | 0 | 307,000 | 615,000     |
| Permanent Housing Subsidies (begin July 2020) <b>based on revenues received over \$6 Million</b><br>Cap of \$2.5 Million, 15% set aside for homeless families. POE understanding was that PSH subsidies were permanent so the cost of this allocation would take priority for any future Measure P revenues before any further allocations. | 0 | 0       | 2,500,000** |
| Training and Evaluation                                                                                                                                                                                                                                                                                                                     | 0 | 66,666  | 133,334     |

\*Cost due to Alameda County policy change or funding cut

\*\*PSH subsidies will be allocated when revenues exceed \$6 Million

**BACKGROUND**

At the November 2018 General Municipal Election, Berkeley voters approved Measure P, a 1% increase in the Real Property Transfer Tax for sales or transfers of properties valued over \$1.5 Million. The receipts generated by the increased Transfer Tax go into the General Fund for general municipal services. Potential revenue estimates included on the ballot ranged from \$6-8 Million annually. The measure also established the Homeless Services Panel of Experts, a new city commission comprised of persons with deep expertise in areas relevant to homelessness, including extensive professional or lived experience with homelessness. The Panel of Experts advise the City Council on the allocation of city funds for services to end or prevent homelessness and provide humane services and support. The measure passed with 72.37% of the vote.

***Homeless Services Panel of Experts Recommendations***

Earlier this year, Council appointed the Homeless Services Panel of Experts. The Panel held its first meeting in May 2019. To guide its work, the Panel adopted a Statement of Purposes (included in Attachment 2). On September 4, 2019, the Panel adopted recommendations for initial investments from General Funds to increase and improve housing and services to address homelessness in Berkeley (Attachment 2).

To guide its work, the Panel reviewed all referrals made since Measure P's passage. This included the funding requests and referrals included in the January 2019 Measure P Informational report to Council as well as additional referrals, formal and informal. The Panel also considered information presented by City staff regarding current City of Berkeley investments, local and regional strategies, the 2019 Point-in-Time Count, and the 1,000 Person Plan.

The Panel categorized the referrals by areas of investment (permanent housing, shelter, etc.) and proposed percentages to each area, as well as prioritized specific programs within each subcategory. The recommendations regarding shelter and temporary accommodations included the potential to use funds to support sanctioned encampments if approved by a Council policy. The Panel encouraged the Council to give consideration to the establishment of a sanctioned encampment.

The Panel did not know the actual amount of revenue received in FY 2019, but assumed revenues of \$4 Million. They presented their allocation recommendations in order of priority and percentage keeping in mind the impact \$4 Million in revenues would have in each area. The Panels' priorities are expressed in the order of activities and they recommended that higher ranked activities be given higher priority for resources.

The Panel also adopted subpopulation priorities within the key investment areas of permanent housing subsidies, and flexible housing subsidies. These include establishing a \$500,000 set-aside for permanent housing subsidies for homeless families with children. This also included a recommended 20% set-aside for families and transition-age youth in flexible housing subsidies, using the McKinney-Vento (i.e. Berkeley Unified School District) definition of homelessness, though not limited to families with school-age children.

#### Prior Council Actions in FY 2019 on HEAP and Measure P

On March 12, 2019, the City Council approved a contract with Alameda County Housing and Community Development in the amount of \$4,032,711 in state HEAP funding. The Council adopted the following allocation plan which provided funding for programs until FY 2021:

- Partially fund second year (FY 20) of the Pathways STAIR navigation center: \$2,000,000;
- Partially fund two years (FY 20 and 21) of the Dorothy Day House Shelter at the Veterans Building: \$832,000;
- Partially fund two years of encampment servicing/trash removal: \$729,847. This allocation was reduced by \$50,000 to fund a RV outreach and flexible funding for RV campers;
- Fund two years (FY 20 and 21) of port-a-potty and sanitation efforts at existing and expanded locations: \$270,000;
- Capital and services costs for one year (FY 20) of the pilot homeless locker program including expansion at a second site: \$100,000;

- Administrative allowance at 2.5%: \$100,864.

On June 25, 2019, the City Council adopted the FY 2020-2021 Biennial Budget which included forward commitments of excess Transfer Tax and Excess Equity including \$1.2 Million in FY 2020 and \$2.4 Million in FY 2021 for Fire Department 5150 Response and Transport, and funding a Community Services Specialist II position in HHCS at \$172,592 in FY 2020 and \$178,633 in FY 2021. The funding for 5150 Transport and the new CSS II position in HHCS were approved from Measure P tax receipts.

December 3, 2019 Council Action on Measure P Allocations

On December 3, 2019, the City Council considered the recommendations of the Homeless Services Panel of Experts for General Fund allocations from Measure P tax receipts. In addition, Mayor Arreguin introduced a set of funding recommendations for Fiscal Years 2020 and 2021 in Supplemental Packet 2. The Mayor's supplemental included three spreadsheets: 1) a cover sheet for illustrative purposes to compare the Mayor's recommendations to those suggested by the Homeless Services Panel of Experts; 2) Scenarios A and B, which were derived from spreadsheets developed by the City Manager's Office illustrating assumed revenues and potential expenditures of General Fund revenues based on \$6 Million in tax receipts (Scenario A) and \$8 Million in tax receipts (Scenario B). The Mayor's recommended allocations were included in the Scenario A and B spreadsheets. The Council took the following action:

**Action:** 41 speakers. M/S/C (Hahn/Harrison) to adopt the Mayor's proposal in Supplemental Communications Packet #2 amended to reduce the Safe RV Parking allocation to \$100,000 in FY 2021 and remove the Lifelong Street Medicine allocation to the February AAO process.

**Vote:** Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Droste; Abstain – Wengraf.

The adopted motion was to approve the line item allocations in Scenario A and B spreadsheets, with the modifications mentioned above.

Since the Council's action on December 3, 2019, questions have been raised about the Council's motion, specifically the governing documents outlining the allocation plan, timing of expenditures, and program requirements. This item seeks to answer those questions and reaffirm the Council's action taken on December 3, 2019 to approve Measure P funding allocations for FY 2020 and 2021.

Timeframe of expenditures

The expenditures approved by the Council majority were for an 18-month period - for the remainder of Fiscal Year 2020 which ends on June 30, 2020; and for Fiscal Year 2021 which ends on June 30, 2021. This was to ensure that there was sufficient funding to keep

existing and new programs in operation. Some services such as the Dorothy Day nightly shelter at 1931 Center Street, and the STAIR Center received funding through the state HEAP grant for FY 2020 and 2021. However, there was a funding gap projected by HHCS staff which needed to be filled, or the programs would end. In some cases, programs were for a limited period (e.g. Safe Parking Program, which is expected to operate for one year).

*“Mayors Submittal” Cover Sheet in December 3, 2019 Supplemental 2 Packet*

The cover sheet to the Supplemental Packet 2 submittal entitled “Mayors Submittal” was for information purposes and simply reflected the Mayor’s recommendations for expenses over an 18-month horizon beginning January 2020 through June 30, 2021 and reflected how his recommendations related to the proportional allocations proposed by the Panel of Experts (POE). Because the purpose of this document was to compare the Mayor’s proposed Measure P allocations to those categories recommended by the Panel of Experts, it did not include the allocations approved by Council on June 25, 2019 of \$1,200,000 for FY 2020, and \$2,400,000 in FY 2021 for 5150 Response and Transport. Also not included in this document are proposed staffing positions to implement new programs and funding to fill gaps in the Coordinated Entry System due to the loss of County grants. These costs however were reflected in the Scenario A and Scenario B spreadsheets. It is acknowledged that the Mayor’s recommendations were different from those of the POE and therefore the percentage of funds spent on specific program categories were different from those of the POE. That was the purpose of submitting the “Mayor’s Submittal” cover sheet, it was intended for illustrative comparison purposes and were not the specific line item allocations proposed for funding.

*Staff Estimates of Funding Needs for Existing Programs and Council Referrals*

Also attached is a document (Attachment 3) compiled by Health Housing and Community Services (HHCS) and City Manager staff which outlines existing programs and the costs needed to keep those services in operation, particularly after the one-time state HEAP funding is exhausted. This spreadsheet informed the Mayor’s recommended allocations and in some cases the Mayor rounded the amount upwards from the amounts staff estimated. It is not clear at this time how new State Homeless Assistance Program (HAP) grants will be allocated to local governments. This may result in additional funding to the City of Berkeley in FY 2020.

*Governing Documents and Actions Approved by Council on December 3, 2019*

Governing documents, that were approved by City Council on December 3, 2019, were spreadsheets Scenario A and B. These spreadsheet formats were provided by the City Manager’s office. They included line items for staff positions to implement Measure P programs in HHCS and Finance. They also included already approved allocations for Emergency Mental Health Transport, and funding for gaps in existing programs including the Coordinated Entry System (CES) which is estimated to receive a \$1.4 Million reduction in County funding due to the end of the County funded CES Pilot program. The Mayor’s

recommended funding for Council referrals and new programs were added to the expense rows, in the appropriate fiscal year, in order to illustrate the impact of the allocations for positions and programs over time. These spreadsheets were reviewed with the Deputy City Manager for accuracy prior to submittal in Supplemental Packet 2. Permanent Supportive Housing allocations were included in the Scenario B spreadsheet based on revenues over \$6 Million.

The "Mayors Submittal" and Scenario A and B spreadsheets were included in Supplemental 2 for transparency and also posted online on the Council agenda page the day prior to the Council meeting.

The motion ultimately adopted by the City Council, was to approve the Mayor's proposal which included all three documents (the "Mayor's Submittal" illustrative cover page, Scenario A, and Scenario B). The Council's allocations were based on a baseline of \$6 Million, and any additional revenues over \$6 Million, up to a cap of \$2.5M with a 15% set aside for families, would be allocated to Permanent Housing Subsidies as illustrated in Scenario B. As noted, \$6 Million was a conservative estimate of assumed revenues in FY 2021. In fact, the financial estimates included in the text of Measure P were a range of \$6-8 Million. By approving Permanent Housing Subsidies, the Council was making a long-term commitment to ongoing funding for the maintenance of those subsidies. Going forward starting in FY 2022, funding for Permanent Housing Subsidies will need to be prioritized before allocating funding for other programs.

With the exception of new staff positions, funding for Mental Health transport, and Coordinated Entry, a considerable portion of funding was dedicated to programs currently funded by the one-time state HEAP grant. Some of these one-time HEAP funds were used to fund existing programs with the understanding that there would be a funding gap after FY 2020-2021. The allocations the Council approved on December 3, 2019 will fill funding gaps through FY 2020-2021 to keep programs in operation at their current funding levels.

During the debate at the December 3, 2019 City Council meeting, modifications were made to some of the Mayor's recommendations. These changes included reducing funding for the Safe Recreational Vehicle parking program to one year, postponing the allocation to the proposed Lifelong Medical Care Street Medicine program (Attachment 4) to the 2nd Amendment to the Annual Appropriations Ordinance (estimated in March 2020) to allow City staff time to review and meet with Lifelong regarding their proposal and to develop a complete budget. In addition, the Council approved conditional funding for the Youth Spirit Artworks Tiny Home Case Management proposal with specific criteria for housing navigation and outcome reporting as outlined in Attachment 1.

In order to provide greater clarity, the Mayor has consolidated the information into one spreadsheet (Attachment 1) for Council to review and confirm the allocations presented.

FINANCIAL IMPLICATIONS

General Fund revenues in the amount of \$2,477,582 for FY 2020 and \$11,795,047 for FY 2021. Total \$14,272,629 over 18-month period.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1. Approved Expenditures of Measure P revenues for Fiscal Years 2020 and 2021
2. Homeless Service Panel of Experts “Recommendations for Allocation of FY19/20 Measure P Funds”
3. HHCS/City Manager Spreadsheet on Funding Needs for Existing Homeless Programs
4. Proposal from Lifelong Medical Care for Street Medicine Program

**Attachment 1: FY 2020 & 2021 GENERAL FUND ALLOCATIONS FROM MEASURE P  
TAX RECIEPTS  
As approved by Council on December 3, 2019**

|                                                                                                                                                                                                                                                                                                                                       | FY 2019<br>Actuals | FY 2020<br>Adopted | FY 2021<br>Adopted |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------|--------------------|
| Revenues                                                                                                                                                                                                                                                                                                                              |                    |                    |                    |
| Beginning Fund Balance                                                                                                                                                                                                                                                                                                                |                    | \$2,932,313        | \$6,454,731        |
| Revenues                                                                                                                                                                                                                                                                                                                              | 2,932,313          | 6,000,000          | 6,180,000          |
| <b>Total Revenues and Balance of Funds</b>                                                                                                                                                                                                                                                                                            | 2,932,313          | 8,932,313          | 12,634,731         |
| <b>LESS: Total Expenses</b>                                                                                                                                                                                                                                                                                                           | 0                  | 2,477,582          | 11,795,047         |
| <b>Personnel Costs - requested by City Manager</b>                                                                                                                                                                                                                                                                                    | 0                  | 418,087            | 432,720            |
| Finance: Accountant II                                                                                                                                                                                                                                                                                                                |                    | 149,258            | 154,482            |
| HHCS: Community Services Specialist II (Filled)                                                                                                                                                                                                                                                                                       |                    | 172,592            | 178,633            |
| HHCS: 50% Senior Management Analyst (Requested)                                                                                                                                                                                                                                                                                       |                    | 96,237             | 99,605             |
| <b>Non-Personnel Costs/ Program Expenses</b>                                                                                                                                                                                                                                                                                          | 0                  | 2,059,495          | 11,362,327         |
| <b>Fire: 5150 Response &amp; Transport</b>                                                                                                                                                                                                                                                                                            |                    |                    |                    |
| Approved by Council on June 25, 2019.<br>Estimated 45% of homeless served (2019 PIT)<br>City will look for alternative funding sources                                                                                                                                                                                                | 0                  | 1,200,000          | 2,400,000          |
| Coordinated Entry System                                                                                                                                                                                                                                                                                                              | 0                  | 0                  | 1,400,414          |
| Safe RV Parking Program (On-Street Permits)                                                                                                                                                                                                                                                                                           | 0                  | 100,000            | 100,000            |
| Dorothy Day House Emergency Shelter (Veterans Bldg)                                                                                                                                                                                                                                                                                   | 0                  | 0                  | 300,000            |
| Dorothy Day House Daytime Drop-In Program (Veterans Bldg)                                                                                                                                                                                                                                                                             | 0                  | 0                  | 21,340             |
| Pathways STAIR Center (existing)                                                                                                                                                                                                                                                                                                      | 0                  | 0                  | 2,415,000          |
| Pathways STAIR Center Expansion (new)                                                                                                                                                                                                                                                                                                 | 0                  | 0                  | 705,000            |
| Berkeley Daytime Drop-In Center Locker Program                                                                                                                                                                                                                                                                                        | 0                  | 0                  | 50,000             |
| Lifelong Medical Care Street Medicine Program<br>Funding set aside, to be allocated following HHCS review and AAO #2 approval                                                                                                                                                                                                         | 0                  | 251,829            | 454,239            |
| Youth Spirit Artworks Tiny Home Case Management<br>To fund 11 Berkeley youth. Youth must be engaged with housing navigation services and YSA to report outcomes.                                                                                                                                                                      | 0                  | 39,000             | 78,000             |
| Downtown Berkeley Association - Homeless Outreach Worker Fund half-time of current outreach worker                                                                                                                                                                                                                                    | 0                  | 20,000             | 40,000             |
| Downtown Streets Team Expansion                                                                                                                                                                                                                                                                                                       | 0                  | 75,000             | 150,000            |
| Outdoor Shelter Program                                                                                                                                                                                                                                                                                                               | 0                  | 307,000            | 615,000            |
| <b>Permanent Housing Subsidies (begin July 2020) based on revenues over \$6 Million</b><br>Cap of \$2.5 Million, 15% set aside for homeless families.<br>POE understanding was that PSH subsidies were permanent so the cost of this allocation would take priority for any future Measure P revenues before any further allocations. | 0                  | 0                  | 2,500,000          |
| Training and Evaluation                                                                                                                                                                                                                                                                                                               |                    | 66,666             | 133,334            |
| Fiscal Year Surplus or Shortfall<br>(FY revenues less FY expenses)                                                                                                                                                                                                                                                                    | 2,932,313          | 3,522,418          | -5,615,047         |
| Ending Fund Balance                                                                                                                                                                                                                                                                                                                   | \$2,932,313        | \$6,454,731        | \$839,684          |

Revenues increase 3% per year beginning FY 2021/22  
Expenses increase 3% per year beginning FY 2021/22  
Cost due to Alameda County policy change or funding cut





Homeless Services Panel of Experts

**27a**

ACTION CALENDAR

December 3, 2019

*(Continued from November 19, 2019)*

To: Honorable Mayor and Members of the City Council  
 From: Homeless Services Panel of Experts  
 Submitted by: Katharine Gale, Chairperson  
 Subject: Recommendations for Allocation of FY19/20 Measure P Funds

RECOMMENDATION

Approve recommendations for the allocation of FY19/20 General Funds at least commensurate with resources accrued to date from the passage of Measure P. Refer to the City Manager to produce data regarding the percentage of those transported with County Emergency Mental Health Transport who are homeless, and other sources that could be used to cover this cost.

SUMMARY

The Homeless Services Panel of Experts recommends that the City allocate general funds to a variety of critical activities including permanent housing, shelter, supportive services and other program types to address the current crisis of homelessness in Berkeley. The recommended priority order, percentages, types of activities and subpopulation considerations are included as Attachment 1 to this report.

FISCAL IMPACTS OF RECOMMENDATION

Recommendations covered by this report allocate general fund resources for homeless housing and services in an undetermined amount to be at least commensurate with those raised to date under the transfer tax authorized under Measure P (minus those previously allocated by Council).

CURRENT SITUATION AND ITS EFFECTS

Homeless is increasing in the City of Berkeley and throughout the Bay Area. Between 2017 and 2019 homelessness in Berkeley at a point-in-time has risen by 13%, affecting more than 1,100 people on any given night. Recognizing the need for additional housing and services and for humane measures to address the impacts of homelessness, the Voters of Berkeley passed Measure P in November 2018 which collects a specified transfer tax with the intention to use these additional funds to address homelessness in the City of Berkeley.

Measure P established a Homeless Services Panel of Experts to advise the City Council. The Panel consists of nine members with a deep level of expertise in areas relevant to homelessness, including persons with extensive professional and/or lived experience with homelessness. The Panel began meeting in May 2019. Katharine Gale and Yesica Prado are the elected chair and vice-chair of the Panel.

Addressing homelessness is a Strategic Plan Priority Project, advancing the City's goal to create affordable housing and supportive services for our most vulnerable community members.

### Process

This report provides the Panel's first recommendations for initial investments from General Funds to increase and improve housing and services to address homelessness in Berkeley. In order to develop these recommendations, the Panel first adopted a Purpose Statement (attached). The Panel reviewed all of the referrals made to us since the Measure's passage in light of our adopted statement. This included the funding requests and referrals included in the January 2019 Measure P Informational report to Council as well as additional referrals, formal and informal, sent to the Panel since that time. We also considered information we were presented by City staff regarding current City of Berkeley investments, local and regional strategies, the 2019 Point-in-Time Count, and the 1,000 Person Plan.

A Mission and Budget Subcommittee of the Panel meet and categorized the referrals we received by areas of investment (permanent housing, shelter, etc.) and proposed initial percentages to each area, as well as a process to determine the final recommendations. The full Panel reviewed the investment areas, added additional activities/program types to the areas, prioritized the program types within each area, and made recommended adjustments to the percentages, resulting in the recommended allocations attached to this report. Our recommendation regarding shelter and temporary accommodations includes the potential to use funds to support sanctioned encampments if approved by a Council policy and we encourage the City to give consideration to this approach.

The Panel also adopted subpopulation priorities within the key investment areas of permanent housing subsidies, and flexible housing subsidies. These include establishing a \$500,000 set-aside for permanent housing subsidies for homeless families with children. This also includes a recommended 20% set-aside for families and transition-age youth in flexible housing subsidies, using the McKinney-Vento (i.e. Berkeley Unified School Districts) definition of homelessness, though not limited to families with school-age children.

As stated above, the actual amount of funding to be allocated has yet to be determined. The agreed upon order of priority and percentages is included as Attachment 1. The Panels' priorities within each area are expressed in the order of activities. We

recommend that higher ranked activities be given a greater priority for resources, but we recognize that some activities we have recommended may be funded using other resources at the City’s disposal. Activities left out of our table, such as Public Works street cleaning, and general street outreach, were not recommended for funding from Measure P at this time.

Objection to Full Funding for Emergency Mental Health Transport

The Panel notes that the amount available for us to allocate was reduced by nearly \$1.5 million in FY19/20 based on commitments recommended previously by the City Manager for City staff and for Mental Health Emergency Transport. We understand that FY19/20 funding is already committed but we wish to express our strong objection to the pre-allocation of \$2.4 million in FY20/21 Measure P-generated funding to fully cover these transportation costs. Measure P was passed by the voters of Berkeley to address the crisis of homelessness; while some people who experience homelessness may require emergency mental health transportation, this service is not limited to people who are homeless and was not budgeted with consideration that most people who will be transported will be people who are housed. In addition, this service does not result in greater housing or shelter for people who are homeless and we believe is not consistent with the purpose of Measure P. **We recommend the Council refer to the City Manager to produce information regarding the percentage of those transported who are homeless and other potential sources to cover this expense.** We hope to make recommendations for next year’s investments with consideration to this.

Next Steps

The HSPE recognizes that it was established not only to make recommendations about investment amounts but also to advise on methods and practices. A companion letter will be sent to Council to accompany this report with additional recommendations and considerations for how to ensure Berkeley’s programming is consistent with best practices.

Future work of the Panel will include developing an Action Plan for the coming year, and coordinating with Measure O to plan for future developments. Future work may include recommendations regarding establishing a goal of ending family homelessness or other City-wide goals.

BACKGROUND

Measure P was passed by the voters of Berkeley in 2018. The Homeless Services Panel of Experts began meeting in May of 2019. To guide our work, in August 2019 we have adopted a Statement of Purpose. This Statement is provided as Attachment 2 to this report and is a guide to the recommendations made in this Report.

At their September 4, 2019 regular meeting, the Homeless Services Panel of Experts took the following action regarding these recommendations:

**Action:** M/S/C Sutton/Trotz to adopt Budget A as amended:

- (i) Re-prioritize item #2 (Permanent Housing) as item #1 (and vice-versa), and within the Permanent Housing category:
  - a. Replace “permanent supportive housing” with “permanent housing”;
  - b. Strike the language under “Additional considerations”;
  - c. Add “establish a minimum set-aside of \$500,000 for homeless families in this category”; Note that Transition-Age Youth should be included in funding for adults.
- (ii) Remove the recommended dollar amounts in each funding category, replacing them with percentage allocations, and change the allocations to each category as follows:
  - a. #1 – Permanent Housing: 30%
  - b. #2--Shelter and Temporary Accommodations: 30%
  - c. #3--Immediate Street Conditions and Hygiene: 14%
  - d. #4--Supportive Services: 14%
  - e. #5--Short/Medium Term Housing Subsidies: 10%
  - f. #6--Infrastructure: 2%.
- (iii) Within Category #2 (Shelter and Temporary Accommodations),
  - a. Add “City should ensure there is a focus on families living on the street”;
  - b. Remove “Support sanctioned encampments” as a specific line-item, and instead add reference to sanctioned encampments as a possible modality in line-item #1 (Expand shelter capacity), with the language “if the City should adopt such a policy”;
  - c. Add language in the report to reflect that City should study the potential for sanctioned encampments as a form of shelter expansion and if it adopts such a policy these funds could be used to support that modality.
- (iv) Within Category #3 (Immediate Street Conditions and Hygiene):
  - a. Add “storage units” to the “lockers” item;
  - b. Add “including for encampments” to the “Toilets and Hygiene Stations” item.
- (v) Within Category #5 (Short/Medium Term Housing Subsidies), remove the language on additional considerations and replace with:
  - a. Establish a 20% set-aside for families and youth (including transition-aged youth).
  - b. Use the McKinney-Vento definition of “homelessness” as an eligibility criterion, without limiting to BUSD-enrolled households to ensure coverage of families with children under school age.

**Vote:** Ayes: Carrasco, cheema, Gale, Jordan, Metz, Patil, Prado, Sutton, Trotz.  
 Noes: None. *Abstain:* None. *Absent:* None.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental costs or opportunities associated with these recommendations; the determination regarding how to invest in shelter expansion activities may require environmental consideration.

RATIONALE FOR RECOMMENDATION

The exact amount of funds that will be generated by Measure P are unknown at this time, and additional State and local funds may become available to the City to cover similar cost areas to address homelessness as those recommended by the Panel. Thus, the Panel is recommending key categories for investment, relative priorities expressed as percentages, and priorities within each of these areas. City staff and Council are encouraged to use these recommendations to determine the specific investments within each area.

ALTERNATIVE ACTIONS CONSIDERED

The HSPE considered various options for allocating resources to families and Transition Age Youth (TAY) including allocating resources based on each population's percentages in the Point in Time (PIT) count, establishing a specific priority for unsheltered families, and adopting a significant percentage of housing resources for families. The HSPE ultimately adopted and recommends a specific set-aside in the first allocation of at least \$500,000 of funding for permanent housing for families and a 20% percent set-aside in flexible subsidies for families and transition age youth.

CITY MANAGER

See Companion Report.

CONTACT PERSON

Peter Radu, Homeless Services Coordinator and Secretary to the Homeless Services Panel of Experts, HHCS, (510) 981-5435.

Attachments:

- 1: Recommendations for First Year Measure P Allocations - By Category and Activity
- 2: Homeless Services Panel of Experts Statement of Purpose

**ATTACHMENT 1:  
Recommendations for General Fund Allocations Associated with Measure P - By  
Category and Activity**

Because the total amount of funding available is unknown, recommendations are based on a percentage of funding to each category. Within investment areas, activities are listed in the order they were prioritized and we generally recommend higher priority be given to these activities over those that are listed further down in higher priority categories. Additional considerations and recommendations include subpopulation priorities and service types considered within each activity.

| Investment Area and Sub-Category Activities listed in Priority Order                                                                                             | Percent | Additional Considerations/ Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>1. PERMANENT HOUSING</b></p> <p>Permanent Housing Subsidies and Services</p>                                                                               | 30%     | Establish a minimum set-aside of \$500,000 for homeless families in this category. Transition-age youth should be included in funding for Adults.                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>2. SHELTER &amp; TEMPORARY ACCOMMODATIONS</b></p> <p>1. Expand Shelter Capacity</p> <p>2. Invest in improving existing shelter capacity</p>                | 30%     | <p>1. Adding new sheltering capacity may include the development of dedicated RV parking, use of tiny houses, or other means to increase shelter capacity. If the City should adopt a policy approving sanctioned encampments then this use would also be included. City should ensure there is a focus on meeting needs of any families living on the street.</p> <p>2. Increase services and housing connections in existing shelters so that they are able to function as Navigation Centers.</p> |
| <p><b>3. IMMEDIATE STREET CONDITIONS &amp; HYGIENE</b></p> <p>1. Toilets and Hygiene Stations, including for encampments</p> <p>2. Lockers and Storage Units</p> | 14%     | Note: These funds were not recommended for general clean-up and other Public Works functions and should be spent on activities that directly benefit homeless people.                                                                                                                                                                                                                                                                                                                                |

| Investment Area and Sub-Category Activities listed in Priority Order                                                                                                                                        | Percent     | Additional Considerations/ Recommendations                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>4. SUPPORTIVE SERVICES</b></p> <ul style="list-style-type: none"> <li>1. Health Care services</li> <li>2. Employment and Income Development Activities</li> <li>3. Substance Use Treatment</li> </ul> | 14%         | <ul style="list-style-type: none"> <li>1. Health care services dedicated to people experiencing homelessness which may include street medicine.</li> <li>2. Activities may include job development and support as well as benefits advocacy and other services to improve incomes.</li> <li>3. Substance use treatment services dedicated for persons who are experiencing homelessness.</li> </ul> |
| <p><b>5. FLEXIBLE HOUSING SUBSIDIES</b></p> <p>Flexible housing subsidies may include prevention, diversion and/or rapid resolution support.</p>                                                            | 10%         | Establish a 20% set-aside for homeless families and transition-age youth, using the McKinney-Vento definition of homelessness.                                                                                                                                                                                                                                                                      |
| <p><b>6. INFRASTRUCTURE</b></p> <ul style="list-style-type: none"> <li>1. Training ~80%</li> <li>2. Evaluation ~20%</li> </ul>                                                                              | 2%          | <ul style="list-style-type: none"> <li>1. Use resources in this category for training for Berkeley community-based organizations working with people who are homeless.</li> <li>2. Use resources in this category to ensure that the experiences of service users are captured and considered in performance evaluation.</li> </ul>                                                                 |
| <b>TOTAL</b>                                                                                                                                                                                                | <b>100%</b> |                                                                                                                                                                                                                                                                                                                                                                                                     |

**ATTACHMENT 2:  
Homeless Services Panel of Experts Mission/Purpose Statement  
(adopted August 14, 2019)**

The Voters of Berkeley passed Measure P to generate additional General Funds to use to address the crisis of homelessness. The Homeless Services Panel of Experts created by the Measure was established to “make recommendations on how and to what extent the City should establish and/or fund programs to end or prevent homelessness in Berkeley and provide humane services and support.”

We understand the current crisis of homelessness requires investments in prevention, health services and permanent housing which we know to be the solution to homelessness, as well as in shelters, supports and other temporary measures that get people immediately out of the elements. We will seek to strike a balance between these needs in our recommendations.

We will consider currently unmet needs, gaps and opportunities, best practices and currently available data on outcomes. We will make recommendations for increased local investment, including program types, target populations and geographic areas as appropriate. We will seek to consider the best use of these investments in the context of other available Federal, State and local funding. In general, we will not make recommendations on the specific agencies to receive funding, nor run our own proposal process, recognizing this as a role for staff and the Council. We will request updates on the performance of Measure P investments and the homeless service system overall, including the experience of service users, and use this information to inform future recommendations and provide oversight.

We recognize that homelessness is a regional issue and requires a regional approach, including recognizing that people from Berkeley may live in other places and remain connected to Berkeley services.

To ensure Measure P funding recommendations further efforts to create more housing for people experiencing homelessness in Berkeley, we will coordinate with the Measure O panel to ensure that very low cost housing is connected to services and operating support so that it can successfully targeted to people who are homeless.

We will meet as needed to fulfill this Mission, and to make recommendations to the City Council at least annually.



|                                   | Annual Cost  | FY2020 Funding | FY2021 Funding | FY21 Budget Gap | Funding Exhausted By... |
|-----------------------------------|--------------|----------------|----------------|-----------------|-------------------------|
| <b>Dorothy Day House</b>          |              |                |                |                 |                         |
| Emergency Shelter @ Vet's         | \$ 565,963   | \$ 565,963     | \$ 266,037     | \$ 299,926      | 12/31/2020              |
| Daytime Drop-In services          | \$ 181,777   | \$ 177,437     | \$ 160,437     | \$ 21,340       | 6/30/2020               |
| <b>Total Cost:</b>                | \$ 747,740   | \$ 743,400     | \$ 426,474     | \$ 321,266      | \$ 88,208               |
| <b>Pathways STAIR Center</b>      |              |                |                |                 |                         |
| Operations                        | \$ 688,086   | \$ 688,086     | \$ -           | \$ 688,086      |                         |
| Staffing                          | \$ 1,096,212 | \$ 1,096,212   | \$ -           | \$ 1,096,212    |                         |
| Flexible Housing Funds            | \$ 630,000   | \$ 630,000     | \$ -           | \$ 630,000      |                         |
| Subtotal Cost:                    | \$ 2,414,298 | \$ 2,414,298   | \$ -           | \$ 2,414,298    | 6/30/2020               |
| Aditonal Trailer Operations       | \$ 145,000   | n/a            | \$ -           | \$ 145,000      |                         |
| Additional Trailer Staffing       | \$ 238,000   | n/a            | \$ -           | \$ 238,000      |                         |
| Aditonal Trailer Flexible Housing | \$ 322,000   | n/a            | \$ -           | \$ 322,000      |                         |
| Subtotal Cost:                    | \$ 705,000   |                | \$ -           | \$ 705,000      |                         |
| <b>Total Cost:</b>                | \$ 3,119,298 |                | \$ -           | \$ 3,119,298    |                         |
| <b>Coordinated Entry System</b>   |              |                |                |                 |                         |
| City of Berkeley general fund     | \$ 1,285,452 | \$ 1,285,452   | \$ 1,285,452   | \$ -            |                         |
| Alameda County WPC                | \$ 1,400,414 | \$ 1,400,414   | \$ -           | \$ 1,400,414    |                         |
|                                   | \$ 2,685,866 | \$ 2,685,866   | \$ 1,285,452   | \$ 1,400,414    |                         |
| <b>BDIC Locker Program</b>        | \$ 50,000    | \$ 50,000      | \$ -           | \$ 50,000       | one year from launch    |
| <b>Encampment debris removal</b>  | \$ 339,924   | \$ 339,924     | \$ 339,923     | \$ -            | 6/30/2021               |
| <b>Toilets and Handwashing</b>    | \$ 135,000   | \$ 135,000     | \$ 135,000     | \$ -            | 6/30/2021               |
| <b>TOTALS</b>                     | \$ 6,847,751 | \$ 6,662,766   | \$ 2,186,849   | \$ 4,660,902    |                         |

HEAP funding  
AC WPCare funding

To: Mayor Jesse Arreguin  
Council Member Rashi Kesarwani  
Homeless Services Panel of Experts Chair Katherine Gale  
Deputy City Manager Paul Buddenhagen  
Director Steve Grolnic-McClurg

From: Marty Lynch, Chief Executive Officer, LifeLong Medical Care

Date: September 2, 2019

**Request:** LifeLong Medical Care and City of Berkeley partner to establish an integrated primary care health model that provides intensive outreach and street medicine, case management, behavioral health services, including substance use services, physical health care and linkages to oral health.

**BACKGROUND:**

LifeLong Medical Care has 20 years of experience working in partnership with the City of Berkeley to serve people who are homeless and/or reside in supportive housing. Serving Berkeley's chronic homeless population requires a multifaceted approach that combines housing with services such as intensive outreach, case management, behavioral health services, including substance use services, physical health care and oral health.

According to the 2019 Alameda County Everyone Home Point in Time Count, Berkeley's homeless census increased 14%, from 972 in 2017 to 1108 in 2019. While the detailed Berkeley report has yet to be publicly released, the following health conditions noted in the 2017 PIT most likely continue to "affect housing stability or employment".

- 43% reported psychiatric or emotional conditions
- 28% reported chronic health problems
- 28% reported Post Traumatic Stress Disorder
- 25% reported physical disability
- 24% reported drug or alcohol abuse
- 10% reported Traumatic Brain Injury
- 9% reported AIDS/HIV related

Across Alameda County in 2019, 49% of those surveyed reported "money issues" as the top cause of their homelessness. After money issues, the following **three conditions were listed as primary causes of homelessness** by those surveyed:

- substance use - reported by 19% of those surveyed
- mental health issues - reported by 17% of those surveyed
- physical health - reported by 15% of those surveyed

The County of Alameda, in response to similar data in Oakland, partnered with LifeLong to offer primary and behavioral health services tailored to the needs of people who are homeless and/or experiencing serious mental illness. For the past 4 years LifeLong has operated the LifeLong Trust Health Center in collaboration with Alameda County to provide integrated primary care services for adults who are homeless in Oakland.

Trust offers a behavioral health enriched primary care model with drop in access to medical, mental health and wellness services, as well as a safe space where people can take a shower, get a bag lunch, choose clothing from the clothes closet, and some days even get a haircut. In addition, the clinic is able to provide a stable health home that enables patients to establish a medical record to support social security applications, thereby increasing income, a key contributor to improved health.

Currently, the Trust clinic has approximately 1000 active patients, with average daily visits of 30. The majority have significant physical health needs and mental health and/or substance use disorders. In addition to a physician, psychiatry, and social services, Trust Health Center patients also have access to a Registered Nurse (RN), Health Homes Case Managers, a housing Coordinator, Medication Assisted Treatment (MAT) for opiate and alcohol use disorders, acupuncture and five Health and Wellness Coaches.

Most recently, to extend care beyond the clinic itself, LifeLong piloted a Trust Clinic Street Medicine program to bring medical care to people at the needle exchange site in downtown Oakland. In July LifeLong was awarded two Street Medicine contracts with Alameda County to expand this pilot in downtown Oakland and to launch services in East Oakland. The Street Medicine teams include a primary care provider (PCP), case manager, social worker and RN. The PCP provides care to approximately two people per hour. Most individuals already receive or qualify for MediCal and the medical visit is billed at the Federally Qualified Health Center (FQHC) rate. Other team members are funded by the county contract, which funding from Mental Health Services Act and Health Homes. While building trusting relationships, patients seen by the street medicine team are encouraged to come to the Trust clinic site, or another LifeLong clinic, but can also receive follow-up care on the streets.

**RECOMMENDATION:**

LifeLong recommends a partnership with the City of Berkeley to bring an array of services modeled on the LifeLong Trust Health Center in Oakland to better serve the homeless population in Berkeley. This program would provide primary care and specialty behavioral health services designed to serve Berkeley and Albany-based individuals who are experiencing homelessness and/or are serious mental illness. In partnership with the City of Berkeley Public Health and Mental Health Departments, we propose to establish a LifeLong Trust-Berkeley Program that will launch in two phases: Phase 1) Street Medicine and Phase 2) establish a “brick-and-mortar” health center with drop-in access and hours tailored to Berkeley’s needs.

**Phase 1: Street Medicine**

LifeLong, in partnership with Berkeley Mental Health, will launch a full time street medicine team based out of an existing LifeLong Health Center. The team will be led by a primary care provider working side by side with a licensed clinical social worker and a community health worker. The street medicine team will prioritize services to sites/individuals identified by the city and will have regularly scheduled times when they visit encampments.

The team will provide outreach and engagement services, attend to basic needs (e.g. hygiene, overdose prevention kits), provide direct medical assessment and care, prescribing and medication management, support linkages to social services and respite care, and promote housing readiness. The social worker and case manager will provide follow up counseling and case management for the highest risk people

served. Medical services will be provided in a compact van specially equipped for that purpose and easily able to park at encampments. Follow up care will be provided either at a LifeLong clinic or on the streets. It's estimated that one full time street medicine team can provide medical care to 60 individuals per month with both new and follow up visits, and can manage a caseload mix of 250 light touch and 30 in depth case management clients in a year.

*Budget for Phase 1 Street Medicine:*

Year 1: \$503,657 (includes a one-time expense of a Street Medicine Van)

Year 2: \$404,819

Year 3: \$406,464

A detailed line item budget is attached.

**Phase 2: LifeLong Trust - Berkeley Health Center**

The second phase will be the development of a brick-and-mortar LifeLong Trust-Berkeley. This clinic will be specifically designed to meet the unique needs of individuals who are, or have recently been, homeless and/or are experiencing serious mental illness. Key features will include drop in appointments, highly integrated behavioral health, medical and wellness services, showers, and access to food and clothing resources. Staff will be deeply trained in trauma informed practices and will offer a highly flexible care model. The strong link with the street medicine team will allow for outreach and follow up outside the walls of the clinic.

*Proposed Services Offered:*

- Primary Medical Care
- Mental Health Services
- Medication Assisted Treatment/Substance Use Disorder Services
- Intensive case management
- Housing assistance
- Referrals to dental, specialty care
- Benefits eligibility
- Linkage to Street Medicine

*Budget considerations:*

A specific budget for the proposed clinic is not included at this time. LifeLong recommends that it works with the BMH and the office of the City Manager to plan for this site to assure that the clinic location, hours, and staffing meet the needs of the current homeless population. We estimate that a clinic operating 4 - 5 half days per week would cost approximately \$1 million per year and that approximately two thirds (\$660k) would be funded by FQHC building and \$340k in city funding would be required. Additionally, LifeLong and the City should explore benefits and capacity for co-location of city mental health and LifeLong primary care staff.

## Phase 1:

LifeLong Medical Care –COB Homeless Health Care  
Street Medicine -Berkeley Team  
Proposed Budget 2020-2022

| Budget Item                                                                            | Year 1 Program Expense | Year 2 Program Expense | Year 3 Program Expense |
|----------------------------------------------------------------------------------------|------------------------|------------------------|------------------------|
| <b>Personnel Expenses</b>                                                              |                        |                        |                        |
| .10 Program Manager                                                                    | \$ 9,248               | \$ 9,525               | \$ 9,811               |
| 1.0 Nurse Practitioner or Physician Assistant                                          | \$ 130,000             | \$ 133,900             | \$ 137,917             |
| 1.0 Social Worker (ASW/MFTi)                                                           | \$ 70,720              | \$ 72,842              | \$ 75,027              |
| 1.0 CHOW                                                                               | \$ 53,400              | \$ 55,002              | \$ 56,652              |
| .05 LCSW                                                                               | \$ 4,160               | \$ 4,285               | \$ 4,413               |
| .02 Medical Director                                                                   | \$ 4,337               | \$ 4,467               | \$ 4,601               |
| Employee Benefits @.28                                                                 | \$ 76,122              | \$ 78,406              | \$ 80,758              |
| <b>Salary, Wages, &amp; Benefits Subtotal</b>                                          | \$ 338,739             | \$ 348,901             | \$ 359,368             |
| <b>Operating Expenses</b>                                                              |                        |                        |                        |
| Office Supplies                                                                        | \$ 5,000               | \$ 1,500               | \$ 1,000               |
| Utilities                                                                              | \$ 2,000               | \$ 2,000               | \$ 2,000               |
| Communications                                                                         | \$ 4,500               | \$ 4,500               | \$ 4,500               |
| Transportation & Travel                                                                | \$ 4,000               | \$ 5,000               | \$ 5,000               |
| Training                                                                               | \$ 6,000               | \$ 5,000               | \$ 3,000               |
| Rents and Leases                                                                       | \$ 9,600               | \$ 9,600               | \$ 9,600               |
| Client Supportive Expenditures                                                         | \$ 5,000               | \$ 7,000               | \$ 6,178               |
| Van (one time only)                                                                    | \$ 100,000             | 0                      | 0                      |
| Other: Medical Supplies                                                                | \$ 5,000               | \$ 3,500               | \$ 4,000               |
| <b>Operating Expenses Subtotal</b>                                                     | \$ 41,100              | \$ 38,100              | \$ 35,278              |
| <b>Indirect Expenses (Not to exceed 10.00% of total budget)</b>                        | \$ 31,818              | \$ 31,818              | \$ 31,818              |
| <b>Program Total</b>                                                                   | \$ 411,657             | \$ 418,819             | \$ 426,464             |
| <b>Less Third Party Billing/Additional Revenue (Please specify, e.g. Health Homes)</b> | \$ 8,000               | \$ 14,000              | \$ 20,000              |
| <b>Total Budget Request</b>                                                            | \$ 503,657             | \$ 404,819             | \$ 406,464             |





Office of the City Manager

ACTION CALENDAR

January 21, 2020

*(Continued from December 10, 2019)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group in an amount not to exceed \$492,284, and a subsequent purchase order for the conversion of the nine (9) Ford Super Duty F-Series Pickup Trucks to plug in hybrid vehicles in an amount not to exceed \$245,000 using XL Fleet technology when it becomes commercially available.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of nine (9) Ford F-Series Pickup Trucks with various Service Body configurations will not exceed \$492,284 and includes CA tire fees, delivery to City of Berkeley and sales tax. The vehicles being replaced by have fully paid the amortization for their replacement. Funding for this purchase is available in the FY 2020 baseline budget for Parks, Recreation & Waterfront (PRW) Fund will be added to the Equipment Replacement Fund (671) in the second Annual Adjustment to the Appropriations Ordinance; and Fund amounts will be distributed as follows:

| <b>Fund</b>                                      | <b>Amount</b>     |
|--------------------------------------------------|-------------------|
| 671-54-626-723-0000-000-473-664120               | \$ 392,284        |
| 138-52-542-567-0000-000-461-664120<br>PRWPK20001 | \$ 100,000        |
| <b>Total</b>                                     | <b>\$ 492,284</b> |

The estimated price will be between \$25,000 to \$27,000 per vehicle not including installation. This amount is an estimate based on projected cost as it is not yet possible to get a quote from National Auto Fleet Group for this product. Funding for the conversion to plug in hybrid is requested from the General Fund (011) in the amount not to exceed \$245,000. As part of the FY2020 & FY 2021 Adopted Biennial Budget, the baseline transfer from the General Fund to the Equipment Replacement Fund was increased by \$300,000 to address the increased cost tied to replacing the existing smaller fleet vehicles, scheduled for replacement during the biennial period, with an alternative fuel or electric option. This allocation has already been programmed. While funding is available in the Equipment Replacement Fund to purchase nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group, the Equipment Replacement Fund does not have sufficient budget to make the full purchase of upfitting the new vehicles with these new technologies, which is estimated not to exceed \$245,000.

The replacement purchase of the identified vehicles will be made with the funding identified above. The \$245,000 subsequent upfitting funding will be requested from the General Fund in the FY 2021 Mid-Cycle Budget Process. The support of this allocation is critical in supporting the conversion of the fleet to becoming Fossil Fuel Free.

**CURRENT SITUATION AND ITS EFFECTS**

This purchase will replace nine existing vehicles that have exceeded the end of their useful lifecycle. The Parks, Recreation and Waterfront Department staff need these vehicles to transport staff, supplies and equipment to, within, and from City parks, the Marina, and street medians. These vehicles are critical in supporting the operational needs of the staff and to provide necessary services to the community. These vehicles will also be used to remove debris and green waste from parks and street medians.

Vehicles being replaced include the following:

| <b>Current Vehicle #s</b> | <b>Year</b> | <b>Make/Model</b>      |
|---------------------------|-------------|------------------------|
| 263                       | 1996        | GMC 3500 Pickup Truck  |
| 266                       | 1994        | GMC 3500 Dump Truck    |
| 295                       | 1998        | Ford F250 Pickup Truck |
| 1001                      | 1999        | Ford F350 Pickup Truck |
| 3125                      | 2001        | Dodge 2500 Utility     |
| 3201                      | 2003        | Ford F250 Pickup Truck |
| 3202                      | 2003        | Ford F250 Pickup Truck |
| 3203                      | 2003        | Ford F250 Pickup       |
| 3242                      | 2001        | Ford F250 Utility      |

***Hybrid Electric / Electric Evaluation***

For every fleet purchase, Public Works staff researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City’s transition off of



fossil fuels. Fully electric heavy duty pick up vehicles that meet the service needs are not commercially available at this time. However, the authorized Ford Electric Conversion Company XL Fleet<sup>1</sup> anticipates that the plug-in hybrid conversion of F250 pickups will be available in the third quarter of 2020. As soon as the conversion is available from XL Fleet, the City will work with National Auto Fleet Group to have the purchased vehicles converted to plug-in hybrids.

Currently, there is no electric vehicle charging infrastructure at the Corporation Yard, but Public Works staff are working closely with the East Bay Community Energy's consultant to complete a fleet assessment to evaluate overall fleet needs, alternative fuel and feasible electric vehicle options, fleet right-sizing, and siting electric vehicle charging infrastructure. In addition to the City Council's plan to accelerate the electrification of municipal fleet vehicles, the City's Electric Mobility Roadmap, the first draft of which was completed in October 2019, provides strategies and tools to achieve the vision of a fossil fuel-free transportation system that integrates with and supports the City's ongoing efforts to increase walking, biking, and public transportation use in the City, and ensures equitable access to the benefits of clean transportation.<sup>2</sup>

This purchase will support the City's Strategic Plan Goal of Creating a resilient, safe, connected, and prepared City.

#### BACKGROUND

Throughout the year, Department of Public Works purchases vehicles and equipment for City's operating departments that are paid through the Equipment Replacement fund. City departments that use fleet vehicles pay into the equipment replacement fund, which funds vehicle replacement as they reach the end of their life. If a purchase request exceeds \$25,000, the Department of Finance, General Services Division, solicits bids or "piggybacks" off competitively bid contracts to ensure the City's departments receive the best pricing.

The City of Berkeley has been a no-cost member of Sourcewell formerly National Joint Powers Alliance (NJPA), a municipal contracting agency operation under the legislative authority of Minnesota Statue 123A.21.<sup>3</sup> The original 1978 statute was revised in 1995 to allow government clients to better meet their specific needs through participation in a service cooperative, rather than paying the higher cost associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves all educational, government, and non-profit agencies nationwide, and offers cooperatively contracted products, equipment and service opportunities to government entities throughout the U.S.

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<sup>1</sup> <https://www.xlfleet.com/content/technology/>

<sup>2</sup> Berkeley Electric Mobility Roadmap, October 2019: <http://bit.ly/2JQnXI3>

<sup>3</sup> <https://sourcewell-mn.gov/>

All Sourcewell contracts have been competitively solicited nationwide. On October 21, 2016 Sourcewell released Request for Proposal No. 120716 for Vehicles, Cars, Vans, SUV's, and Light Trucks with Related Equipment, Accessories, and Services. The solicitation was released for approximately forty-nine days and four proposals were submitted. Upon their review, Sourcewell selected National Auto Fleet Group as the best most responsive proposer to meet the specifications thusly awarding Contract No. 120716-NAF.

For all contracts, Sourcewell charges an administrative fee based upon a percentage of the sales, and that fee is paid by the Sourcewell. In this instance, an additional fee 1% will be paid by Sourcewell Contract holder National Auto Fleet Group and this cost will not be passed on to the City.

#### ENVIRONMENTAL SUSTAINABILITY

Public Works Equipment Maintenance works to procure the most fuel-efficient vehicles and equipment that are suitable for the required tasks. It is anticipated that the conversion to plug-in hybrid will be completed by the end of 2020, and until then, the vehicles will be powered by 100% renewable diesel<sup>4</sup> that meet 2018 EPA and California Air Resources Board (CARB) requirements.

#### RATIONALE FOR RECOMMENDATION

All city vehicles are due for replacement at the end of their recognized economic lives. This purchase will assist in the goal of fleet standardization by reducing the number of manufactures from three (Ford, GMC, Dodge) to one (Ford), the vehicles will be state of the art supporting operational needs and employee safety, and will allow the City to implement the first conversions of renewable diesel vehicles to plug-in hybrids.

#### ALTERNATIVE ACTIONS CONSIDERED

None. Listed vehicles have reached the end of their useful service life and replacement vehicles are urgently needed to provide safe and efficient vehicles to support services.

Greg Ellington, Equipment Superintendent, Department of Public Works (510) 981-6469

Attachment:  
1: Resolution

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<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2016/10\\_Oct/Documents/2016-10-18\\_Item\\_44\\_Use\\_of\\_Renewable\\_Diesel.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_Item_44_Use_of_Renewable_Diesel.aspx)

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

PURCHASE ORDER: NATIONAL AUTO FLEET GROUP FOR NINE FORD F-SERIES PICKUP TRUCKS WITH VARYING SERVICE BODY CONFIGURATIONS

WHEREAS, nine (9) Ford-F-Series Pickup Trucks with varying service body configurations are needed by the Parks Recreation & Waterfront Department (PRW) for transporting staff, supplies and equipment to, within, and from City parks, waterfront, and street medians; and

WHEREAS, the vehicles have reached the end of their useful service life; and

WHEREAS, vehicles must be replaced based upon a reasonable schedule that allows city employees to efficiently, safely, and effectively carry out their duties; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, on October 21, 2016 Sourcewell released Request for Proposal No. 120716 for Vehicles, Cars, Vans, SUV's, and Light Trucks with Related Equipment, Accessories, and Services. The solicitation was released for approximately forty-nine days and four proposals were submitted. Upon their review Sourcewell selected National Auto Fleet Group as the best most responsive proposer to meet the specifications, thusly awarding Contract No. 120716-NAF; and

WHEREAS, Sourcewell contract bid procedures satisfy the procurement requirements of the City of Berkeley; and

WHEREAS, funds in the amount of \$492,284 are available in the FY 2020 PRW Fund (138) and the in the Equipment Replacement Fund (671) pending approval of the second Amendment to the Annual Appropriations Ordinance; and

WHEREAS, funds in the amount of \$245,000 will be requested from the General Fund (011) in the FY 2021 Mid-Cycle Budget Process to support the electrification of the City Fleet.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for nine (9) Ford F-Series Pickup Trucks with varying Service Body Configurations with National Auto Fleet Group in an amount not to exceed \$492,284 and a subsequent purchase order with National Auto Fleet Group for nine (9) XL Fleet Plug-In conversions in an amount not to exceed \$245,000 when they are available for purchase.





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
January 21, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Harrison  
Subject: Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow

RECOMMENDATION

1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.
2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee adopted the following action: M/S/C (Robinson/Davila) to send the item, as amended, with a Positive Recommendation back to the City Council with the following amendments:

Amend the recommendation revised to read as follows:

1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.
2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.

Amend the effective date to read as follows:

The effective date of this amendment shall be XXX, or the effective adoption date of the 2020 California Building Standards Code, whichever is sooner.

Vote: All Ayes.

## BACKGROUND

The California Building Standards Code, or Title 24 of the California Code of Regulations, specifies the standards for buildings and other structures in California. Title 24 is intended to protect public health, safety, and general welfare building occupants, and is updated at the state level and adopted by local jurisdictions every three years. Municipalities are permitted to make local amendments to the Building Standards Code<sup>1</sup> as deemed necessary for general welfare, as long as they are submitted to the California Building Standards Commission with the necessary findings. The ideal time to update local buildings codes is before the next code cycle. Berkeley will adopt the 2019 code on January 1, 2020.

Cooktops contribute to toxic indoor air quality. A 2013 Lawrence Berkeley National Laboratory (LBNL) study found that “60 percent of homes in the state that cook at least once a week with a gas stove” produce toxic levels of nitrogen dioxide, formaldehyde and carbon monoxide exceeding federal standards for outdoor air quality.<sup>2</sup> A prior LBNL study found that the “aggregate health consequences of poor indoor air quality...are as significant as those from all traffic accidents or infectious diseases in the United States.”<sup>3</sup> Even electric cooktops generate toxic particulate matter. Unfortunately, the Environmental Protection Agency does not currently regulate indoor air quality.

Researchers in the United States and Australia have begun to link the use of natural gas stoves with asthma attacks and associated hospitalizations.<sup>4</sup> Asthma and its relationship to natural gas and other forms of cooking present profound questions about equity.<sup>5</sup> Researchers from the University of California, Berkeley, and the University of California, San Francisco found that the highest asthma rates in Berkeley and Oakland

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<sup>1</sup> “Local Amendments to Building Standards—Ordinances,” California Building Standards Commission, <https://www.dgs.ca.gov/BSC/Codes/Local-Jurisdictions-Code-Ordinances>.

<sup>2</sup> “Pollution in the Home: Kitchens Can Produce Hazardous Levels of Indoor Pollutants,” Julie Chao, Lawrence Berkeley National Laboratory, July 23, 2013, <https://newscenter.lbl.gov/2013/07/23/kitchens-can-produce-hazardous-levels-of-indoor-pollutants/>.

<sup>3</sup> *Id.*

<sup>4</sup> Amy Mitchell-Whittington, “Cooking with gas, damp housing may cause childhood asthma: study,” Brisbane Times, April 15, 2018, <https://www.brisbanetimes.com.au/national/queensland/cooking-with-gas-damp-housing-may-cause-childhood-asthma-study-20180415-p4z9pz.html>; Nadia N. Hansel et al., “A Longitudinal Study of Indoor Nitrogen Dioxide Levels and Respiratory Symptoms in Inner-City Children with Asthma,” *Environmental Health Perspectives.*, October 2008, <https://pdfs.semanticscholar.org/e099/2f996c97844af8fbcf86b4824fbb7b1cf092.pdf>.

<sup>5</sup> A 2017 California Public Health Department report found that asthma is 30% more prevalent for African Americans and 40% more prevalent for Asian Americans and Native Americans than whites. Gay/lesbian and bisexual men and women have 40-60% higher asthma prevalence than straight men and women. Hispanics and Asians born in the U.S. are more than twice as likely to have current or lifetime asthma as Hispanics and Asians born outside of the U.S. See California Department of Health, “Asthma Prevalence in California: A Surveillance Report,” January 2017, [https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/CPE/CDPH%20Document%20Library/Asthma\\_Surveillance\\_in\\_CA\\_Report\\_2017.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHIB/CPE/CDPH%20Document%20Library/Asthma_Surveillance_in_CA_Report_2017.pdf).

tracked areas that were redlined pursuant to racist housing policies.<sup>6</sup> This issue is compounded by state and regional efforts to boost home efficiency to trap air indoors.

The state currently requires certain types of kitchen exhaust ventilation systems in all new residential construction, but not necessarily range ventilation hoods. There is also no requirement for range ventilation hoods at time of sale. The City Planning Department is proposing amendments to the state mechanical code effective January 1, 2020 requiring range hoods in all dwelling units undergoing renovation. Ventilation systems are designed to remove combustion and other cooktop byproducts from the residential unit to preserve air quality.

In addition to the Planning Department amendments, this ordinance proposes requiring kitchen exhaust range hood ventilation systems in any multifamily residential or condominium units subject prior to execution of a contract for sale or close of escrow.

The transfer of property currently triggers various state and local building code requirements. For example, at time of sale the state health and safety code requires gas water heaters to be seismically braced, anchored, or strapped.<sup>7</sup> Other local ordinances related to environment, such as the BMC 19.81: the Building Energy Saving Ordinance, require energy efficiency reports prior to time of sale. The intention of Section 402.1.3 is to ensure that all buildings and units therein that are sold in Berkeley include exhaust ventilation systems, therefore enhancing air quality and public safety across the existing building stock.

#### FINANCIAL IMPLICATIONS

Staff time to submit ordinance to the Building Standards Commission and to draft findings resolution. In addition, building inspector staff time will be necessary to compliance with new provisions.

#### ENVIRONMENTAL SUSTAINABILITY

Mandating kitchen exhaust ventilation systems in residential units undergoing renovation and all units at sale will enhance indoor air quality.

#### CONTACT PERSON

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

#### ATTACHMENTS

1: Ordinance

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<sup>6</sup> UC Berkeley Public Health, "Historically redlined communities face higher asthma rates" May 2019, <https://sph.berkeley.edu/historically-redlined-communities-face-higher-asthma-rates>.

<sup>7</sup> Health and Safety Code § 18031.7, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC)

AMENDING CHAPTER 19.32 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE KITCHEN EXHAUST HOOD VENTILATION IN RESIDENTIAL AND CONDOMINIUM UNITS PRIOR TO EXECUTION OF A CONTRACT FOR SALE OR CLOSE OF ESCROW

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

Section 1. That Berkeley Municipal Code Section 19.32.040 is hereby amended to read as follows:

**19.32.040 Amendments to the California Mechanical Code**

**Chapter 4** of the 2019 California Mechanical Code is adopted in its entirety subject to the modifications thereto which are set forth below:

**402.1.2 Ventilation in Dwelling Units.** Requirements for ventilation air rate for single-family dwellings and residential dwelling units in multi-family buildings shall be in accordance with this section and ASHRAE 62.2. Each kitchen range shall be provided with a vented hood ducted to terminate outside the building, with a minimum air flow of 100 cfm and a maximum sound rating of 3 sones.

**Exception:** A vented range hood shall not be required in dwelling unit kitchens equipped with a local mechanical exhaust system installed in accordance with ASHRAE 62.2.

**402.1.3 Sale of Existing Buildings.**

The requirements of Section 402.1.2 shall apply prior to entering into a contract of sale, or prior to the close of escrow when an escrow agreement has been executed in connection with a sale as follows:

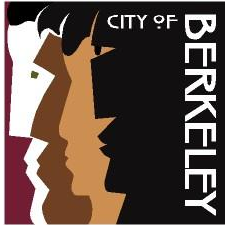
1. in any residential or condominium building or structure, applicable to all dwelling units therein; or
- 1.2. in an individual condominium unit.

For regulations governing wood burning appliances, see BMC 19.28.040.

Section 2. The effective date of this amendment shall be **XXX**, or the effective adoption date of the 2019 California Building Standards Code, whichever is sooner.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

## REVISED AGENDA MATERIAL

**Meeting Date:** December 3, 2019

**Item Description:** City Council Rules of Procedure and Order Revisions

**Supplemental/Revision Submitted By:** Mark Numainville, City Clerk

This revised language for **Section 5. Number and Make-Up of Committees** was discussed and unanimously adopted by the Agenda & Rules Committee on Monday, November 18.

The recommended language will adjust the committee membership to allow for four members to serve on the Budget and Finance Committee and require that the Mayor be a member of the Budget and Finance Committee.

**5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three councilmembers, except Budget & Finance, which shall have four members. All Committees, except Budget & Finance, will have a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda & Rules Committee, the Budget & Finance Committee, and one other committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety



**SOPHIE HAHN**

Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

## **SUPPLEMENTAL AGENDA MATERIAL**

### **for Supplemental Packet 2**

**Meeting Date:** November 19, 2019

**Item Number:** A

**Item Description:** City Council Rules of Procedure and Order Revisions

**Submitted by:** Councilmember Hahn

This Supplemental is built on the Clerk's previous Supp 1 submission. All but one change proposed (on Page 8) reflect allowing more than one Author for each item. Authors are defined as having actual authorship of an item, while Co-Sponsors are strong supporters. Up to 4 Authors and Co-Sponsors are allowed per item. The first Author listed is the Primary Author and is the sole contact for the City Manager with respect to that item. All other changes proposed (except on Page 8) are technical changes to clarify this allowance for more than one Author.

The change on Page 8 allows flexibility for Ad Hoc Subcommittees to consult the parties they deem appropriate to their task, rather than be required to consult with all parties listed.

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# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~-N.S.  
Effective November 12, 2019

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## I. DUTIES

## I. DUTIES

## A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

Commented [NML1]: Standard current practice per City Charter

## B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

## C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

## D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

Commented [NML2]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Commented [NML3]: SUPP 1 – changed to "a limit" to be more clear that the time is the same for all Councilmembers

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

## E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

I. DUTIES

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~ ~~recuse~~ themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML4]: Correct terminology

F. Requests for Technical Assistance and/or Reports

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

G. ~~City Council Policy for Naming and Renaming Public Facilities~~

~~The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.~~

Commented [NML5]: Edit from July 15, 2019 Agenda & Rules Committee meeting  
Language is unnecessary here



II. MEETINGS

II. MEETINGS

A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair, ~~at the conclusion of the business presently before the Council.~~ In the absence of the two officers specified in this section, the ~~Councilmember~~~~council member~~ present with the longest period of Council service shall preside.

Commented [NML6]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Mayor resume chair upon resuming place on dais

Commented [NML7]: Amended to standardize use throughout the document

B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

D. Council Meeting ~~Schedule~~Conduct of Business

~~The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.~~

Commented [NML8]: Moved to more appropriate location below

~~Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.~~

~~Regular City Council meetings shall begin no later than 6:00 p.m.~~

The agenda for the regular business meetings shall include the following: Ceremonial ~~Items (including comments from the City Auditor if requested);~~ Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Commented [NML9]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Commented [NML10]: Items removed from Consent may have many other actions taken and listing this single action is misleading.

Upon request by ~~the Mayor or~~ any ~~Councilmember~~~~council member~~, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by ~~the Mayor or~~ any ~~Councilmember~~~~council member~~, ~~at the~~ ~~Council~~~~council member~~ may also move an item from the Action Calendar to the Consent Calendar.

Commented [NML11]: Amended for clarity throughout document

Commented [NML12]: Edit from July 15, 2019 Agenda & Rules Committee meeting – changed “a Councilmember” to “the Council”

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious

II. MEETINGS

and lengthy and/or the Council's regular meeting schedule is heavily booked, the ~~Agenda Committee~~ Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Commented [NML13]: Amended to standardize use throughout the document

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda Committee Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month ~~except during recess periods~~; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Commented [NML14]: SUPP 1 – Added for clarity

Regular City Council meetings shall begin no later than 6:00 p.m.

Commented [NML15]: Proposed addition regarding starting early for ceremonial items was removed at the July 15, 2019 Agenda & Rules Committee meeting

A recess period is defined as a period of time longer than 21 days without a regular ~~or special~~ meeting of the Council.

Commented [NML16]: Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to

## II. MEETINGS

extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the ~~Agenda Committee~~ Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend ~~through up to the deadline for submission of staff reports for date of the first Agenda & Rules Committee meeting for the first regular meeting~~ after the Council recess.

**Commented [NML17]:** The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

**Commented [NML18]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

#### H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the ~~program~~ Ceremonial Calendar will be the Pledge of Allegiance.

#### I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~ be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups as appropriate to the charge or responsibilities of such Subcommittee. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

**Commented [HS19]:** Depending on the charge or responsibilities of an Ad Hoc Subcommittee, it may not be necessary or appropriate to consult with all the groups/bodies listed. Adding this language allows some flexibility; as written it requires every ad hoc subcommittee to engage in all of the consultation activities listed.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in ~~public and in accessible~~ locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

**Commented [NML20]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

II. MEETINGS

~~City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.~~

~~Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.~~

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

~~Certain requirements listed above may not apply to a~~ Ad hoc subcommittees ~~may seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.~~ ~~convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.~~

**Commented [NML21]:** Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting. This language mirrors the language used for Policy Committees Charter III, Section G

**Commented [NML22]:** Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting.

III. AGENDA

III. AGENDA

A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items ~~carried over~~ continued from a previous meeting and published on a revised agenda.

Commented [NML23]: Additional clarification

B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember~~council member~~, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember~~council member~~ so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.

Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author) four Authors and Co-Sponsors, in any combination that includes at least one Author.

Commented [NML24]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. New language for designation of co-sponsors from the July 15, 2019 Agenda & Rules Committee meeting – removed limitation on when co-sponsors could be added and changed it to limit the addition of co-sponsors to discretion of the primary author.

Authors must be listed in the original item as submitted by the Primary Author. Co-Sponsors may only be added in the following manner:

- In the original item as submitted by the Primary Author
- In a revised item submitted by the Primary Author at the Agenda & Rules Committee
- By verbal request of the Primary Author at the Agenda & Rules Committee
- In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
- By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below, following as applicable:

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report ~~and action requested;~~

III. AGENDA

- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- c) Recommendation of the City Manager report author that describes the action to be taken on the item, if applicable; ~~(these provisions shall not apply to Mayor and Council items.);~~
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;
- g) Rationale for recommendation;
- h) Alternative actions considered;
- i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);

Commented [NML25]: Required by the Brown Act for all agenda items.

j) Person or persons to contact for further information, with telephone number.

k) Additional information and analysis as required. It is recommended that reports include the ~~recommended~~ points of analysis in the Council Report Guidelines in Appendix B.

Commented [NML26]: SUPP 1 – redundant word deleted

~~j) If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Commented [NML27]: Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Author" means the Mayor or other Councilmembers who actually authored an item by contributing to the ideas, research, writing or other material elements.

3. "Primary Author" means the Mayor or Councilmember first Author listed on the item. The Primary Author is the sole contact for the City Manager with respect to the item. Communication with other Authors and Co-Sponsors, if any, is the responsibility of the Primary Author. ~~the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.~~

34. "Co-Sponsor" means the Mayor or other Councilmembers who wish to indicate their strong support for the item, but are not Authors, and are designated by the Primary Author to be co-sponsors of the council agenda item.

III. AGENDA

1.4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.

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2.5. "Packet" means the agenda plus all its corresponding duplicated agenda items.

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3.6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

1-a) A work stoppage or other activity which severely impairs public health, safety, or both;

2-b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

4.7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, as uncompleted items.

5.8. "Old Business" Items carried over from a prior agenda of a meeting as uncompleted items occurring more than 11 days earlier.

Commented [NML28]: Per Open Government Ordinance

C. Procedure for Bringing Matters Before City Council

a) 1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by the Agenda & Rules Committee, which shall be a standing committee of the City Council. The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.

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Commented [NML29]: Superseded by policy committee section below

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15th day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda & Rules Committee meeting.

Commented [NML30]: Clarification

The Agenda Committee shall have the powers set forth below.

III. AGENDA

~~4. Items Authored by a Councilmember or the Auditor. As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.~~

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~~The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the Agenda Committee meeting whether he or she prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the Agenda Committee within 24 hours of the adjournment of the Agenda Committee meeting for the Council agenda under consideration.~~

Commented [NML31]: Current practice

~~In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the Agenda Committee's adjournment, the recommendation of the Agenda Committee will take effect.~~

~~Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.~~

Commented [NML32]: Unecessary. If the item is being submitted for a future meeting, it is a "new" item.

~~For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading "Referred Items". The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.~~

Commented [NML33]: No longer needed with the policy committee system.

- ~~Reason 1 — Significant Lack of Background or Supporting Information~~
- ~~Reason 2 — Significant Grammatical or Readability Issues~~

~~The Agenda & Rules Committee shall have the powers set forth below.~~

Commented [NML34]: SUPP 1 – change as described in the Supp 1 Cover Memo



III. AGENDA

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a) Items Authored by the Mayor, a Councilmember, or the Auditor. As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:

- i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
- ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
- iii. Refer the item back to the author for adherence to required form or for additional analysis as required in Section III.B.1, (Primary Author may decline and request Policy Committee assignment).
- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.iii the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs i, ii, or iii.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

III. AGENDA

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

a)b) Items Authored by the City Manager. The Agenda Committee~~Agenda & Rules Committee~~ shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda Committee~~Agenda & Rules Committee~~'s action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the ~~referral~~ recommendation of the Agenda Committee~~Agenda & Rules Committee~~ ~~of revised items that have not been resubmitted to the Agenda Committee~~ will automatically be placed on the Action Calendar.

2-c) Items Authored by Boards and Commissions. Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda Committee~~Agenda & Rules Committee~~.

i) For a commission item that does not require a companion report from the City ~~Manager~~Manager, the Agenda Committee~~Agenda & Rules Committee~~ may act on an agendized commission report in the following manner:

a-1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

b-2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.

c-3. Allow the item to proceed as submitted.

ii) For any commission report that requires a companion report, the Agenda Committee~~Agenda & Rules Committee~~ ~~may~~will schedule the item on a Council agenda. The Committee must schedule the the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda Committee~~Agenda & Rules Committee~~. A commission

**Commented [NML35]:** Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

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III. AGENDA

report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

~~3-d)~~ The Agenda Committee~~Agenda & Rules Committee~~ shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

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~~b)2.~~ **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

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~~e)3.~~ **Submission of Agenda Items.**

~~1-a)~~ **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

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~~2-b)~~ **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.

~~3-c)~~ **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 ~~Councilmember~~council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~Agenda & Rules Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the ~~Agenda Committee~~Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the ~~Agenda Committee~~Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the ~~Agenda Committee~~Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

~~4-d)~~ The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

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d)4. **Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation.

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b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.

Commented [NML36]: Per Open Government Ordinance

1.

2.c) After 5:12:00 p.m. ~~seven~~ one calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

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e)5. **Scheduling a Presentation.**

~~Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.~~

Commented [NML37]: Reflects current practice, which is much less formal than deleted text.

Commented [NML38]: SUPP 1 – Reflects current practice.

~~Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.~~

~~The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.~~

**i.D. Packet Preparation and Posting**

a)1. **Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. ~~Reports carried over, as Continued Business or Old Business need not be reproduced again.~~

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Commented [NML39]: Inconsistent with OGO

b)2. **Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

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e)3. **Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- ~~a) distribute the Agenda Packet to each member of the City Council;~~

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III. AGENDA

- ~~ii-b)~~ post the Agenda Packet to the City's website;
- ~~iii-c)~~ place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- ~~iv-d)~~ make the Agenda Packet available to members of the press.

~~d)4.~~ **Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - ~~a-e)~~ A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - ~~b-e)~~ Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

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**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

- ~~a)1.~~ Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
- ~~b)2.~~ Consent Calendar
- ~~c)3.~~ Action Calendar
  - ~~1-a)~~ Appeals
  - ~~2-b)~~ Public Hearings
  - ~~3-c)~~ Continued Business
  - ~~4-d)~~ Old Business
  - ~~5-e)~~ New Business
  - ~~6.~~ Referred Items
- ~~4.~~ Information Reports
- ~~d)5.~~ Non-Agenda Public Comment
- ~~e)6.~~ Adjournment Communications
- ~~f)7.~~ Communications Adjournment

Commented [NML40]: Edits to reflect current order

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

The [Agenda Committee](#) [Agenda & Rules Committee](#) shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

**i)1.** Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.

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**ii)2.** The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

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**iii)3.** Removal of confidential materials from a binder is prohibited.

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**iv)4.** Duplication of the contents of a binder by any means is prohibited.

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**v)5.** Confidential materials shall be retained in the binders for at least two years.

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**vi)6.** This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

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[G. Regulations Governing City Council Policy Committees](#)

Commented [NML41]: Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

**1A. Legislative Item Process**

All agenda items begin with submission to the [Agenda Committee](#) [Agenda & Rules Committee](#).

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Full Council Track

Items under this category are exempt from ~~Agenda Committee~~ Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- 4.a. Items submitted by the City Manager and City Auditor
- 5.b. Items submitted by Boards and Commissions
- 6.c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- 7.d. Position Letters and/or Resolutions of Support/Opposition
- 8.e. Donations from the Mayor and Councilmember District Office Budgets
- 9.f. Referrals to the Budget Process
- 10.g. Proclamations
- 11.h. Sponsorship of Events
- 12.i. Information Reports
- 13.j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- 14.l. Committee and Regional Body Appointments

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Commented [NML42]: Clarification

~~Notwithstanding the exemption stated above, the Agenda Committee, at its discretion, may route a Full Council Track item submitted by a Councilmember to a policy committee if the item has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues.~~

Commented [NML44]: Change made at September 16, 2019 Agenda & Rules Committee; integrated into next paragraph

~~The Agenda Committee~~ Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. ~~If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.~~

Commented [NML45]: SUPP 1 – this sentence is unnecessary given the current authority of the Agenda & Rules Committee to refer any item to a policy committee

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the ~~Agenda Committee~~ Agenda & Rules Committee on a draft City Council agenda (on a list).

Commented [NML46]: Clarification

The ~~Agenda Committee~~ Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the ~~Agenda~~



## III. AGENDA

~~Committee~~Agenda & Rules Committee. ~~The Agenda Committee~~Agenda & Rules Committee may only assign the item to a single ~~Policy~~Policy ~~Committee~~Committee.

For a Policy Committee Track item, the ~~Agenda Committee~~Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a ~~Policy~~Policy ~~Committee~~Committee.

Time Critical Track

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 Mayor or ~~Councilmember~~council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~Agenda & Rules Committee's published agenda.

The ~~Agenda Committee~~Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass ~~Policy~~Policy ~~Committee~~Committee review if determined to be time critical. If such an item is deemed not to be time critical, it ~~may~~will be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the ~~Agenda Committee~~Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

**B2. Council Referrals to Committees**

The full Council may refer any agenda item to a ~~Policy~~Policy ~~Committee~~Committee by majority vote.

**3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. ~~The quorum of a three-member~~Policy ~~Committee~~Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may ~~co-author~~be listed as Authors or Co-Sponsors on an item provided that one of the ~~Authors or Co-Sponsors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate, who also can not be an Author or Co-Sponsor.~~will serve as a committee member in place of the non-participating ~~co-author~~Author or Co-Sponsor.

Commented [NML47]: New requirements due to re-evaluation of Brown Act applicability to policy committees

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d. All three members of a Policy Committee may not be ~~co-authors~~ Authors or Co-Sponsors of an item that will be heard by the committee.

e. Only one ~~co~~ Author or Co-Sponsor who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.

Commented [NML48]: SUPP 1 – added for clarification

Commented [NML49]: SUPP 1 – added for clarification

g. An item may be considered by only one Policy Committee before it goes to the full Council.

**C4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.

f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.

~~f-g.~~ The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.

Commented [NML50]: Clarification of authority; reflects Charter

g-h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.

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i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.

h.i. Per Brown Act regulations, any such revised or supplemental materials must be direct revisions or supplements to the item that was published in the agenda packet.

Commented [NML51]: Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agenda items

Commented [NML52]: SUPP 1 – added for clarification

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Items referred to a Policy Committee from the Agenda Committee Agenda & Rules Committee or from the City Council must be agendaized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the Agenda Committee Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's will include their recommendation will be included in a new separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

Commented [NML53]: Clarification of authority. Commissions are advisory to the Full Council

The original Council author Primary Author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the agenda process City Clerk by the members of the committee.

Commented [NML54]: Clarification of responsibility for shepherding items through process

Commented [NML55]: SUPP 1 – added for clarification

A policy committee may refer an item to another policy committee for review. The total time for review by all policy committees is limited to the initial 120-day deadline.

Commented [NML56]: Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda Committee Agenda & Rules Committee and appears on the next available Council agenda. The Agenda Committee Agenda & Rules Committee may leave

III. AGENDA

the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Commented [NML57]: Closes "endless loop" loophole

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action. Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee.

Commented [NML58]: SUPP 1 – This paragraph was re-worded for clarity

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda Committee Agenda & Rules Committee on the next available agenda. The Agenda Committee Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

Commented [NML59]: Clarification

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review item first appeared on the committee agenda.

**5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

Commented [NML60]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

SUPP 1 – comma added after Councilmembers

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda Committee Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

III. AGENDA

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All standing Policy Committees of the City Council are considered "legislative bodies" under the Brown Act and must conduct all business in accordance with the Brown Act.

Commented [NML61]: Clarification

**6E. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall [stand and identify themselves](#), shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### ~~7.1.~~ **Public Comment on Consent Calendar and Information Items.**

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." 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."

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, [the Mayor or](#) 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.

## IV. CONDUCT OF MEETING

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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.

[This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.](#)

Commented [NML62]: SUPP 1 – added for clarification

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the “Action” section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the “Action” section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the “Public Hearings” section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants [of a single appeal](#) collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. [If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment.](#) Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

Commented [NML63]: Reflects existing due process standards

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons 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 commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

~~According to the current Rules and Procedures~~Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the ~~Agenda Committee~~Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.



## IV. CONDUCT OF MEETING

It is the policy of the Council that [the Mayor or Councilmembers](#) wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of [the Mayor or any Councilmember](#) shall be added to the appropriate section of [the Reports for Action Calendar](#) and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of [Mayor or any Councilmember](#) a Report for Information may be acted upon by the Council.

**D. Written Communications**

[Letters](#) [Written communications](#) from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." \_

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. [The Mayor or Any Councilmember](#) may refer a communication to [staff](#) [the City Manager](#) for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

[Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.](#)

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

Commented [NML64]: SUPP 1 – Clarification and updating of language

Commented [NML65]: Clarification per OGO

IV. CONDUCT OF MEETING

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

Commented [NML66]: Same as above

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

Commented [NML67]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Public Discussions**

Commented [NML68]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.

IV. CONDUCT OF MEETING

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~~The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.~~

**H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a ~~Councilmember~~council member except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any ~~written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council. message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.~~

Commented [NML69]: Clarification that Clerk forwards written communications only, not verbal messages

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question ~~or motion~~ is before the Council, ~~no motion shall be entertained~~ except:

Commented [NML70]: SUPP 1 - clarification

~~4-1.~~ To adjourn,

~~5-2.~~ To fix the hour of adjournment,

~~6-3.~~ To lay on the table,

~~7-4.~~ For the previous question,

~~8-5.~~ To postpone to a certain day,

~~9-6.~~ To refer,

~~10-7.~~ To amend,

~~11-8.~~ To substitute, and

V. PROCEDURAL MATTERS

~~12.9.~~ To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to ~~adjourn, amend, or substitute,~~ shall be put to a vote without debate.

Commented [NML71]: Motion to adjourn is not debatable pursuant to Roberts Rules

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall ~~supercede~~ supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The ~~Mayor or Councilmember~~ council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the ~~Mayor or Councilmember~~ council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session on the day such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made ~~and seconded by a member one of~~ on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

Commented [NML72]: Must happen at the same meeting, not just the same day.

Commented [NML73]: Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

## V. PROCEDURAL MATTERS

**G. Debate Limited**

1. ~~Except as provided in Section V.F.b hereof, eC~~ Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of ~~Good of the City Information Reports~~; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, ~~the a motion for the~~ previous question, which, if passed ~~by a 2/3 vote~~, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph ~~a-1~~ hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any ~~Councilmember~~~~council member~~ to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any ~~Councilmember~~~~council member~~ may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in ~~subparagraph Section a-1D~~ hereof is made and is passed.

Commented [NML74]: SUPP 1 – changes to b) added for clarification

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

~~Any person desiring to address the Council shall first secure the permission of the presiding officer to do so.~~ Under the following headings of business, unless the presiding officer rules otherwise, any ~~qualified and~~ interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

Commented [NML75]: Exactly restated later in same paragraph

Commented [NML76]: Not sure what could be meant by "qualified"

**1. Written Communications.**

V. PROCEDURAL MATTERS

Interested parties or their authorized representatives may address the Council ~~by in the form of~~ written communications in regard to matters of concern to them ~~by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.~~

~~Communications~~ pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.

Commented [NML77]: Described elsewhere and unnecessary here.

~~Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.~~

2. **Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

3. **Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than ~~the Mayor or a Councilmember~~ council member shall address the Council without first securing the permission of the presiding officer or Council to do so.



## VI. FACILITIES

## VI. FACILITIES

## A. Council Chamber Capacity

~~Council Chamber~~ Attendance at council meetings shall be limited to the posted seating capacity of the meeting location~~thereof~~. Entrance to the ~~City Hall~~ meeting location will be appropriately regulated by the City Manager on occasions when the ~~Council Chamber~~ capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the ~~Council Chamber~~ meeting room except to address the Council, and sitting on the floor shall not be permitted. ~~The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.~~

Commented [NML78]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

## B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the ~~City Council Chambers~~ School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the ~~City Council Chambers~~ Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the ~~City Council Chambers~~ Board Room.

## C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the ~~Council Chamber~~ meeting location during Council meetings.

## D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

## E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the ~~Council Chambers~~ meeting location has have reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

B-A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

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- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

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APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.

E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the ~~Agenda Committee~~ [Agenda & Rules Committee](#) to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

~~3-2.~~ Agenda items shall contain all relevant documentation, including the following as Applicable:

- a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
- b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
- d. Fiscal impacts of the recommendation;
- e. A description of the current situation and its effects;
- f. Background information as needed;
- g. Rationale for recommendation;
- h. Alternative actions considered;
- i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
- j. Person or persons to contact for further information, with telephone number.

If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ "Current situation and its effects"**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.

- Example (fictional):

*Winter rains are lasting longer than expected. Berkeley's winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley's winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

### 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

### 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

### 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,



APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

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but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

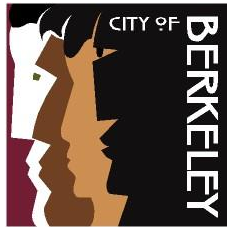
Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**



Office of the City Manager

## REVISED AGENDA MATERIAL

**Meeting Date:** November 12, 2019

**Item Number:** 26

**Item Description:** City Council Rules of Procedure and Order Revisions

**Supplemental/Revision Submitted By:** Mark Numainville, City Clerk

It was brought to my attention by a Councilmember that some of the provisions of Chapter III.C.1.a regarding the powers of the Agenda & Rules Committee were unclear and inconsistent with other provisions related to policy committees.

The proposed amendment attempts to clarify the provisions of Chapter III.C.1.a given the authority granted to the Agenda & Rules Committee by Resolution 68,726-N.S. while maintaining adequate discretion and control of the primary author of a Council item.

The new language proposed for Council consideration is in the version attached to this cover memo; track changes pages 13-14, and clean version pages 11-12. The original wording of this section is on page 875 of the packet (clean version) and page 916 of the packet (track changes version).

In addition, I have incorporated some non-substantive corrections/clarifications to the proposed amendments based on suggestions from Councilmembers. These edits are annotated in the attached track changes version of the ROP amendments. These new annotated edits all begin with "SUPP 1" in the comment bubble.

The clean version in this supplemental replaces Exhibit A to the resolution in the agenda packet.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

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# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~-N.S.  
Effective November 12, 2019

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## I. DUTIES

## I. DUTIES

## A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

Commented [NML1]: Standard current practice per City Charter

## B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

## C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

## D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

Commented [NML2]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Commented [NML3]: SUPP 1 – changed to "a limit" to be more clear that the time is the same for all Councilmembers

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

## E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

I. DUTIES

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~ recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML4]: Correct terminology

F. Requests for Technical Assistance and/or Reports

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

G. City Council Policy for Naming and Renaming Public Facilities

~~The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.~~

Commented [NML5]: Edit from July 15, 2019 Agenda & Rules Committee meeting  
Language is unnecessary here

II. MEETINGS

II. MEETINGS

A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair ~~at the conclusion of the business presently before the Council.~~ In the absence of the two officers specified in this section, the ~~Councilmember~~council member present with the longest period of Council service shall preside.

**Commented [NML6]:** Edit from July 15, 2019 Agenda & Rules Committee meeting  
Mayor resume chair upon resuming place on dais  
**Commented [NML7]:** Amended to standardize use throughout the document

B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

D. Council Meeting ~~Schedule~~Conduct of Business

~~The City Council shall hold a minimum of twenty four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.~~

**Commented [NML8]:** Moved to more appropriate location below

~~Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.~~

~~Regular City Council meetings shall begin no later than 6:00 p.m.~~

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

**Commented [NML9]:** Edit from July 15, 2019 Agenda & Rules Committee meeting

**Commented [NML10]:** Items removed from Consent may have many other actions taken and listing this single action is misleading.

Upon request by the Mayor or any ~~Councilmember~~council member, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any ~~Councilmember~~council member, the Council~~council member~~ may also move an item from the Action Calendar to the Consent Calendar.

**Commented [NML11]:** Amended for clarity throughout document

**Commented [NML12]:** Edit from July 15, 2019 Agenda & Rules Committee meeting – changed "a Councilmember" to "the Council"

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious



II. MEETINGS

and lengthy and/or the Council's regular meeting schedule is heavily booked, the ~~Agenda Committee~~Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Commented [NML13]: Amended to standardize use throughout the document

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the ~~Agenda Committee~~Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month ~~except during recess periods~~; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Commented [NML14]: SUPP 1 – Added for clarity

Regular City Council meetings shall begin no later than 6:00 p.m.

Commented [NML15]: Proposed addition regarding starting early for ceremonial items was removed at the July 15, 2019 Agenda & Rules Committee meeting

A recess period is defined as a period of time longer than 21 days without a regular ~~or special~~ meeting of the Council.

Commented [NML16]: Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to

## II. MEETINGS

extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the ~~Agenda Committee~~ Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend ~~through up to the deadline for submission of staff reports for date of the first~~ through up to the date of the first ~~Agenda & Rules Committee~~ Agenda & Rules Committee meeting ~~for the first regular meeting~~ after the Council recess.

Commented [NML17]: The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

Commented [NML18]: Edit from July 15, 2019 Agenda & Rules Committee meeting

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

#### H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the ~~program~~ Ceremonial Calendar will be the Pledge of Allegiance.

#### I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~ be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in ~~public and in accessible~~ locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Commented [NML19]: Edit from July 15, 2019 Agenda & Rules Committee meeting

II. MEETINGS

~~City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.~~

~~Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.~~

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

~~Certain requirements listed above may not apply to a~~ Ad hoc subcommittees ~~may seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.~~ convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

**Commented [NML20]:** Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting. This language mirrors the language used for Policy Committees Charter III, Section G

**Commented [NML21]:** Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting.

## III. AGENDA

## III. AGENDA

## A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items ~~carried over~~ continued from a previous meeting and published on a revised agenda.

Commented [NML22]: Additional clarification

## B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember~~council member~~, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember~~council member~~ so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.

Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:

- In the original item as submitted by the Primary Author
- In a revised item submitted by the Primary Author at the Agenda & Rules Committee
- By verbal request of the Primary Author at the Agenda & Rules Committee
- In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
- By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Commented [NML23]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. New language for designation of co-sponsors from the July 15, 2019 Agenda & Rules Committee meeting – removed limitation on when co-sponsors could be added and changed it to limit the addition of co-sponsors to discretion of the primary author.

Agenda items shall contain all relevant documentation, including the information listed below. ~~following as applicable:~~

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report ~~and action requested;~~
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

III. AGENDA

- c) Recommendation of the City Manager report author that describes the action to be taken on the item, if applicable; ~~(these provisions shall not apply to Mayor and Council items.);~~
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;
- g) Rationale for recommendation;
- h) Alternative actions considered;
- i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
- j) Person or persons to contact for further information, with telephone number.
- k) Additional information and analysis as required. It is recommended that reports include the recommended points of analysis in the Council Report Guidelines in Appendix B.
- ~~j) If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Commented [NML24]: Required by the Brown Act for all agenda items.

Commented [NML25]: SUPP 1 – redundant word deleted

Commented [NML26]: Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.

3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.

4.4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.

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2.5. "Packet" means the agenda plus all its corresponding duplicated agenda items.

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3.6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

III. AGENDA

1-a) \_\_\_\_\_ A work stoppage or other activity which severely impairs public health, safety, or both;

2-b) \_\_\_\_\_ A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

4-7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, ~~as uncompleted items.~~

5-8. "Old Business" Items carried over from a prior agenda of a meeting ~~as uncompleted items occurring more than 11 days earlier.~~

Commented [NML27]: Per Open Government Ordinance

C. Procedure for Bringing Matters Before City Council

a)1. **Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by ~~the Mayor or any Councilmember~~ council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by ~~an the Agenda Committee~~ Agenda & Rules Committee, which shall be a standing committee of the City Council. ~~The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.~~

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Commented [NML28]: Superseded by policy committee section below

The ~~Agenda Committee~~ Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. ~~Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day.~~ The ~~Agenda Committee~~ Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the ~~Agenda Committee~~ Agenda & Rules Committee meeting.

Commented [NML29]: Clarification

~~The Agenda Committee shall have the powers set forth below.~~

~~1. Items Authored by a Councilmember or the Auditor. As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.~~

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~~The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the Agenda Committee meeting whether he or she prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item~~

III. AGENDA

~~completely; or 4) re-submit the item with revisions as requested by the Agenda Committee within 24 hours of the adjournment of the Agenda Committee meeting for the Council agenda under consideration.~~

Commented [NML30]: Current practice

~~In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the Agenda Committee's adjournment, the recommendation of the Agenda Committee will take effect.~~

~~Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.~~

Commented [NML31]: Unnecessary. If the item is being submitted for a future meeting, it is a "new" item.

~~For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading "Referred Items". The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.~~

Commented [NML32]: No longer needed with the policy committee system.

- ~~Reason 1 — Significant Lack of Background or Supporting Information~~
- ~~Reason 2 — Significant Grammatical or Readability Issues~~

The Agenda & Rules Committee shall have the powers set forth below.

Commented [NML33]: SUPP 1 – change as described in the Supp 1 Cover Memo

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:
  - i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
  - ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
  - iii. Refer the item back to the author for adherence to required form or for additional analysis as required in Section III.B.1. (Primary Author may decline and request Policy Committee assignment).

III. AGENDA

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- iv. Refer the item to a Policy Committee.
- v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.iii the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or
- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs i, ii, or iii.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

**a)b) Items Authored by the City Manager.** The ~~Agenda Committee~~Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the ~~Agenda Committee~~Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the ~~referral~~ recommendation of the ~~Agenda Committee~~Agenda & Rules Committee or



III. AGENDA

~~revised items that have not been resubmitted to the Agenda Committee will~~ automatically be placed on the Action Calendar.

**Commented [NML34]:** Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

~~2-c)~~ **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the ~~Agenda Committee~~ Agenda & Rules Committee.

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i) For a commission item that does not require a companion report from the City ~~Mananger~~ Manager, the ~~Agenda Committee~~ Agenda & Rules Committee may act on an agendaized commission report in the following manner:

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~~a-1.~~ 1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

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~~b-2.~~ 2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.

~~c-3.~~ 3. Allow the item to proceed as submitted.

ii) For any commission report that requires a companion report, the ~~Agenda Committee~~ Agenda & Rules Committee ~~may~~ will schedule the item on a Council agenda. ~~The Committee must schedule the the~~ commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the ~~Agenda Committee~~ Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

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~~3-d)~~ 4-d) The ~~Agenda Committee~~ Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

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~~b)2.~~ 2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

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~~c)3.~~ 3. **Submission of Agenda Items.**

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III. AGENDA

**1-a) City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

**2-b) Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.

**3-c) 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 ~~Councilmember~~council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~Agenda & Rules Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the ~~Agenda Committee~~Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the ~~Agenda Committee~~Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the ~~Agenda Committee~~Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

**4-d)** The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

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**d)4. Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

**a)** Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City

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Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation.

b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.

Commented [NML35]: Per Open Government Ordinance

~~4.~~

~~2-c)~~ After ~~5~~12:00 p.m. ~~seven~~one calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

~~e)5.~~ **Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

Commented [NML36]: Reflects current practice, which is much less formal than deleted text.

Commented [NML37]: SUPP 1 – Reflects current practice.

~~Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.~~

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The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.

**i.D. Packet Preparation and Posting**

**a)1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. ~~Reports carried over, as Continued Business or Old Business need not be reproduced again.~~

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Commented [NML38]: Inconsistent with OGO

**b)2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

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**e)3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- ~~i.a)~~ distribute the Agenda Packet to each member of the City Council;
- ~~ii.b)~~ post the Agenda Packet to the City's website;
- ~~iii.c)~~ place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- ~~iv.d)~~ make the Agenda Packet available to members of the press.

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III. AGENDA

~~4.~~ **Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - ~~a.~~ A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - ~~b.~~ Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which support~~ing~~ materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

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**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

- ~~a)1.~~ Preliminary Matters: (Ceremonial, Comments from the City Manager, ~~Comments from the City Auditor, Non-Agenda~~ Public Comment)
- ~~b)2.~~ Consent Calendar
- ~~c)3.~~ Action Calendar
  - ~~1-a)~~ Appeals
  - ~~2-b)~~ Public Hearings
  - ~~3-c)~~ Continued Business
  - ~~4-d)~~ Old Business
  - ~~5-e)~~ New Business
  - ~~6.~~ Referred Items
- ~~4.~~ Information Reports
- ~~d)5.~~ Non-Agenda Public Comment
- ~~e)6.~~ AdjournmentCommunications
- ~~f)7.~~ CommunicationsAdjournment

Commented [NML39]: Edits to reflect current order

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

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

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F. Closed Session Documents

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.

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2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

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3. Removal of confidential materials from a binder is prohibited.

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4. Duplication of the contents of a binder by any means is prohibited.

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5. Confidential materials shall be retained in the binders for at least two years.

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6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

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G. Regulations Governing City Council Policy Committees

Commented [NML40]: Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

1A. Legislative Item Process

All agenda items begin with submission to the Agenda Committee Agenda & Rules Committee.

Full Council Track

Items under this category are exempt from Agenda Committee Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

III. AGENDA

- 4.a. Items submitted by the City Manager and City Auditor
- 5.b. Items submitted by Boards and Commissions
- 6.c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- 7.d. Position Letters and/or Resolutions of Support/Opposition
- 8.e. Donations from the Mayor and Councilmember District Office Budgets
- 9.f. Referrals to the Budget Process
- 10.g. Proclamations
- 11.h. Sponsorship of Events
- 12.i. Information Reports
- 13.j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- 14.l. Committee and Regional Body Appointments

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Commented [NML41]: Clarification

Commented [NML42]: Standard administrative item

~~Notwithstanding the exemption stated above, the Agenda Committee, at its discretion, may route a Full Council Track item submitted by a Councilmember to a policy committee if the item has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues.~~

Commented [NML43]: Change made at September 16, 2019 Agenda & Rules Committee; integrated into next paragraph

~~The Agenda Committee Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.~~

Commented [NML44]: SUPP 1 – this sentence is unnecessary given the current authority of the Agenda & Rules Committee to refer any item to a policy committee

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda Committee Agenda & Rules Committee on a draft City Council agenda (on a list).

Commented [NML45]: Clarification

The Agenda Committee Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda Committee Agenda & Rules Committee. The Agenda Committee Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda Committee Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

## III. AGENDA

Time Critical Track

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 Mayor or ~~Councilmember~~council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~Agenda & Rules Committee's published agenda.

The ~~Agenda Committee~~Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass ~~P~~Policy ~~C~~Committee review if determined to be time critical. If such an item is deemed not to be time critical, it ~~may~~will be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the ~~Agenda Committee~~Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

B2. Council Referrals to Committees

The full Council may refer any agenda item to a ~~P~~Policy ~~C~~Committee by majority vote.

3. Participation Rules for Policy Committees Pursuant to the Brown Act

- a. The quorum of a three-member ~~P~~Policy ~~C~~Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a Policy Committee may not be co-authors of an item that will be heard by the committee.
- e. Only one co-author who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.

Commented [NML46]: New requirements due to re-evaluation of Brown Act applicability to policy committees



III. AGENDA

f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.

Commented [NML47]: SUPP 1 – added for clarification

Commented [NML48]: SUPP 1 – added for clarification

g. An item may be considered by only one Policy Committee before it goes to the full Council.

**C4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.

f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.

f.g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.

Commented [NML49]: Clarification of authority; reflects Charter

g-h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.

i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.

h-j. Per Brown Act regulations, any such revised or supplemental materials must be direct revisions or supplements to the item that was published in the agenda packet.

Commented [NML50]: Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agendized items

Commented [NML51]: SUPP 1 – added for clarification

Formatted: Strikethrough

Items referred to a Policy Committee from the Agenda Committee ~~Agenda & Rules Committee~~ or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

III. AGENDA

Within 120 days of the referral date, the committee must vote to either (1) accept the author’s request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the ~~Agenda-Committee~~Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee’s ~~will include their~~ recommendation will be included in a ~~new~~separate section of the report template for that purpose.

~~A~~ Policy Committee may not refer an item under its consideration to a city board or commission.

Commented [NML52]: Clarification of authority. Commissions are advisory to the Full Council

~~The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the agenda process City Clerk by the members of the committee.~~

Commented [NML53]: Clarification of responsibility for shepherding items through process

~~A policy committee may refer an item to another policy committee for review. The total time for review by all policy committees is limited to the initial 120-day deadline.~~

Commented [NML55]: Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

If a ~~P~~policy ~~C~~committee does not take final action by the 120-day deadline, the item is returned to the ~~Agenda-Committee~~Agenda & Rules Committee and appears on the next available Council agenda. The ~~Agenda-Committee~~Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Commented [NML56]: Closes “endless loop” loophole

~~Policy~~ Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action. ~~Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee.~~

Commented [NML57]: SUPP 1 – This paragraph was re-worded for clarity

## III. AGENDA

Once the item is voted out of a Policy Committee, ~~the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda Committee~~ Agenda & Rules Committee on the next available agenda. The ~~Agenda Committee~~ Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

Commented [NML58]: Clarification

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the ~~committee approves expedited review.~~ item first appeared on the committee agenda.

#### **5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three ~~Councilmembers,~~ with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. ~~The Mayor shall be a member of the Agenda and Rules Committee.~~ The committees are as follows:

Commented [NML59]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

SUPP 1 – comma added after Councilmembers

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The ~~Agenda Committee~~ Agenda & Rules Committee shall establish the ~~P~~policy ~~C~~committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

~~All~~ standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

Commented [NML60]: Clarification

#### **6E. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential ~~legal issues,~~ costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall [stand identify themselves](#), shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 7.1. Public Comment on Consent Calendar and Information Items.

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.” 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.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, [the Mayor or](#) 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.

## IV. CONDUCT OF MEETING

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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.

[This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.](#)

Commented [NML61]: SUPP 1 – added for clarification

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the “Action” section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the “Action” section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the “Public Hearings” section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants [of a single appeal](#) collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. [If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment.](#) Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

Commented [NML62]: Reflects existing due process standards

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

## IV. CONDUCT OF MEETING

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons 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 commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

~~According to the current Rules and Procedures Pursuant to this document,~~ no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the ~~Agenda Committee~~ [Agenda & Rules Committee](#) for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, ~~C~~eouncilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

## IV. CONDUCT OF MEETING

It is the policy of the Council that [the Mayor or Councilmembers](#) wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of [the Mayor or any Councilmember](#) shall be added to the appropriate section of [the Reports for Action Calendar](#) and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of [Mayor or any Councilmember](#) a Report for Information may be acted upon by the Council.

**D. [Written Communications](#)**

~~Letters~~ [Written communications](#) from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." \_

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. [The Mayor or A Councilmember](#) may refer a communication to ~~staff~~ [the City Manager](#) for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

[Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.](#)

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

Commented [NML63]: SUPP 1 – Clarification and updating of language

Commented [NML64]: Clarification per OGO

IV. CONDUCT OF MEETING

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

Commented [NML65]: Same as above

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

Commented [NML66]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Public Discussions**

Commented [NML67]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.



IV. CONDUCT OF MEETING

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~~The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.~~

**H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a ~~Councilmember~~council member except through the Presiding Officer.

## V. PROCEDURAL MATTERS

## V. PROCEDURAL MATTERS

**A. Persons Authorized to Sit at Tables**

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

**B. Decorum**

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council. ~~message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.~~

Commented [NML68]: Clarification that Clerk forwards written communications only, not verbal messages

**C. Enforcement of Decorum**

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

**D. Precedence of Motions**

When a question or motion is before the Council, no motion shall be entertained except:

Commented [NML69]: SUPP 1 - clarification

~~4-1.~~ To adjourn,

~~5-2.~~ To fix the hour of adjournment,

~~6-3.~~ To lay on the table,

~~7-4.~~ For the previous question,

~~8-5.~~ To postpone to a certain day,

~~9-6.~~ To refer,

~~10-7.~~ To amend,

~~11-8.~~ To substitute, and

## V. PROCEDURAL MATTERS

~~42.9.~~ To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to ~~adjourn~~, amend, or substitute, shall be put to a vote without debate.

Commented [NML70]: Motion to adjourn is not debatable pursuant to Roberts Rules

#### E. Roberts Rules of Order

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall ~~supercede~~supersede.

#### F. Rules of Debate

##### 1. Presiding Officer May Debate.

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

##### 2. Getting the Floor - Improper References to be avoided.

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

##### 3. Interruptions.

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

##### 4. Privilege of Closing Debate.

The ~~Mayor or Councilmember~~council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the ~~Mayor or Councilmember~~council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

##### 5. Motion to Reconsider.

A motion to reconsider any action taken by the Council may be made only ~~during the same session on the day~~ such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made ~~and seconded~~ by a member ~~one of~~ the prevailing sides, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

Commented [NML71]: Must happen at the same meeting, not just the same day.

Commented [NML72]: Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.

V. PROCEDURAL MATTERS

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**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. ~~Except as provided in Section V.F.b hereof, c~~ Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of [Good of the City Information Reports](#); provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, ~~the a motion for the~~ previous question, which, if passed [by a 2/3 vote](#), shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph ~~a-1~~ hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any ~~Councilmember~~~~council member~~ to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any ~~Councilmember~~~~council member~~ may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in ~~subparagraph Section a.1D~~ hereof is made and is passed.

Commented [NML73]: SUPP 1 – changes to b) added for clarification

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

~~Any person desiring to address the Council shall first secure the permission of the presiding officer to do so.~~ Under the following headings of business, unless the presiding officer rules otherwise, any ~~qualified and~~ interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

Commented [NML74]: Exactly restated later in same paragraph

Commented [NML75]: Not sure what could be meant by "qualified"

**1. Written Communications.**

## V. PROCEDURAL MATTERS

Interested parties or their authorized representatives may address the Council by in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

~~Communications pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.~~

~~Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.~~

Commented [NML76]: Described elsewhere and unnecessary here.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember~~council member~~ shall address the Council without first securing the permission of the presiding officer or Council to do so.

**VI. FACILITIES**

**A. Council Chamber Capacity**

~~Council Chamber~~ Attendance at council meetings shall be limited to the posted seating capacity of the meeting location thereof. Entrance to the ~~City Hall~~ meeting location will be appropriately regulated by the City Manager on occasions when the ~~Council Chamber~~ capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the ~~Council Chamber~~ meeting room except to address the Council, and sitting on the floor shall not be permitted. ~~The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.~~

Commented [NML77]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

**B. Alternate Facilities for Council Meetings**

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the ~~City Council Chambers~~ School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the ~~City Council Chambers~~ Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the ~~City Council Chambers~~ Board Room.

**C. Signs, Objects, and Symbolic Materials**

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the ~~Council Chamber~~ meeting location during Council meetings.

**D. Fire Safety**

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

**E. Overcrowding**

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the ~~Council Chambers~~ meeting location has have reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

B.A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:



## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

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1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the ~~Agenda Committee~~ [Agenda & Rules Committee](#) to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

- ~~3.2.~~ 3.2. Agenda items shall contain all relevant documentation, including the following as Applicable:
- a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

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Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

#### 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

#### 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

#### 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~–N.S.  
Effective November 12, 2019



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## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set a limit on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

**II. MEETINGS****A. Call to Order - Presiding Officer**

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

**B. Roll Call**

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

**C. Quorum Call**

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

**D. Council Meeting Conduct of Business**

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month except during recess periods; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:

- In the original item as submitted by the Primary Author
- In a revised item submitted by the Primary Author at the Agenda & Rules Committee
- By verbal request of the Primary Author at the Agenda & Rules Committee
- In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
- By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- c) Recommendation of the report author that describes the action to be taken on the item, if applicable;
- d) Fiscal impacts of the recommendation;



- e) A description of the current situation and its effects;
  - f) Background information as needed;
  - g) Rationale for recommendation;
  - h) Alternative actions considered;
  - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j) Person or persons to contact for further information, with telephone number.
  - k) Additional information and analysis as required. It is recommended that reports include the points of analysis in the Council Report Guidelines in Appendix B.
2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.
3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.
4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
5. "Packet" means the agenda plus all its corresponding duplicated agenda items.
6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
8. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

## C. Procedure for Bringing Matters Before City Council

### 1. Persons Who Can Place Matters on the Agenda.

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by the Agenda & Rules Committee, which shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may take the following actions:
  - i. Refer the item to a commission for further analysis (Primary Author may decline and request Policy Committee assignment).
  - ii. Refer the item to the City Manager for further analysis (Primary Author may decline and request Policy Committee assignment).
  - iii. Refer the item back to the author for adherence to required form or for additional analysis as required in Section III.B.1, (Primary Author may decline and request Policy Committee assignment).
  - iv. Refer the item to a Policy Committee.
  - v. Schedule the item for the agenda under consideration or one of the next three full Council agendas.

For referrals under Chapter III.C.1.a.iii the Primary Author must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to:

- 1) re-submit the item for a future meeting with modifications as suggested by the Agenda & Rules Committee; or
- 2) pull the item completely; or

- 3) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration; or
- 4) accept the referral of the Agenda & Rules Committee in sub paragraphs i, ii, or iii.

If the Primary Author requests a Policy Committee assignment, the item will appear on the next draft agenda presented to the Agenda & Rules Committee for assignment.

In the event that the City Clerk does not receive guidance from the Primary Author of the referred item within 24 hours of the Agenda & Rules Committee's adjournment, the item will appear on the next draft agenda for consideration by the Agenda & Rules Committee.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee.

- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
  1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.

2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
  3. Allow the item to proceed as submitted.
    - ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
    - d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.
2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**  
The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.
3. **Submission of Agenda Items.**
- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.
  - b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
  - c) **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 Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

**4. Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.
- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a

factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

**5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda. The Agenda & Rules Committee may request a presentation by staff in consultation with the City Manager.

**D. Packet Preparation and Posting**

**1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

**G. Regulations Governing City Council Policy Committees****1. Legislative Item Process**

All agenda items begin with submission to the Agenda & Rules Committee.

**Full Council Track**

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions



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- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

Time Critical Track

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 Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.

- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

## **2. Council Referrals to Committees**

The full Council may refer any agenda item to a Policy Committee by majority vote.

## **3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a Policy Committee may not be co-authors of an item that will be heard by the committee.
- e. Only one co-author who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.
- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author who is not a member of the committee is present to participate in the discussion of their item, no other non-committee member Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

## **4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.

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- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any revised or supplemental materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendaized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

- 1. Positive Recommendation (recommending Council pass the item as proposed),
- 2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
- 3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
- 4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the City Clerk by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Policy Committees may add discussion topics that are within their purview to their agenda with the concurrence of a majority of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda & Rules Committee on the next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

### **5. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers, with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee

3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

***6. Role of City Staff at Committee Meetings***

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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.” 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.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, the Mayor or 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.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons 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 commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.



It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Written Communications**

Written communications from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question or motion is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate****1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, a motion for the previous question, which, if passed by a 2/3 vote, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by

submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI. FACILITIES

### A. Council Chamber Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.



## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City’s policy on naming of public facilities, for that commission’s review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

## Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

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**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**





Office of the City Manager

ACTION CALENDAR

January 21, 2020

*(Continued from December 3, 2019)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted By: Mark Numainville, City Clerk  
Subject: City Council Rules of Procedure and Order Revisions

RECOMMENDATION

Adopt a Resolution revising the City Council Rules of Procedure and Order to integrate the previously adopted regulations for policy committees and make associated changes to other sections; update outdated references and practices; conform to the Open Government Ordinance; make other technical corrections; and rescinding any preceding amendatory resolutions.

POLICY COMMITTEE RECOMMENDATION

On September 16, 2019, the Agenda & Rules Committee adopted the following action: M/S/C (Harrison/Wengraf) to send the item to the City Council with a Positive Recommendation on the proposed amendments to the Rules of Procedure including the changes and edits made at the meeting on pages 10, 11, 14, 20, 21, 22, and 23; and to change “Co-Author” to “Co-Sponsor” throughout; add “Mayor” when using term “Councilmember;” and add a definition for “Primary Author.” The Committee also requested that a standing item be added to the agenda for discussion of further changes to the Rules of Procedure. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

This report and resolution are a response to the need to update the Rules of Procedure (ROP) to incorporate the regulations adopted to govern City Council Policy Committees in Resolution 68,726-N.S. adopted on December 11, 2018. The policy committee resolution was not adopted as an amendment to the ROP in December 2018. In addition, with six months of policy committee meetings completed, the need for amendments to the original policy committee regulations have surfaced. The amendments related to policy committees have ripples throughout the document and required changes to the sections for the Agenda Committee and the legislative process.

Some of the amendments related to policy committees are related to the participation of councilmembers. These amendments are being proposed due to a re-evaluation of the Brown Act's applicability to the policy committee process. After thorough review by the City Attorney's Office, the City Clerk Department, and the Chair of the League of California Cities Brown Act Committee, staff has concluded that new rules limiting participation by councilmembers are required. These changes are located on pages 20-21 of Attachment 2.

Further amendments to the policy committee rules are related to the authority of the Agenda & Rules Committee, calling special meetings of policy committees, responsibilities for shepherding legislation through the committee process, closing loopholes that would delay council items, and the rules for expedited review.

With the significant amendments needed to incorporate policy committees, staff recommends using this update to make other amendments related to the items below.

- Schedule for revised and supplemental materials per the Open Government Ordinance
- Outdated language related to agenda sections and headings
- Changes to the procedure for adding co-sponsors to agenda items
- Clarification regarding public comment on appeals
- Parliamentary clarifications to adhere to Roberts Rules of Order
- Updates related to moving Council meetings to the BUSD Board Room
- Other minor modifications and technical corrections

A fully annotated version of the revised document with all amendments in track changes is in Attachment 2.

#### BACKGROUND

The City Council Rules of Procedure and Order governs the duties of the Council, the conduct of meetings, the agenda, procedural matters and facilities. The rules have been amended as necessary over time to improve the function of the Agenda Committee and the conduct of City Council meetings.

#### ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This update is primarily to incorporate the changes regarding policy committees that were adopted separately in Resolution 68,726-N.S. regarding council policy committees. Other conforming changes and technical updates are also included in this revision.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

- 1: Resolution  
    Exhibit A: City Council Rules of Procedure and Order (Clean Version)
- 2: Rules of Procedure with Track Changes

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

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order attached hereto as Exhibit A shall govern all proceedings of the City Council therein described, subject to the exception and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure.

BE IT FURTHER RESOLVED that this update is primarily to incorporate the changes regarding policy committees that were adopted separately in Resolution 68,726-N.S. regarding council policy committees.

BE IT FURTHER RESOLVED that all preceding amendatory resolutions, including Resolution No. 68,753-N.S., are hereby rescinded.

Exhibit A: City Council Rules of Procedure and Order

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~–N.S.  
Effective **October 29, 2019**

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**I. DUTIES****A. Duties of Mayor**

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

**B. Duties of Councilmembers**

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

**C. Motions to be Stated by Chair**

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

**D. Decorum by Councilmembers**

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set limits on the speaking time allotted to Councilmembers during Council discussion.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

**E. Voting Disqualification**

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be



decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair. In the absence of the two officers specified in this section, the Councilmember present with the longest period of Council service shall preside.

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting Conduct of Business

The agenda for the regular business meetings shall include the following: Ceremonial Items (including comments from the City Auditor if requested); Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by the Mayor or any Councilmember, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by the Mayor or any Councilmember, the Council may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

A recess period is defined as a period of time longer than 21 days without a regular meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend up to the date of the Agenda & Rules Committee meeting for the first regular meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the Ceremonial Calendar will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Councilmembers may be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Ad hoc subcommittees may convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items continued from a previous meeting and published on a revised agenda.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if the Mayor or a Councilmember so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter. Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:
  - In the original item as submitted by the Primary Author
  - In a revised item submitted by the Primary Author at the Agenda & Rules Committee
  - By verbal request of the Primary Author at the Agenda & Rules Committee
  - In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
  - By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report;
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- c) Recommendation of the report author that describes the action to be taken on the item, if applicable;

- d) Fiscal impacts of the recommendation;
  - e) A description of the current situation and its effects;
  - f) Background information as needed;
  - g) Rationale for recommendation;
  - h) Alternative actions considered;
  - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j) Person or persons to contact for further information, with telephone number.
  - k) Additional information and analysis as required. It is recommended that reports include the recommended points of analysis in the Council Report Guidelines in Appendix B.
2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.
  3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.
  4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
  5. "Packet" means the agenda plus all its corresponding duplicated agenda items.
  6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
    - a) A work stoppage or other activity which severely impairs public health, safety, or both;
    - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
  7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier.
  8. "Old Business" Items carried over from a prior agenda of a meeting occurring more than 11 days earlier.

**C. Procedure for Bringing Matters Before City Council****1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by the Mayor or any Councilmember, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by the Agenda & Rules Committee, which shall be a standing committee of the City Council.

The Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day. The Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the Agenda & Rules Committee meeting.

The Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a Policy Committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a “referred” item must inform the City Clerk within 24 hours of the adjournment of the Agenda & Rules Committee meeting whether they prefer to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the Agenda & Rules Committee within 24 hours of the adjournment of the Agenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a Policy Committee.

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the Agenda & Rules Committee’s adjournment, the recommendation of the Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk.

- b) **Items Authored by the City Manager.** The Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the recommendation of the Agenda & Rules Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda & Rules Committee.
- i) For a commission item that does not require a companion report from the City Manager, the Agenda & Rules Committee may act on an agendaized commission report in the following manner:
1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
  2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
  3. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the Agenda & Rules Committee may schedule the item on a Council agenda. The Committee must schedule the the commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E.



2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**  
The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.
3. **Submission of Agenda Items.**
  - a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.
  - b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
  - c) **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 Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.
4. **Submission of Supplemental and Revised Agenda Material.**  
Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:
    - a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council

meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.
- c) After 12:00 p.m. one calendar day prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

#### **5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

### **D. Packet Preparation and Posting**

#### **1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4.

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
4. Information Reports
5. Non-Agenda Public Comment
6. Adjournment
7. Communications

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

The Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## **G. Regulations Governing City Council Policy Committees**

### **1. Legislative Item Process**

All agenda items begin with submission to the Agenda & Rules Committee.

#### Full Council Track

Items under this category are exempt from Agenda & Rules Committee discretion to refer them to a Policy Committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- l. Committee and Regional Body Appointments

The Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.

Policy Committee Track

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee. The Agenda & Rules Committee may only assign the item to a single Policy Committee.

For a Policy Committee Track item, the Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Policy Committee.

Time Critical Track

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 Mayor or Councilmember is received by the City Clerk after established deadlines and is not included on the Agenda & Rules Committee's published agenda.

The Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Policy Committee review if determined to be time critical. If such an item is deemed not to be time critical, it may be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

**2. Council Referrals to Committees**

The full Council may refer any agenda item to a Policy Committee by majority vote.

**3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member Policy Committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed

- alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a Policy Committee may not be co-authors of an item that will be heard by the committee.
  - e. Only one co-author who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.
  - f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other Councilmembers, nor the Mayor, may attend as observers.
  - g. An item may be considered by only one Policy Committee before it goes to the full Council.

#### 4. Functions of the Committees

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Policy Committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- j. Per Brown Act regulations, any such materials must be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a Policy Committee from the Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's recommendation will be included in a separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the agenda process by the members of the committee.

If a Policy Committee does not take final action by the 120-day deadline, the item is returned to the Agenda & Rules Committee and appears on the next available Council agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Once the item is voted out of a Policy Committee, the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda & Rules Committee on the



next available agenda. The Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the committee approves expedited review.

### **5. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee. The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The Agenda & Rules Committee shall establish the Policy Committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing Policy Committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

### **6. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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.” 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.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, the Mayor or 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.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons 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 commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of the Mayor or any Councilmember shall be added to the appropriate section of the Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of Mayor or any Councilmember a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. The Mayor or a Councilmember may refer a communication to the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember except through the Presiding Officer.

**V. PROCEDURAL MATTERS****A. Persons Authorized to Sit at Tables**

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

**B. Decorum**

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council.

**C. Enforcement of Decorum**

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

**D. Precedence of Motions**

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and
9. To postpone indefinitely.



These motions shall have precedence in order indicated. Any such motion, except a motion to amend or substitute, shall be put to a vote without debate.

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The Mayor or Councilmember moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the Mayor or Councilmember moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by a member on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph 1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any Councilmember to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any Councilmember may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in Section D hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Under the following headings of business, unless the presiding officer rules otherwise, any interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI.FACILITIES

### A. Council Chamber Capacity

Attendance at council meetings shall be limited to the posted seating capacity of the meeting location. Entrance to the meeting location will be appropriately regulated by the City Manager on occasions when capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the meeting room except to address the Council, and sitting on the floor shall not be permitted.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda & Rules Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.



## Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

This version incorporates  
the edits and changes  
made through the  
meeting of Sept. 16, 2019.

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. ~~##,###~~–N.S.  
Effective ~~October~~ 29, 2019

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## I. DUTIES

## I. DUTIES

## A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

Commented [NML1]: Standard current practice per City Charter

## B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

## C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

## D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set limits on the speaking time allotted to Councilmembers during Council discussion.

Commented [NML2]: Edit from July 15, 2019 Agenda & Rules Committee meeting

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

## E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be



I. DUTIES

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~ ~~recuse~~ themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML3]: Correct terminology

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

**~~G. City Council Policy for Naming and Renaming Public Facilities~~**

~~The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.~~

Commented [NML4]: Edit from July 15, 2019 Agenda & Rules Committee meeting  
Language is unnecessary here

II. MEETINGS

II. MEETINGS

A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair ~~at the conclusion of the business presently before the Council.~~ In the absence of the two officers specified in this section, the ~~Councilmember~~~~council member~~ present with the longest period of Council service shall preside.

Commented [NML5]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Mayor resume chair upon resuming place on dais

Commented [NML6]: Amended to standardize use throughout the document

B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

D. Council Meeting ~~Schedule~~Conduct of Business

~~The City Council shall hold a minimum of twenty four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.~~

Commented [NML7]: Moved to more appropriate location below

~~Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.~~

~~Regular City Council meetings shall begin no later than 6:00 p.m.~~

The agenda for the regular business meetings shall include the following: Ceremonial ~~Items (including comments from the City Auditor if requested);~~ Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Commented [NML8]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Commented [NML9]: Items removed from Consent may have many other actions taken and listing this single action is misleading.

Upon request by ~~the Mayor or~~ any ~~Councilmember~~~~council member~~, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by ~~the Mayor or~~ any ~~Councilmember~~~~council member~~, ~~athe~~ ~~Council~~~~council member~~ may also move an item from the Action Calendar to the Consent Calendar.

Commented [NML10]: Amended for clarity throughout document

Commented [NML11]: Edit from July 15, 2019 Agenda & Rules Committee meeting – changed "a Councilmember" to "the Council"

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious

## II. MEETINGS

and lengthy and/or the Council's regular meeting schedule is heavily booked, the ~~Agenda Committee~~Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Commented [NML12]: Amended to standardize use throughout the document

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the ~~Agenda Committee~~Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

Pursuant to the Open Government Ordinance, the City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

Commented [NML13]: Proposed addition regarding starting early for ceremonial items was removed at the July 15, 2019 Agenda & Rules Committee meeting

A recess period is defined as a period of time longer than 21 days without a regular ~~or special~~ meeting of the Council.

Commented [NML14]: Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to

## II. MEETINGS

extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the ~~Agenda Committee~~ Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend ~~through-up to the deadline for submission of staff reports for date of the first~~ Agenda & Rules Committee meeting ~~for the first regular meeting~~ after the Council recess.

Commented [NML15]: The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

Commented [NML16]: Edit from July 15, 2019 Agenda & Rules Committee meeting

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

#### H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the ~~program~~ Ceremonial Calendar will be the Pledge of Allegiance.

#### I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~ be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in ~~public and in accessible~~ locations that are open to the public ~~and meet accessibility requirements under the Americans with Disabilities Act~~. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Commented [NML17]: Edit from July 15, 2019 Agenda & Rules Committee meeting

II. MEETINGS

~~City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.~~

Ad hoc subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

~~Certain requirements listed above may not apply to a~~Ad hoc subcommittees may seek legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.~~convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.~~

Commented [NML18]: Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting. This language mirrors the language used for Policy Committees Charter III, Section G

Commented [NML19]: Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting.

## III. AGENDA

## III. AGENDA

## A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items ~~carried over~~ continued from a previous meeting and published on a revised agenda.

Commented [NML20]: Additional clarification

## B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

- "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by ~~the Mayor or any Councilmember~~ council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if ~~the Mayor or a Councilmember~~ council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.

Council agenda items are limited to a maximum of three Co-Sponsors (in addition to the Primary Author). Co-Sponsors to Council reports may only be added in the following manner:

Commented [NML21]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. New language for designation of co-sponsors from the July 15, 2019 Agenda & Rules Committee meeting – removed limitation on when co-sponsors could be added and changed it to limit the addition of co-sponsors to discretion of the primary author.

- In the original item as submitted by the Primary Author
- In a revised item submitted by the Primary Author at the Agenda & Rules Committee
- By verbal request of the Primary Author at the Agenda & Rules Committee
- In a revised item submitted by the Primary Author in Supplemental Reports and Communications Packet #1 or #2
- By verbal or written request of the Mayor or any Councilmember at the Policy Committee meeting or meeting of the full council at which the item is considered

Agenda items shall contain all relevant documentation, including the information listed below, following as applicable:

- A descriptive title that adequately informs the public of the subject matter and general nature of the item or report ~~and action requested~~;
- Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;

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- c) Recommendation of the City Manager report author that describes the action to be taken on the item, if applicable; ~~(these provisions shall not apply to Mayor and Council items.);~~
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;
- g) Rationale for recommendation;
- h) Alternative actions considered;
- i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
- j) Person or persons to contact for further information, with telephone number.
- k) Additional information and analysis as required. It is recommended that reports include the recommended points of analysis in the Council Report Guidelines in Appendix B.
- j) ~~If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Commented [NML22]: Required by the Brown Act for all agenda items.

Commented [NML23]: Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Primary Author" means the Mayor or Councilmember that initiated, authored, and submitted a council agenda item.

3. "Co-Sponsor" means the Mayor or other Councilmembers designated by the Primary Author to be co-sponsor of the council agenda item.

4. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.

5. "Packet" means the agenda plus all its corresponding duplicated agenda items.

6. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

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- a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
7. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, ~~as uncompleted items.~~
8. "Old Business" Items carried over from a prior agenda of a meeting ~~as uncompleted items occurring~~ occurring more than 11 days earlier.

Commented [NML24]: Per Open Government Ordinance

**C. Procedure for Bringing Matters Before City Council**

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by the Mayor or any Councilmember~~council member~~, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by ~~an the Agenda Committee~~ Agenda & Rules Committee, which shall be a standing committee of the City Council. ~~The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.~~

Commented [NML25]: Superseded by policy committee section below

The ~~Agenda Committee~~ Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. ~~Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day.~~ The ~~Agenda Committee~~ Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the ~~Agenda Committee~~ Agenda & Rules Committee meeting.

Commented [NML26]: Clarification

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by the Mayor, a Councilmember, or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the ~~Agenda Committee~~ Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a Policy Committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the ~~Agenda Committee~~ Agenda & Rules Committee meeting whether ~~he or she~~ they prefers to: 1) hold the item for a future



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meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the ~~Agenda Committee~~ Agenda & Rules Committee within 24 hours of the adjournment of the Agenda Committee Agenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a Policy Committee.

Commented [NML27]: Current practice

Commented [NML28]: Per policy committee regulations

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the ~~Agenda Committee~~ Agenda & Rules Committee's adjournment, the recommendation of the ~~Agenda Committee~~ Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.

Commented [NML29]: Unecessary. If the item is being submitted for a future meeting, it is a "new" item.

~~For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading "Referred Items". The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.~~

Commented [NML30]: No longer needed with the policy committee system.

- Reason 1— Significant Lack of Background or Supporting Information
- Reason 2— Significant Grammatical or Readability Issues

b) **Items Authored by the City Manager.** The ~~Agenda Committee~~ Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the ~~Agenda Committee~~ Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the referral recommendation of the Agenda Committee Agenda & Rules Committee or revised items that have not been resubmitted to the Agenda Committee will automatically be placed on the Action Calendar.

Commented [NML31]: Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the

Commissioners' Manual. The content of commission items is not subject to review by the ~~Agenda Committee~~Agenda & Rules Committee.

- i) For a commission item that does not require a companion report from the City ~~Mananger~~Manager, the ~~Agenda Committee~~Agenda & Rules Committee may act on an agendized commission report in the following manner:
  - 1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
  - 2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
  - 3. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the ~~Agenda Committee~~Agenda & Rules Committee ~~may~~will schedule the item on a Council agenda. ~~The Committee must schedule the the~~commission item for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the ~~Agenda Committee~~Agenda & Rules Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The ~~Agenda Committee~~Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

## 2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

## 3. Submission of Agenda Items.

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.
- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.

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- c) **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 ~~Councilmember~~~~council member~~ is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~~~Agenda & Rules Committee~~'s published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the ~~Agenda Committee~~~~Agenda & Rules Committee~~. Time Critical items must be accompanied by complete reports and statements of financial implications. If the ~~Agenda Committee~~~~Agenda & Rules Committee~~ finds the matter to meet the definition of Time Critical, the ~~Agenda Committee~~~~Agenda & Rules Committee~~ may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~~~Agenda & Rules Committee~~ meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

4. **Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation.
- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to

Commented [NML32]: Per Open Government Ordinance

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the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council evaluation.

a)–

b)c) After ~~5~~12:00 p.m. ~~seven~~–one calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council–member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

#### 5. Scheduling a Presentation.

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

~~Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.~~

~~The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.~~

Commented [NML33]: Reflects current practice, which is much less formal than deleted text.

**D. Packet Preparation and Posting****1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. ~~Reports carried over, as Continued Business or Old Business need not be reproduced again.~~

Commented [NML34]: Inconsistent with OGO

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention

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of the City subsequent to the posting of the agenda as required by law.

- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

#### E. **Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Comments from the City Auditor, Non-Agenda Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business
  - ~~f) Referred Items~~
4. Information Reports
- 4-5. Non-Agenda Public Comment
- 5-6. Adjournment Communications
- 6-7. Communications Adjournment

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

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

#### F. **Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed

Commented [NML35]: Edits to reflect current order

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session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

#### G. Regulations Governing City Council Policy Committees

##### 1A. Legislative Item Process

All agenda items begin with submission to the ~~Agenda Committee~~ Agenda & Rules Committee.

##### Full Council Track

Items under this category are exempt from ~~Agenda Committee~~ Agenda & Rules Committee discretion to refer them to a ~~Policy Committee~~. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from the Mayor and Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports

Commented [NML36]: Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

Commented [NML37]: Clarification

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j. Presentations from Outside Agencies and Organizations

k. Ceremonial Items

k.l. Committee and Regional Body Appointments

Commented [NML38]: Standard administrative item

~~Notwithstanding the exemption stated above, the Agenda Committee, at its discretion, may route a Full Council Track item submitted by a Councilmember to a policy committee if the item has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues.~~

Commented [NML39]: Change made at September 16, 2019 Agenda & Rules Committee; integrated into next paragraph

~~The Agenda Committee~~Agenda & Rules Committee has discretion to determine if an item submitted by the Mayor or a Councilmember falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item. If an item submitted by the Mayor or a Councilmember has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues the Agenda & Rules committee may refer the item to a Policy Committee.

Policy Committee Track

~~Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda Committee~~Agenda & Rules Committee on a draft City Council agenda (on a list).

Commented [NML40]: Clarification

~~The Agenda Committee~~Agenda & Rules Committee must refer an item to a Ppolicy Ccommittee at the first meeting that the item appears before the Agenda-CommitteeAgenda & Rules Committee. The Agenda-CommitteeAgenda & Rules Committee may only assign the item to a single Ppolicy Ccommittee.

For a Policy Committee Track item, the Agenda-CommitteeAgenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a Ppolicy Ccommittee.

Time Critical Track

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 Mayor or Councilmembercouncil member is received by the City Clerk after established deadlines and is not included on the Agenda-CommitteeAgenda & Rules Committee's published agenda.

The Agenda-CommitteeAgenda & Rules Committee retains final discretion to determine the time critical nature of an item.



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- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass Ppolicy Ccommittee review if determined to be time critical. If such an item is deemed not to be time critical, it maywill be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the Agenda CommitteeAgenda & Rules Committee may go directly on a council agenda if determined to be time critical.

**B2. Council Referrals to Committees**

The full Council may refer any agenda item to a Ppolicy Ccommittee by majority vote.

**3. Participation Rules for Policy Committees Pursuant to the Brown Act**

Commented [NML41]: New requiremetns due to re-evaluation of Brown Act applicability to policy committees

- a. The quorum of a three-member Ppolicy Ccommittee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two Policy Committee members may not discuss any item that has been referred to the Policy Committee outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a Policy Committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or action on the item. For purposes of the item, the appointed alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a Policy Committee may not be co-authors of an item that will be heard by the committee.
- e. Only one co-author who is not a member of the Policy Committee may attend the committee meeting to participate in discussion of the item.
- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other Councilmembers, nor the Mayor, may attend as observers.
- g. An item may be considered by only one Policy Committee before it goes to the full Council.

**C4. Functions of the Committees**

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Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- f.g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- g.h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a Ppolicy Ccommittee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- h.j. Per Brown Act regulations, any such materials must be direct revisions or supplements to the item that was published in the agenda packet.

Commented [NML42]: Clarification of authority; reflects Charter

Commented [NML43]: Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agendized items

Items referred to a Ppolicy Ccommittee from the ~~Agenda Committee~~ Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the ~~Agenda Committee~~ Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),

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- 3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
- 4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's ~~will include their~~ recommendation will be included in a new separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

Commented [NML44]: Clarification of authority. Commissions are advisory to the Full Council

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the Policy Committee are submitted to the agenda process by the members of the committee.

Commented [NML45]: Clarification of responsibility for shepherding items through process

A policy committee may refer an item to another policy committee for review. The total time for review by all policy committees is limited to the initial 120-day deadline.

Commented [NML46]: Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

If a ~~P~~policy ~~C~~committee does not take final action by the 120-day deadline, the item is returned to the ~~Agenda Committee~~Agenda & Rules Committee and appears on the next available Council agenda. The ~~Agenda Committee~~Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a Policy Committee may not be referred to a Policy Committee and must remain on the full Council agenda for consideration.

Commented [NML47]: Closes "endless loop" loophole

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Commented [NML48]: Clarification

Once the item is voted out of a ~~P~~policy ~~C~~committee, the final item will be resubmitted to the agenda process by the author, and it will return to the ~~Agenda Committee~~Agenda & Rules Committee on the next available agenda. The ~~Agenda Committee~~Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

Commented [NML49]: Clarification

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the

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deadline for final committee action is 45 days from the date the committee approves expedited review. ~~item first appeared on the committee agenda.~~

**5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three Councilmembers ~~with a fourth Councilmember appointed as an alternate~~. Each Councilmember and the Mayor will serve on two committees. The Mayor shall be a member of the Agenda and Rules Committee.

The committees are as follows:

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

~~The Agenda Committee~~ Agenda & Rules Committee shall establish the Ppolicy ~~Ccommittee~~ topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All ~~standing~~ Policy Committees of the City Council are considered "legislative bodies" under the Brown Act and must conduct all business in accordance with the Brown Act.

**6E. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Commented [NML50]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

Commented [NML51]: Clarification

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and/or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall stand identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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.” 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.”

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. 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, the Mayor or 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.

## IV. CONDUCT OF MEETING

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

Commented [NML52]: Reflects existing due process standards

#### 4. **Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons 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 commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

~~According to the current Rules and Procedures~~Pursuant to this document, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the ~~Agenda Committee~~**Agenda & Rules Committee** for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

#### 5. **Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

#### **B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, Councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

## IV. CONDUCT OF MEETING

It is the policy of the Council that ~~the Mayor or C~~councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of ~~the Mayor or any Councilmember~~council member shall be added to the appropriate section of ~~the Reports for~~ Action Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of ~~Mayor or any Councilmember~~council member a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." \_

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. ~~The Mayor or Aa Councilmember~~council member may refer a communication to ~~staff~~the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

Commented [NML53]: Clarification per OGO

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review



IV. CONDUCT OF MEETING

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

Commented [NML54]: Same as above

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, 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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. 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.

Commented [NML55]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Public Discussions**

Commented [NML56]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.

~~The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.~~

#### H. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a Councilmember~~council member~~ except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council. ~~message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.~~

Commented [NML57]: Clarification that Clerk forwards written communications only, not verbal messages

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and

## V. PROCEDURAL MATTERS

## 9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to ~~adjourn~~, amend, or substitute, shall be put to a vote without debate.

Commented [NML58]: Motion to adjourn is not debatable pursuant to Roberts Rules

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall ~~supercedes~~supersede.

**F. Rules of Debate****1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The ~~Mayor or Councilmember~~council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the ~~Mayor or Councilmember~~council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session on the day such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made ~~and seconded~~ by a member one of on the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

Commented [NML59]: Must happen at the same meeting, not just the same day.

Commented [NML60]: Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

## V. PROCEDURAL MATTERS

**G. Debate Limited**

1. ~~Except as provided in Section V.F.b hereof, c~~Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Good of the City Information Reports; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph ~~a.1~~ hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any ~~Councilmember~~~~council member~~ to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any ~~Councilmember~~~~council member~~ may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in ~~subparagraph~~~~Section a.4D~~ hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

~~Any person desiring to address the Council shall first secure the permission of the presiding officer to do so.~~ Under the following headings of business, unless the presiding officer rules otherwise, any ~~qualified and~~ interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

1. **Written Communications.**

Commented [NML61]: Exactly restated later in same paragraph

Commented [NML62]: Not sure what could be meant by "qualified"

## V. PROCEDURAL MATTERS

Interested parties or their authorized representatives may address the Council by in the form of written communications in regard to matters of concern to them by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.

~~Communications pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.~~

~~Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.~~

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than the Mayor or a Councilmember~~council member~~ shall address the Council without first securing the permission of the presiding officer or Council to do so.

Commented [NML63]: Described elsewhere and unnecessary here.

## VI. FACILITIES

## VI. FACILITIES

**A. Council Chamber Capacity**

~~Council Chamber~~ Attendance at council meetings shall be limited to the posted seating capacity of the meeting location thereof. Entrance to the City Hall meeting location will be appropriately regulated by the City Manager on occasions when the ~~Council Chamber~~ capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the ~~Council Chamber~~ meeting room except to address the Council, and sitting on the floor shall not be permitted. ~~The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.~~

Commented [NML64]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

**B. Alternate Facilities for Council Meetings**

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the ~~City Council Chambers~~ School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the ~~City Council Chambers~~ Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the ~~City Council Chambers~~ Board Room.

**C. Signs, Objects, and Symbolic Materials**

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the ~~Council Chamber~~ meeting location during Council meetings.

**D. Fire Safety**

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

**E. Overcrowding**

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the ~~Council Chambers~~ meeting location has reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.



## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the ~~Agenda Committee~~Agenda & Rules Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

## Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**





Office of the City Manager

ACTION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Sugar Sweetened Beverage Product Panel of Experts (SSBPPE)

Submitted by: Poki Namkung, Chairperson, SSBPPE Commission

Subject: Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales and Serving of Sugar-Sweetened Beverages.

RECOMMENDATION

The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not:

- 1) Serve sugar-sweetened beverages at City meetings and events on City property;
- 2) Procure sugar-sweetened beverages with City funds; or,
- 3) Sell sugar-sweetened beverages on City property, including in vending machines.

FISCAL IMPACTS OF RECOMMENDATION

Cost of promulgating information, notifying City Departments and revising clauses in City contracts.

CURRENT SITUATION AND ITS EFFECTS

Currently, the City of Berkeley has no policy regarding either the procurement of sugar-sweetened beverages with City funds or the sales or distribution of sugar-sweetened beverages at City meetings and events or on City property.

On September 19, 2019, the SSBPPE Commission voted as follows:

**Moved to approve and adopt the SSB Resolution (version #13) and the accompanying Council Report and forward to the City Council.**

**M/S/C:** Commissioners Scheider/Rose

**Ayes:** Commissioners Browne, Crawford, Moore, Rose, Ishii, and Scheider

**Noes:** None

**Abstain:** None

**Absent from vote:** None

**Recused:** None

**Excused:** Commissioners Morales and Namkung

Definitions: Sugar-sweetened beverages or SSBs refer to all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, as defined in Chapter 7.72 of the City of Berkeley Municipal Code.i SSBs include juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks. These drinks offer little or no nutritional value, but include massive quantities of added sugar. For instance, a single 20-ounce bottle of soda typically contains the equivalent of approximately 16 teaspoons of sugar.

In BMC Chapter 7.72, SSBs exclude 100% juice, diet drinks, waters, and milk drinks as well as medical drinks and baby formula.

### BACKGROUND

In November of 2014, the Berkeley voters passed Measure D with 76% of the vote, which requires both the collection of a 1 cent-per-ounce tax on the distribution of SSBs in the City of Berkeley and the convening of the Sugar Sweetened Beverage Products Panel of Experts (SSBPPE) to recommend investments to both reduce the consumption of SSBs as well as to address the health consequences of the consumption of SSBs including diabetes, dental caries, heart disease and obesity.ii

To accomplish these goals, the SSBPPE recommended that the City create the Healthy Berkeley program to reduce the consumption of sugar-sweetened beverages (“SSB”) in Berkeley and to address the effects of SSB consumption. The City Council unanimously adopted this recommendation on November 29, 2016 and awarded a \$1.5 million per year investment to be granted to community agencies and the Berkeley Unified School District garden and nutrition program. \$225,000, or 15%, of this funding is allocated to the City Public Health Division to administer and evaluate the Healthy Berkeley Program. See November 29, 2016, Council agenda items 33a and 33b.iii

The City of Berkeley requires that all Healthy Berkeley funded programs (including the school district) adopt an organizational policy curtailing the service, procurement and sale of SSBs. The purpose of these organizational policies is to change norms in our community about consuming sugary drinks and support the educational work of these programs.

We know from the public health campaigns to reduce tobacco use, that institutional policies that change norms have a powerful impact on behavior and are a vital tool to improving health in our communities. Education and media campaigns are not enough to change behaviors, especially when pervasive and persuasive marketing by corporations influence choices that people make, and when there is an addictive aspect to the behavior as is the case with both tobacco and sugar.iv

### ENVIRONMENTAL SUSTAINABILITY

None

RATIONALE FOR RECOMMENDATION

In 2014, Berkeley voters overwhelmingly passed Measure D and since then the City of Berkeley has led the effort to reduce the consumption of sugary drinks and resulting health impacts and disparities, not only in Berkeley but also in the Bay Area and nationwide. Sales of sugary beverages have decreased and school and community groups have been funded to continue the effort to reduce sugary drink consumption and improve health. Now is an opportune time for the City to once again provide leadership for City employees and the community by enacting a healthy beverage policy for the City that restricts procurement of sugary drinks as well as the serving and sales of sugary drinks at City events. This policy would be responsive to the will of the voters, supportive of school and community efforts to improve Berkeley residents' health, and a model to other cities. This policy will align the City with Healthy Berkeley grantees who have already adopted similar policies. The SSBPPE encourages the City to take this step to set an example and demonstrate its own commitment to the further reducing sugary drink consumption and improvement in community health.

ALTERNATIVE ACTIONS CONSIDERED

In January 2018, the SSSBPPE voted to recommend that the Berkeley City Council adopt an Ordinance amending the Administrative Code to direct the City of Berkeley departments and City food services contractors to refrain from: 1) Procuring sugar-sweetened beverages with City funds; 2) Selling sugar-sweetened beverages on City property, including in vending machines; and, 3) Serving sugar-sweetened beverages at City meetings and events on City property. On March 27, 2018, the City Council voted to refer the recommendation to the City Manager and request that the City Manager draft an ordinance for consideration by the City Council. In June 2018, the City Council ranked this ordinance around 32 among items to develop for the City. No further action was taken until May of 2019, when Council Member Harrison reached out to Holly Scheider, her appointee on the SSBPPE Commission, and suggested that the Commission put forward a Resolution in place of an Ordinance with the same content.

CITY MANAGER

See the City Manager companion report.

CONTACT PERSON

Dechen Tsering, SSBPPE Commission Secretary (510) 981-5394

## Attachments:

1: Resolution

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

RESOLUTION ESTABLISHING CITY POLICY / AMENDING THE ADMINISTRATIVE CODE TO DIRECT CITY OF BERKELEY DEPARTMENTS AND CONTRACTORS TO REFRAIN FROM PROCURING, SERVING OR SELLING SUGARY DRINKS

WHEREAS, the City of Berkeley is known for its commitment to reducing inequities in diet and disease and in promoting access to healthy food and beverages.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of becoming diabetic.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of early death from cardiovascular disease.

WHEREAS, city employees deserve a healthy work environment, with an increased variety of healthier low-sugar alternative beverages such as flavored waters, plain or carbonated water, 100% juice, milk drinks, diet drinks, unsweetened or artificially sweetened iced teas and coffee drinks.

WHEREAS, it is recognized that city staff are free to bring and consume their own sugary beverages at work.

WHEREAS, other public institutions that have completely eliminated the sales of sugar sweetened beverages on their premises and have demonstrated that as a result, positive changes have been documented in the staff's metabolic disease indicators associated with lower risk of diabetes and heart disease

WHEREAS, giving City employees access to healthier beverages in the workplace will increase healthy beverage consumption and reduce the impact of diet-related disease, thus reducing the City's health care expenses.

WHEREAS, the City of Berkeley requires that *all* organizations receiving funding from Healthy Berkeley not serve or sell sugar sweetened beverages on their premises.

WHEREAS, the Berkeley Unified School District does not serve or sell soda to students of all ages and students on their premises and this contributes to positive adult role modeling regarding healthy beverage consumption.

WHEREAS, Chapter 7.72 of the City of Berkeley Municipal Code<sup>v</sup> has already defined sugar-sweetened beverages as all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, including juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks which offer little or no nutritional value, but include massive quantities of added sugar and in addition, Berkeley Municipal Code Chapter 7.72 also defines exemptions and thus excludes waters, 100% juice, milk drinks, diet drinks, as well as medical drinks and baby formula.

THEREFORE BE IT RESOLVED that the City of Berkeley and City food services contractors **shall not**:

- 1) Serve sugar-sweetened beverages at City meetings and events on City property,
- 2) Procure sugar-sweetened beverages with City funds; and,
- 3) Sell sugar-sweetened beverages on City property, including in vending machines.

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i B.M.C. 7388-NS § 7.72, 2014, City of Berkeley

ii B.M.C. 7388-NS § 7.72, 2014, City of Berkeley

iii Berkeley Nov. 29, 2016 agenda:

[https://www.cityofberkeley.info/Clerk/City\\_Council/2016/11\\_Nov/City\\_Council\\_11-29-2016\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2016/11_Nov/City_Council_11-29-2016_-_Regular_Meeting_Agenda.aspx) Language in the Nov. 29, 2016

Resolution, Agenda item 33a, pages 9 and 11, follows:

“BUSD will not sell or serve sugar-sweetened beverages (as defined by the SSB tax) at any BUSD schools or campuses.”

“Funded organizations must have in place or agree to adopt prior to being funded an organizational policy prohibiting serving SSBs at organization sponsored events or meetings.”

iv <https://www.theatlantic.com/health/archive/2014/01/the-sugar-addiction-taboo/282699/>

v B.M.C. 7388-NS § 7.72, 2014, City of Berkeley



Office of the City Manager

ACTION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Director, HHCS

Subject: Companion Report: Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales, and Serving Sugar-Sweetened Beverages

RECOMMENDATION

Recommend that the City Council adopt an amended resolution that recognizes the important principles in the Commission recommendation, clarifies the intent of the measure and provides some flexibility for City programs and staff while still emphasizing availability of healthy options. This amended resolution would require that the majority of all beverages provided or sold at any City event or on any City property (including vending machines) be non-sugar sweetened beverages (as defined in chapter 7.72 of the Berkeley Municipal Code) and education materials be provided to all COB staff to actively discourage the consumption of sugar-sweetened beverages and encourage the consumption of water.

FISCAL IMPACTS OF RECOMMENDATION

Potential impacts on programs could include increased staffing capacity across Departments to monitor or enforce the recommended resolution and/or impacts on participation in certain events and programs.

CURRENT SITUATION AND ITS EFFECTS

The Sugar Sweetened Beverage Product Panel of Experts has recommended that the Berkeley City Council adopt a resolution to prohibit City of Berkeley departments and City food services contractors, from:

- 1) Procuring sugar-sweetened beverages with City funds;
- 2) Selling sugar-sweetened beverages on City property, including in vending machines; and,
- 3) Serving sugar-sweetened beverages at City meetings and events on City property.

The City of Berkeley has steadily reduced the purchase of sugar sweetened beverages throughout its Departments and has promoted healthy options at functions and program activities. The City Manager supports the goals of this effort and agrees to continue working to reduce the consumption of SSBs on City properties and at City sponsored

events. An initial survey of City Departments indicates that adoption of the resolution as presented would have potential negative impacts on some programs and staff, most particularly those that work in jobs where they are unable to leave the worksite during their shifts, such as police dispatchers. Additionally,

- 1) The prohibition of procuring sugar sweetened beverages cannot be tracked through the City's procurement process, as many of these purchases are not listed item by item in the electronic system for requisitions. This would require staff to review all food and beverage purchases both on the program level as well as the fiscal level. As many food purchases are made via a blanket purchase order process, there is no internal mechanism in place to monitor the purchasing process for any specific item.
- 2) The prohibition of selling of sugar-sweetened beverages on City property, including vending machines may impact staff in some Departments, such as the Police Department, who provide 24-hour, 7-day of week operations. Although offering a majority of healthy options would promote and encourage the choice of healthy beverage options, eliminating sugar-sweetened beverages entirely, may not offer a choice to staff who cannot leave their worksites and did not bring the desired beverage with them to work.
- 3) The prohibition of "serving sugar-sweetened beverages at City meetings and events on City property" is not well defined and does not have clear guidelines regarding who is providing the beverages or the manner in which it is provided (i.e. a staff member at a City hosted holiday potluck). This language, as it is written, cannot be reasonably monitored and would be unenforceable.
- 4) Additionally, some City programs, such as family camps, serve lemonade and other such drinks which are a part of the fabric of the experience. Banning such drinks could limit people choosing these programs and presumes that people cannot make informed choices.

Finally, the City of Berkeley Public Health Division is piloting a program of locating Refillable Hydration Stations in some of our public facilities to encourage the consumption of water and use of refillable bottles. These environmental changes will make it easier for people to choose water over other beverages.

#### BACKGROUND

In November of 2014, Berkeley voters passed Measure D, requiring both the collection of a 1 cent per ounce tax on the distribution of sugary drinks in the City of Berkeley and the convening of a Panel of Experts (the Sugar Sweetened Beverage Products Panel of Experts--SSBPPE) to recommend general fund investments to both reduce the consumption of sugary drinks as well as to address the health consequences of the consumption of sugary drinks.

Since FY 2019, the City Council has passed resolutions allocating over \$9 million in budget code 010-9703-410.35-10 between FY2015 through FY2021 for minigrants,



branding and education campaigns, and funding of community agencies as per SSBPPE Commission's recommendations. The resolutions included allocation of overhead funding to pay for staff support and evaluation and education campaigns from the public health division.

A previous recommendation submitted on March 27, 2018 that included language for City departments and City food service contractors "to refrain" from these activities was referred to the Health, Housing and Community Services Department via the Re-Weighted Rank Voting list and is in the queue to be addressed by priority. The Commission's proposed resolution strengthens this further by prohibiting such actions.

#### ENVIRONMENTAL SUSTAINABILITY

This recommendation has no direct environmental sustainability effects.

#### RATIONALE FOR RECOMMENDATION

The prohibitive language of "shall not" places a burden on internal systems to monitor and enforce activities that may not be possible. It also impacts choice options for staff as well as community members who engage in services provided by City run programs.

#### ALTERNATIVE ACTIONS CONSIDERED

The City could replace the "shall not" to language to "promote healthy beverage options and refrain from." The City could also remove the "serving sugar-sweetened beverages at City meetings and events on City property" language from the proposed resolution.

The City could adopt the resolution language as recommended by the Commission, with the understanding that it is cost prohibitive to monitor, track, or enforce any violations of this resolution based on the constraints stated above.

#### CONTACT PERSON

Janice Chin, Division Manager, Public Health Division, HHCS, (510) 981-5121  
Dechen Tsering, Secretary, SSBPPE Commission, (510) 981-5394

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

RESOLUTION ESTABLISHING CITY POLICY / AMENDING THE ADMINISTRATIVE CODE TO DIRECT CITY OF BERKELEY DEPARTMENTS AND CONTRACTORS TO REFRAIN FROM PROCURING, SERVING OR SELLING SUGARY DRINKS

WHEREAS, the City of Berkeley is known for its commitment to reducing inequities in diet and disease and in promoting access to healthy food and beverages.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of becoming diabetic.

WHEREAS, drinking just **one** serving of sugar-sweetened beverage per day poses a **30 percent or higher risk** of early death from cardiovascular disease.

WHEREAS, city employees deserve a healthy work environment, with an increased variety of healthier low-sugar alternative beverages such as flavored waters, plain or carbonated water, 100% juice, milk drinks, diet drinks, unsweetened or artificially sweetened iced teas and coffee drinks.

WHEREAS, it is recognized that city staff are free to bring and consume their own sugary beverages at work.

WHEREAS, other public institutions that have made efforts to decrease or eliminated the sales of sugar sweetened beverages on their premises and have demonstrated that as a result, positive changes have been documented in the staff's metabolic disease indicators associated with lower risk of diabetes and heart disease

WHEREAS, giving City employees access to healthier beverages in the workplace will increase healthy beverage consumption and reduce the impact of diet-related disease, thus reducing the City's health care expenses.

WHEREAS, the City of Berkeley strongly encourages *all* organizations receiving funding from Healthy Berkeley not serve or sell sugar sweetened beverages on their premises.

WHEREAS, the Berkeley Unified School District does not serve or sell soda to students of all ages and students on their premises and this contributes to positive adult role modeling regarding healthy beverage consumption.

WHEREAS, Chapter 7.72 of the City of Berkeley Municipal Code<sup>i</sup> has already defined sugar-sweetened beverages as all beverages with added caloric sweeteners with a minimum of 2 calories per fluid ounce, including juices with added sweetener, sodas, energy drinks, sweetened teas and coffee drinks, and sport drinks which offer little or no nutritional value, but include massive quantities of added sugar and in addition, Berkeley Municipal Code Chapter 7.72 also defines exemptions and thus excludes waters, 100% juice, milk drinks, diet drinks, as well as medical drinks and baby formula.

THEREFORE BE IT RESOLVED that the City of Berkeley and City food services contractors promote healthy beverage options by:

- 1) Promoting that the majority of beverages offered are always non-sugar sweetened beverages
- 2) Providing educational materials to City of Berkeley staff to encourage consumption of water and reduction of consumption of sugar sweetened beverages, and;
- 3) Provide as much as possible an environment that makes consumption of water an easier choice, such as through the placement of Refillable Hydration Stations.

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<sup>i</sup> B.M.C. 7388-NS § 7.72, 2014, City of Berkeley





Office of the City Manager

INFORMATION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

Subject: 2019 Business Survey Results

SUMMARY

In fall 2019, the Office of Economic Development (OED) conducted a survey of businesses located in or operating within the City of Berkeley. The goal of the survey was to understand the profile of Berkeley businesses; to inform the design of solutions that respond to businesses' opportunities and needs; and to communicate effectively with our business community and raise their awareness of OED. The annual survey extends OED's efforts to connect and communicate more effectively with our larger Berkeley business community. This report summarizes the survey results and findings.

CURRENT SITUATION AND ITS EFFECTS

In fall 2019, the Office of Economic Development (OED) conducted its second comprehensive survey of businesses located in or operating within the City of Berkeley. The survey was administered via "Berkeley Considers", the City's web-based platform for citizen engagement, and was open from September 23, 2019 through October 21, 2019.

The link to the survey was distributed by e-mail to approximately 4,577 emails obtained from the City of Berkeley Business License database, to Berkeley Business District Network (BBDN) leaders for circulation to their own members, and to OED newsletter recipients. OED received 427 unique responses for a 9.3% response rate, a decrease from the 575 unique responses received to the prior year's survey.

*Survey Findings*

Key survey findings from 2019 OED business survey include the following:

When asked to select the top three reasons their business is located in Berkeley, respondents said:

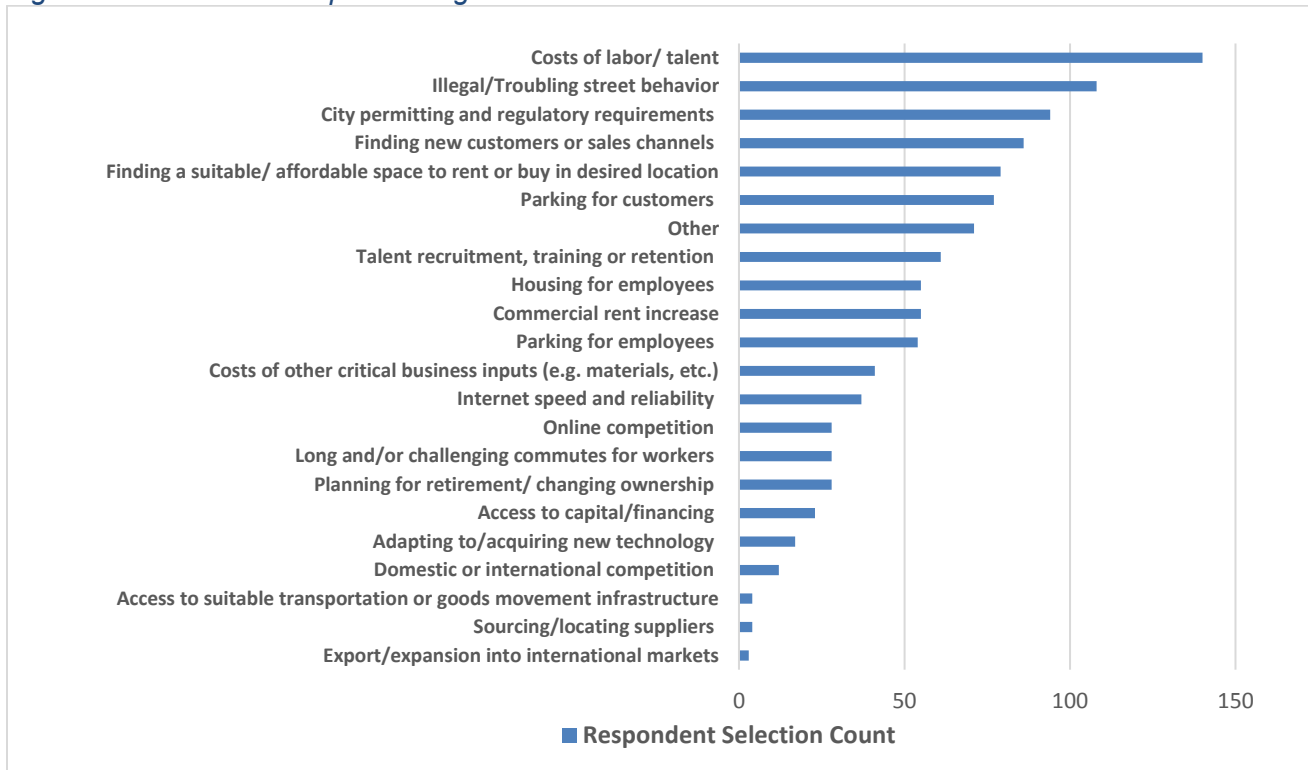
- At least one of the founders/owners lives in Berkeley (57.1%)
- My key markets/customers are local (36%)
- Alignment with Berkeley's values (25.2%)
- Berkeley's cultural, culinary, educational or recreational amenities (23.6%)

- The proximity to BART, Amtrak, I-80, international airports, or other transportation networks (16%)
- The majority of employees live nearby (14.5%)
- The proximity to UC Berkeley or the Berkeley Lab (11.7%)

Nearly 19% of respondents entered in free text under the “other” category. These open-ended responses included statements that were positive (e.g., “*Accessibility to rice, ideal water and climate for making sake*” and “*Been here and customers know where to come*”) and troubling (e.g., “*Long ago we agreed with most of the above [reasons to locate here]. Not so sure we would locate in Berkeley again*”), as well as statements that defy characterization: “*Business established too long ago to know. 1910!*” and “*This is where the Lord my God Placed me*” (sic).

When asked to identify their top 3 business challenges in 2019, 31.4% of respondents cited “costs of labor/talent” as a top business challenge, the highest response by a significant margin (Figure 1). In July 2019, the municipal minimum wage increased by \$0.59, to \$15.59 per hour; many independent business owners cited the increasing labor costs as an existential threat to their business. Business owners described challenges related to the costs of labor and talent in free text as “[making it hard] to survive in an ever increasing expensive place to do business. High taxes, high cost of labor, high rents continue to shrink our margins” and that “[business] sustainability is now questionable.” One response specific to this topic from a prominent local bookseller and business owner is included as Attachment 1.

Figure 1: Businesses' Top Challenges in 2019

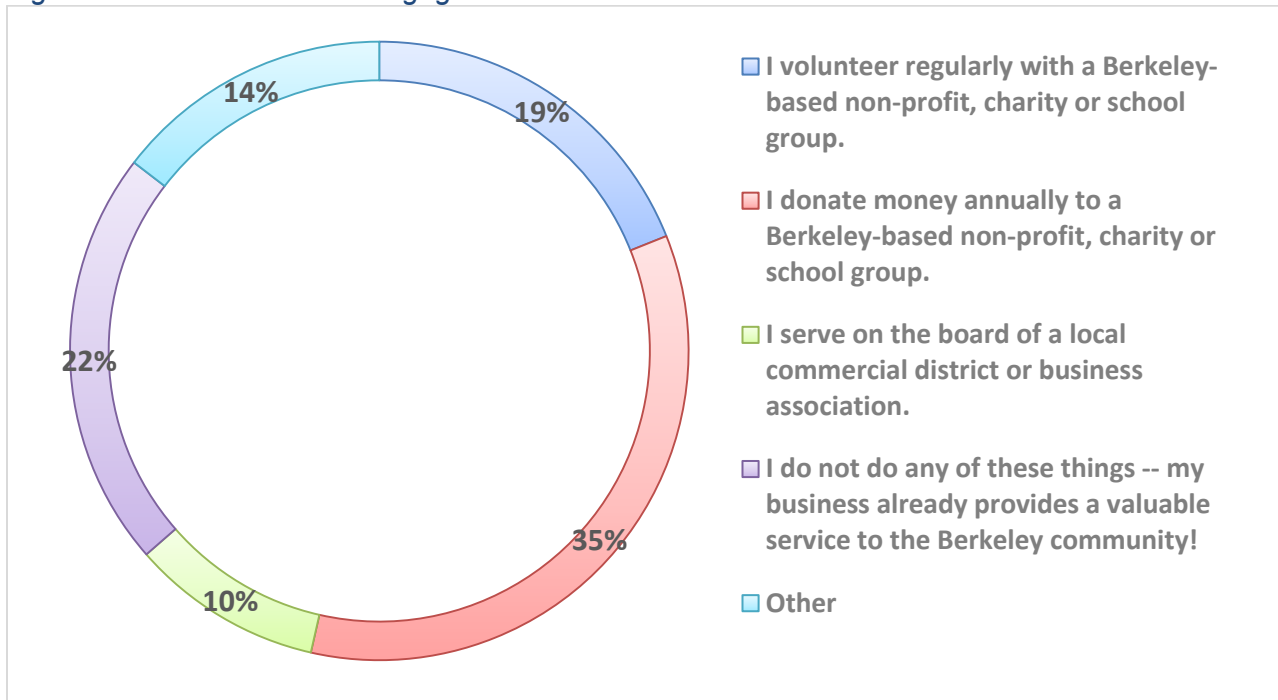


After “costs of labor/talent,” respondents’ top challenges in 2019 included:

- Finding new customers or sales channels (21.0%), down from 27.9% in 2018.
- Illegal/Troubling street behavior (26.3%), up from 24.8% in 2018.
- City permitting and regulatory requirements (22.9%), up from 19.3% in 2018.
- Finding a suitable/affordable space to rent or buy in a desired location (19.3%).
- Parking for Customers (18.8%) and parking for employees (13%).
- Talent recruitment, training or retention (14.9%).
- Finding housing for employees (13.0%)
- Commercial rent increase (13.0%)
- Costs of other critical business inputs (e.g. materials, electricity, internet, etc.) (10.0%).

When asked about business engagement with public service (Figure 2), 190 survey respondents reported that they donate money annually to a Berkeley-based non-profit, charity or school group (35%), 104 respondents volunteer regularly with a Berkeley-based non-profit, charity or school group (19%), 55 respondents serve on the board of a local commercial district or business association (10%).

Figure 2: Businesses' Civic Engagement

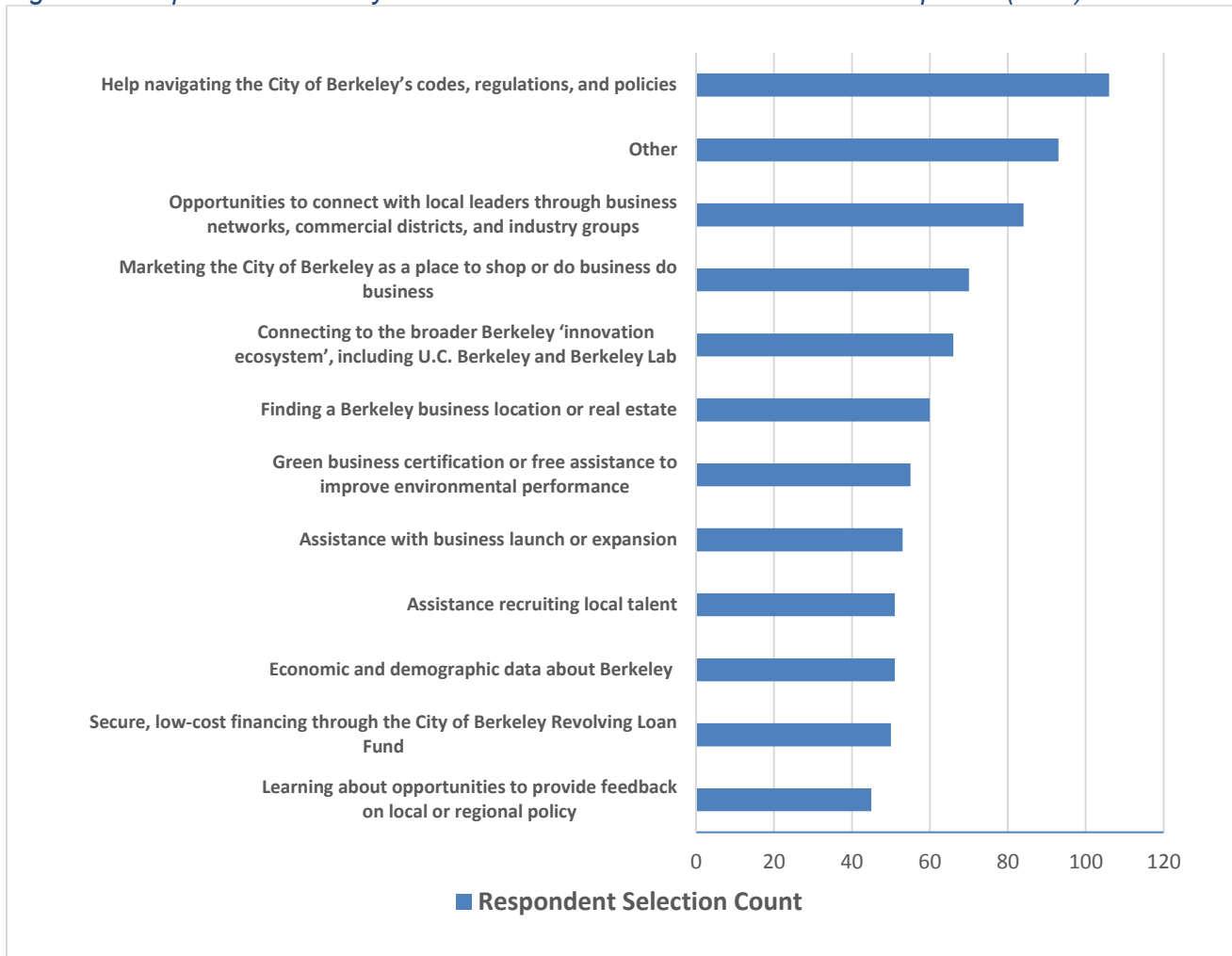


When asked which OED activity would be of greatest value to their business (Figure 3), respondents' top choices included:

- Help navigating Berkeley's codes, regulations, and policies (29%)
- Opportunities to connect with local leaders through business networks, commercial districts, and industry groups (23%)
- Marketing the City of Berkeley as a place to shop or do business (19%)



Figure 3: Respondents' Priority Activities for the Office of Economic Development (OED)



Before taking the survey, 47% of the respondents (197) had heard of OED before (an increase from 2018's 33%), 139 (33%) had not heard of OED, 79 respondents were unsure (9.6%), and 39 respondents (9.4%) were familiar with OED "solely because I took this same survey last year."

**BACKGROUND**

*Survey Methodology*

OED conducted the survey using a web based collection tool, on the City of Berkeley's Internet-based platform for citizen engagement known as "Berkeley Considers." The survey went live on September 23, 2019 and was open through October 21, 2019. The electronic link to the survey was sent to approximately 4,577 emails obtained from the City of Berkeley Business License database. These emails are provided to the Finance customer service center by the businesses registrant when renewing or applying for a

Business License. OED removed duplicate emails and emails associated with business licenses for “rental of real property.” OED also asked partner organizations – including Berkeley’s business membership organizations, networks, and commercial district associations<sup>1</sup> – to distribute the survey link to their member businesses. Most organizations distributed the link soon after the survey went live, and sent a reminder email during the week before the survey closed.

The survey consisted of fifteen questions, requiring approximately ten minutes to complete. Thirteen were multiple choice with multiple answers (including a write in ‘other’ option choice on six questions), and one question had a space only for free text response. For several of the multiple choice questions, respondents could select all answers that apply; as a result, the sum of the percentages of responses exceed 100% in some cases. The full text of the survey is included as Attachment 2.

#### *Survey Respondents*

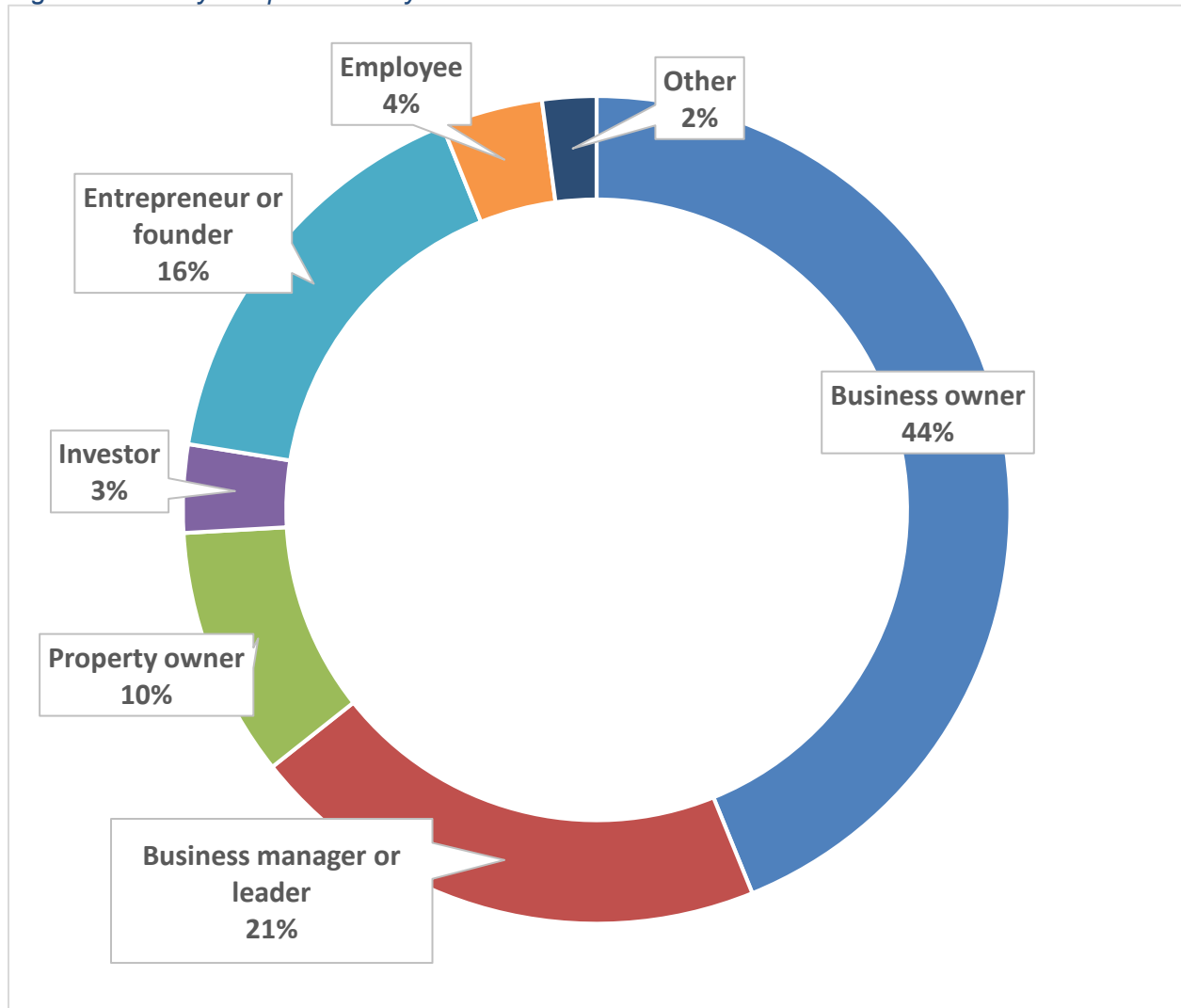
OED received 427 unique survey responses, representing a response rate of approximately 9%.

44% of survey respondents identified themselves as “business owners” and 21% identified themselves as “business manager, executive or leaders” (Figure 4). Nearly 57% of the total respondents indicated that they (or the business founder or leader) lives in Berkeley.

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<sup>1</sup> A list of active associations is available on the City website:  
[https://www.cityofberkeley.info/City\\_Manager/Economic\\_Development/Commercial\\_Districts.aspx](https://www.cityofberkeley.info/City_Manager/Economic_Development/Commercial_Districts.aspx)

Figure 4: Survey Respondents by Role



Approximately two fifths of survey respondents (165) indicated that they had been in business in Berkeley for more than 20 years (see Figure 5). Twenty two percent of respondents (93 respondents) indicated that they had been in business between 1 and 5 years.

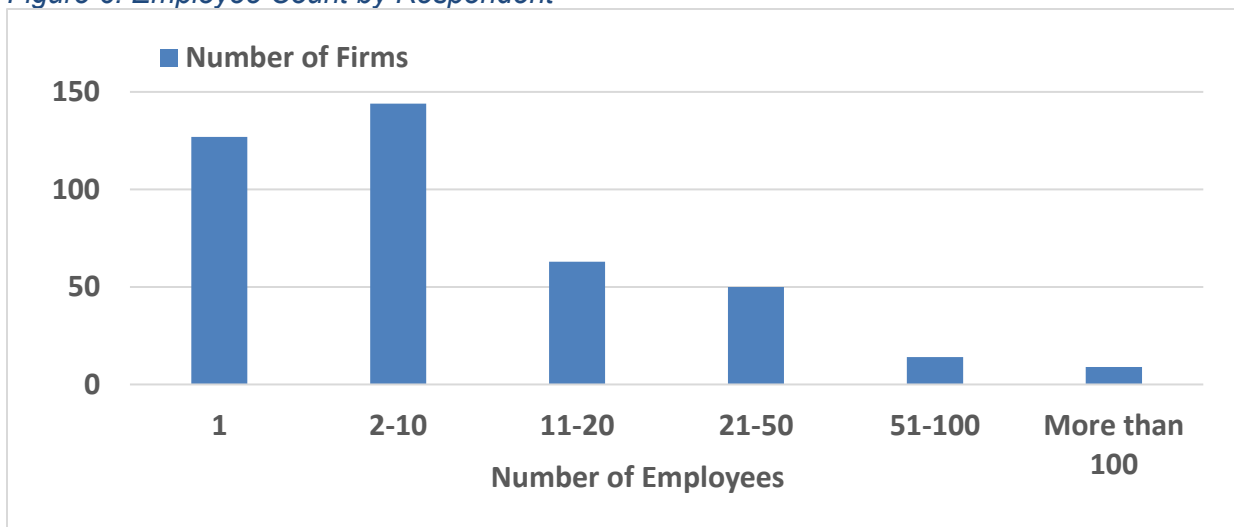
Of the 2019 survey respondents, 127 (31%) indicated that they were sole proprietors, and 144 respondents (35%) said they had between 2 and 10 employees (Figure 6). Only 9 respondents (2.2%) indicated that their firm has 100 or more employees. This corresponds closely with the overall sample of businesses in Berkeley.<sup>2</sup>

<sup>2</sup> US Census Bureau, *Quarterly Census of Employment & Wages*, 2018.

Figure 5: Business Age by Respondent



Figure 6: Employee Count by Respondent



Twenty six percent of firms surveyed reported annual revenues between \$50,000 and \$250,000 annually. Twenty-five percent of respondents indicated that they earned between \$250,000 and \$1,000,000 annually, and 7.6% of firms showed revenues over \$5M, up from 5% in 2018.

Industry sectors represented by survey respondents varied. Twenty-four percent of respondents selected Professional Services (including Administrative, Finance, Architecture, Engineering, Legal, Design and 'other' business support services) as their industry, 15% identified life sciences, healthcare or medical services as their sector, 7.6% were in Technology (including Research and Development), 18% Retail (including wholesale), 10% were in the restaurant industry (including catering), and 15.4% selected Arts Recreation and Hospitality. This roughly corresponds with the industry sectors represented in Berkeley's small businesses by employment over the past few years. For example, in 2017, of Berkeley's firms employing 50 people or less, 12% were in professional services, 16% were health care related, 12% were retailers and 18% represented accommodation and food service with an additional 3% in the arts, entertainment and recreation industry.<sup>3</sup> Compared to the 2017 figures, professional services and firms in arts and recreation sector are slightly over represented in the 2019 OED business survey responses.

#### Past and Future Business Surveys

A similar OED Business Survey was conducted in the fall of 2018, and the results were published in a report to council in early 2019.<sup>4</sup> OED plans to continue to administer this business survey on a biennial basis in the fall, as staffing allows, and has posted the results of the previous versions on the City's website at <http://www.ci.berkeley.ca.us/oed/reports/>. These publications support the City's Strategic Plan, advancing our goal *to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community*.

#### ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy and its business community. Staff believes that the continued pursuit of sustainable economic goals, represents a strength for Berkeley and demonstrates a competitive advantage of the City and the region.

#### POSSIBLE FUTURE ACTION

Staff will, as directed by Council through previous and future referral items, assist to identify and implement ideas and activities that support economic development priorities for the city as articulated by the surveyed businesses.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Actions that facilitate increased economic activity tend to boost revenues related to sales tax and property tax, and thus have positive fiscal impacts on the city.

#### CONTACT PERSON

Eleanor Hollander, Economic Development Project Coordinator, (510) 981-7536.

<sup>3</sup> [Economic Development Worksession: Small Business Support](#), Attachment 2: Employment in Berkeley's Small Businesses by Industry, January 16, 2018.

<sup>4</sup> [Referral Response: Small Business Support](#), Attachment 3, February 5, 2019.

**Attachment:**

- 1: 2019 OED Small Business Survey Open Text Response, Question 7
- 2: 2019 OED Small Business Survey Full Text

Attachment 1: 2019 OED Small Business Survey [Open Text] Response to *Question 7: Select your top three business challenges in 2019.*

**Subject:** Re: City of Berkeley Business Survey 2019

Hello [REDACTED],

I thought I filled this survey out already but I got three separate reminders this morning from three different (!) places so can you check for me?

[REDACTED] We have been hit amidst by the back to back minimum wage increases. The Council has put wage increases on automatic pilot into the future and this year they gave my staff a 4% wage increase - every time the start wage goes up, so, sooner or later, and usually sooner, it drives all other wages up right along. And though one of my stores is in Oakland, where the start wage is \$13.85, with no immediate plans to increase, I of course have to follow Berkeley and hire all my staff at the higher rate. Meanwhile, though the raise is obviously welcome to my staff, it is squeezing our business and doing virtually nothing to help with the main problem with working at a retail job in the East Bay in 2019 - rent.

My trade association, the American Booksellers Association, has for several years collected detailed data from a few hundred booksellers around the country. Through their interactive tool, you can compare your numbers with other stores who share similar characteristics, and challenges. My payroll costs, in comparison, could almost have been printed in neon, so starkly did they stand out. I would like to share this data with you, and have a conversation about how to make this crisis real to the lawmakers on the council.

We have been in business for 50 years in Berkeley, employ 34 people who live in Berkeley and Oakland (and El Cerrito, and Richmond, and Alameda) and every year our long term prospects seem more and more alarming. We are selling modestly priced items in one of the most expensive cities in the world, we are battling a world class homeless crisis on our doorsteps, and we are competing with a monster online discounter not only for our regular customers but for institutional sales throughout the city - The City, the University, the libraries, the schools. And for the last two years the City council has imposed significant new costs as if maybe some magic unicorn will come down and make sales go up so everything will be fine.

Our sales have been steady and on the rise for the last three years. They have not, however, gone up nearly 20%, or anything like, which is the amount my payroll has increased in that time. This last increase will cost an additional day of sales from all three locations per month. Our margins are already razor thin. If our sales start to trend down even a little bit, that could be it for [REDACTED] Books and the 34 booksellers who work here. And here's the thing. There will be a downward trend at some point - my forty years of running this business have shown me that. We got through them by doing the standard things in a retail emergency - cutting hours, staff, inventory, locations. Covered California and the ACA came along just in the nick of time a few years ago. We never touched wages.

But we are about out of tricks. We can't price our new books higher - the price is printed on the book. We can't raise our used book prices much more than they are, or we wouldn't be serving

Attachment 1: 2019 OED Small Business Survey [Open Text] Response to *Question 7: Select your top three business challenges in 2019.*

some of the real needs of our customers. Cutting hours or reducing staff works only in the very short term - we have learned to our sorrow that these measures create long-term consequences that take years to remediate. And online discounters add ever more trucks to Berkeley. While Amazon itself now collects sales taxes (after a 20 year fight in the legislature!), the vast majority of their sales are through third party sellers that do not collect sales tax for the city of Berkeley. Those trucks - and they deliver to the City as well - represent sales leaking, no, pouring out of the City coffers.

The City needs to get real with these facts, and get creative with solutions that help people who work in Berkeley without sinking the businesses that employ them. I think there are such ideas out there, but I personally have never gotten any traction when I present them. The city supported Buy Local Berkeley, [REDACTED], and I believe honestly cares about their mission to support all sectors of the community, but they need to step up their efforts as dramatically as they have stepped up the minimum wage.

Sorry about this long letter [REDACTED]! Do let me know if any of this resonates with you and your staff who have been helpful to me in the past.

All best,

[REDACTED]



***“The City of Berkeley Office of Economic Development's mission is to assist businesses, entrepreneurs, artists and community organizations to access services, feel welcome in Berkeley, and thrive.”***

The Office of Economic Development (OED) is conducting its annual survey of Berkeley businesses to help the City better understand Berkeley businesses and their needs – and design corresponding policies, programs, or other solutions. As a representative of a Berkeley business, we would greatly appreciate your response. Thank you for taking the time (< 10 minutes) to provide your feedback.

Your candid responses are appreciated. Rest assured, all data and information shared will be aggregated and thus ensure anonymity and confidentiality for individual respondents.

---

**1. Which of the following titles apply to your Berkeley business? Check all that apply. *multiple choice question, multiple answers***

- Business owner
- Business manager, executive or leader
- Property owner
- Investor
- Entrepreneur or founder
- Employee
- Other: \_\_\_\_\_ *(write-in)*

**2. How long has your business been in the City of Berkeley? *multiple choice question, one answer***

- Less than 1 year
- Between 1 and 5 years
- Between 6 and 10 years
- Between 11 and 20 years
- More than 20 years

**3. How many employees (or Full Time Employee contractors) do you have? *multiple choice question, one answer***

- 1
- 2-10
- 11-20
- 21-50
- 51-100
- More than 100

**4. What's your business' estimated annual revenue?** *multiple choice question, one answer*

- Less than \$50,000
- \$50,001 - \$250,000
- \$250,001 - \$1,000,000
- \$1 million - \$5 million
- Greater than \$5 million

**5. With which industry sector do you identify most? Check all that apply.** *multiple choice question, multiple answers- randomize answer choices*

- Arts, Recreation, Hospitality
- Education
- Building Construction and Maintenance (including Landscaping)
- Technology (e.g. Research & Development, Software, Hardware, etc.)
- Life Sciences, Healthcare, or Medical Services
- Manufacturing
- Professional Services (including Administrative, Finance, Architecture, Engineering, Legal, Design and other business support services)
- Retail (including Wholesale)
- Restaurant (including Catering)
- Real Estate (including Property Management)
- Personal Services (including Exercise Studios, Salons and House Cleaning)
- Automotive and Transportation Services
- Other: \_\_\_\_\_ *(write-in)*

**6. Please identify the top three reasons why your business is located in Berkeley.** *multiple choice question, multiple (3) answers- randomize answer choices*

- At least one of the founders/owners lives in Berkeley.
- Berkeley's cultural, culinary, educational or recreational amenities.
- Berkeley's civic infrastructure (i.e. sidewalks, bike boulevards, improved parks, and renovated libraries)
- Alignment with Berkeley's values.
- The majority of employees live nearby.
- I can easily find the talent I need here.
- My key markets/customers are local.
- My key vendors, suppliers and/or other companies in my industry sector are located nearby.
- The proximity to BART, AC Transit, Amtrak, Interstate Highways, international airports, or other transportation networks.

- The proximity to UC Berkeley or the Berkeley Lab.
- My investors or sources of financing are in Berkeley.
- Other: \_\_\_\_\_ (write-in)

**7. State your top three business challenges in 2019.** *multiple choice question, multiple (3) answers- randomize answer choices*

- Finding a suitable/ affordable space to rent or buy in desired location
- Commercial rent increase
- Costs of labor/ talent
- Costs of other critical business inputs (e.g. materials, electricity, internet, etc.)
- Internet speed and reliability
- City permitting and regulatory requirements
- Talent recruitment, training or retention
- Finding new customers or sales channels
- Illegal/Troubling street behavior
- Planning for retirement/ changing ownership
- Parking for employees
- Parking for customers
- Housing for employees
- Long and/or challenging commutes for workers
- Access to capital/financing
- Sourcing/locating suppliers
- Adapting to/acquiring new technology
- Online competition
- Domestic or international competition
- Export/expansion into international markets
- Access to suitable transportation or goods-movement infrastructure (freight compatible roadways, freeways, ports, airports, etc.)
- Other: \_\_\_\_\_ (write-in)

**8. State your top two business related accomplishments for 2019.**

*Text style question with 2 individual rows of text space (configured to allow for longer responses, where the text area will enlarge as the user types)*

**9. Beyond the products and services provided by your business, do you contribute in any of the following ways to Berkeley public service? Select all that apply.** *multiple choice question, multiple answers- randomize answer choices*

- I volunteer regularly with a Berkeley-based non-profit, charity or school group.
- I donate money annually to a Berkeley-based non-profit, charity or school group.
- I serve on the board of a local commercial district or business association.
- Other: \_\_\_\_\_ (write-in)

Attachment 2: 2019 OED Small Business Survey [Full Text]

- I do not do any of these things -- my business already provides a valuable service to the Berkeley community!

**10. Of the following OED services, which would be of greatest value to your business?**

*multiple choice question, multiple (up to 3) answers- randomize answer choices*

- Marketing the City of Berkeley as a place to shop or do business
- Assistance with business launch or expansion
- Opportunities to connect with local leaders through business networks, commercial districts, and industry groups
- Economic and demographic data about Berkeley
- Green business certification or free assistance to improve environmental performance
- Finding a Berkeley business location or real estate
- Secure, low-cost financing through the City of Berkeley Revolving Loan Fund
- Assistance recruiting local talent
- Learning about opportunities to provide feedback on local or regional policy
- Help navigating the City of Berkeley's codes, regulations, and policies
- Connecting to the broader Berkeley 'innovation ecosystem', including U.C. Berkeley and Berkeley Lab
- Other: \_\_\_\_\_ (write-in)

**11: On a scale of 1 to 5, with 1 being "terrible" and 5 being "great", how would you rate the City of Berkeley TODAY as a place to do business?** *multiple choice question, one answer*

- 1 (Terrible)
- 2
- 3
- 4
- 5 (Great)

**12: On the same scale of 1 to 5, how would you rate the City of Berkeley TWO YEARS AGO (2017) as a place to do business?** *multiple choice question, one answer*

- 1 (Terrible)
- 2
- 3
- 4
- 5 (Great)
- N/A I was not in business in Berkeley two years ago

**13. Before taking this survey, were you familiar with the City of Berkeley's Office of Economic Development (OED)?** *multiple choice question, one answer*

- Yes
- Yes, solely because I took this same survey last year
- No
- Not sure

**14. Are you willing to provide your contact information?** *multiple choice question, one answer*

- Yes
- No

**If they select yes, have spaces for them to include their name, business, title, email address, business address, and phone number.**

**15. Would you like to receive future information about resources, opportunities and local business news from the City of Berkeley's Office of Economic Development (OED)?**

- Yes
- No
- I'm already a subscribed to the OED quarterly newsletter.

---

Thanks for your input!





Office of the City Manager

INFORMATION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Office of Economic Development

Subject: Referral Response: Small Business Retention Programs

SUMMARY

In 2019, in response to a City Council referral, the Office of Economic Development (OED) launched Small Business Retention Programs to support and retain small businesses in Berkeley that are at risk of displacement or closure. OED conducted an RFP and engaged two organizations, Uptima Business Bootcamp and Project Equity, to implement programs. In this report, OED provides an update on the status and progress of the programs one year into implementation.

CURRENT SITUATION AND ITS EFFECTS

The Small Business Retention Programs launched in January 2019 with the goal of providing business support services to help the City retain its diverse small businesses and organizations and provide resources for them to thrive and boost their profitability and sustainability.

*Outreach and Recruitment*

Any existing independently-owned small businesses and non-profit based in the City of Berkeley were eligible as long as they fit the following criteria:

- Potentially at risk of displacement or closure
- Have the potential to retain existing jobs or create new jobs in Berkeley
- Need business support to stay in place or relocate elsewhere in Berkeley
- Can commit the time and effort to put in place a plan to maintain and grow their business
- Interested in converting to a worker ownership business model

OED and its partners have conducted extensive outreach to prospective clients, including door-to-door outreach, physical mailings, e-mail blasts, workshops, and tabling at community events. Uptima partnered with YaVette Holts of Bay Area Organization of Black-Owned Businesses (BAOBOB) to conduct focused outreach to businesses owned by people of color. OED worked with Project Equity to conduct a strategic mailing to businesses that are most likely to be interested in conversion to worker ownership. The partnership with Project Equity has already benefited from local media coverage, which supports outreach efforts.

Below is a brief summary of the work each organization completed during the first year of the program. For the complete annual report and additional information provided by Uptima and Project Equity, please refer to the report attachments.

#### UPTIMA BUSINESS BOOTCAMP

Uptima Business Bootcamp is an innovative member-owned business accelerator dedicated to providing entrepreneurs with greater access to hands-on education, resources and community to create thriving businesses. They offer in person programs at their locations in Oakland and San Francisco, and at a variety of locations in throughout the East Bay; and they also offer online programming.

Uptima has been engaged to provide direct services to at least 20 small businesses and non-profits over the course of two years. Uptima's business advising services include intake and analysis of the client's strengths, weaknesses, opportunities, and threats; the development and implementation of an action plan that is focused on increasing profitability and sustainability; and assistance securing business financing. Since the program's launch, Uptima has reached 215 small business and non-profit leaders in Berkeley, and has enrolled 13 small businesses and non-profits in the program. Uptima has provided 317 hours of business advising, which has helped retain 12 of those 13 businesses. And the businesses that have been retained have a ripple effect of \$4.96 million in revenue and are supporting 49 jobs and 118 other small businesses and independent contractors.

#### *Summary of accomplishments to date:*

- Uptima and BAFOB have collectively spent 103 hours on grassroots, face-to-face outreach to small business owners and non-profit leaders across Berkeley.
- Outreach activities have reached 215 small business owners and non-profit leaders.
- 13 small businesses and non-profits enrolled in the program, 5 of which were located in South Berkeley.
- Uptima has provided 317 hours of business advising services to support these 13 businesses in creating their action plans, renewing their lease or relocating, accessing funding, and implementing their plans.
- 12 out of the 13 small businesses and non-profits have been retained. One business was lost due to an inability to identify affordable kitchen space to accommodate its growth in Berkeley.
- Small businesses and non-profits that have been retained through the program have an economic impact of \$4.96 million in revenue, 49 jobs, and 118 other small businesses and independent contractors.

#### *Implementation findings include:*



- Legacy organizations have expressed frustrations with working with the City and the outreach and advising through this program allows them to feel heard and valued.
- Creating an effective retention program requires substantial trust-building, which takes some time in the outreach phase but pays off in advising outcomes.
- A key leverage point for business retention is the business owner's relationship with their landlord and knowledge of the landlord's potential moves for the property.
- Because business owners and non-profit leaders are stretched for time and are not able to work on their plans outside of advising sessions, the advising scope was shifted to be more hands-on with stakeholder engagement, planning, and financial analysis.
- One of the biggest differentiators of this program versus other advising programs is Uptima's ability to weave the technical skills and emotional intelligence to support the business owners and non-profit leaders in breaking down their barriers to moving the business forward.
- Working one-on-one with business owners and non-profits over a longer timeframe increases their confidence in their plans and ability to maintain their business in Berkeley.
- Participants appreciate the long-term advising relationship and see it as unique selling point for Berkeley's economic development.

#### *Support for and Engagement with the Berkeley Flea Market*

The summary of outputs and accomplishments above includes the direct support that Uptima and BAFOB provided to Community Services United (CSU), the nonprofit organization that manages the Berkeley Flea Market. For over four decades, the Berkeley Flea Market has operated on Saturdays and Sundays in the Ashby BART Station northwest parking lot. The market is comprised of approximately 100 independent vendors offering a wide variety of items and goods. On February 26, 2019, City Council adopted a referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market to sustain and enhance its ability to serve both merchant participants and the community at large.<sup>1</sup>

Staff from OED and the Department of Planning and Development have been working directly with CSU board members to develop and implement strategies to sustain the Berkeley Flea Market. As of December 2019, Uptima Business Bootcamp has provided 112 hours of business advising services to CSU, with a focus on governance, financial analysis, communications, and strategic planning. As a result of this support, CSU has over the past ten months achieved the following:

- Completed and adopted a new Strategic Plan (see Attachment 3).

---

<sup>1</sup> [Ensuring the Sustainability of the Berkeley Flea Market](#), Item 15, Berkeley City Council Meeting, February 26, 2018

- Formed an advisory board of 20 volunteer vendors and community members to support planning and execution of the market revitalization.
- Transitioned a majority of board of directors seats to be held by vendors.
- Applied for and received a \$5,000 grant from OED to increase public communications through social media, email blasts, and media appearances.
- Submitted the paperwork to restore the IRS tax-exempt status.
- Formalized staffing plans, including appointment of general manager, outreach events coordinator, social media manager, and market support and security personnel.

### PROJECT EQUITY

Project Equity, a nonprofit organization that is dedicated to advancing worker cooperatives, provides technical aid to businesses looking to transition to a worker-ownership model.

Project Equity has taken a multi-phase approach to support Berkeley businesses interested in the worker cooperative ownership model. First, they conducted a business retention data study, which provided a better understanding of which of the City's businesses are at risk of closure and may be candidates for conversion to worker ownership. Second, they performed broad outreach and direct engagement to educate business owners about the worker cooperative model. OED then subsidizes the cost of working with up to four businesses to transition to worker ownership, including a feasibility study and transition plan. To date, one business, Adams and Chittenden Scientific Glass, has completed the feasibility analysis and is on their way to completing the transition to a cooperative.

In addition, Project Equity prepared a communications plan, outreach and intake materials, educational materials for economic development professionals and regulators, and training for City staff on the worker cooperative model. In February 2019, OED and Project Equity hosted a free training for staff from the City of Berkeley, neighboring municipalities, and other partners on providing support for worker cooperatives and how traditional businesses can convert to coops. Particular attention was paid to succession planning for business owners who are wishing to retire and may want to sell their business to their employees.

#### *Summary of accomplishments to date:*

- Completion of detailed data analysis, well-attended staff training and [public release](#) of data summary.
- Significant positive press highlighting Berkeley's investment ([San Francisco Chronicle](#), [East Bay Express](#), [Daily Californian](#), [Nonprofit Quarterly](#), [Huffington Post](#)).
- Personal engagement with over 250 Berkeley businesses.
- Hands-on employee ownership technical assistance to four Berkeley businesses, with demonstrated interest from several more.

- Project Equity worked with the Sustainable Economies Law Center helped the Loan Administration Board (LAB) amend the terms of the City's Small Business Revolving Loan Fund to expand access for worker cooperative businesses and create a 10% lending target for cooperatives.
- Successful event that feature two Berkeley employee-owned businesses: Sun Light & Power and Adams and Chittenden.

### *Contract expansion*

Staff is finalizing contract revisions with Project Equity to increase funding by \$100,000 through October 2021 to achieve these shared objectives, in partnership with the Sustainable Economies Law Center:

1. Continued support for succession and employee ownership transitions (TA and legal)
2. Support for start-up worker cooperatives
3. Training and advice on worker coop topics

The Small Business Retention Programs are aligned with the City's Strategic Plan goal to foster a dynamic, sustainable, and locally-based economy.

### BACKGROUND

There are approximately 5,000 small businesses in Berkeley. Small businesses are a critical part of our local economy: they provide access to essential goods and services, create jobs and economic opportunities, and make essential contributions to Berkeley's vitality and distinct character. In recent years, the viability of small businesses has been threatened by a broad range of issues including the increasing costs of doing business, physical conditions of commercial districts, competition from the Internet, and difficulty engaging with the City of Berkeley.

In April 2017, City Council referred to the City Manager the development of a package of policies and programs to support the establishment of new, and sustainability of existing, small and/or locally owned businesses.<sup>2</sup> Subsequently, during summer and fall of 2017, OED staff conducted outreach to and research on Berkeley's small businesses and compiled its findings in a work session report and presentation to council in January 2018.<sup>3</sup> The report concluded with a commitment to implement five policy and programmatic initiatives to support small businesses by June 2019. Each initiative relates directly to the feedback received by small business owners and managers, and to items identified in City Council's original small business package referral. One of the five initiatives was to pilot new small business retention programs, which was the impetus for the Small Business Retention Program currently underway.

<sup>2</sup> [Small Business Support Package](#), Item 41, Berkeley City Council Meeting, April 25, 2017.

<sup>3</sup> [Economic Development Worksession: Small Business Support](#), Item 1, Berkeley City Council Meeting, January 16, 2018.

In summer 2018, OED issued a request for proposals to provide assistance to small, locally-owned, independent retailers that are at risk of displacement or closure. Of the five submissions, Uptima Business Bootcamp and Project Equity were selected to implement the program.

ENVIRONMENTAL SUSTAINABILITY

Small businesses often contribute to sustainable transportation choices by providing opportunities for residents to shop locally in neighborhood commercial districts that are accessible by foot, bicycle and transit. Successful initiatives that support small businesses in turn promote both environmental and economic sustainability.

POSSIBLE FUTURE ACTION

The Small Business Retention Programs are funded through the end of Fiscal Year 2021. The City Council could, during the budget process for Fiscal Years 2022-2023, consider providing additional funding for the continuation of the programs.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

OED will continue to implement the programs described above with existing staff and budgetary resources. Small businesses are important contributors to General Fund revenues through sales tax, business license tax, and property tax. To the extent that the new policies and programs encourage the development and expansion of small businesses in Berkeley, the fiscal impacts are beneficial, but difficult to estimate.

CONTACT PERSON

Jordan Klein, Economic Development Manager, 510-981-7534  
Kieron Slaughter, Community Development Project Coordinator, 510-981-2490

Attachments:

- 1: Uptima Business Bootcamp Small Business Retention Program 2019 Annual Report and materials
- 2: Project Equity Small Business Retention Program 2019 Annual Report and materials
- 3: CSU Strategic Plan for the Berkeley Flea Market



**Berkeley Business Retention Program  
Program Evaluation Report  
2018-19**



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## 1. Executive Summary

The Berkeley Business Retention Program (the “Program”) is a collaboration between the City of Berkeley’s Office of Economic Development (“OED”), Uptima Business Bootcamp (“Uptima”), and Bay Area Organization of Black-Owned Businesses (“BAOBOB”) to support small businesses and non-profits that are at risk of displacement or closure in Berkeley. The Program launched in January 2019 as a 2-year pilot to help the City of Berkeley retain its diverse small businesses and non-profits and provide resources for them to thrive by increasing their profitability and sustainability. Through the Program, the City of Berkeley aimed to provide direct service to at least 20 small businesses and non-profits over the course of two years.

This report documents our findings related to the implementation of the Berkeley Business Retention Program and participant outcomes in the first year of operations. In developing this report, we collected data from several sources, including event reports, pipeline reports, and participant surveys, and reviewed program materials and participant advising files.

Key outcome findings include:

- BAOBOB and Uptima have collectively spent 103 hours on grassroots, face-to-face outreach to small business owners and non-profit leaders across Berkeley
- Outreach activities have reached 215 small business owners and non-profit leaders
- There have been 13 small businesses and non-profits enrolled in the Program, 5 of which were located in South Berkeley
- Uptima has provided 317 hours of business advising services to support these 13 businesses in creating their action plans, renewing their lease or relocating, accessing funding, and implementing their plans
- The Program has helped retain 12 out of the 13 small businesses and non-profits – only one business was lost due to the lack of affordable kitchen space to grow in Berkeley
- Small businesses and non-profits that have been retained through the Program have an economic impact of \$4.96 million in revenue, 49 jobs, and 118 other small businesses and independent contractors

Key implementation findings include:

- Legacy organizations have expressed frustrations with working with the City and the outreach and advising through this Program allows them to feel heard and valued
- Creating an effective retention program requires substantial trust-building, which takes some time in the outreach phase but pays off in advising outcomes
- A key leverage point for business retention is the business owner’s relationship with their landlord and knowledge of the landlord’s potential moves for the property



- Because business owners and non-profit leaders are stretched for time and are not able to work on their plans outside of advising sessions, we had to shift the advising scope to be more hands-on with stakeholder engagement, planning, and financial analysis
- One of the biggest differentiators of this Program versus other advising programs is our ability to weave the technical skills and emotional intelligence to support the business owners and non-profit leaders in breaking down their barriers to moving the business forward
- Working one-on-one with business owners and non-profits over a longer timeframe increases their confidence in their plans and ability to maintain their business in Berkeley
- Participants appreciate the long-term advising relationship and see it as unique selling point for Berkeley's economic development

Based on the evaluation, we propose the following recommendations to strengthen the Program and increase City of Berkeley supports for business retention:

- Continue building on the trust we have engendered in the Berkeley business community by extending Program outreach activities for another year
- More intentionally utilize Program information sessions as networking opportunities for small businesses and non-profits in need of support
- Use Program outreach activities to bring more awareness to City services relevant to business retention
- Increase visibility of City's new small business and non-profit marketing programs and consider additional supports for marketing collaborations among small business owners
- Review City funding options for small businesses and non-profits to ensure there are programs that align with business retention needs
- Review the City's level of enforcement around ordinances related to long-term parking, cleanliness of sidewalks and streets, and safety to make Berkeley commercial corridors more welcoming for customers and businesses





## 2. Introduction

Launched in January 2019, the Berkeley Business Retention Program is a 2-year pilot program to support up to 20 small businesses and non-profits that are at risk of displacement or closure in Berkeley. The Program is collaboration between the OED, Uptima, and BAOBOB to conduct outreach and provide one-on-one business advising and workshops to help business owners and non-profit leaders create an action plan, find funding, and implement their plans to keep their small businesses in Berkeley.

Since its launch in January 2019, the Program has reached 215 small business and non-profit leaders in Berkeley, and there have been 13 small businesses and non-profits enrolled in the Program. Uptima has provided 317 hours of business advising, which has helped retain 12 of those 13 businesses. And the businesses that have been retained have a ripple effect of \$4.96 million in revenue and are supporting 49 jobs and 118 other small businesses and independent contractors.

As the Program comes up on its first anniversary, we conducted an evaluation to document the implementation and outcomes of the Program. The Program evaluation had five goals:

- Document Program operations including business owner profile and outreach and enrollment mechanisms;
- Describe stakeholders' and participants' experiences with the Program;
- Identify best practices associated with outreach, enrollment, and business advising services to develop trust and support participants in creating a plan to keep their business in Berkeley and have confidence in implementing that plan;
- Assess Program outcomes, including the business owner's ability to retain their business in Berkeley and barriers to business retention in Berkeley; and
- Develop recommendations to improve the Program and provide addition supports for business retention.

This report documents our evaluation findings related to the implementation of the Program and participant outcomes. Drawing on the information collected from the review of Program materials, event reports, pipeline reports, participant advising files, team feedback, and participant surveys, this report documents the implementation of the Program, assesses Program outcomes, synthesizes implementation strengths and challenges, and presents recommendations for refinements of the Program and other City supports for business retention. Specifically, this report is divided into the following sections:

- A description of the Program, including historical background and context of the Program and key characteristics of the target businesses, outreach activities, enrollment process, and advising activities.
- An overview of the evaluation methodology, including the data sources and data collection and analysis methods.



- A description of the key outcomes achieved by Program participants.
- A summary of the implementation findings related to the implementation strengths and challenges.
- A set of proposed recommendations for modifications and refinements to the Program as well as additional City supports for business retention.



### 3. Program Background

In April 2018, the City of Berkeley issued a request for proposals (“RFP”) from qualified firms and individuals to pilot new small business retention programs in the City of Berkeley. The City sought to assist small, locally-owned businesses that are at risk of displacement or closure, with a particular focus on independent retailers.

Uptima partnered with BAOBOB to respond to the RFP with a proposal to provide outreach and business advising services to support up to 10 black-owned businesses that were at risk of displacement or closure in Berkeley. In the proposal, Uptima recommended a 16-month engagement with each business to develop a plan, access capital, and implement the plans.

In summer 2018, OED informed Uptima that its proposal had been selected and asked to modify its scope of services to support retention of up to 20 small businesses and non-profits over a 2-year period. OED asked Uptima to focus on existing small businesses and non-profits that are traditionally underserved or serve traditionally underserved neighborhoods in Berkeley, and to provide these organizations with support to bolster their business model, access capital, and/or identify a legacy plan to maintain and grow their operations Berkeley.

Uptima amended its scope for approval at the first City Council meeting after the summer break. In September 2018, City Council approved the contract with Uptima. And after completing necessary contract paperwork in the fall, Uptima was given a notice to proceed with the Program in December 2018.

#### 3.1 Program Description

The Program is a collaboration between the OED, Uptima, and BAOBOB to support small businesses and non-profits that are at risk of displacement or closure in Berkeley.

The business assistance part of the Program is provided by Uptima. It includes free one-on-one business advising and workshops to help business owners and non-profit leaders create an action plan, find funding, and implement their plans to keep their small businesses in Berkeley.

**Eligibility.** Existing independently-owned small businesses and non-profits based in the City of Berkeley that:

- Are potentially at risk of displacement or closure;
- Have the potential to retain existing jobs or create new jobs in Berkeley;
- Need business support to stay in place or relocate elsewhere in Berkeley; and
- Can commit the time and effort to put in place a plan to maintain and grow their business or non-profit.



**Services.** We offer free customized, one-on-one business advising to help business owners and non-profit leaders maintain and grow their organizations in Berkeley.

|                       |                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Create an Action Plan | <ul style="list-style-type: none"> <li>• Develop strategies to increase sales and profitability</li> <li>• Prepare to renew an existing commercial lease or relocate</li> <li>• Research costs to upgrade, relocate or expand</li> <li>• Plan for retirement by developing a succession plan</li> </ul>  |
| Find Funding          | <ul style="list-style-type: none"> <li>• Learn what funding options are available and how to access them</li> <li>• Prepare the business to raise money</li> <li>• Connect with potential funders</li> <li>• Get assistance in navigating the funding process</li> </ul>                                 |
| Implementation        | <ul style="list-style-type: none"> <li>• Create or enhance the business' online presence</li> <li>• Improve the business' operations, finances and administration</li> <li>• Mitigate business disruption before, during and after relocation</li> <li>• Transition ownership of the business</li> </ul> |

### 3.2 Program Goals

The primary goals of the Program as outlined in the marketing and outreach plan are to:

- Inform and educate the Berkeley small business and non-profit community on the Program, its benefits, and requirements;
- Enroll at least 20 Berkeley-based independent small businesses and non-profits that are at risk displacement or closure in the Program;
- Demonstrate the City of Berkeley's commitment to retaining its diverse small businesses and non-profits and providing the resources for them to thrive; and
- Demonstrate the City of Berkeley as a welcoming place for small businesses and non-profits.

### 3.3 Outreach Activities

We recognized the importance of engaging Berkeley small businesses and non-profits to build trust and demonstrate our commitment to helping them keep their businesses in their community. As such, we designed our marketing and outreach plans to focus on engaging Berkeley small businesses and non-profits primarily through grassroots, face-to-face efforts and referrals from business partners, and to supplement face-to-face efforts with digital and print communication tools.

Primary marketing efforts include:

**Business Owner Meetings.** The bulk of our outreach efforts focus on one-on-one meetings with business owners. BAOBOB would lead door-to-door outreach to existing small businesses and non-profits to inform them of the Program, its benefits, and any upcoming information sessions, and to determine if the small business or non-profit is qualified for an initial consultation with Uptima.



**Information Sessions.** Uptima and BAOBOB would hold a series of 2-hour information sessions that provide Berkeley small businesses and non-profits with the opportunity to learn more about the Program and its benefits, receive tips and tools to help them keep their businesses in their community, and network with other Berkeley small businesses and non-profits.

**Berkeley Events.** Uptima and BAOBOB would attend and set up informational tables at various Berkeley small business events, street fairs, and festivals. These events include Sunday Streets, Juneteenth Festival, Solano Avenue Stroll, among others.

**Business Partner Meetings.** BAOBOB would attend regular BBDN meetings, and Uptima and BAOBOB would lead one-on-one meetings with representatives from Berkeley business districts, the Berkeley Chamber of Commerce, and business support, legal support, capital access, commercial real estate partners, and financial planners to provide information about the Program and its benefits and seek referrals of Berkeley small businesses and non-profits that could benefit from the Program.

Supplemental digital and print communication tools include:

**Website.** Uptima would establish pages on its website with basic information about the Program and upcoming information sessions, detail on the structure of our business advising services, and an inquiry form. BAOBOB would also include language about the Program on their website. And, we recommended that OED add Uptima as a resource under its Technical Assistance page and add a new section on the Technical Assistance page describing the key elements of the Program.

**Print Collateral.** Uptima would ensure that printed postcards and flyers describing the Program are available for one-on-one meetings with business owners, business districts, and business support providers. Uptima and BAOBOB would ensure that flyers are periodically distributed to public places throughout Berkeley.

**Email Marketing.** Uptima would utilize its email marketing list of 3,800+ subscribers and BAOBOB would utilize its email marketing list of 650+ subscribers to promote the Program, its benefits, and any upcoming information sessions in at least one newsletter per month. We encouraged OED to include language about the Program and upcoming information sessions in any regular email newsletters to the Berkeley community. In addition, we would provide our business support and capital access partners with a social media toolkit to encourage them to include the Program in their email marketing from time to time.

**Social Media Marketing.** Both Uptima and BAOBOB would run at least one social media post per month advertising the Program, any upcoming information sessions, and link to the inquiry form. We recommended that OED request that the Program's social media posts be placed in the City of Berkeley social media feed from time to time. In addition, we would provide our business support and capital access partners with a social media toolkit to encourage them to include the Program in their social media posts.



In early January 2019, OED, Uptima, and BAOBOB met to review the above marketing and outreach plans and marketing collateral for the Program. It was anticipated that Uptima and BAOBOB would conduct outreach activities from January 2019 – November 2019.

### 3.4 Enrollment Process

When a qualified lead is identified through outreach activities, Uptima schedules an initial hour consultation and assessment with the small business owner or non-profit leader. In this initial meeting, Uptima focuses on understanding the current situation, goals, challenges, risk of displacement and closure, and assess if the Program is a good fit for their needs.

In general, we seek small businesses and non-profits that have been traditionally underserved or that serve traditionally underserved populations, with their primary location in the City of Berkeley, that meet the following criteria:

- Are potentially at risk of displacement or closure;
- Have the potential to create new jobs and other positive community impact in the City of Berkeley;
- Need business support to bolster their business model, access funding and/or develop a legacy plan to stay in place or relocate elsewhere in the City of Berkeley;
- Are able to commit the time and effort to put in place a plan to bolster their business model, and if relevant, apply for funding and/or implement their legacy plan; and
- Are open to receiving structured support to develop their business.

When a lead is identified as a good fit for the Program, Uptima makes a recommendation to OED to enroll the small business or non-profit in the Program. If OED approves the recommendation, Uptima creates an individual business advising plan and reviews it with the business owner. The small business owner or non-profit leader is expected to sign an advising agreement that outlines the individual advising plan and advising expectations. To ensure participants are taking full advantage of the Program, each participant enrolling in the Program is required to sign off on their commitment to:

- Attending their scheduled one-on-one business advising sessions with their Uptima advisor;
- Completing assigned business development activities in between sessions and sharing those activities for review by their Uptima advisor;
- Providing timely and professional responses to communications with potential funders and other resource providers that have been introduced to them by Uptima; and
- Allowing Uptima to share the status and challenges with small business or non-profit with the City of Berkeley.

It was anticipated that Uptima would enroll up to 20 small businesses and non-profits in the Program from February 2019 – November 2019.



### 3.5 Business Advising Services

Small business owners and non-profit leaders enrolled in the Program are assigned an Uptima advisor. The advisor is matched with the small business owner or non-profit leader based on the industry, stage, challenges, and individual business advising plan.

We anticipated that a advisor would work with each participant in two phases over a 16-month period.

**Phase I – Planning.** In Phase I, it was anticipated that advisors would work with each small business owner or non-profit for up to 4 months to help them bolster their business model, evaluate lease renewal or relocation options, prepare for funding, and/or identify a legacy plan. During this phase, it was anticipated that the advisor and small business owner or non-profit leader would meet for 1 hour weekly or bi-weekly plan to review the previous session’s work and assist with any questions or additional resource needs. In between sessions, the business owner or non-profit leader would complete business development activities and share them with their advisor. Also during this time, Uptima would leverage its relationships with legal support providers, marketing services, funders, commercial real estate partners, financial planners, and other resource providers to support planning, access to capital, and physical space needs.

**Phase II - Implementation.** Based on our experience working with small business owners and non-profit leaders, we know the need for support does not end when they receive funding, renew their lease or relocate, or have a legacy plan. To nurture stronger small businesses and non-profits in our communities, we saw a need for ongoing advice and mentorship to implement plans. As such, we proposed providing up to 1 year of wrap-around business advising services to each business owner or non-profit coming out of Phase I. We anticipated that each business owner or non-profit leader would continue to work with the same Uptima advisor they built a trusting relationship with during Phase I of the Program. During Phase II, it was anticipated they would meet with their advisor for up to 30 minutes each week by phone or in person to receive ongoing advice and connections for implementing their plans.

It was anticipated that Phase I of business advising would occur from February 2019 – December 2019 and that Uptima would provide up to 330 hours of business advising to at least 20 small businesses and non-profits during this phase.



## 4. Evaluation Methodology

Using a multi-method approach, we conducted an implementation and outcome evaluation for the first year of the Program's operations. We collected quantitative and qualitative data to:

- Document Program operations including business owner profile and outreach and enrollment mechanisms;
- Describe stakeholders' and participants' experiences with the Program;
- Identify best practices associated with outreach, enrollment, and business advising services to develop trust and support participants in creating a plan to keep their business in Berkeley and have confidence in implementing that plan;
- Assess Program outcomes, including the business owner's ability to retain their business in Berkeley and barriers to business retention in Berkeley; and
- Develop recommendations to improve the Program and provide additional supports for business retention.

Specifically, the Program evaluation set out to answer the following questions:

**Participant Profile:** Who participates in the Program? What are their common characteristics?

**Outreach Activities:** What are the most effective ways of reaching business owners and non-profit leaders to inform them about the Program? What does it take for qualified candidates to take the first step in getting support from the Program?

**Enrollment Process:** What are qualified candidates' experiences with the enrollment process? Does the enrollment process adequately assess participants' challenges and needs? How is the experience of hand-off from enrollment consultation to business advisor?

**Business Advising Services:** What are participants' experiences with the one-on-one advising provided by the Program? Is the advising effective in helping them develop plans and connect with resources to keep their businesses and non-profits in Berkeley?

**Outcomes:** What types of outcomes does the Program seem to help participants achieve (e.g., improved business model, relocation of business, transfer of business ownership)? What impact does the Program have on the Berkeley community (e.g., job retention and creation, key partnerships)?

**Perception of Berkeley Business Services:** How does the Program impact participants' perception of the City of Berkeley as a place to maintain and grow their businesses? What other business retention supports do participants want to see from the City of Berkeley?

To help answer these questions, we used a multi-method approach, collecting and analyzing qualitative and quantitative data from multiple sources, as described in the following table.





Table 1: Evaluation Data Sources

| Source                     | Description                                                                                                                                                                                                                                                                                       |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Program Materials          | Review of Program materials, including Program marketing collateral, enrollment process documentation, standard advising agreement, and reports to OED                                                                                                                                            |
| Event Reports              | Analysis of administrative data on workshop registrations and attendance and sign-ups at tabling, as well as qualitative feedback on workshop content                                                                                                                                             |
| Pipeline Reports           | Analysis of administrative data on number of hours spent on business owner outreach, number of business owners reached through outreach activities, number and source of qualified candidates, number of enrollment consultations, and conversions of qualified candidates to Program enrollments |
| Participant Advising Files | Review of participants' advising files, including enrollment consultations, individual advising plans, number of advising hours spent with each participant, and weekly progress reports from business advisors                                                                                   |
| Team Feedback              | Unstructured feedback on program activities and outcomes through weekly meetings with outreach and business advising team members                                                                                                                                                                 |
| Participant Surveys        | Structured one-on-one interviews with participants to collect responses to annual survey questions around enrollment process, business advising, business plans, satisfaction with Program, and satisfaction with City's overall business services                                                |



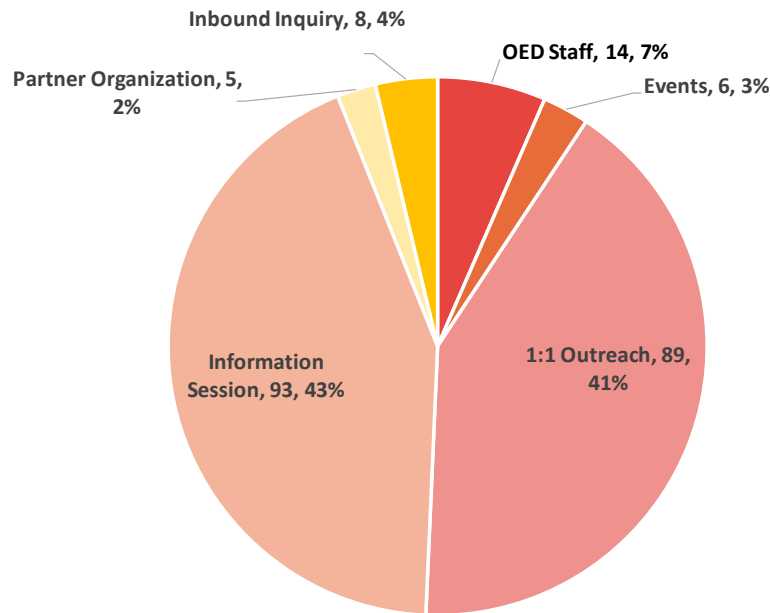
## 5. Key Outcomes

Based on information gleaned from the analysis of administrative data, review of participant advising files, and feedback from team members, we describe below the key outcomes of our outreach activities, enrollment process, business advising services, and retention of small businesses and non-profits through the Program.

### 5.1 Outreach Activities

From January 2019 – November 2019, BAOBOB and Uptima have been conducting outreach activities in accordance to the marketing and outreach plan provided to OED. As of November 2019, we have reached 215 small business owners and non-profit leaders through our outreach activities across Berkeley.

**Figure 1: Business Owners Reached by Lead Source as of November 2019**





**Business Owner Outreach.** As of October 2019, BAOBOB conducted 103 hours of one-on-one outreach that reached 89 business owners and non-profit leaders within the following commercial corridors:

- South Berkeley: Lorin Business District x 4; Sacramento Street corridor
- West Berkeley: University Ave. from San Pablo Ave. to Eighth St.; San Pablo Ave. south of University Ave. to Bancroft Way; Fourth St. between Channing Way and Virginia St.; Seventh St. between Ashby Ave. and Dwight Way; Eighth Str. between Heinz St. and Dwight Way
- North Berkeley: San Pablo Ave. north of University Ave.; Solano Ave. from The Alameda to Colusa Ave.; Hopkins St. east of Sacramento St.; North Shattuck Business District
- East Berkeley: Elmwood Business District
- Central Berkeley: Telegraph Ave. from Ashby Ave. to Dwight Way; Shattuck between Bancroft Way and University Ave.

**Information Sessions.** From January 2019 – November 2019, Uptima and BAOBOB scheduled 11 information sessions and held 10 of them. The final one was cancelled as both the host and presenter were ill. While attendance at information sessions was on average 30% of registrations, the advertising for the sessions led to a total of 93 leads. The following table shows a report of information session registration and attendance by location and topic.

**Table 2: Program Information Sessions**

| Date         | Topic                                 | Location                | Registered | Attended  |
|--------------|---------------------------------------|-------------------------|------------|-----------|
| 1/28/19      | Healthy Business Checklist            | Adelines Lab            | 17         | 6         |
| 2/28/19      | Commercial Lease Basics               | KC's BBQ                | 12         | 3         |
| 3/25/19      | Website Basics                        | CoWorking with Wisdom   | 7          | 2         |
| 4/29/19      | Social Media Brush-up                 | University Press Books  | 4          | 2         |
| 5/20/19      | Business Planning                     | Cassave Restaurant      | 5          | 0         |
| 6/24/19      | Fund Your Business                    | Afikomen Judaica        | 22         | 5         |
| 7/29/19      | Financial Forecasting                 | The Office: Berkeley    | 9          | 4         |
| 8/26/19      | Refine Your Business Model            | Black Repertory Theater | 6          | 3         |
| 9/30/19      | Worker Cooperatives                   | Pegasus Books           | 4          | 1         |
| 10/28/19     | Strategic Planning for Small Business | Metro Lighting          | 5          | 1         |
| 11/18/19     | Retention Success Stories             | Smoke Berkeley          | 2          | Cancelled |
| <b>Total</b> |                                       |                         | <b>93</b>  | <b>27</b> |



We chose the host locations to showcase businesses that have been successful, those that have expressed risk, and those who are a part of the Program. We chose information session topics that are helpful for maintaining a thriving business. To deliver content, we engaged the Uptima network, including business advisors who have been working in the Program, freelancer marketing service providers, and other resource providers, such as Lawyers Committee for Civil Rights, Kiva, Working Solutions, Pacific Community Ventures, and Project Equity.

**Berkeley Events.** Uptima and BAOBOB attended 8 Berkeley business and community events from November 2018 – September 2019. While we received sign-ups at our information table at all the community events, most were not Berkeley based businesses or non-profits and therefore we did not include them in our leads. The 6 leads that we counted from events came from the Small Business Forum and Berkeley Chamber Holiday Fair. The following table shows a report of the Berkeley community and business events we attended.

**Table 3: Attendance at Berkeley Events**

| Date           | Event                             | Type of Event            |
|----------------|-----------------------------------|--------------------------|
| November 2018  | Small Business Forum              | Berkeley Business Event  |
| December 2018  | Berkeley Chamber Holiday Fair     | Berkeley Business Event  |
| June 2019      | Sunday Streets: Telegraph         | Berkeley Community Event |
| June 2019      | Sunday Streets: North Berkeley    | Berkeley Community Event |
| June 2019      | Juneteenth Festival               | Berkeley Community Event |
| July 2019      | Sunday Streets: Downtown Berkeley | Berkeley Community Event |
| July 2019      | Berkeley Chamber Mixer            | Berkeley Business Event  |
| September 2019 | Solano Avenue Stroll              | Berkeley Community Event |

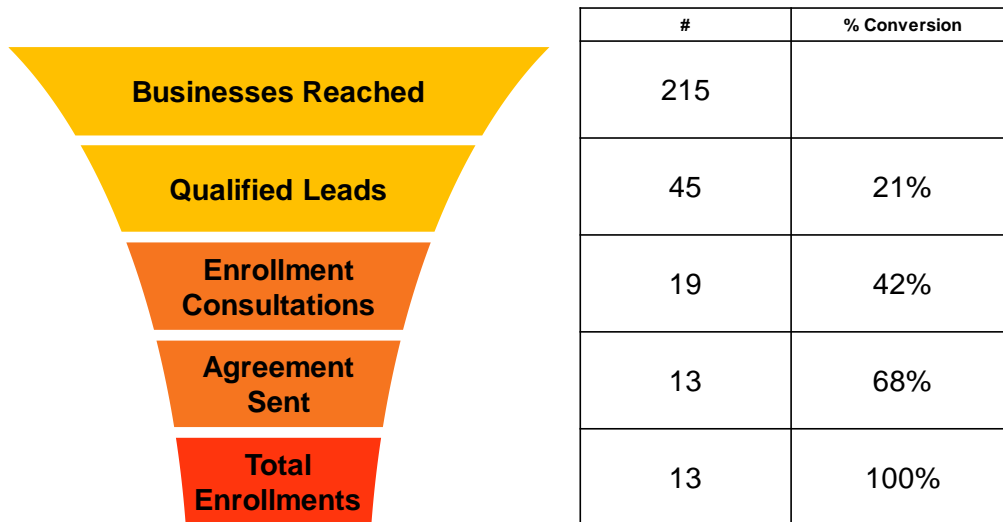
**Business Partner Meetings.** Uptima and BAOBOB were invited to present the Program at the first Berkeley Business District Network meeting of 2019. BAOBOB continued to attend regular BBDN meetings throughout the year. Through the BBDN meetings, we were invited to present at meetings of the Lorin Business Association, North Shattuck Merchants Association, and Berkeley Cultural Trust, and have been approached to attend future meetings of the Solano Avenue Merchants Association and newly forming South of University Merchants Association. In addition, we shared the Program in regional network meetings of the California Association for Microenterprise Opportunity, San Francisco Economic Development Alliance, and Alliance for Community Development, and had one-on-one conversations and shared information about the Program with local business support organizations and microlenders. Lastly, Kieron Slaughter from OED, Rani Langer-Croager from Uptima, and YaVette Holts from BAOBOB have all been invited to present the Program on panels at economic development ecosystem gatherings, such as the Coalition for Black Excellence Conference in February 2019 and Alliance for Community Development BACCXI Conference in September 2019.



## 5.2 Enrollment Process

Through outreach efforts from January 2019 – November 2019, we identified 45 qualified leads for the Program. Of those qualified leads, 19 scheduled enrollment consultations with us. The following figure shows the pipeline of enrollment activity from January 2019 – November 2019.

**Figure 2: Enrollment Pipeline as of November 2019**



From January 2019 – October 2019, we spent a total of 39 hours on the enrollment process. This represents an average of about 2 hours per enrollment consultation. This includes the time to schedule a consultation, conduct the consultation to understand the business' current situation and needs, make a recommendation to OED, and follow-up with an advising plan and agreement.

## 5.3 Business Advising Services

As of November 2019, a total of 13 small business owners and non-profit leaders had enrolled in the Program. The following figures show some basic demographic information about the small businesses and non-profits enrolled in the Program.



Figure 3: Advising Clients by Location

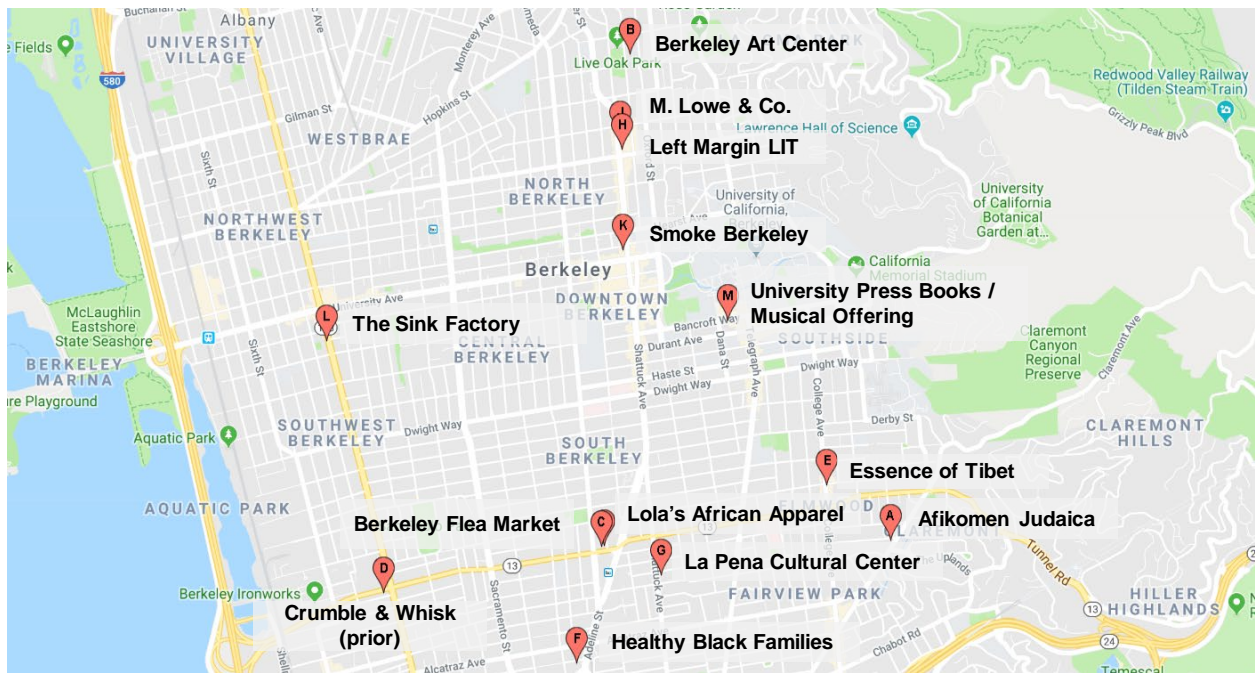
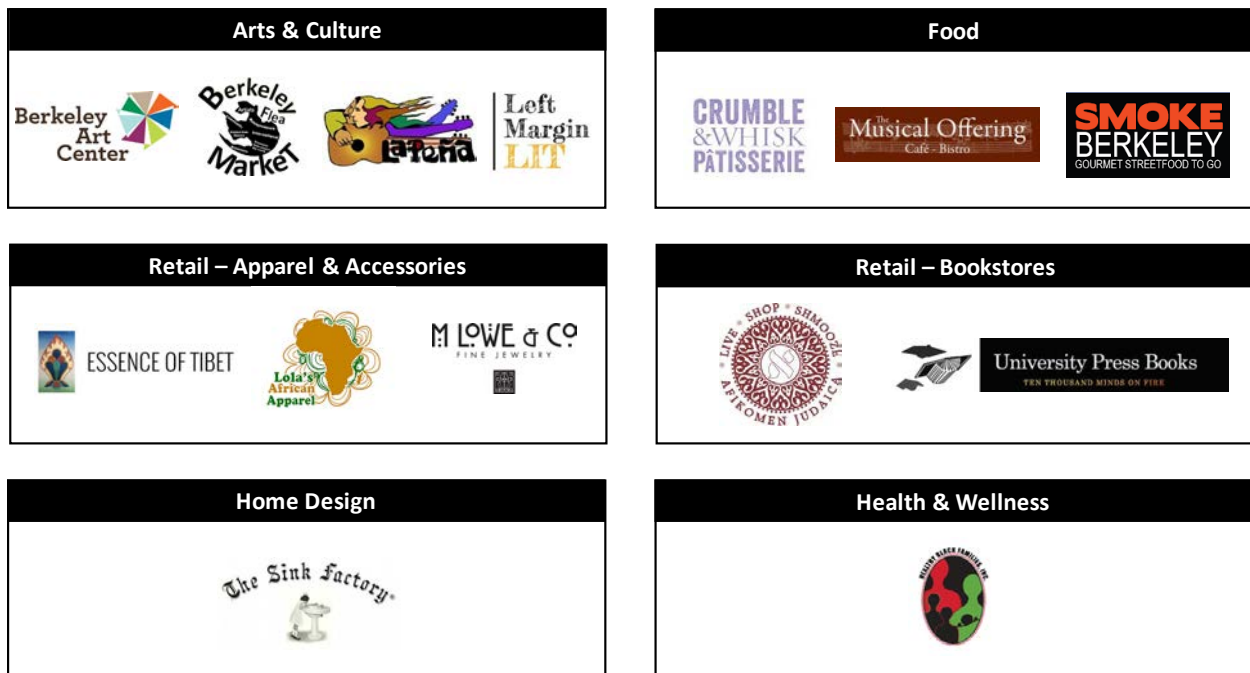


Figure 4: Advising Clients by Industry



From January 2019 – October 2019, we delivered 317 hours of business advising. The table below is a summary of key business advising activities by client.



Table 4: Advising Activities by Client

| Client                  | Tenure (Months) | Advising Hours | Activities                                     |                                                 |                                                                         |                        |                                                                   |
|-------------------------|-----------------|----------------|------------------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------|------------------------|-------------------------------------------------------------------|
|                         |                 |                | Action Plan                                    | Lease Renewal / Relocation                      | Access to Capital                                                       | Implementation Support | Additional Resources Provided                                     |
| Afikomen Judaica        | 8               | 27.3           | Developed business plan and financial forecast | Not yet – will need to renew lease              | In progress                                                             | In progress            | Kiva, Working Solutions, Pacific Community Ventures               |
| Berkeley Art Center     | 6               | 22.8           | Reviewing strategic plan and developing budget | Not applicable                                  | In progress                                                             | In progress            |                                                                   |
| Berkeley Flea Market    | 10              | 111.2          | Engaged community to develop strategic plan    | Assistance with Adeline Corridor Plan responses | \$5K grant received from OED                                            | In progress            | Berkeley Civic Arts Grants, organizational development consultant |
| Crumble & Whisk         | 2               | 9.7            | Worked on business plan and financial forecast | Unable to find space to grow in Berkeley        | Not applicable – agreement terminated as client relocated to Emeryville |                        | Runway Project Friends & Family Loan Program; business brokers    |
| Essence of Tibet        | 2               | 2.0            | Developing marketing plans                     | Assistance with downsizing plan                 | Not yet                                                                 | In progress            | Merchandising consultant                                          |
| Healthy Black Families  | 3               | 6.3            | Developing budget                              | Evaluation of relocation alternatives           | Support Giving Tuesday campaign plans                                   | In progress            | LCCR, EBCLC                                                       |
| La Pena Cultural Center | 3               | 5.6            | Analysis of primary earned income strategy     | Negotiation of lease with tenant restaurant     | Not yet                                                                 | In progress            | LCCR, OED around ABC license and signage                          |
| Left Margin LIT         | 6               | 22.5           | Strategic plan and budget                      | Renewed lease                                   | Not yet                                                                 | In progress            | Fiscal sponsors, social media consultants                         |
| Lola's African Apparel  | 1               | 3.8            | Developing staffing plan for maternity leave   | Not yet                                         | Not yet                                                                 | In progress            |                                                                   |
| M. Lowe &Co.            | 1               | 4.0            | Developing marketing plans                     | Not yet – will need to renew lease              | Not yet                                                                 | In progress            | Social media and SEO consultants                                  |



| Client                                    | Tenure (Months) | Advising Hours | Activities                                                   |                                                         |                                                                        |                               |                                                                         |
|-------------------------------------------|-----------------|----------------|--------------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------------|-------------------------------|-------------------------------------------------------------------------|
|                                           |                 |                | Action Plan                                                  | Lease Renewal / Relocation                              | Access to Capital                                                      | Implementation Support        | Additional Resources Provided                                           |
| Smoke Berkeley                            | 5               | 19.3           | Developed financial forecast                                 | Evaluated alternatives; assisted with Spats negotiation | \$10K Kiva loan                                                        | Completed advising engagement | Berkeley Revolving Loan Fund, Kiva, Working Solutions, business brokers |
| The Sink Factory                          | 4               | 17.3           | Developing marketing plans and financial forecast            | In discussions about new space                          | Working on loan package                                                | In progress                   | Branding and social media experts                                       |
| University Press Books / Musical Offering | 6               | 43.3           | Engaged staff to developed restructuring and transition plan | Assisted with lease renewal negotiations                | Not applicable – agreement terminated due to disagreement among owners |                               | Branding and social media experts, Berkeley Revolving Loan Fund         |





In providing the business advising services, Uptima has deployed 3 of its 12 business advisors. The following advisors have been working in the Program.

**Rani Langer-Croager.** Rani founded Uptima to address the challenges of traditional entrepreneurship programs and business accelerators in providing accessible education and mentorship to a diverse group of entrepreneurs. Rani has drawn on more than 15 years of experience advising organizations on strategic and financial planning, capital raising and mergers and acquisitions to develop the model for Uptima. Prior to co-founding Uptima, Rani was a member of the founding team and vice president at Altius Education where she raised over \$30 million of capital to fund development of the company's educational ecosystem. Rani began her career as a successful investment banker and has led and participated in over 30 financing, merger, acquisition and joint venture transactions, representing over \$15 billion in value, for leading technology companies. She has extensive experience supporting very early stage entrepreneurs as an organizer, coach and judge for numerous hackathons and startup challenges. Rani has been advising Afikomen Judaica, Berkeley Flea Market, Crumble & Whisk, Healthy Black Families, Smoke Berkeley, and University Press Books / Musical Offering.

**Sarita Evans.** Sarita mentors in Uptima's Creating a Business Roadmap course in Oakland. Sarita Evans has over 30 years of training, public service and entrepreneurial experience. She began her first business venture at the young age of 23, when she started a Hair Care and Beauty Supply company. Currently, Sarita is the owner of the system wide #1 ranked Ladies Workout Express, a women's fitness center, located in Pinole, CA, which she began in 2003 and serves over 800 women. Most recently, Sarita founded and designed Move Around Fitness, a conscious focused corporate wellness program which features a uniquely designed mobile fitness studio that comfortably accommodates small group fitness classes and allows targeted fitness activities to be conducted on site. Sarita also served as a consultant and trainer with Women's Initiative for over nine years, where she combined her love of teaching and entrepreneurial expertise to support women to start their own businesses and become financially self-sufficient. Sarita was previously a founding partner of Women's Independent Cinema, an organization dedicated to the empowerment of women through entertainment and she is a licensed California Real Estate Broker and real estate investor. Sarita has been advising Essence of Tibet, Lola's African Apparel, and M. Lowe & Co.

**Mike Gabriel.** Mike teaches in Uptima's Building Operational Capacity course in Oakland. He is an experienced investment and strategy professional with over 10 years in the social enterprise sector. Mike is an Associate CFO for SoProCFO, scalable CFO and accounting services for high growth, high impact social enterprises. Prior to SoProCFO, Mike created and managed RSF Social Finance's Regenerative Economy Fund, which deploys flexible and innovative financing to social enterprises that are working to accelerate the transition to an economy based on circular economic principles. Previously, Mike served as the Asia Regional Manager for Grameen Foundation's capital markets team, focusing on providing financing and financial advisory services to microfinance institutions and other businesses focused on alleviating poverty. Mike has been advising Berkeley Art Center, Left Margin LIT, and The Sink Factory.

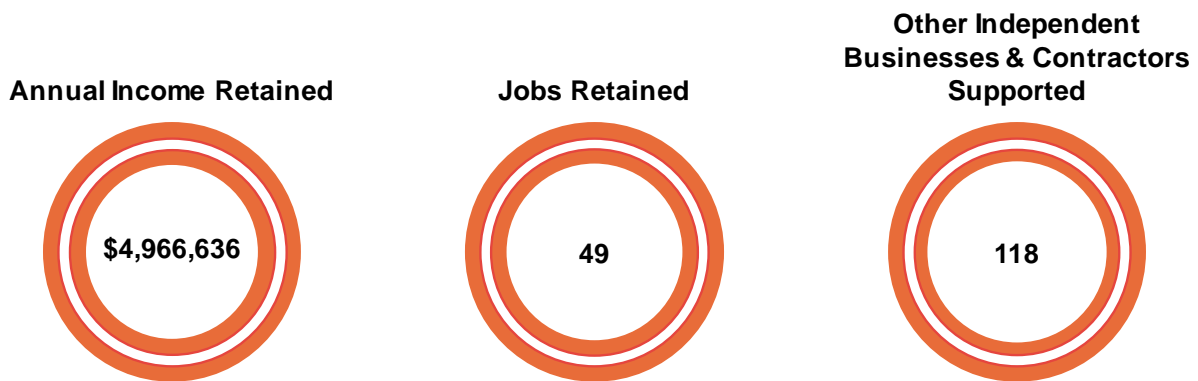


## 5.4 Business Retention Outcomes

Of the 13 businesses enrolled in the Program, 12 have remained open for business in Berkeley. Crumble & Whisk was the only business that was not retained, and they relocated to Emeryville due to the lack of affordable and actionable kitchen space to grow their business in Berkeley.

The following graphic shows the economic impact of the 12 businesses that have been retained in Berkeley through the Program.

**Figure 5: Economic Impact of Businesses Retained**





## 6. Implementation Findings

As part of our annual review of the Program, we surveyed participants to evaluate the implementation and perceptions of the Program. This survey, together with feedback from business owner outreach meetings and team members and review of participant advising files, reveals the strengths and challenges in the implementation of the Program.

### 6.1 Annual Survey Results

We designed and conducted a participant survey to gather feedback on the enrollment process, business advising services, and overall perception of the Program, as well as recommendations for improvement of the Program and additional business retention supports.

In November 2019, we reached out to all past and present Program participants to conduct the survey by phone. Of the 13 participants, 12 scheduled phone calls and completed the survey by phone. Only one participant, Rahwa Neguse from Healthy Black Families, declined to complete the survey by phone due to her meeting schedule, and she completed the survey online. The following table shows the participant survey results.

**Table 5: Annual Survey Results**

|                                                                                                                                                                                 | Disagree Strongly | Disagree Somewhat | Neutral | Agree Somewhat | Agree Strongly |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|---------|----------------|----------------|
| <b>Enrollment Process:</b>                                                                                                                                                      |                   |                   |         |                |                |
| I received value in the initial enrollment consultation. (n=13, mean=4.85)                                                                                                      | 0%                | 0%                | 0%      | 15%            | 85%            |
| Communications in the enrollment process for the business retention program was timely and clear. (n=13, mean=4.85)                                                             | 0%                | 0%                | 0%      | 15%            | 85%            |
| The hand-off from enrollment process to business advisor was smooth. (n=13, mean=4.85)                                                                                          | 0%                | 0%                | 0%      | 15%            | 85%            |
| <b>Business Advising Services:</b>                                                                                                                                              |                   |                   |         |                |                |
| My advisor was knowledgeable about issues related to business retention and was able to guide me through developing a plan to keep my business in Berkeley. (n=13, mean = 4.92) | 0%                | 0%                | 0%      | 8%             | 92%            |
| My advisor was supportive and connected me with the resources to help me retain my business in Berkeley. (n=13, mean=4.92)                                                      | 0%                | 0%                | 0%      | 8%             | 92%            |
| I am satisfied with the advising that I've received through the Berkeley Business Retention Program. (n=13, mean=4.85)                                                          | 0%                | 0%                | 8%      | 0%             | 92%            |



|                                                                                                                                                   | Disagree Strongly | Disagree Somewhat | Neutral | Agree Somewhat | Agree Strongly |
|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|---------|----------------|----------------|
| <b>Business Plans:</b>                                                                                                                            |                   |                   |         |                |                |
| I have a solid plan for maintaining and growing my business or non-profit in Berkeley. (n=12, mean=4.17)                                          | 0%                | 8%                | 17%     | 25%            | 50%            |
| With the plans I've developed, I feel confident that I will be able to maintain and grow my business or non-profit in Berkeley. (n=12, mean=3.92) | 0%                | 17%               | 17%     | 25%            | 42%            |
| With the plans I've developed, I believe I can achieve a satisfactory work life balance. (n=12, mean=3.92)                                        | 0%                | 8%                | 17%     | 50%            | 25%            |
| <b>Overall:</b>                                                                                                                                   |                   |                   |         |                |                |
| I would recommend the Berkeley Business Retention Program to other business owners without reservation. (n=13, mean=4.85)                         | 0%                | 0%                | 8%      | 0%             | 92%            |
| I am satisfied with the overall support that the City of Berkeley is providing around business retention. (n=13, mean=3.69)                       | 8%                | 15%               | 8%      | 38%            | 31%            |

## 6.2 Key Strengths & Challenges

Drawing information collected from the business outreach meetings, participant survey, team feedback, and review of participant advising files, we describe below the key strengths and challenges in the implementation of the Program. The following section lists each key finding in bold followed by a summary description of the key finding.

### **The Program Supports Legacy Organizations in Feeling Heard and Valued**

In our initial outreach conversations with legacy small business owners and non-profit leaders, we have noticed some skepticism about the City of Berkeley's commitment to supporting them. Oftentimes when we first approach a legacy organization with the Program offering, they express their frustration about how their requests and expressions of need to City of Berkeley departments and officials have gone without action. As an independent and confidential third-party, we are able to take the time to deeply listen to their frustrations and challenges without judgment. This enables them to set aside their distrust of the City for a moment and allow us to assess their needs and translate them into actions for working with the City and other partners more effectively.





*“[This Program has impacted my business] by affirming the value of the business in the Berkeley community and committing practical support to ensure its sustainability going forward... [It has] referenced back to me the value of my business and underscores the value of many small businesses that have been in the community for a long time and have found it difficult to be sustainable in the current marketplace but have a big community impact.”*

*- Chaim Mahgel-Friedman, Afikomen Judaica*

### **It Takes Time for the Berkeley Business Community to Trust the Program**

For legacy organizations, it requires substantial trust-building throughout the process of outreach and enrollment. It takes more than one touchpoint for them to take action on the Program. They may hear about the Program from BAOBOB’s canvassing, attend an information session, see us at events, and hear about the results of the Program from other businesses before committing to an enrollment consultation. BAOBOB’s approach to conversations and continual follow-up has been able to engender trust, allow for deeper conversations and connection, and prepare organizations for what is required of them in the Program. Because the hand-off from BAOBOB to Uptima is seamless in the flow of information about the organization’s challenges, we have been able to keep trust throughout the arc of the organization’s participation in the Program. This process of trust-building with legacy organizations may take several months of regular conversations, which extends our outreach period.

### **Berkeley Small Businesses & Non-profits Face Financial Challenges**

The small businesses and non-profits we have been working with have been operating on a thin financial thread. Legacy small businesses have been held together because owners have sacrificed their own financial future by not taking salary or owner draws to support themselves and/or moving money around through bank debt and credit cards to keep the businesses afloat. Newer small businesses have been bootstrapped as owners don’t have the confidence in their business skills and the overall business environment to undertake financing. And, many small non-profits lost their reserves during the last recession and are struggling to rebuild and diversify income streams. Our business advising supports a shift in mindset around money, development of business acumen, and assists with financial analysis to build confidence in their numbers.

### **Relationship with Property Owners is Key to Retention Success**

It’s important that small business owners and non-profit leaders are in regular and good communication with their landlords about their physical spaces. Without this communication, there is often little advanced notice about the landlord’s future plans for the space and how it will affect the business or non-profit. From our experience over the last year, businesses that are in good communication with their landlords have a greater ability to plan their business activities around their space needs, and renew their leases on favorable terms or relocate if necessary.



## Business Owner Time Constraints Shifts Advising Scope

Because many of the small businesses and non-profits we work with have been under-resourced for so long, the owners or managers are wearing too many hats. This creates a challenge for them to carve out the time to work on their business' strategy, prepare for succession, and implement their plans. We have found they are able to make appointments, but often not able to complete work outside of appointments. We believe this a temporary issue while they work on gaining the resources and staffing they need to improve the business. We have had to mitigate this challenge by shifting the business advising scope from our original two-phased structure to include assisting them with employee and community engagement, financial analysis, and documenting plans outside of the scheduled business advising sessions.

## Successful Advising Requires Breadth of Technical Skills and Emotional Intelligence

Running a small business or non-profit is deeply personal – it is a substantial part of the owner's or manager's life and livelihood. As a result, any major challenges that are experienced in the business have deep personal and family relationship impact. This emotional side of the business can often create barriers to developing future plans and implementing them. Our business advising weaves together the technical side of creating and implementing plans with an understanding of how the business impacts the whole person. Our biggest differentiator versus other advising practices has been our ability to address the fears and anxieties around the unknown, failure, and financial issues, in order to support the business owner or non-profit in moving forward with a new plan to revitalize and grow their organization.



*"We're such a small organization coming through a major transition where we almost shut down and now trying to move into growth. The advising has been very critical emotional support and practical support to check my own understanding of what's going on and what needs to happen."*

*- Daniel Nevers, Berkeley Art Center*

## Length of Advising Engagement Directly Impacts Outcomes

At the time of this report, the average tenure of our clients was 4.4 months, and ranged from 1-10 months. Based on survey results, those who were early in their tenure with us had less confidence in their business plans and ability maintain their business or achieve work-life balance. We know from all our experience working with business owners on developing plans, it usually takes several months to create a realistic set of goals, action plans, and financial forecasts. We've found that that this timeframe is extended when a business is at risk and the owner is juggling the day-to-day challenges of trying to stay in business. As a result, we've had to adjust our two phased approach to advising in order to address urgent issues alongside planning and implementation.



## Having a Long-Term Advising Relationship is Extremely Valuable

Turning around any business in jeopardy, especially a legacy business, requires a long view approach. The businesses and non-profits we are working are facing a myriad of challenges without adequate staffing, mentorship, and Board support. Matching each business owner or non-profit leader with an advisor who will work with them for up to up to 16 months has been pivotal in maintaining momentum in creating and implementing their plans. Participants have expressed how unique and valuable this long-term advising relationship has been versus other programs they have experienced or known about.



*“What’s interesting about this program, is that it is a longer term consultant-based program... Having a long-term partner to us is super valuable and a huge resource... This is very innovative. I’m very pleased that the City of Berkeley has taken on this initiative... Kudos to the City of Berkeley for taking this on.”*

*– Natalia Neira, La Pena Cultural Center*



## 7. Recommendations

The key program outcomes, implementation successes and challenges, and stakeholder perceptions present opportunities for further refinement of the Program and consideration of additional City of Berkeley supports for business retention. Drawing on these findings, we propose the following recommendations for strengthening business retention services in the City of Berkeley:

### **Continue Outreach to Business Owners**

As indicated in the implementation findings, it takes time to build trust with busy small business owners and non-profit leaders and enroll them in the Program. With our outreach activities in the first year, the foundation has been laid with a number of legacy businesses and non-profits that we know are at risk, and we continue to field calls from businesses finding themselves newly at risk largely due to redevelopment. We recommend adjusting the scope of the work to continue one-on-one outreach efforts in the second year of operations.

### **Increase Networking Opportunities Among Business Owners**

Small business owners and non-profit leaders in the Program expressed an interest in more networking opportunities outside of the Berkeley Chamber and merchant association events. As such, we recommend adjusting the scope of the work to continue the Program's monthly information sessions. We also recommend refining them for more structured networking activities and rotating them to businesses that we know are in need of support.

### **Improve Visibility of City Services that Support Business Owners**

In the annual survey, many Program participants indicated a lack of awareness of other existing City services that are available to support their businesses. We recommend working with OED to create a single, concise handout with available City resources relevant to business retention (e.g, planning, revolving loan fund, retention programs). We could provide that resource list to business owners and non-profit leaders in our outreach and advising activities.

### **Increase Marketing of Small Businesses & Non-profits**

Program participants expressed a need for more city-sponsored marketing programs to promote small businesses and non-profits in Berkeley. Marketing programs like Discovered in Berkeley are in their early stages, and there is opportunity to increase the visibility of those programs among the small business and non-profit community. Also, there may be an opportunity support the organization and funding of grassroots marketing collaborations among business owners both through merchants associations and more informal groups.





## **Create Additional Funding Options for Small Businesses & Non-profits**

Small business participants were reluctant to apply for the revolving loan fund because the criteria involved being declined by a bank, which would negatively impact their credit scores, and concern over a slow approval process. They also expressed interest in the smaller amounts of funding for marketing, signage, etc. We recommend the City review its revolving loan criteria and process to be more sensitive to the business owner's needs and to consider establishing a small grant fund for marketing and façade improvements.

The non-profit participants were grateful for access to the Civic Arts grants, but indicated that the amounts were small for organizations. Many of them have a higher need for rebuilding their reserves and starting capital improvements. We recommend reviewing the City's funding opportunities for non-profits and to consider establishing a larger grant fund for specifically for capital improvements.

## **Improve City Services in Commercial Corridors**

Many small business owners who we have reached out to as well as some participants in the Program have expressed frustrations over long-term parking issues, cleanliness of sidewalks and streets, and safety of themselves and their customers. They have asked for more attention to enforcement of current and future public works ordinances that affect small business commercial corridors, so they are more welcoming to customers and other businesses. We recommend that the City take this feedback into consideration and review the level of enforcement.

# City of Berkeley Business Retention Program

Keep your Small Business or Non-profit in Berkeley



Apply for a one-on-one  
consultation today

[optimabootcamp.com/apply](http://optimabootcamp.com/apply)

## What is it?

The Berkeley Business Retention Program is a collaboration between the City of Berkeley's Office of Economic Development, Uptima Business Bootcamp and Bay Area Organization of Black Owned Businesses to support small businesses and non-profits that are at risk of displacement or closure in Berkeley.

The business assistance part of the program is provided by Uptima Business Bootcamp. It includes free one-on-one business advising and workshops to help you create an action plan, find funding and implement your plan to maintain and grow your business in Berkeley.

## Who's eligible?

Existing independently-owned small businesses and non-profits based in the City of Berkeley that:

- Are potentially at risk of displacement or closure
- Have the potential to retain existing jobs or create new jobs in Berkeley
- Need business support to stay in place or relocate elsewhere in Berkeley
- Can commit the time and effort to put in place a plan to maintain and grow their business

## How do we help?

We offer free customized, one-on-one business advising to help you maintain and grow your business in Berkeley.

### CREATE AN ACTION PLAN

- Develop strategies to increase your sales and profitability
- Prepare to renew your existing commercial lease or find new space
- Research costs to upgrade, relocate or expand your business
- Plan for retirement by developing a succession plan

### FIND FUNDING

- Learn what funding options are available and how to access them
- Prepare documentation to raise money
- Connect with potential funders
- Get assistance in navigating the funding process

### IMPLEMENT YOUR PLAN

- Create or enhance your online presence, including e-Commerce and online ordering options
- Improve your operations, finances and administration
- Mitigate business disruption before, during and after relocation
- Transition ownership of your business

## ABOUT THE PARTNERS



**City of Berkeley's Office of Economic Development** assists businesses, entrepreneurs, artists and community organizations to access services, feel welcome in Berkeley and thrive.  
Visit: [cityofberkeley.info/oed](http://cityofberkeley.info/oed)



**Uptima Business Bootcamp** is a member-owned business accelerator dedicated to providing entrepreneurs with greater access to hands-on education, resources and community to create thriving businesses.  
Visit: [optimabootcamp.com](http://optimabootcamp.com)



**Bay Area Organization of Black Owned Businesses** is a membership organization committed to connecting, promoting, informing and representing black-owned and led businesses and nonprofits throughout the Bay Area. Visit: [baobobdirectory.com](http://baobobdirectory.com)

## CONTACT

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# Keep Your Small Business or Non-Profit in Berkeley



# Berkeley Business Retention Program

- Support small businesses and non-profits at risk of displacement or closure in Berkeley
- Free one-on-one business advising and workshops
- Create an action plan
- Find funding
- Implement your plan to keep your business in Berkeley



**Accelerate your business.**

# Eligibility Requirements

- Existing independently-owned small businesses or non-profits based in the City of Berkeley
- Are potentially at risk of displacement or closure
- Have the potential to retain existing jobs or create new jobs in Berkeley
- Need business support to stay in place or relocate elsewhere in Berkeley
- Can commit the time and effort to put in place a plan to maintain and grow their business

# Business Advising

## Create an Action Plan

- Develop strategies to increase sales and profitability
- Prepare to renew an existing commercial lease or find a new space
- Research costs to upgrade, relocate or expand the business
- Plan for retirement by developing a succession plan

## Find Funding

- Learn what funding options are available and how to access them
- Prepare documentation to raise money
- Connect with potential funders
- Get assistance in navigating the funding process

## Implementation

- Create or enhance the business' online presence
- Improve the business' operations, finances and administration
- Mitigate business disruption before, during and after relocation
- Transition ownership of the business

**Accelerate your business.**

# Workshops

- Fourth Monday of each month throughout this year
- Rotating throughout the City of Berkeley's business districts
- Join us to:
  - Learn about the business retention program
  - Receive tips and tools to help you keep your business in the community
  - Get to know other Berkeley businesses



# Business Health Checklist

**Accelerate your business.**



# #1: Strategy

**Have a strategy to grow your business**

- ☑ Understand your strengths, weaknesses, opportunities and threats
- ☑ Set goals for the year
- ☑ Create an action plan to achieve those goals
- ☑ Have a monthly budget for the year that reflects your goals and action plans
- ☑ Identify if you need outside funding



**Accelerate your business.**

## #2: Infrastructure

**Make sure you have the appropriate infrastructure in place to manage the business**

- ☑ Formed a business legal entity
- ☑ Have made all legal entity filings
- ☑ Federal, state and local permits are up to date
- ☑ Have the appropriate insurances
- ☑ Accounting system is in place and someone is doing the bookkeeping on an ongoing basis



**Accelerate your business.**

# #3: Online Presence

**Make sure your business' online presence is working**

- ☑ Get your business online
- ☑ Hook up marketing analytics platforms (e.g., Google Analytics)
- ☑ Review traffic to your website
- ☑ Review social media activity and email marketing campaigns



**Accelerate your business.**

# #4: Sales

**Without sales, your small business can't earn a profit**

- ☑ Compare actual sales to budget each month
- ☑ Know your bestsellers
- ☑ Review your sales channels
- ☑ Set reasonable boundaries with customers to ensure efficient use of time and other resources

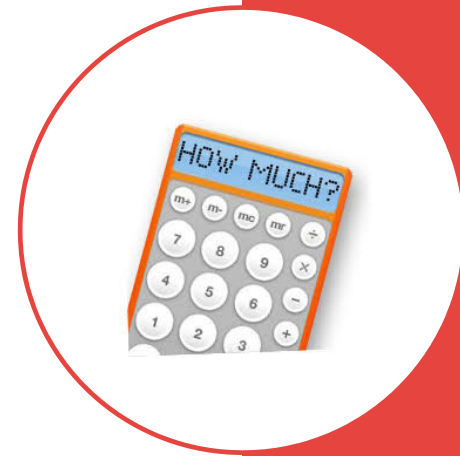


**Accelerate your business.**

# #5: Expenses

**Get a handle on how your money is spent**

- Compare actual expenses to budget each month
- Know your biggest expenses
- Know when your bills are due
- Look at how you can save money



# #6: Workers

## Recruit, hire and retain workers

- ☑ Have properly classified employees vs. independent contractors
- ☑ Roles and responsibilities are clear
- ☑ Proper onboarding and training
- ☑ Procedures for performance evaluation
- ☑ Compliant with employer requirements – workers compensation, I-9s, W-2s, payroll tax withholding, minimum wage



# #7: Physical Space

**Maintain a physical space for your business**

- ☑ Have a commercial lease
- ☑ Know the lease terms
- ☑ Lease permits current / planned use of the space
- ☑ Have met all federal, state and local zoning and permit requirements



**Accelerate your business.**



**Thank you!**

**Berkeley Business Retention Program**

**<https://uptimabootcamp.com/keep-your-business>**

**Accelerate your business.**



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**MEMO**

To: Jordan Klein, Office of Economic Development  
 From: Alison Lingane, Project Equity  
 Date: November 27, 2019  
 Re: Employee Ownership Program and System Implementation Recommendations

Project Equity engages long-standing businesses to retain them in Berkeley through providing business retention services, with an emphasis on employee ownership.

I am pleased to provide a set of program and system recommendations for the city of Berkeley to help integrate employee ownership—specifically business retention through employee ownership—into some of the existing systems and processes to help it take stronger hold in the city’s small business support programs. These recommendations stem from our partnership with the Office of Economic Development that began in November 2019, as well as from our interactions and engagements with other city economic development teams.

I have provided a summary of the recommendations below, and a more detailed review of them is incorporated in the attached PDF presentation.

**SUMMARY OF IMPLEMENTATION RECOMMENDATIONS**

| Recommendation |                                                                                                                                                                                          | Short-, near- or long-term | Responsible department                                                        |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------------------------------------------------------------|
| #1             | <b>Integrate into small business touch points:</b><br>Identify opportunities within existing small business touch points to introduce Employee Ownership and business succession support | Short-term and Near-term   | Office of Economic Development<br>Business Licensing<br>Procurement<br>Others |
| #2             | <b>Refine small business data collection and management (data points + systems)</b>                                                                                                      | Near-term                  | Business Licensing<br>Finance                                                 |
| #3             | <b>Integrate into staff priorities</b>                                                                                                                                                   |                            |                                                                               |
| #3A            | Incorporate into economic development staff priorities                                                                                                                                   | Short-term                 | Office of Economic Development                                                |
| #3B            | Publicly recommend and promote Employee Ownership transition to business owners looking to sell or retire                                                                                | Short-term and ongoing     | Office of Economic Development                                                |

|           |                                                                                      |                        |                                                                                |
|-----------|--------------------------------------------------------------------------------------|------------------------|--------------------------------------------------------------------------------|
| #3C       | Research a Legacy Business Program and recommend whether / what to pursue            | Short-term             | Office of Economic Development                                                 |
| <b>#4</b> | <b>Provide staff and elected officials with information about employee ownership</b> |                        |                                                                                |
| #4A       | Publish annual report of longstanding businesses                                     | Near-term and ongoing  | Office of Economic Development                                                 |
| #4B       | Provide ongoing education for staff and elected officials                            | Short-term and ongoing | Office of Economic Development                                                 |
| <b>#5</b> | <b>Integrate into city funding priorities</b>                                        | Near-term and ongoing  | City Council Finance<br>With recommendations from OED, City Manager and others |

We look forward to a continued partnership to advance the city's goals, retaining long-standing Berkeley businesses and supporting worker cooperatives.

Attachment: Employee Ownership Program and System Recommendations PDF



# Business Retention through Employee Ownership

*Program and systems recommendations  
for the City of Berkeley*

*Fall 2019*

## IMPLEMENTATION RECOMMENDATIONS

- #1 Integrate into small business touch points
- #2 Refine small business data collection and management (data points + systems)
- #3 Integrate into staff priorities
- #4 Provide staff and elected officials with information about employee ownership
- #5 Integrate into city funding priorities

# RECOMMENDATION #1

## INTEGRATE INTO SMALL BUSINESS TOUCH POINTS

## Identify opportunities within existing small business touch points to introduce Employee Ownership and business succession support

- Business licensing / annual tax payments
  - Include employee ownership as a business form
  - If businesses are over 20 years old, include an insert about business succession support with annual renewal
- Include EO + succession in regular OED engagement
  - e.g. small business forums, newsletters
- Business procurement
  - Procurement preference for EO businesses
  - Include insert about EO succession in communication

**RECOMMENDATION #2**  
**REFINE SMALL BUSINESS DATA**  
**COLLECTION AND MANAGEMENT**  
**(DATA POINTS + SYSTEMS)**

## RECOMMENDATION #2

### Refine data collection and management

- Refine the specific data points that the city captures to enable reporting on existing EO, and potential retention risk due to need for succession (see next slide)
- Consider utilizing California Employment Development Department data to capture employee and revenue numbers
- Invest in data systems that connect business data with city revenue, to generate revenue reports by age of business



| HELPFUL DATA                                                                                                                                                                                                     | PURPOSE                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <b>Year formed</b>                                                                                                                                                                                               | Age of businesses = retention risk                                                                                        |
| <b>Change of ownership date</b>                                                                                                                                                                                  | Time since change of ownership = retention risk                                                                           |
| <b>Broad-based employee ownership (worker coop, ESOP or other form)</b>                                                                                                                                          | Enables tracking of the # of EO businesses in the city                                                                    |
| <b>Business form</b><br>Include checkbox for <ul style="list-style-type: none"> <li>- If nonprofit</li> <li>- If publicly-traded</li> <li>- If single location of a larger entity with HQ out of area</li> </ul> | Supports data analysis of privately-held, locally-owned businesses that could be benefit from local succession strategies |
| <b>Identify if primarily real estate ownership</b>                                                                                                                                                               | Not a candidate for employee ownership                                                                                    |
| <b># of employees (could use a range)</b>                                                                                                                                                                        | Below 10 employees, less viable employee ownership candidate                                                              |
| <b>NAICS code</b>                                                                                                                                                                                                | Industry / sector analysis                                                                                                |

# RECOMMENDATION #3

## INTEGRATE INTO STAFF PRIORITIES

## RECOMMENDATION #3A

### **Incorporate into economic development staff priorities**

- ✓ Understand business retention risk among city businesses
- ✓ Attend training (or watching recorded webinar) about employee ownership succession
- ✓ Engage with legacy businesses to provide access to local succession resources and introduce employee ownership
  - Annual legacy business retention event that focuses on or includes an employee ownership component
  - Annual direct mail and email to business owners raising awareness of employee ownership option as succession / transition option

## RECOMMENDATION #3B

### **Publicly recommend and promote Employee Ownership transition to business owners looking to sell or retire**

- ✓ City website
- ✓ City engages Berkeley Chamber of Commerce to promote employee ownership
- ✓ Other opportunities as available

## RECOMMENDATION #3C

### Research a Legacy Business Program and recommend whether / what to pursue

- For example, see the city of San Francisco program: [sfosb.org/legacy-business](https://sfosb.org/legacy-business)
  - Legacy business registry
  - Financial grants available to help with displacement

## RECOMMENDATION #4

**PROVIDE STAFF AND ELECTED OFFICIALS  
WITH INFORMATION ABOUT EMPLOYEE  
OWNERSHIP**

## RECOMMENDATION #4A

### **Publish annual report of longstanding businesses**

- Publish an annual report on longstanding businesses to keep the importance of business retention through succession support front and center
- Include a summary of this in City Council report(s)

## RECOMMENDATION #4B

### **Provide ongoing education for staff and elected officials**

- Provide access to recorded webinar and/or training by an outside expert on employee ownership to provide high level understanding and talking points
- Have handouts that are available to city staff and elected officials to provide to local businesses



# RECOMMENDATION #5

## INTEGRATE INTO CITY FUNDING PRIORITIES

## RECOMMENDATION #5

### **Integrate into city funding priorities**

- City review of opportunities to incentivize local ownership transition, including subsidizing technical assistance
- Contract with employee ownership experts to provide hands on employee ownership technical assistance
- City held/endorsed loan fund available for employee ownership transitions

## Contact

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310-913-1474

Alison Lingane

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510-684-6665



# EMPLOYEE OWNERSHIP

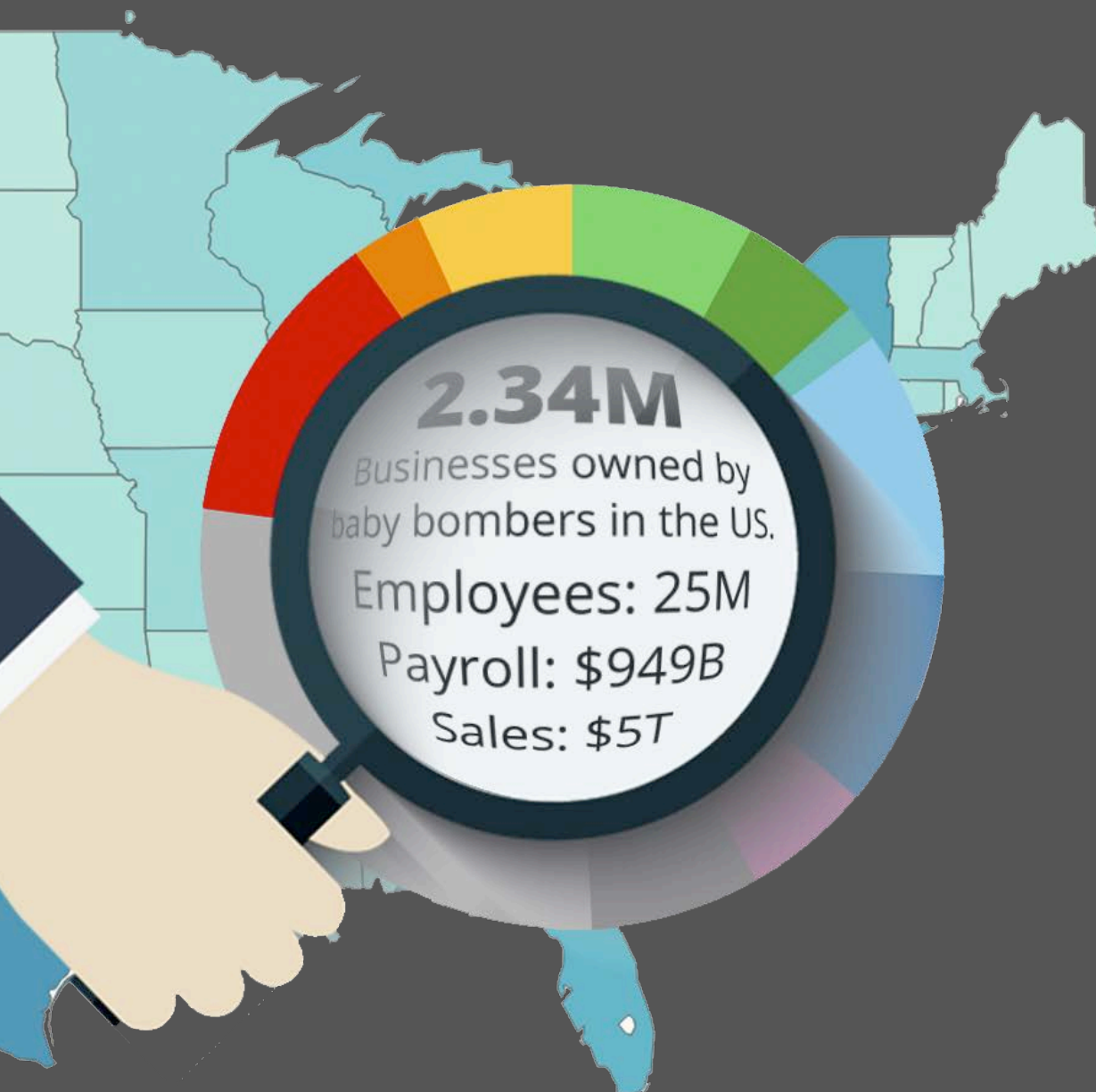
grows good jobs and keeps  
our local businesses thriving

City of Berkeley staff training



# Agenda

1. Why Employee Ownership?
2. Retain local businesses & quality jobs
3. Types of Employee Ownership
4. How it works
5. Next steps



# The Problem

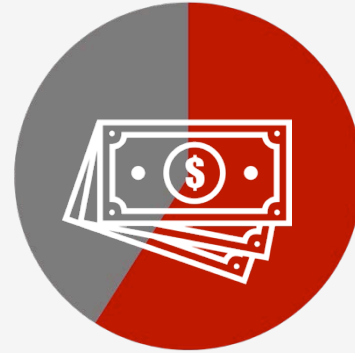
National Silver Tsunami  
only 1 out of 5 businesses sell

## Impact & opportunity

- Local business retention
- Jobs
- Local tax base
- Local ownership
- Opportunities for employees

# The Problem

Need for succession planning



**1,200** businesses  
in **Berkeley** are  
over **20** years old.

They account for  
**\$1.6B** or **60%** of  
small business  
revenue.

These businesses  
employ **1** in **3**  
workers.

According to a Project Equity study. Measurements indicate percentages of total businesses included in the study and do not include nonprofits, publicly traded companies, franchises, public sector and related companies.

# TOM & GEORGE Sold to their Employees



“When it came time for us to think about succession, the thought of finding someone to buy us out—given our distinct manufacturing niche—seemed improbable.”

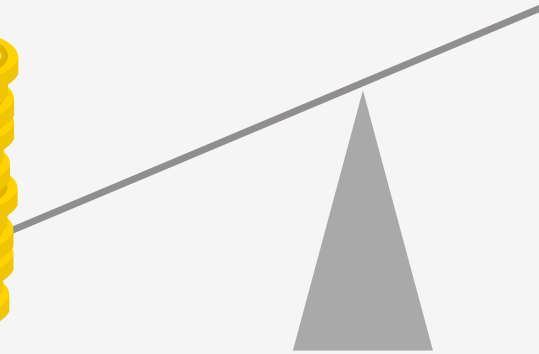


# UNDERSTANDING YOUR SUCCESSION OPTIONS

| OPTIONS            | <br>PRESERVE LEGACY | <br>MARKET VALUE | <br>TAX BENEFITS | <br>EMPLOYEES RETAINED |
|--------------------|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| Sell to Family     | ✓                                                                                                    | ?                                                                                                   | ?                                                                                                   | ?                                                                                                         |
| Acquisition        | ?                                                                                                    | ?                                                                                                   | ✗                                                                                                   | ?                                                                                                         |
| Employee Ownership | ✓                                                                                                    | ✓                                                                                                   | ✓                                                                                                   | ✓                                                                                                         |
| Close Down         | ✗                                                                                                    | ✗                                                                                                   | ✗                                                                                                   | ✗                                                                                                         |

# The Problem

Racial wealth gap





# The Solution Employee Ownership

# Most common forms of Employee Ownership



Employee Stock  
Ownership Plan (ESOP)  
*20-40+ employees minimum size  
threshold*



Worker-owned  
cooperative

# Employee ownership creates quality jobs



Household  
net worth is  
**92%** higher



Median job  
tenure is  
**53%** longer

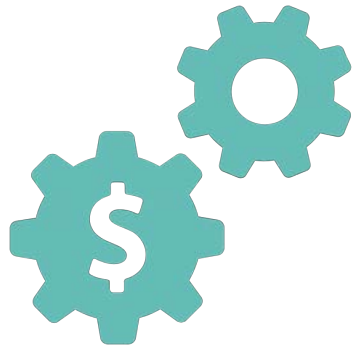


Median wage  
income is  
**33%** higher

Based on a 2017 study from the National Center for Employee Ownership

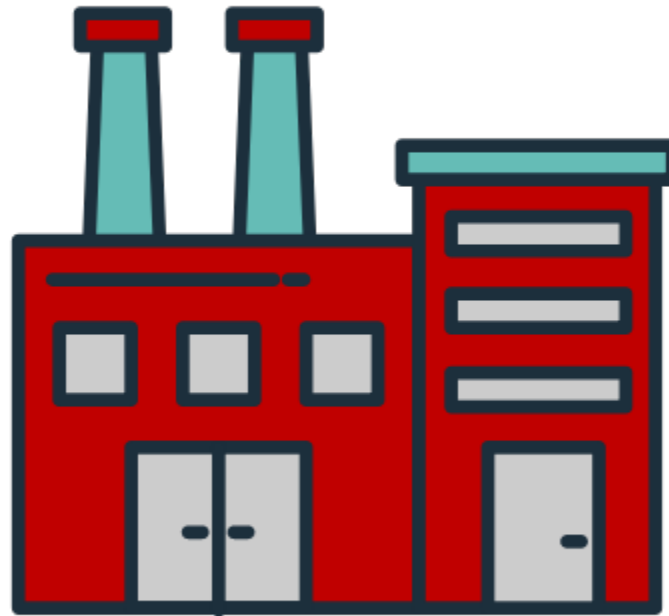
# Employee ownership creates stronger businesses

## Productivity levels



grow **9-19%** higher  
PER YEAR

CASS Business School in London



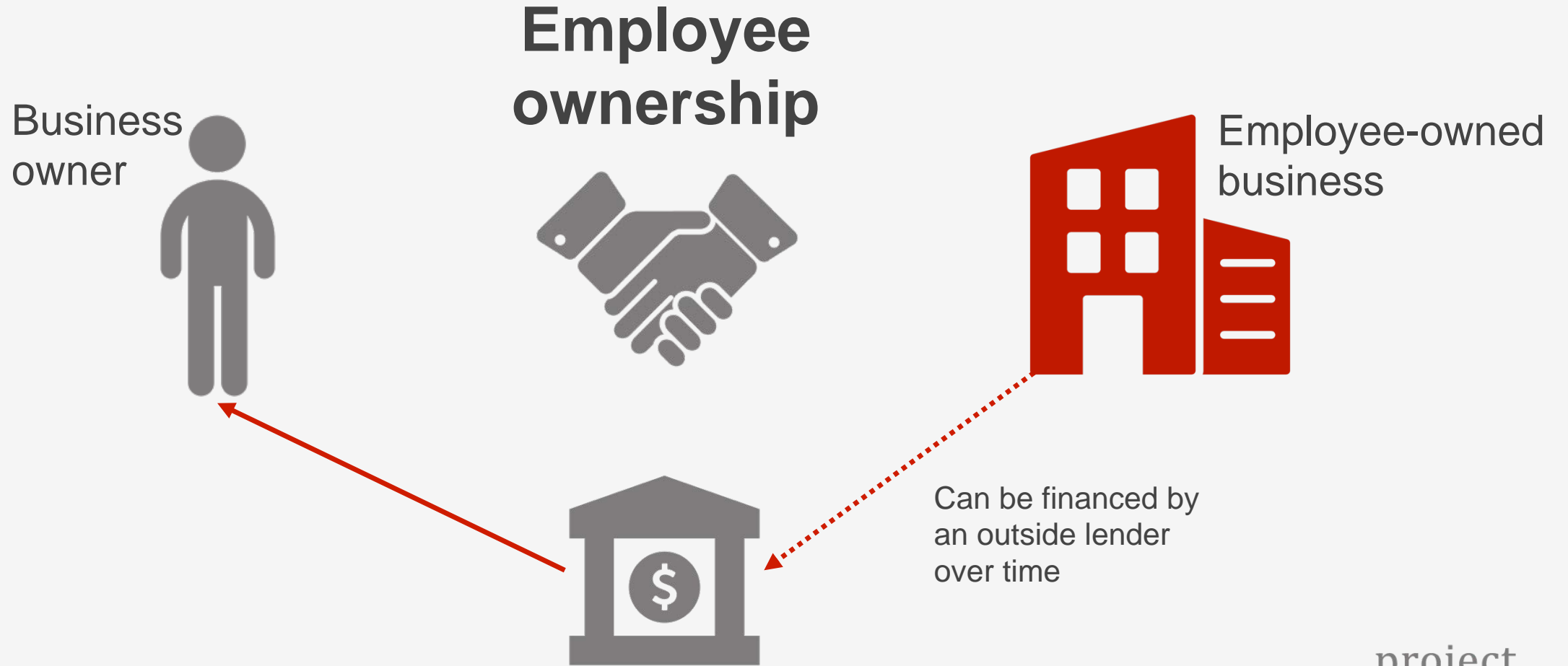
## Sales and employment



grows **2%** faster  
PER YEAR

National Center for Employee Ownership

# How it works



# Financing is available



Businesses that work with Project Equity can participate in *Accelerate Employee Ownership* and receive:



Flexible, affordable financing



Expert advice and hands on support through the transition



# Readiness factors



## Profitable company

In good financial health for the past 3 years



## 10+ employees

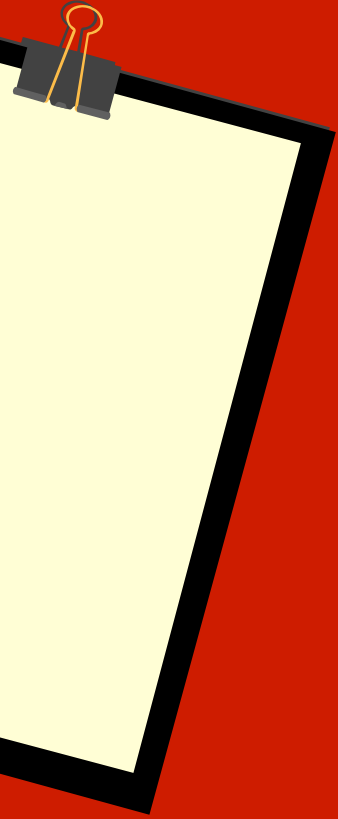
Grows a strong team and expands access to equity



## Proven track record

Years of experience, not a start-up





Found a good candidate?



# Next steps

Have them set up a free consultation  
by emailing **consult@project-equity.org**

Visit [Project-Equity.org](https://Project-Equity.org) for more information



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**MEMO**

To: Jordan Klein, Office of Economic Development  
 CC: Yassi Eskandari, Sustainable Economies Law Center  
 From: Alison Lingane, Project Equity  
 Date: November 27, 2019  
 Re: Employee ownership and worker cooperative support

I am pleased to provide a progress update on the Project Equity contract with the City of Berkeley, which has been very successful in advancing our shared goals of supporting Berkeley's vibrant small business community. Project Equity engages long-standing businesses to retain them in Berkeley through providing business retention services, with an emphasis on employee ownership.

**Summary of accomplishments to date**

- ✓ Completion of detailed data analysis, well-attended staff training, and [public release](#)<sup>i</sup> of data summary
- ✓ Significant positive press highlighting Berkeley's investment<sup>ii</sup> ([San Francisco Chronicle](#), [East Bay Express](#), [Daily Californian](#), [Nonprofit Quarterly](#), [Huffington Post](#), [NextCity](#))
- ✓ Personal engagement with over 250 Berkeley businesses
- ✓ Hands-on employee ownership technical assistance to four Berkeley businesses, with demonstrated interest from several more

The Sustainable Economies Law Center helped the Loan Administration Board amend the terms of the City's Small Business Revolving Loan Fund to expand access for worker cooperative businesses and create a 10% lending target for cooperatives.

- ✓ Successful event that feature two Berkeley employee-owned businesses: Sun Light & Power and Adams and Chittenden
- ✓ Set of program and system recommendations provided to OED for how the city can integrate employee ownership succession into its small business data, communications and support systems

**Contract expansion**

We are finalizing contract revisions with OED to for an expanded contract amount of \$100,000 through October 2021 to achieve these shared objectives, in partnership with the Sustainable Economies Law Center:

- 1) Continued support for succession and employee ownership transitions (TA and legal)
- 2) Support for start-up worker cooperatives (legal)
- 3) Training and advice on worker coop topics

We look forward to a continued partnership to advance the city's goals, retaining long-standing Berkeley businesses and supporting worker cooperatives.

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<sup>i</sup> [www.project-equity.org/communities/small-business-closure-crisis/berkeley-california/](http://www.project-equity.org/communities/small-business-closure-crisis/berkeley-california/)

<sup>ii</sup> San Francisco Chronicle ([www.sfchronicle.com/bayarea/otistaylorjr/article/Nonprofit-helps-employees-take-hold-of-reins-as-13429622.php#photo-16569511](http://www.sfchronicle.com/bayarea/otistaylorjr/article/Nonprofit-helps-employees-take-hold-of-reins-as-13429622.php#photo-16569511)), East Bay Express ([www.eastbayexpress.com/oakland/berkeley-pledges-support-and-funding-for-worker-co-ops/Content?oid=25301247](http://www.eastbayexpress.com/oakland/berkeley-pledges-support-and-funding-for-worker-co-ops/Content?oid=25301247)), Daily Californian ([www.dailycal.org/2019/03/07/berkeley-city-council-increases-support-of-worker-cooperatives](http://www.dailycal.org/2019/03/07/berkeley-city-council-increases-support-of-worker-cooperatives)), Nonprofit Quarterly ([nonprofitquarterly.org/2019/03/08/in-california-berkeley-city-council-votes-](http://nonprofitquarterly.org/2019/03/08/in-california-berkeley-city-council-votes-)

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[unanimously-to-support-worker-co-ops](http://www.huffpost.com/entry/berkeley-business-cooperatives-baby-boomers-retire_n_5cc8b8d2e4b0d123954be5df), Huffington Post ([www.huffpost.com/entry/berkeley-business-cooperatives-baby-boomers-retire\\_n\\_5cc8b8d2e4b0d123954be5df](http://www.huffpost.com/entry/berkeley-business-cooperatives-baby-boomers-retire_n_5cc8b8d2e4b0d123954be5df))

# Community Services United

## Strategic Plan

### October 2019-December 2020

#### Background

Community Services United (“CSU”) launched the Berkeley Flea Market (“BFM”) over 47 years ago as a fundraiser for community organizations. CSU set up BFM on the Ashby BART station parking lot despite warnings from BART and in the early 1980s, fought and won to preserve our space through a concession permit from BART.

BFM is a festive heartbeat of the Berkeley community. BFM has been a weekly neighborhood appointment where patrons can make acquaintances with local vendors, dance to a drum circle, listen to live music, join the open mic, hang with neighbors, and meet newcomers to the city. BFM is loved for our international flare and family-oriented vibe. We have provided a place to celebrate Berkeley’s diversity and cultural expression and highlight Berkeley’s commitment to ecological awareness and sustainable living by providing opportunities for reuse and recycling.

From inception, BFM has provided pathways to entrepreneurship for vendors and has been an important source of secondary and primary income for the hundreds of vendors who regularly set up stalls on weekends. The presence of BFM has acted as a catalyst, extending the City of Berkeley’s larger economic progressive strategy by providing lucrative opportunities for marginalized people to engage in business and graduate to their own brick-and-mortar facilities.

But over the years, BFM has developed a complicated reputation. Various Berkeley-based individuals and groups have periodically raised concerns about the sale of stolen goods, safety of the market, and mismanagement of CSU funds. In addition, the overall economic environment in Berkeley has been changing as gentrification has displaced many longstanding South Berkeley residents and buying patterns of newer residents are more geared toward eCommerce (e.g., Amazon). These factors along with unusual wildfire and rainy seasons put CSU in financial risk and caused a temporary closure of BFM in early 2019.

With significant effort from the Board and staff, vendors, and advisors, CSU has emerged from many of the challenges related to the temporary shutdown and has stabilized our financial position for the near-term. However, the BFM location in the Ashby BART station parking is again uncertain as the City of Berkeley and BART plan for transit-oriented development on the lot.

With this in mind, we have developed a strategic plan for the next year to support efforts to regain trust in the community, improve our financial position, and build organizational capacity to withstand the challenges ahead and ensure a long-term space for BFM to provide sustainable economic opportunities for our vendors.

#### Mission & Vision

The purpose of CSU is to operate the Berkeley Flea Market by providing a safe and supportive marketplace for an established community of diverse vendors to do business.

In doing this, CSU seeks to:

*Alleviate Poverty.* CSU exists to provide low-income, minority East Bay residents with income necessary to alleviate the effects of gentrification and community disinvestment that is pervasive throughout the area.

*Support Self-Reliance through Entrepreneurship.* CSU fosters entrepreneurial skills in low-income small business owners through practical, hands-on business education and occupational training. CSU imparts vendors with tools for life-long self-sufficiency to ensure their businesses are successful and sustainable. These tools include financial management, marketing, customer service, negotiation, leadership, and networking.

*Empower the Underserved.* CSU offers meaningful employment to community members and donates basic necessities, including food and clothing, to those most vulnerable in the East Bay.

*Foster Community.* CSU organizes the weekly Berkeley Flea Market, which provides low-income vendors with much-needed income while also developing a mutually supportive and sustaining business community of local entrepreneurs. Even more, BFM boasts an open community space for local artists suffering from harsh economic pressures to participate in restorative drum circles, share poetry, songs, and their culturally-based ingenuities.

## Environmental Scan

Through engagement with CSU’s Board of Directors and staff, BFM advisory board, as well as in-person surveys with half of the current BFM vendors, we have identified the following factors in our performance and our market landscape that are informing our strategic goals.

| Strengths                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Weaknesses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Historical significance</li> <li>• Family and community vibe / people come with good energy</li> <li>• Place for people to heal</li> <li>• Gathering place for community</li> <li>• Last bastion for former Berkeley residents and business owners who have been displaced</li> <li>• Grassroots organization</li> <li>• Has a social conscience and activist leaning</li> <li>• Counter culture</li> <li>• Provides economic opportunity for low income folks through accessible, low-cost vending opportunities</li> <li>• Diversity of vendors and their offerings - multicultural / international market, intergenerational</li> <li>• Longstanding vendors have regular customers who come from all over the Bay to purchase from them</li> <li>• Vendors feel supported by other vendors</li> </ul> | <ul style="list-style-type: none"> <li>• BFM hasn’t been run as a business – has been more like a club, management hasn’t stuck to the rules they created, not all vendors are paying, and some people are walking around selling stuff without a stall</li> <li>• Number of vendors has fallen off – lot is not full, need more food vendors</li> <li>• Vendors not making enough money</li> <li>• Some vendors not serious about their business – vendors not coming on time, merchandising not up to par</li> <li>• Need more commitment from new vendors – don’t just vend once and disappear</li> <li>• Majority of drum circle has left</li> <li>• Lack of curation – need dedicated food court, classify rows for specific types of vendors (e.g., bath and body products)</li> <li>• Safety – too many ways in, people selling drugs / using drugs / causing trouble / fights, dogs not on leashes, need more professional security</li> <li>• Some vendors bad mouthing other vendors – don’t want new people coming in / competition, having challenges with working in a diverse environment</li> <li>• Community not bonded as much as before</li> <li>• Need more volunteers</li> <li>• Need cleaner bathrooms</li> <li>• Lack of financial reserve to get through rainy season</li> </ul> |

| Opportunities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Threats                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Celebrate the history of BFM</li> <li>• Increase promotional activity to drive more foot traffic and vendors to BFM through radio, tv, Berkeley event and tourist websites, social media, videos, flyer distribution, etc.</li> <li>• Create campaigns with once a month features, such as Art Walk, collectibles, and vintage</li> <li>• Create campaigns that showcase the businesses at BFM and businesses that have graduated from BFM (e.g., People’s Bazaar, Lola’s African Apparel)</li> <li>• Create campaigns and events around different holidays</li> <li>• Encourage vendors to promote they will be at BFM during the weekend</li> <li>• Partnerships with business support organizations, schools, and community groups to increase number of vendors and provide support for vendors</li> <li>• Partnerships to bring in community offerings, such as farm stand, distribution point for food pick-up, health clinic, etc.</li> <li>• Partnerships to increase offerings for youth, such as junior market and arts tables for youth, to make BFM more family oriented</li> <li>• Events with music and entertainment to draw more of a crowd</li> <li>• Wellness tent for meditation, yoga, etc.</li> <li>• Pull in artists, speakers, and community events on the stage area</li> <li>• Charging an admissions fee to support BFM operations</li> <li>• Reducing stall fees to bring in more vendors</li> <li>• More fencing to increase security</li> <li>• Improve systems for renting stalls – allow for purchasing on website and payment through PayPal</li> <li>• Make BFM a cooperative owned by the vendors</li> <li>• Establish a BFM residency program to highlight specific vendors and their ideas for BFM</li> <li>• Have a way for vendors to sell online through BFM (e.g., Amazon)</li> </ul> | <ul style="list-style-type: none"> <li>• Proliferation of other markets, street fairs, and festivals continue to take vendors away – more foot traffic and affluent customer base at those markets provide more sales for vendors</li> <li>• Interlopers – people spreading rumors about BFM operations, CSU Board decisions, etc. and trying to create vendors associations outside of the CSU structure</li> <li>• Internal division due to rumors being spread by interlopers</li> <li>• BART proposed development on the parking lot</li> <li>• Perception that vendors are selling stolen items</li> <li>• Berkeley politics</li> <li>• Gentrification</li> <li>• Amazon effect</li> <li>• Looming recession</li> <li>• Rainy season affects foot traffic and number of vendors at outdoor market</li> <li>• Wildfires creating poor air quality affects foot traffic and number of vendors at outdoor market</li> </ul> |

## Objectives

### Objective #1: Improve financial position and create financial reserve

#### Overview

For a period of three years prior to 2019, the financial conditions of CSU were deteriorating due to the confluence factors affecting BFM, including changing neighborhood demographics, shift in consumer buying patterns to eCommerce platforms, poor public perception of BFM as a place to buy stolen goods, and lack of proper structure, management, and Board oversight. And after an unusual season of wildfires affecting air quality and significant rains in late 2018, CSU did not have a financial reserve to cover the costs of BFM operations through the remainder of the rainy season in early 2019, resulting in a temporary closure of BFM. To prevent future closures during the winter and early spring seasons, CSU

is prioritizing the re-establishment of a financial reserve by raising philanthropic capital and increasing our revenue generation from BFM operations.

### Goals

| Goal                                              | Timeframe    |
|---------------------------------------------------|--------------|
| Raise \$10,000 in funding to re-establish reserve | January 2020 |
| Consistently bring in \$25,000 in monthly income  | June 2020    |
| Increase reserve to \$25,000                      | October 2020 |

### Action Plan

| Action Step                                           | Description                                                                                                                        | Staffing                                        | Completion Date |
|-------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------------|
| Develop sponsorship package                           | Create package outlining BFM sponsorship opportunity, including sponsorship tiers and incentives                                   | Kaylah, Uptima support                          | October 2019    |
| Create list of potential sponsors                     | Create list of potential sponsors to reach out and identify Board and staff members to reach out to them                           | Kaylah, Uptima support                          | October 2019    |
| Receive notice on tax exempt status                   | Receive notice from IRS about tax-exempt status, which will either grant the status or be a request for additional information     | Board, EBCLC support                            | November 2019   |
| Implement financial policies                          | Develop and implement financial policies around reimbursements, independent contractors, vendor payments, etc.                     | Yasin, Board Accountant support, Uptima support | November 2019   |
| Philanthropic raise - \$5,000                         | Raise \$5,000 from combination of grants, corporate sponsorships, and individual donors                                            | Kaylah                                          | December 2019   |
| GoFundMe Campaign - \$5,000                           | Receive \$5,000 through GoFundMe Campaign for BFM preservation                                                                     | Kaylah, Uptima support                          | January 2020    |
| Develop plan to monetize stage area                   | Develop pricing structure, policies for stage use, process for receiving and approving applications, and contract for stage rental | Kaylah, Yasin, Uptima support, EBCLC support    | February 2020   |
| Increase number of vendors who pay on a monthly basis | Increase number of vendors who pay on a monthly basis from 2-3 vendors to at least 10 vendors                                      | Yasin                                           | February 2020   |
| Start renting stage area                              | Start renting stage area to community groups for artists, speakers, and entertainment                                              | Kaylah, Yasin                                   | March 2020      |



| Action Step                                                      | Description                                                                                                                                                                | Staffing      | Completion Date |
|------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-----------------|
| Increase number of consistent vendors to 80 paid vendors per day | Increase number of consistent vendors from 50 to 80 paid vendors per day (a vendor is considered consistent if they have been vending every weekend for at least 3 months) | Yasin, Kaylah | May 2020        |
| Rent stage area consistently                                     | Rent stage area to community groups at least 2x per month on a consistent basis (consistent means for at least 3 months)                                                   | Kaylah, Yasin | October 2020    |

## Objective #2: Improve vendor attraction and retention

### Overview

In our heyday, BFM routinely filled 200+ vendor stalls and was teeming with foot traffic on the weekends. Back then, vendors would line up down the block on Thursday nights to make sure they had a stall for the weekend. And for patrons, BFM was a place to be seen. Now, most weekends BFM operates with around 50 vendors and much lighter foot traffic. A sizeable proportion of the vendors are longstanding with at least ten years of tenure with BFM and their own regular customer base who are looking for them at BFM. However, the newer vendors find it challenging to make sales at BFM due in part to BFM's low foot traffic, but also to their own lack of business skills. In order to attract and retain new vendors, we will need to increase marketing and promotion activities and themed events to drive more foot traffic to BFM, as well as provide additional supports for vendors to gain the skills they need to have successful vending experiences.

### Goals

| Goal                                                 | Timeframe  |
|------------------------------------------------------|------------|
| Increase first time vendor retention from 10% to 30% | March 2020 |
| Increase number of vendors from 50 to 80             | May 2020   |
| Increase weekly foot traffic by 300%                 | June 2020  |

### Action Plan

| Action Step                       | Description                                                                                                                                                                                                 | Staffing               | Completion Date |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------|
| Receive partial marketing grant   | Receive partial grant of \$4,000 from the City of Berkeley's Office of Economic Development for marketing and promotion to increase foot traffic and number of vendors                                      | Kaylah, Uptima support | October 2019    |
| Receive remaining marketing grant | Submit draft of strategic plan and receive remaining grant of \$1,000 from the City of Berkeley's Office of Economic Development for marketing and promotion to increase foot traffic and number of vendors | Kaylah, Uptima support | November 2019   |

| Action Step                                      | Description                                                                                                                                                                                                                                                                                                           | Staffing               | Completion Date |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------|
| Create new vendor onboarding package             | Create new vendor onboarding package with vendor policies, tips for making the most out of their vending experience, and business resources                                                                                                                                                                           | Yasin, Uptima support  | November 2019   |
| Create marketing and outreach plan for 2020      | Review profile of vendors and patrons and performance of 2019 marketing activities, use data to develop 2020 marketing and outreach plan, allocate budget for 2020 marketing activities, and develop monthly report to measure return on marketing investment                                                         | Kaylah, Uptima support | November 2019   |
| Implement holiday fair specials                  | Develop and implement advertising campaigns to increase number of paying vendors and sales for vendors during the holiday season                                                                                                                                                                                      | Kaylah, Yasin          | November 2019   |
| Integrate ArtWalk into BFM operations            | Ensure structure of monthly ArtWalk event supports an increase in number of paying vendors and sales for vendors, and create repeatable processes to make the monthly ArtWalk event more efficient to advertise and produce                                                                                           | Kaylah                 | December 2019   |
| Outreach to entrepreneurship organizations       | Create and send email and marketing collateral (e.g., pdf flyer) to local entrepreneur support organizations to encourage them to promote vending opportunities at BFM to the businesses they support and begin to cultivate relationships for training and advising to support vendors in their business development | Kaylah, Uptima support | January 2020    |
| Create partnerships with community organizations | Create partnerships with at least 10 community organizations to implement programs / projects at BFM (e.g., junior market program, farm stand) that are designed to increase the number of paying vendors and sales for vendors                                                                                       | Kaylah                 | March 2020      |
| Curate vending opportunities                     | Engage vendor association in conversation about curating BFM (e.g., ensure diversity of items sold, segment vendors into rows according to what they sell) and make any policy changes to implement their recommendations                                                                                             | Yasin, Kaylah          | May 2020        |

| Action Step                   | Description                                                                                                                                                                                                              | Staffing | Completion Date |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------|
| Establish Wellness Day at BFM | Develop and implement monthly Wellness Day event that supports an increase in the number of paying vendors and sales for vendors, and ensure event has repeatable processes to be efficient and to advertise and produce | Kaylah   | April 2020      |

### Objective #3: Engage vendor community

#### Overview

The temporary shutdown in early 2019 exposed gaps in communication between CSU and the BFM vendor community, eroded trust in our ability to manage BFM, and left open space for interlopers to spread misleading information and rumors about CSU and the future of BFM. We spent several months engaging our vendors through community meetings, walking the market each weekend, in-person surveys, and monthly newsletters to ensure they were properly informed and to regain their trust. We recognize the need to continue to engage our vendor community, keep them informed about the status of CSU and BFM operations, and provide structures for them to participate in certain decision-making processes about future plans for BFM.

#### Goals

| Goal                                                   | Timeframe     |
|--------------------------------------------------------|---------------|
| Keep vendors consistently informed                     | March 2020    |
| Implement vendor association                           | April 2020    |
| Pathway for vendor association in CSU Board governance | December 2020 |

#### Action Plan

| Action Step                                        | Description                                                                                                                                                                                                    | Staffing                | Completion Date |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------------|
| Sunset advisory board                              | Hold final meetings of advisory board as group no longer has quorum                                                                                                                                            | Yasin, Kaylah           | October 2019    |
| Engage vendor community around association concept | Reach out to the most committed vendors (e.g., those who contributed the \$250 to keep BFM open in early 2019) to discuss opportunity to establish a vendor association and envision what that could look like | Yasin, Kaylah, Vendors  | November 2019   |
| Community engagement support employee              | Recruit, hire, and onboard community engagement support person to work on monthly newsletters and other community engagement efforts for vendor community                                                      | Yasin, Kaylah, New Hire | December 2019   |

| Action Step                                            | Description                                                                                                                                                                                                 | Staffing                                      | Completion Date |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------|
| Develop vendor association offering                    | Survey vendors about vendor association offering and use data to develop offering (e.g., pricing structure, expectations, benefits, member contract, key measurements of engagement) for vendor association | Yasin, Vendors, Uptima support, EBCLC support | December 2019   |
| Implement vendor association concept                   | Launch vendor association with at least 20 members and hold first vendor association meeting                                                                                                                | Yasin, Vendors                                | January 2020    |
| Consistent newsletter communications with vendors      | Community newsletters are consistently distributed in hardcopy and digitally to vendors at least 2x per month (consistent means for at least 3 months)                                                      | Yasin, Kaylah, New Hire                       | March 2020      |
| CSU Board consistently walking BFM on weekends         | At least two CSU Board members are consistently walking BFM, talking to vendors, and soliciting feedback on a weekly basis (consistent means for at least 3 months)                                         | Yasin, Board                                  | March 2020      |
| Publish annual report                                  | Publish annual report with overview of BFM operations for 2019 and showcasing vendor stories                                                                                                                | Kaylah, Yasin, Uptima support                 | April 2020      |
| Vendor association is fully functioning                | Vendor association is meeting consistently on a monthly basis (consistent means for at least 3 months)                                                                                                      | Yasin, Vendors                                | April 2020      |
| Feedback loop between vendor association and CSU Board | Establish process and protocols for feedback between vendor association and CSU Board as well as pathway for vendor association to nominate Board members to fill vacancies                                 | Yasin, Vendors, Board, EBCLC support          | June 2020       |
| Reporting between vendor association and CSU Board     | Consistent monthly reporting by vendor association representatives on CSU Board to full vendor association and feedback loop from vendor association to CSU Board on major decisions                        | Yasin, Vendors, Board, EBCLC support          | September 2020  |
| CSU Board nominations from vendor association          | Vendor association nominates members to the CSU Board (number to be determined based on Board terms)                                                                                                        | Yasin, Vendors, Board, EBCLC support          | November 2020   |

## Objective #4: Improve governance and decision-making for the vendors

### Overview

When CSU was established, the Board of Directors was comprised of representatives from the community organizations that received distributions from the operations of BFM. Over three years ago, CSU stopped making distributions to the community organizations with no intent to reinstate them. However, until 2019, representatives from those organizations remained on the Board with very limited engagement. In early 2019, we reorganized the CSU Board of Directors in connection with our filing to regain IRS tax-exemption. This started to create a pathway for vendors to be nominated and join the CSU Board, and now half of the CSU Board are current vendors. As the CSU Board becomes a majority vendors, we will need to build organizational capacity for governance and decision-making to support our vendor community.

### Goals

| Goal                                                   | Timeframe     |
|--------------------------------------------------------|---------------|
| Develop appropriate CSU Board governance structures    | December 2019 |
| Implement CSU Board committees for proper oversight    | April 2020    |
| Pathway for vendor association in CSU Board governance | December 2020 |

### Action Plan

| Action Step                                             | Description                                                                                                                                    | Staffing                              | Completion Date |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-----------------|
| Establish proper maintenance of corporate records       | Update corporate record book and establish protocols for meeting notices, agendas, minutes, etc.                                               | Kaylah, EBCLC support                 | October 2019    |
| CSU Board training                                      | Training of board members on board duties and responsibilities                                                                                 | Kaylah, Board, The Justice Collective | November 2019   |
| Develop CSU Board member terms, policies and committees | Develop CSU Board member terms, policies, and committees, and identify CSU Board members' interest and ability to commit to various committees | Kaylah, Board, EBCLC support          | November 2019   |
| Develop CSU Board committee charters                    | Develop charters for CSU Board committees (e.g., executive, finance, nominating committees)                                                    | Kaylah, Board, EBCLC support          | December 2019   |
| Establish CSU Board committees                          | Formal vote on CSU Board committee charters and initial composition                                                                            | Kaylah, Board, EBCLC support          | January 2020    |
| Consistent CSU Board committee meetings                 | Consistent monthly CSU Board committee meetings (consistent means for at least 3 months)                                                       | Kaylah, Board, EBCLC support          | April 2020      |

| Action Step                                                 | Description                                                                                                                                                                          | Staffing                             | Completion Date |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-----------------|
| Feedback loop between vendor association and CSU Board      | Establish process and protocols for feedback between vendor association and CSU Board as well as pathway for vendor association to nominate CSU Board members to fill vacancies      | Yasin, Vendors, Board, EBCLC support | June 2020       |
| Reporting between vendor association and CSU Board          | Consistent monthly reporting by vendor association representatives on CSU Board to full vendor association and feedback loop from vendor association to CSU Board on major decisions | Yasin, Vendors, Board, EBCLC support | September 2020  |
| CSU Board nominations from vendor association               | Vendor association nominates members to the CSU Board (number to be determined based on Board terms)                                                                                 | Yasin, Vendors, Board, EBCLC support | November 2020   |
| CSU Board meeting to approve vendor association nominations | CSU Board meeting to approve vendor association nominations for CSU Board (number to be determined based on Board terms)                                                             | Yasin, Board, EBCLC support          | December 2020   |

### Objective #5: Ensure BFM has appropriate space to operate for long-term

#### Overview

In 2015, the City of Berkeley began a community planning process to develop a long-range plan for the Adeline Corridor. The planning process entailed a series of community events, stakeholder meetings, and working sessions over a two-year period that covered housing affordability, economic opportunity, transportation, public space, and community character and use. In mid-2019, the draft plan and environmental impact report were released outlining the priorities for the future of the Adeline Corridor. The Adeline Corridor Plan outlines transit-oriented housing development on the Ashby BART station parking lot where BFM operates on the weekends and envisions a community plaza where the BFM could operate. We responded in the initial comment period of the Adeline Corridor Plan; however, further comments by BART regarding the community plaza have prompted us to respond in more detail. We recognize the need to engage our vendor community in any further responses and to remain engaged in the Adeline Corridor Plan process to ensure BFM has appropriate space to operate for the long-term.

#### Goals

| Goal                                              | Timeframe     |
|---------------------------------------------------|---------------|
| Respond to BART comments to Adeline Corridor Plan | December 2019 |

**Action Plan**

| <b>Action Step</b>                                  | <b>Description</b>                                                                                                                             | <b>Staffing</b>      | <b>Completion Date</b> |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|------------------------|
| Collect feedback on vendor needs                    | Survey vendors in person and online to collect feedback on their needs for BFM in the context of the Adeline Corridor Plan                     | Yasin, Kaylah, Board | October 2019           |
| Community meeting to discuss vendor needs           | Hold community meeting to review outcomes of survey responses on vendor needs and discuss response to BART's comments on Adeline Corridor Plan | All                  | November 2019          |
| Respond to BART's comments on Adeline Corridor Plan | Use vendor feedback from surveys and community meeting, and draft and submit response to BART's comments on Adeline Corridor Plan              | Board                | December 2019          |







Office of the City Manager

INFORMATION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation and Waterfront  
Phil Harrington, Director, Public Works

Subject: Update on Measure T1 City Infrastructure Bond Program

INTRODUCTION

This is a semi-annual update on the implementation of the \$100 million Measure T1 bond program to renovate existing City facilities and infrastructure for the period June 2019 – December 2019. This progress report provides the City Council with an update on key issues and upcoming challenges, non-project specific milestones, and the progress of each project.

BACKGROUND

In November 2016, Berkeley voters approved [Measure T1](#)<sup>1</sup> – a \$100 million dollar general obligation bond to repair, renovate, replace or reconstruct the City's aging existing infrastructure, including facilities, streets, sidewalks, storm drains, and parks. Measure T1 passed with 86.5% of the vote.

After the passage of Measure T1, the City Manager proposed a [three phase implementation plan](#)<sup>2</sup> and a list of possible Phase 1 projects to be considered by the Council, the City's commissions, and the general public.

From December 2016 through June 2017, the City undertook a robust public process to gather input on the proposed projects. In addition to three Measure T1 Workshops for the general public, the Parks & Waterfront and Public Works Commissions invited and received input from the public and other City Commissions. They submitted a [joint report to Council in June 2017](#)<sup>3</sup> detailing their recommendations. The City Manager incorporated this input and submitted a [final recommended list of projects](#)<sup>4</sup>. Council

<sup>1</sup> See <https://www.cityofberkeley.info/MeasureT1/>

<sup>2</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Measure%20T1%20GO%20Bonds%20Recommendations.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20GO%20Bonds%20Recommendations.pdf)

<sup>3</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf)

<sup>4</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/06\\_June/Documents/2017-06-27\\_Item\\_49\\_Implementing\\_Phase\\_1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-27_Item_49_Implementing_Phase_1.aspx)

adopted this list and proposed plan for implementing Phase 1 of the T1 bond program on June 27, 2017.

On January 23, 2018, Council adopted [resolution 68,290-N.S.](#)<sup>5</sup> allocating \$2 million from T1 Phase 1 for the Adult Mental Health Clinic located at 2640 Martin Luther King Jr. Way.

At the December 6, 2018 [Council worksession](#)<sup>6</sup>, staff notified City Council of a funding gap for the T1 program due to the cost of approved projects exceeding bond proceeds, an increase in energy upgrades included in the facility projects, and soaring escalation. After receiving construction bids and an engineer's estimate on three major projects, staff was able to more accurately estimate the funding gap and met with the Measure T1 Joint Subcommittee to discuss options on addressing this funding gap. On February 7<sup>th</sup> and 13<sup>th</sup>, 2019 respectively, the Public Works and Parks & Waterfront Commissions voted to recommend additional funding to complete Phase 1 projects including additional escalation.

On March 26, 2019, Council adopted [resolution 68,802-N.S.](#)<sup>7</sup> authorizing \$5.3 million in Measure T1 Phase 2 funds to be used to complete Measure T1 Phase 1 projects.

On July 23, 2019, Council approved Resolution No. 69,051-N.S.<sup>8</sup>, authorizing the removal of the King School Park Bioswale project and the addition of 12 alternate green infrastructure projects to the Measure T1 Phase 1 project list.

On December 10, 2019, Council adopted Resolution No. 69,221<sup>9</sup> authorizing adjustments to the Measure T1 Phase 1 project list with no additional funding to reflect changes made to the project list to provide community members with an accurate and [up-to-date list of projects](#)<sup>10</sup>.

The current budget for 46 Measure T1 Phase 1 projects is approximately \$41.8 million (See Table 1 for the breakdown of this funding).

<sup>5</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/2018-01-23%20Allocating%20\\$2m%20of%20T1%20To%20COB%20Adult%20Mental%20Health.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2018-01-23%20Allocating%20$2m%20of%20T1%20To%20COB%20Adult%20Mental%20Health.pdf)

<sup>6</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/T1%20Semi-Annual%20Update%20Council%20December%202018.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Semi-Annual%20Update%20Council%20December%202018.pdf)

<sup>7</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/2019-03-26%20Reso%2068802%20Authorizing%20\\$5.3%20Million%20in%20Measure%20T1%20Phase%20%20Funds%20to%20be%20used%20to%20complete%20Measure%20T1%20Phase%201%20Projects.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2019-03-26%20Reso%2068802%20Authorizing%20$5.3%20Million%20in%20Measure%20T1%20Phase%20%20Funds%20to%20be%20used%20to%20complete%20Measure%20T1%20Phase%201%20Projects.pdf)

<sup>8</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/07\\_Jul/Documents/2019-07-23\\_Item\\_22\\_Authorizing\\_the\\_modification\\_of\\_the\\_Measure\\_T1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_22_Authorizing_the_modification_of_the_Measure_T1.aspx)

<sup>9</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/12\\_Dec/Documents/2019-12-10\\_Item\\_14\\_Modification\\_of\\_Measure\\_T1\\_Phase.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-10_Item_14_Modification_of_Measure_T1_Phase.aspx)

<sup>10</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Measure%20T1%20Phase%201%20Revised%20List%20of%20Projects%2012-10-19.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20Phase%201%20Revised%20List%20of%20Projects%2012-10-19.pdf)

**Table 1 – Measure T1 Funding**

| <b>Funding</b>                              | <b>Amount</b>       |
|---------------------------------------------|---------------------|
| 2017 Bond Proceeds                          | \$35,000,000        |
| Estimated additional interest               | \$1,500,000         |
| 3/26/19 Council approved additional funding | \$5,300,000         |
| <b>Total Funding</b>                        | <b>\$41,800,000</b> |

**CURRENT SITUATION AND ITS EFFECTS**

The Measure T1 team is made up of Parks, Recreation, & Waterfront and Public Works staff that meets bi-weekly to discuss and solve T1 related general and project-specific issues. The team receives guidance from the T1 Joint Subcommittee of the Parks & Waterfront and Public Works Commissions. The upcoming challenges for the program in the next six months are detailed below.

**KEY ISSUES AND UPCOMING CHALLENGES***1. Phase 2 Public Process*

Phase 2 will start on January 29, 2020 with a joint Parks & Waterfront and Public Works Commission meeting to kick off the process. The timeline for this process is summarized in Table 2 below. For detailed information on this process, see the December 10, 2019 Off-Agenda report to Council<sup>11</sup> titled "[Measure T1 Phase 2 Public Input Process](#)".

**Table 2 – Timeline for Phase 2 Public Input Process**

|                              |                                                                                                                                                                       |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| July – September 2019        | The Measure T1 Joint Subcommittee and staff planned the public input process and structure.                                                                           |
| October 2019                 | Met with the Lead Commissions (Public Works and Parks, Recreation and Waterfront) during their regularly scheduled meetings to discuss the public process for Phase 2 |
| November 2019 – January 2020 | Annual update to 11 Participating Commissions <sup>12</sup>                                                                                                           |
| January 29, 2020             | Lead Commissions Phase 2 Public Process Kick-Off                                                                                                                      |

<sup>11</sup> See [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Measure%20T1%20Update%20on%20Phase%202\\_121019.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Measure%20T1%20Update%20on%20Phase%202_121019.pdf)

<sup>12</sup> Children, Youth, and Recreation Commission; Civic Arts Commission; Community Environmental Advisory Commission; Commission on Aging; Commission on Disability; Disaster and Fire Safety Commission; Energy Commission; Housing Advisory Commission; Landmarks Preservation Commission; Transportation Commission; and Zero Waste Commission.

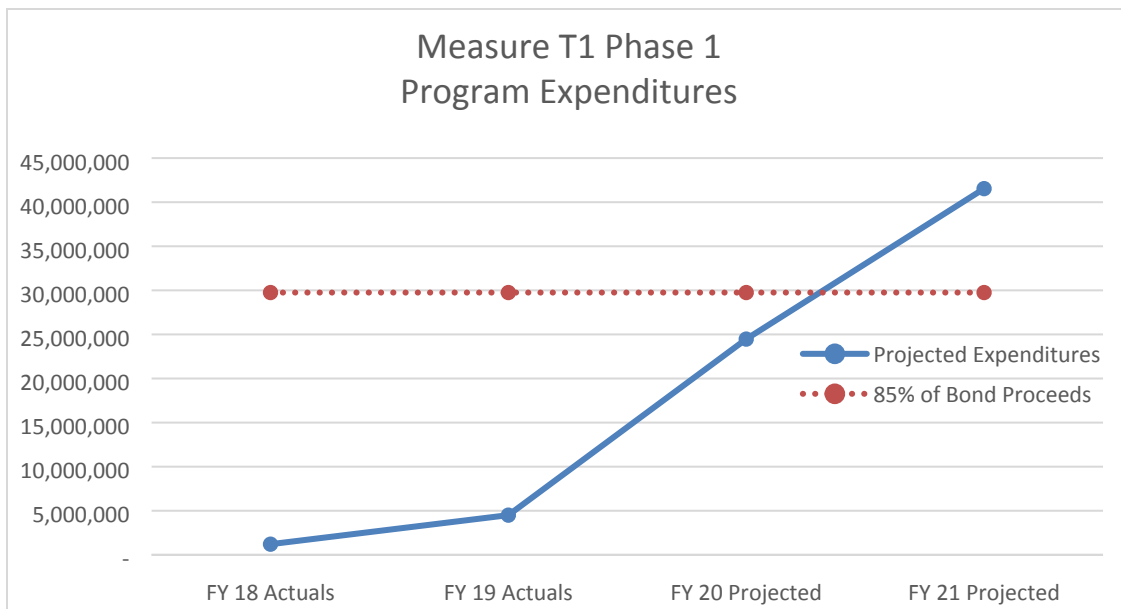
|                               |                                                                                                                                   |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| February – April 2020         | Attend 20 neighborhood group meetings to present information on Phase 2 public process and obtain feedback on potential projects. |
| May – September 2020          | Host 5 large geographic-based meetings to gather feedback on potential projects (5 meetings)                                      |
| October 2020                  | Online survey on Berkeley Considers                                                                                               |
| November – December 2020      | Annual update to Participating Commissions (11 Meetings)                                                                          |
| November 2020 – February 2021 | Staff and commissions' development of recommended Phase 2 project list (3 to 4 meetings)                                          |
| March - May 2021              | Council Worksession to discuss Phase 2 project list                                                                               |
| June 2021                     | Council approves Phase 2 projects                                                                                                 |

## 2. *Completing Phase 1 Projects*

Phase 1 is expected to run through June 2021. Staff are continuously monitoring expenditures to ensure that the program will meet the goal of spending 85% of bond proceeds by November 2020. Based on current projections, we are on track to meet this goal.

As of December 16, 2019, a total of \$7.67 million of T1 funds have been expended. With multiple projects currently under construction, staff estimates that an additional \$16 million will be expended by the end of FY 2020. Additionally, it is estimated that \$ 30.5 million (87% of bond proceeds) will be expended by September 2020 (See Chart 1).

### **Chart 1 – Measure T1 Phase 1 Projected Expenditures**



3. *Financial Audit*

Staff contracted with the City’s current external financial auditor to perform an audit on Measure T1 bond expenditures to ensure that expenses are in accordance with bond measure requirements. Audits are planned for every two years and approximately six financial audits are expected to be performed during the life of Measure T1. An audit of the first two years of Phase 1 (ending June 2019) is in progress and an audit report is expected from the Auditor by February 2020.

4. *Allocation of remaining bond funds*

Staff discussed possible options to allocate the remaining funds with the T1 Joint Subcommittee (See Table 3). Over the course of Phase 2, staff will further consider and evaluate these options based on project priorities and update Council.

**Table 3 – Possible Allocation Options for Remaining T1 Funds**

| Option                                  | Description                     | Pros                                                                                                                                                                                    | Cons                                                                                                                                                                                          |
|-----------------------------------------|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Four Year Phase 2,<br>Four Year Phase 3 | Split funds between two phases. | -Can be accomplished with existing staff                                                                                                                                                | -Two public processes<br>-Will take another 8 years to complete bond program, which will result in increased construction cost<br>-Phase 3 may not have enough funds for significant projects |
| Six Year Phase 2,<br>No formal Phase 3  | Bond issuance every three years | -One robust public process<br>-Accelerated opportunity/ability to deliver more infrastructure improvement sooner, pending capacity<br>-Saving two years of construction cost increases  | -Potential staff capacity issues<br>-May not meet use of funds requirement                                                                                                                    |
| Four Year Phase 2,<br>No formal Phase 3 | Spend remaining bond funds      | -One robust public process<br>-Accelerated opportunity/ability to deliver more infrastructure improvement sooner, pending capacity<br>-Saving four years of construction cost increases | -Requires additional staffing<br>May not meet use of funds requirement                                                                                                                        |

## KEY MILESTONES

Since the last semi-annual update on July 23, 2019<sup>13</sup>, staff have accomplished the following:

1. Hired an Auditor to audit the first two years of expenditures charged to Measure T1. A kick-off meeting with the auditor was held on October 16, 2019 with a report anticipated by January 2020. Audits are planned for every two years of the bond program.
2. Met with the T1 Joint Subcommittee to develop a public process for Phase 2. Staff and committee members established a thorough process identify and vet an extensive public process for determining potential projects for Phase 2. This process includes multiple opportunities for community members to provide feedback including up to 20 Council-recommended neighborhood group meetings, 5 large geographic-based public meetings, e-mail, and an online survey for those who would not be able to attend the scheduled public meetings.
3. Provided an annual update to the 11 Participating Commissions in November 2019- January 2020. This is the third update to these commissions. This update addressed the progress of Phase 1 and information on the Phase 2 public process.
4. Continued the public input process and held events on specific projects.<sup>14</sup>
  - **May 2, 2019:** North Berkeley Senior Center Groundbreaking Ceremony
  - **July 13, 2019:** San Pablo Park Community Meeting
  - **August 6, 2019** Frances Albrier Community Center Outreach

<sup>13</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/07\\_Jul/Documents/2019-07-23\\_Item\\_43\\_Update\\_on\\_Measure\\_T1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_43_Update_on_Measure_T1.aspx)

<sup>14</sup> For full list of meetings and events, visit <https://www.cityofberkeley.info/MeasureT1Events/>

- **August 9, 2019:** Willard Clubhouse Outreach
- **August 23, 2019:** Frances Albrier Community Center Outreach
- **September 9, 2019:** Joint Subcommittee Meeting: Civic Center Project
- **September 26, 2019:** Strawberry Creek Park Community Meeting
- **October 2, 2019:** Willard Clubhouse Community Meeting
- **October 16, 2019:** Citywide Restroom Study Community Meeting (South Berkeley Senior Center)
- **October 20, 2019:** Willard Clubhouse Outreach
- **October 22, 2019:** Citywide Restroom Study Community Meeting (Main Library)
- **October 23, 2019:** Frances Albrier Community Center Community Meeting
- **November 4, 2019:** Live Oak Groundbreaking Ceremony
- **November 5, 2019:** Citywide Restroom Study Community Meeting (Telegraph area)
- **November 6, 2019:** Citywide Restroom Study Community Meeting (West Berkeley)
- **November 7, 2019:** Grove Park Community Meeting
- **November 21, 2019:** Joint Subcommittee Meeting: Civic Center Vision and Implementation Plan
- **December 12, 2019:** Civic Center Community Meeting

## PROJECT-SPECIFIC UPDATES

All 46 Measure T1 projects are in progress. In the last six months, significant progress has been made. The Mental Health Services Center, North Berkeley Senior Center, Live Oak Community Center, Adeline Street, Hearst Avenue and George Florence Park are under construction. The Rose Garden (Pathways, Tennis Courts, Pergola, and repair of erosion), San Pablo Park (ages 2-5 and 5-12 play area and tennis courts), Strawberry Creek Park and Grove Park will be in construction in the next six months. Additionally, all of the “planning only” projects have started, including the Old City Hall/Veterans Building/ Civic Center Park, the Citywide Restroom Assessment, the Frances Albrier Community Center and the Willard Park Clubhouse. Attachment 1 provides a list of the 46 approved [Phase 1 Projects](#)<sup>15</sup>, including project description,

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<sup>15</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Measure%20T1%20Phase%201%20Revised%20List%20of%20Projects%2012-10-19.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20Phase%201%20Revised%20List%20of%20Projects%2012-10-19.pdf)

Phase 1 projects include a mix of types of projects:

- *Planning* projects will focus on public processes, feasibility studies and analyses that culminate in a preferred project plan and cost estimate. These projects will be ready for the design and construction phase when funding is identified.

budget, project manager, and status update. Attachment 2 provides a timeline by month for each T1 project through the remainder of Phase 1. Attachment 3 provides a more detailed update for each project.

## BOND PROGRAM MANAGEMENT

The T1 Management Team continues to meet regularly to review the T1 budget, expenditures, project progress, and to prepare detailed reports for Council, Commissions and the community.

### *T1 Manual*

Staff are using the T1 Policies and Procedures Manual<sup>16</sup> as a guideline to implement the T1 program and will update the manual as needed.

### *Financials*

As shown in Table 2, \$7.67 million of T1 funds have been expended as of December 16, 2019. We continue to be on track to spend 85% of T1 Phase 1 bond proceeds by November of 2020.

**Table 2 – Phase 1 Expenditures to date as of 12/16/19**

| Category                                                   | Sub-Category/<br>Project | Allocated    | Spent       | Remaining    |
|------------------------------------------------------------|--------------------------|--------------|-------------|--------------|
| Art                                                        |                          | \$350,000    | \$50,431    | \$299,569    |
| Staff/ Project Management <sup>17</sup>                    |                          | \$4,200,000  | \$2,117,481 | \$2,082,519  |
| Facilities, Equipment, Supplies,<br>Services <sup>18</sup> |                          | \$400,000    | \$221,230   | \$178,770    |
| Projects <sup>19</sup>                                     | Facilities/ Buildings    | \$18,172,060 | \$2,945,715 | \$15,226,345 |

- *Planning & Design* projects will include public process, design, permits and bid package, and are intended to produce shove-ready projects for a later phase of T1 funding, grant funding, or other funding.
- *Planning, Design & Construction* projects will be entirely designed and built during Phase 1.

<sup>16</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/T1%20Policies%20and%20Procedures%20Manual%20January%202019.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Policies%20and%20Procedures%20Manual%20January%202019.pdf)

<sup>17</sup> *Staff/Project Management* costs include City staff to plan, manage, and supervise T1 projects; and a full-time analyst to provide direct administrative support for T1 projects. This does not include costs for other supervision and administration, such as other managers, departmental administrative staff, and other support functions like IT, Human Resources, and Finance.

<sup>18</sup> *Facilities, Equipment, Supplies, and Services* includes the cost to lease T1's share of office space on the 5th Floor of 1947 Center St., T1-related office furniture, computers, printers, office supplies, copier lease, staff trainings, communication materials, and audits.

<sup>19</sup> *Project costs* will include all direct project expenses.



|              |                               |                     |                    |                     |
|--------------|-------------------------------|---------------------|--------------------|---------------------|
|              | City Wide Safety Improvements | \$979,208           | \$58,153           | \$921,055           |
|              | Park Improvements             | \$6,660,144         | \$1,487,448        | \$5,172,697         |
|              | Green Infrastructure          | \$821,984           | 55,342             | \$766,642           |
|              | Complete Streets              | \$10,217,625        | \$730,535          | \$9,487,090         |
| <b>Total</b> |                               | <b>\$41,801,021</b> | <b>\$7,666,334</b> | <b>\$34,134,687</b> |

### *Communication*

Staff will continue to provide semi-annual updates to the Parks & Waterfront and Public Works Commissions and to City Council. Staff continues to use the City's [Measure T1 website](#)<sup>20</sup> to update the community on the bond program. This includes an updated [story map](#)<sup>21</sup>, providing photos, mapping and summaries of each approved T1 project. Community members can visit the [Measure T1 Phase 1 Project Updates](#)<sup>22</sup> page for project updates, community meeting dates, and quarterly updates. For questions or information about Measure T1, community members are encouraged to email [T1@CityofBerkeley.info](mailto:T1@CityofBerkeley.info).

### ENVIRONMENTAL SUSTAINABILITY

Measure T1 provides potential opportunities to advance the City's environmental sustainability goals. For example, facility upgrade projects are being designed to not only improve safety and address deferred improvements, but also to increase resource efficiency and access to clean energy. The renovations of the North Berkeley Senior Center, Live Oak Community Center, and the Mental Health Services Center will incorporate as many energy efficiency upgrades as feasible within the allotted budget such as a rooftop solar system, an HVAC system that incorporates heat pumps, and energy efficient windows and lights per the Berkeley Resilience Strategy and Climate Action Plan.

### FUNCTIONAL ART

In [Resolution 67,795-N.S.](#)<sup>23</sup>, Council resolved that 1% of bond proceeds shall be available for functional art integrated into Measure T1-funded projects. The bond proceeds for Phase 1 of Measure T1 were \$35 million, resulting in a 1% functional art contribution of \$350,000. The total amount of \$350,000 has been deducted from Phase 1 Measure T1 projects.

Berkeley-based artist, Masayuki Nagase, was selected to create artwork for the entry plaza of the North Berkeley Senior Center. The artist will create a variety of carved stone pavers to be integrated into the plaza's paving, two carved stone wall pieces to help with wayfinding at the plaza entry ramps, and a large carved stone table-bench

<sup>20</sup> See <https://www.cityofberkeley.info/MeasureT1/>

<sup>21</sup> See

<https://berkeley.maps.arcgis.com/apps/MapTour/index.html?appid=6a32f8ecb2924aebbb952bd59cb8b7fc>

<sup>22</sup> See <https://www.cityofberkeley.info/MeasureT1Updates.aspx>

<sup>23</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Resolution%20No%2067,795.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Resolution%20No%2067,795.pdf)

element to be located in the plaza's seating area, which will provide additional seating or a table top while plaza users gather in the area.

Michael Arcega was selected to create a series of functional artwork elements for San Pablo Park. The artwork includes six colorful sculptural benches depicting native flowers to replace the existing benches at the park and dozens of brightly painted wildflower silhouettes that will be mounted on fences, posts, gates, and directional signage, as well as integrated into the seating wall next to the children's play area.

CONTACT PERSON

Scott Ferris, Parks, Recreation & Waterfront, 510-981-6700

Phil Harrington, Public Works, 510-981-6300

Attachments:

- 1: T1 Project Description, Funding and Project Management
- 2: T1 Phase 1 Monthly Schedule
- 3: T1 Project Summary

| DEPT                                 | PROJECT NAME                                                     | PROJECT TYPE                    | PROJECT DESCRIPTION                                                                                                                                                                                                                                                | T1 FUNDING          | OTHER FUNDING                                                                                                                     | OTHER FUNDING AMOUNT | APPROXIMATE TOTAL FUNDING | PM | STATUS UPDATE                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------|------------------------------------------------------------------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------------|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>FACILITIES/BUILDINGS</b>          |                                                                  |                                 |                                                                                                                                                                                                                                                                    | <b>\$18,172,060</b> |                                                                                                                                   | <b>\$7,171,143</b>   | <b>\$25,343,203</b>       |    |                                                                                                                                                                                                                                                                                                                                    |
| PW/<br>PRW                           | Citywide Restrooms<br>Citywide Needs Assessment                  | Planning                        | Perform needs and feasibility assessment of location for citywide restrooms; will include consideration of Ohlone Park restroom.                                                                                                                                   | \$148,215           |                                                                                                                                   |                      | \$148,215                 | RM | Four community meetings were held in 2019 (October 16, 22 and November 5,6) as well as a presentation at the Parks and Waterfront Commission (November 13, 2019) to present an initial assessment and gather feedback on the need for public restrooms and sanitation in Berkeley.                                                 |
| PW                                   | Old City Hall/ Veteran's Building/ Civic Center Park             | Planning                        | Structural analysis and visioning of possible conceptual design alternatives, in concert with Civic Center Park, to help determine a direction for future capital improvements to restore and secure these facilities to maximize their community benefit.         | \$376,430           |                                                                                                                                   |                      | \$376,430                 | EH | A consultant team was secured. A Public Space Public Life study was conducted along with small focus group interview and other research and field work. The results were shared with the Technical Advisory Committee. More public workshops, interactive design charrettes, and a second site tour are set for early spring 2020. |
| PRW                                  | Frances Albrier Community Center Planning and Design             | Planning & Design               | Evaluation of site conditions, facility and structural assessments, and recreation programming to determine what improvements to move forward with to upgrade the center as a Care and Shelter facility and for improved recreation programming and opportunities. | \$741,075           |                                                                                                                                   |                      | \$741,075                 | WK | A community worksession was held in October 2019 to share goals, desired activities, and four plan options currently open for public comments and feedback.                                                                                                                                                                        |
| PRW                                  | Tom Bates (Gilman) Fields North Field House and Restroom         | Planning                        | Evaluation of needs for restroom and storage, analysis of utility and supporting infrastructure needed, and development of detailed design and construction documents.                                                                                             | \$247,025           |                                                                                                                                   |                      | \$247,025                 | NL | Conceptual design has been completed.                                                                                                                                                                                                                                                                                              |
| PRW                                  | Willard Clubhouse Renovation Planning and Design                 | Planning & Design               | Planning and design to renovate or expand the Willard Clubhouse.                                                                                                                                                                                                   | \$247,025           |                                                                                                                                   |                      | \$247,025                 | WK | A community worksession was held in October 2019 to share goals and desired activities from public comments and solicit feedback on proposed project.                                                                                                                                                                              |
| PRW                                  | Live Oak Community Center Seismic Upgrade and Renovations        | Planning, Design & Construction | Seismic retrofit, deferred maintenance upgrades, and programming improvements to upgrade the center as a Care and Shelter facility and enable improved recreation programming.                                                                                     | \$6,331,431         |                                                                                                                                   |                      | \$6,331,431               | TL | Construction is in progress.                                                                                                                                                                                                                                                                                                       |
| PW                                   | North Berkeley Senior Center Seismic Upgrades and Renovations    | Planning, Design & Construction | Seismic retrofit, deferred maintenance upgrades, and programming improvements to upgrade the center as a Care and Shelter facility and enable improved senior programming, generator hook up.                                                                      | \$8,219,080         | FEMA                                                                                                                              | \$1,875,000          | \$10,094,080              | EK | Construction started in May 2019. Interior demolishing and asbestos removal complete. Roof is installed. Expect substantial completion by end of June 2020.                                                                                                                                                                        |
| PRW                                  | Strawberry Creek Park Restroom Replacement                       | Planning, Design & Construction | Replace restroom at Strawberry Creek Park.                                                                                                                                                                                                                         | \$385,579           | Parks Tax & PRW Capital Improvement Fund                                                                                          | \$500,000            | \$885,579                 | WK | Another community meeting held 9/26/2019. Consultant working on final design. Project is bundled with FY 19 Strawberry Creek Phase 2 to leverage additional funding from Parks Tax and Capital Improvement fund. Construction anticipated to begin in Spring 2020.                                                                 |
| HHCS/<br>PW                          | Mental Health Services Center                                    | Planning, Design & Construction | Renovate interior for safety and energy efficiency. A Net Zero Energy project with anticipated payback savings of less than ten years.                                                                                                                             | \$1,476,200         | Capital Improvement Fund, Mental Health Services Act, Mental Health State Aid Realignment Fund, Community Development Block Grant | \$4,796,143          | \$6,272,343               | SG | Construction started in April 2019. Expected completion by June 2020. On track.                                                                                                                                                                                                                                                    |
| <b>CITY WIDE SAFETY IMPROVEMENTS</b> |                                                                  |                                 |                                                                                                                                                                                                                                                                    | <b>\$966,445</b>    |                                                                                                                                   |                      | <b>\$966,445</b>          |    |                                                                                                                                                                                                                                                                                                                                    |
| PW                                   | Berkeley Health Clinic Electrical Assessment                     | Planning                        | Needs assessment and cost estimate to renovate the facility.                                                                                                                                                                                                       | \$7,000             |                                                                                                                                   |                      | \$7,000                   | EK | Project has been completed.                                                                                                                                                                                                                                                                                                        |
| PW                                   | Corporation Yard Roof and Electrical Upgrades                    | Planning, Design & Construction | Roof and electrical improvements                                                                                                                                                                                                                                   | \$568,990           |                                                                                                                                   |                      | \$568,990                 | IL | In permit review.                                                                                                                                                                                                                                                                                                                  |
| PW                                   | Marina Corporation Yard Electrical Upgrades                      | Planning, Design & Construction | Electrical upgrades to main switchboard, two panel boards, and wiring devices.                                                                                                                                                                                     | \$370,693           |                                                                                                                                   |                      | \$370,693                 | IL | In permit review.                                                                                                                                                                                                                                                                                                                  |
| PW                                   | Public Safety Building Mechanical and HVAC Efficiency Assessment | Planning                        | Feasibility study to assess cost and effort to install a HVAC back-up system.                                                                                                                                                                                      | \$19,762            |                                                                                                                                   |                      | \$19,762                  | EK | Project has been completed.                                                                                                                                                                                                                                                                                                        |
| <b>PARKS IMPROVEMENT PROJECTS</b>    |                                                                  |                                 |                                                                                                                                                                                                                                                                    | <b>\$6,660,112</b>  |                                                                                                                                   | <b>\$3,571,220</b>   | <b>\$9,663,414</b>        |    |                                                                                                                                                                                                                                                                                                                                    |
| PRW                                  | Aquatic Park - Tide Tubes                                        | Planning                        | Final design, acquiring regulatory permits and environmental documents, and preparation of construction documents for repair of the tide tubes connecting the main lagoon with the Bay.                                                                            | \$385,579           |                                                                                                                                   |                      | \$385,579                 | NL | Work underway to perform final design, prepare construction documents, and prepare permit application submittal packages.                                                                                                                                                                                                          |
| PRW                                  | Berkeley Municipal Pier                                          | Planning                        | Final design, acquiring regulatory permits and environmental documents, and preparation of construction documents for structural repairs to restore the pier for recreational use.                                                                                 | \$249,549           | Water Emergency Transportation Authority                                                                                          | \$250,000            | \$499,549                 | NL | Planning phase expanded to undergo a study to determine the feasibility of a potential ferry facility and public recreation on a shared pier. Study is anticipated to be completed by December 2020.                                                                                                                               |
| PW                                   | Berkeley Rose Garden Repair of Erosion                           | Planning, Design & Construction | Improvements to Codornices Creek to repair erosion damage at the downstream end of Rose Garden site.                                                                                                                                                               | \$881,323           |                                                                                                                                   |                      | \$881,323                 | SM | Staff processing environmental permits. Construction is anticipated to start spring of 2020, pending contractor selection and receipt of all permits.                                                                                                                                                                              |
| PRW                                  | Berkeley Rose Garden Pathways, Tennis Courts                     | Planning, Design & Construction | Renovation of existing site pathways and construction of new pathways to provide an accessible path of travel to the center of the trellis. Reconstruction of portions or all of the tennis courts for safety.                                                     | \$1,321,984         | Parks Tax & PRW Capital Improvement Fund                                                                                          | \$1,092,499          | \$2,414,483               | EC | Work bundled with Phase 2 of Trellis reconstruction to leverage additional funding from Parks Tax and Capital Improvement Fund. Coordination with drainage project is ongoing. Submitted for permit. Construction anticipated to begin in spring of 2020.                                                                          |

| DEPT                                 | PROJECT NAME                                                                                     | PROJECT TYPE                    | PROJECT DESCRIPTION                                                                                                                                                                                                                                                                                             | T1 FUNDING          | OTHER FUNDING                                     | OTHER FUNDING AMOUNT | APPROXIMATE TOTAL FUNDING | PM | STATUS UPDATE                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------|--------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------------------------------------|----------------------|---------------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PRW                                  | Citywide Irrigation System                                                                       | Planning, Design & Construction | Current irrigation system requires individual programming and daily monitoring by City staff. This project includes the replacement of Irrigation Control Software and Controllers and the establishment of wireless software that controls all irrigation clocks, which will conserve water and control costs. | \$591,075           |                                                   |                      | \$591,075                 | BP | Project has been completed.                                                                                                                                                                                                                                                                                                                                                   |
| PW                                   | Codornices Creek at Kains Avenue                                                                 | Planning, Design & Construction | Creek restoration                                                                                                                                                                                                                                                                                               |                     | State Transportation Tax                          | \$567,949            |                           | SM | Added per Council Resolution 69,221-N.S. See 12/10/19 report. <a href="https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-10_Item_14_Modification_of_Measure_T1_Phase.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-10_Item_14_Modification_of_Measure_T1_Phase.aspx</a>                               |
| PRW                                  | Grove Park Field and Restroom Renovation of ballfield backstop, dugout, lights, and irrigation   | Planning, Design & Construction | Improvements to the ballfield, dugouts, site lighting and accessibility for safety and energy savings, including improvements to site drainage; partial renovation of the restroom building.                                                                                                                    | \$1,101,654         |                                                   |                      | \$1,101,654               | TL | Community meeting held in November 2019 to present final design. Next step is to finalize construction documents and submit the project for permits.                                                                                                                                                                                                                          |
| PRW                                  | George Florence Park Play Equipment Upgrade                                                      | Planning, Design & Construction | Renovate age 2-5 play structures and age 5-12 play structures and complete ADA improvements.                                                                                                                                                                                                                    | \$660,992           | Parks Tax                                         | \$125,000            | \$785,992                 | TL | Construction has started and anticipated to be completed in spring of 2020. . Public meetings were held on 10/20/18 and 11/27/18.                                                                                                                                                                                                                                             |
| PRW                                  | San Pablo Park Play Equipment Upgrade and Tennis Court Renovations                               | Planning, Design & Construction | Renovate ages 2-5 and 5-12 play structures and complete ADA improvements. Renovate existing lighted tennis courts.                                                                                                                                                                                              | \$1,156,736         | Capital Improvement Fund and Parks Tax            | \$400,000            | \$1,556,736               | WK | Play Equipment Renovation project bundled with San Pablo Park Tennis Renovation and Totlot Renovation to leverage funding and design effort. Coordination ongoing with Civic Arts for inclusion of functional art to the project site. Public process has been completed. Finalizing construction documents to submit for permit. Construction anticipated in spring of 2020. |
| PRW                                  | Tom Bates (Gilman) Fields Artificial/Synthetic Turf Replacement                                  | Planning, Design & Construction | Replace artificial turf on two existing fields to include organic infill, shock pad and upgraded turf.                                                                                                                                                                                                          | \$311,220           | JPA, Gilman Reserve Account, Parks Tax, User Fees | \$1,135,772          | \$1,447,023               | NL | Project has been completed.                                                                                                                                                                                                                                                                                                                                                   |
| <b>GREEN INFRASTRUCTURE PROJECTS</b> |                                                                                                  |                                 |                                                                                                                                                                                                                                                                                                                 | <b>\$821,984</b>    |                                                   |                      | <b>\$821,984</b>          |    |                                                                                                                                                                                                                                                                                                                                                                               |
| PW                                   | Page Street, Channing Way, Dwight Way, Grayson Street, Piedmont Avenue Median and Traffic Circle | Planning, Design & Construction | Installation of green infrastructure such as bioswales.                                                                                                                                                                                                                                                         | \$821,984           |                                                   |                      | \$821,984                 | SM | Council approved removal of King School Park project and addition of 12 replacement green infrastructure projects. Design and geotechnical investigation underway.                                                                                                                                                                                                            |
| PW                                   | Jones Street, Heinz Avenue, Tenth Street, Ninth Street, Sacramento Street center median          | Planning                        | Installation of green infrastructure such as bioswales.                                                                                                                                                                                                                                                         |                     |                                                   |                      |                           |    |                                                                                                                                                                                                                                                                                                                                                                               |
| <b>COMPLETE STREETS PROJECTS</b>     |                                                                                                  |                                 |                                                                                                                                                                                                                                                                                                                 | <b>\$10,217,625</b> |                                                   | <b>\$1,160,667</b>   | <b>\$10,898,291</b>       |    |                                                                                                                                                                                                                                                                                                                                                                               |
| PW                                   | Adeline Street & Hearst Avenue                                                                   | Planning, Design & Construction | Complete streets projects to include needed upgrades to curbs, sidewalks, storm drains, bicycle/ped improvements, and pavement, as appropriate.                                                                                                                                                                 | \$3,198,365         |                                                   |                      | \$3,198,365               | SM | Construction is underway.                                                                                                                                                                                                                                                                                                                                                     |
| PW                                   | Monterey Avenue, Ward Street                                                                     | Planning, Design & Construction | Complete streets projects to include needed upgrades to curbs, sidewalks, bicycle/ped improvements, and pavement, as appropriate. Ward Street to include green infrastructure.                                                                                                                                  | \$2,518,060         | State Transportation Tax                          | \$960,667            | \$3,274,139               | SM | Survey and design is underway.                                                                                                                                                                                                                                                                                                                                                |
| PW                                   | 2nd Street                                                                                       | Planning, Design & Construction | Improvements to pavement condition , sidewalks, storm drain, and curb ramp upgrades from Addison Street to Delaware Street.                                                                                                                                                                                     | \$275,413           |                                                   |                      |                           | SM | Survey and design is underway.                                                                                                                                                                                                                                                                                                                                                |
| PW                                   | Hopkins Street                                                                                   | Planning                        | Improvements to pavement condition, bicycle lanes, sidewalks, curb ramp upgrades, and other improvements as identified in the corridor & placemaking study.                                                                                                                                                     | \$10,000            | Council Referral                                  | \$200,000            | \$210,000                 | SM | Unable to complete construction in Phase 1. Hopkins Corridor & Placemaking Study needs to be completed before design. This study is anticipated to start in 2020.                                                                                                                                                                                                             |
| PW                                   | Bancroft Way                                                                                     | Planning                        | Improvements to pavement condition and bicycle and bus lanes from Milvia Street to Fulton Street.                                                                                                                                                                                                               | \$10,000            |                                                   |                      | \$10,000                  | SM | Unable to complete construction in Phase 1. Utility coordination is underway and expected to be completed in 2020.                                                                                                                                                                                                                                                            |
| PRW                                  | University Avenue (West Frontage Rd to Marina Blvd), Marina Blvd, and Spinnaker Way Renovation   | Planning, Design & Construction | Final design, obtaining permits, and pavement reconstruction. Design will be based on the preferred alternative identified in the Feasibility Study on Mitigation of Undulating Pavement at University Avenue.                                                                                                  | \$4,205,787         |                                                   |                      | \$4,205,787               | NL | Conceptual design and public process for all three streets have been completed. Final design is in progress. Construction is anticipated to begin May 2020.                                                                                                                                                                                                                   |
| <b>TOTAL</b>                         |                                                                                                  |                                 |                                                                                                                                                                                                                                                                                                                 | <b>\$36,838,226</b> |                                                   | <b>\$11,903,030</b>  | <b>\$47,693,337</b>       |    |                                                                                                                                                                                                                                                                                                                                                                               |

|                                                             |                                                          |                                                           |                                                           |
|-------------------------------------------------------------|----------------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------------|
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Actual Cost

Key: Planning and Design Projects  
Construction Projects  
Alternative Funding Source

| FY 2020                                                                                              |        |        |        |        |        | FY 2021 |        |        |        |        |        |                                   |        |        |        |        |        |
|------------------------------------------------------------------------------------------------------|--------|--------|--------|--------|--------|---------|--------|--------|--------|--------|--------|-----------------------------------|--------|--------|--------|--------|--------|
| <b>Conceptual/ Planning and Design</b>                                                               |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Jan-20                                                                                               | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20  | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | Jan-21                            | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 |
| Veteran's Building/Old City Hall/Civic Center Park Master Plan                                       |        |        |        |        |        |         |        |        |        | 85%    |        |                                   |        |        |        |        |        |
| Willard Clubhouse                                                                                    |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Berkeley Municipal Pier/Ferry Study                                                                  |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Frances Albrier Community Center                                                                     |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Aquatic Park Tide Tubes                                                                              |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Citywide Restroom Assessment                                                                         |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Green Infrastructure* (Jones Street, Heinz Ave., Tenth St., Ninth St., Sacramento St. center median) |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
|                                                                                                      |        |        |        |        |        |         |        |        |        |        |        | Bancroft Way (Milvia to Shattuck) |        |        |        |        |        |
| Hopkins Street (San Pablo- Alameda) Corridor Study                                                   |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| Transfer Station Masterplan                                                                          |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |
| West Berkeley Service Center                                                                         |        |        |        |        |        |         |        |        |        |        |        |                                   |        |        |        |        |        |

| <b>Construction</b>                                               |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|-------------------------------------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Jan-20                                                            | Feb-20 | Mar-20 | Apr-20 | May-20 | Jun-20 | Jul-20 | Aug-20 | Sep-20 | Oct-20 | Nov-20 | Dec-20 | Jan-21 | Feb-21 | Mar-21 | Apr-21 | May-21 | Jun-21 |
| North Berkeley Senior Center Seismic Upgrade and Renovation       |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Berkeley Mental Health Services Center Renovation                 |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Live Oak Community Center Seismic Upgrade and Renovation          |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Rose Garden Tennis Courts, Pathways, and Pergola                  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Rose Garden: Repair of Erosion                                    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| San Pablo Park Play Areas Renovation                              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| San Pablo Tennis Courts Renovation                                |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Grove Park Fields                                                 |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Strawberry Creek Park Restroom                                    |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| George Florence Play                                              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Marina Streets: University Avenue, Marina Blvd, and Spinnaker Way |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Adeline Street (Derby to Ashby)                                   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Hearst Avenue (Milvia to Henry)                                   |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Monterey Avenue (Alameda to Hopkins)                              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Ward Street (San Pablo to Acton)                                  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| 2nd Street (Delaware to Addison)                                  |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Corporation Yard Roof/Electrical Upgrade                          |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Marina Corporation Yard Electrical Upgrade                        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| Green Infrastructure*                                             |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

- Completed**
- Tom Bates Field Synthetic Turf Replacement
  - Tom Bates Field House Conceptual Design
  - Citywide Irrigation System
  - Ann Chandler Health Clinic Electrical Design
  - Public Safety Building AC Assessment

\* Project authorized by Council on 7/23/19. Green infrastructure at Page Street, Channing Way, Dwight Way, Grayson Street, Piedmon Ave median and traffic circle will be constructed in Phase 1.

Attachment 3  
Measure T1 Phase 1 Project Summary  
Update on Measure T1  
January 21, 2020

Below is a detailed summary of projects that are currently underway:

**Design and Planning Projects**

- **City-Wide Restroom Needs Assessment:** Four community meetings were held (October 16, 22 and November 5,6, 2019) as well as a presentation at the Parks and Waterfront Commission (November 13, 2019) to present an initial assessment and gather feedback on the need for public restrooms and sanitation in Berkeley.
- **Old City Hall/ Veteran’s Building/ Civic Center Park Conceptual Design:** A consultant team was secured and contract was awarded by Council in July 2019. A *Public Space Public Life* study was conducted along with small focus group interviews and other research and field work. In November 2019, the results from this study was shared with the Technical Advisory Committee, consisting of City of Berkeley staff, and the Super-subcommittee of the Civic Arts, Public Works, Parks & Waterfront, and the Landmarks Preservation Commissions. A large public “Vision and Values” workshop was held at the YMCA Teen Center on December 12, 2019 to gather feedback. Staff presented at a worksession at City Council on January 14, 2020 where the working vision statement was presented for consideration. More public workshops, interactive design charrettes, and a second site tour are set for early spring 2020.
- **Frances Albrier Community Center Planning and Design:** Over the past few months, staff and design consultants met with community stakeholders to establish project goals, needs, wants, and priorities. A community worksession was held in October 2019 to present four conceptual plans derived from project goals and solicit feedback from the community. After the worksession, the plans were publicly posted with an online survey to gather additional feedback regarding the design elements of the conceptual plans. A follow-up community meeting to present the preferred design is anticipated to be held in February 2020.
- **Tom Bates Fields North Field House and Restroom Planning and Design:** Conceptual design has been completed. Per report to Council on December 10, 2019, the remaining balance in the amount of \$232,025 allocated to this project will be paid to the Alameda County Transportation Commission (ACTC) to extend a sewer main from east of I-80 freeway on Gilman Street to in front of the facility as a part of ACTC’s I-80/Gilman Street Interchange Improvement Project. The development of a restroom at this site is not financially feasible without this work being performed.

Attachment 3  
Measure T1 Phase 1 Project Summary  
Update on Measure T1  
January 21, 2020

- **Willard Clubhouse Planning and Design:** Over the past few months, staff and design consultants met with community stakeholders to establish project goals, needs, wants, and priorities. A community worksession was held in October 2019 to solicit feedback from the community. A follow-up community meeting to present the preferred design is anticipated to be held in February 2020.

### **Construction Projects**

- **Live Oak Community Center Seismic Upgrade and Renovation:** Construction started in November 2019 and is anticipated to continue for one year. A groundbreaking ceremony was held on November 4, 2019.
- **North Berkeley Senior Center (NBSC) Seismic Upgrade and Renovation:** Construction is in progress and anticipated to be completed by July 2020.
- **Strawberry Creek Park Restroom Replacement:** Per report to Council on December 10, 2019, the restroom was added to Strawberry Creek Park Phase 2 improvements, which is also funded by Parks Tax and the Capital Improvement Fund. A third community was held in September 2019 to present the community's preferred design. Consultant is working on final design. Construction is anticipated to begin in spring 2020.
- **Mental Health Building Renovation:** Construction is in progress and anticipated to be completed by June 2020.
- **Berkeley Health Clinic Electrical Improvements:** Consultant completed the needs assessment and developed an initial cost estimate to renovate the facility. Conceptual design was completed in March 2019.
- **Corporation Yard Roof and Electrical Upgrade:** This project is currently under permit review. Construction is anticipated to start in March 2020.
- **Marina Corporation Yard Electrical Upgrade:** This project is currently under permit review. Construction is anticipated to start in March 2020.
- **Public Safety Building Mechanical and HVAC Efficiency Improvements:** Feasibility study to assess cost and effort to install a HVAC back up system has been completed. T1 scope is complete.
- **Aquatic Park Central Tide Tubes Maintenance Sediment Removal and Inspection:** Staff has entered into a contract with an Engineering consultant.

Attachment 3  
Measure T1 Phase 1 Project Summary  
Update on Measure T1  
January 21, 2020

Work underway to perform final design, prepare construction documents, prepare permit application submittal packages to Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, Bay Conservation and Development Commission and Caltrans.

- **Berkeley Municipal Pier Planning and Design:** This project's phase was reduced from design to planning per Resolution 69,221-N.S since the design phase cannot be completed within the Measure T1 timeline. The planning phase has been expanded to undergo a study to determine the feasibility of a potential ferry facility and public recreation on a shared pier. This study is anticipated to be completed by December 2020 and submitted to the Water Emergency Transportation Authority Board and City Council for approval by June 2021.
- **Rose Garden Repair of Erosion:** Staff is processing environmental permits. Construction is anticipated to start in the spring of 2020, pending contractor selection and receipts of all permits.
- **Rose Garden Pathways, Tennis Courts, and Pergola:** Coordination with the drainage project is ongoing. Designs have been submitted for permit and construction is anticipated to begin in the spring of 2020. Work for the pathways and tennis courts has been bundled with Phase 2 of the Pergola Replacement and ADA renovation project, funded by Parks Tax and the Capital Improvement Fund, to leverage these other funding sources, combine design effort, and consolidate construction time and park closures.
- **Citywide Irrigation System:** Project has been completed.
- **Grove Park Field and Restroom Renovation:** A community meeting was held in November 2019 to present the final design. Next step is to finalize construction documents and submit the project for permits. Construction is anticipated to begin in spring of 2020.
- **George Florence Park Play Equipment Upgrade:** Construction started in October 2019 and is estimated to be completed in February 2020.
- **San Pablo Park Play Equipment Upgrade and San Pablo Park Tennis Courts Renovation:** Staff have combined these projects to leverage the design process and consolidate construction timelines. Stakeholder and public meetings regarding the design have been completed, and next steps



Attachment 3  
Measure T1 Phase 1 Project Summary  
Update on Measure T1  
January 21, 2020

are to finalize construction documents and submit the project for permits. Construction is anticipated to begin in spring of 2020.

### **Streets and Green Infrastructure**

- **Page Street, Channing Way, Dwight Way, Grayson Street, Piedmont Avenue Median and Traffic Circle:** Council approved the removal of the King School Park project<sup>1</sup> and the addition of these projects. These projects include planning, design and construction. Design and geotechnical investigation is underway.
- **Jones Street, Heinz Avenue, Tenth Street, Ninth Street, Sacramento Street Center Median:** Council approved the removal of the King School Park project<sup>2</sup> and the addition of these projects. These projects include planning only. Planning is underway.
- **Adeline Street and Hearst Avenue:** Construction has started and is anticipated to be completed by March 2020.
- **Monterey Avenue and Ward Street:** Survey and design is underway. Ward Street will include green infrastructure elements.
- **2<sup>nd</sup> Street:** Design is underway.
- **Hopkins Street:** This project's phase was reduced from construction to planning per Resolution 69,221-N.S. Additional analysis, including a Traffic and Placemaking Study, will be performed prior to design and cannot be completed within Measure T1's Phase 1 timeframe. The design and construction for this project will be funded by other baseline street funding in FY2023-FY2024.
- **Bancroft Way:** This project's phase was reduced from construction to planning per Resolution 69,221-N.S. Utility work and a study to evaluate parking needs has to be performed before design work can begin. The

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<sup>1</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/07\\_Jul/Documents/2019-07-23\\_Item\\_22\\_Authorizing\\_the\\_modification\\_of\\_the\\_Measure\\_T1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_22_Authorizing_the_modification_of_the_Measure_T1.aspx)

<sup>2</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/07\\_Jul/Documents/2019-07-23\\_Item\\_22\\_Authorizing\\_the\\_modification\\_of\\_the\\_Measure\\_T1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_22_Authorizing_the_modification_of_the_Measure_T1.aspx)

Attachment 3  
Measure T1 Phase 1 Project Summary  
Update on Measure T1  
January 21, 2020

design and construction for this project will be funded by other baseline street funding in FY2023-FY2024.

- **University Avenue (West Frontage Road to Marina Boulevard), Marina Boulevard and Spinnaker Way Pavement Reconstruction Project:** Final design is in progress. Environmental clearances, permitting, and a sea level rise assessment on impacts related to these streets are underway. Construction is anticipated to begin in the summer of 2020.



Office of the City Manager

INFORMATION CALENDAR

January 21, 2020

To: Honorable Mayor and Members of the City Council  
 From: Animal Care Commission  
 Submitted by: Dr. Diane Sequoia, Chairperson, Animal Care Commission  
 Subject: Animal Care Commission FY 2019/2020 Work Plan

INTRODUCTION

In a general meeting of the Animal Care Commission (ACC) on November 20, 2019 the Commission adopted a work plan for Fiscal Year 2019/2020.

CURRENT SITUATION AND ITS EFFECTS

The ACC Work Plan for FY 2019/2020 is as follows:

Advocacy

A. Homeless people and their pets - Continue to support efforts to ensure that pets are not separate from their companions. Make available food and other supplies that will enable all people in need to keep their pets with them, particularly in times of stress.

B. Pet Friendly Housing - Bring to the attention of Berkeley's City Council Members, the city's administrators and landlords the need for pet-friendly housing. Examples of other cities efforts to ensure adequate pet-friendly housing should be obtained and forwarded to the relevant groups.

C. In Berkeley we share our living space with a number of other animal species: Turkeys, Coyotes, Skunks, Opossums, Raccoons, and perhaps a mountain lion, or two. It is important that we keep the human population aware of the presents of these animals and how best to deal with their presence among us through education.

D. Support adequate funding for Animal Services staffing and programs.

The ACC will work with other commissions, including Parks & Waterfront Commission, the Public Works Commission, and non-profit organizations involved in these issues in Berkeley.

BACKGROUND

The ACC meets six (6) times per year with the mission of overseeing the treatment of animals in all shelters established within Berkeley. The ACC advises the council on the care, treatment and control of animals.

In its November 20, 2019 regular meeting, the ACC passed a motion to adopt a Fiscal Year 2019/2020 Work Plan.

Motion IV: Elbasani/Stevens

*In regards to changing the calendar year 2019 Animal Care Commission (ACC) Work Plan to a Fiscal Year 2019/2020 Work Plan, retain items:*

*A. (Homeless people and their pets - Continue to support efforts to ensure that pets are not separate from their companions. Make available food and other supplies that will enable all people in need to keep their pets with them, particularly in times of stress.)*

*B. (Pet Friendly Housing - Bring to the attention of Berkeley's City Council Members, the city's administrators and landlords the need for pet-friendly housing. Examples of other cities efforts to ensure adequate pet-friendly housing should be obtained and forwarded to the relevant groups.)*

*C. (In Berkeley we share our living space with a number of other animal species: Turkeys, Coyotes, Skunks, Opossums, Raccoons, and perhaps a mountain lion, or two. It is important that we keep the human population aware of the presents of these animals and how best to deal with their presence among us.)*  
*and add an additional item D. Support adequate funding for Animal Services staffing and programs.*

*Aye: Hatch, Stevens, Elbasani, Sequioa, Heath*

*Naye: none*

*Motion Passed*

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

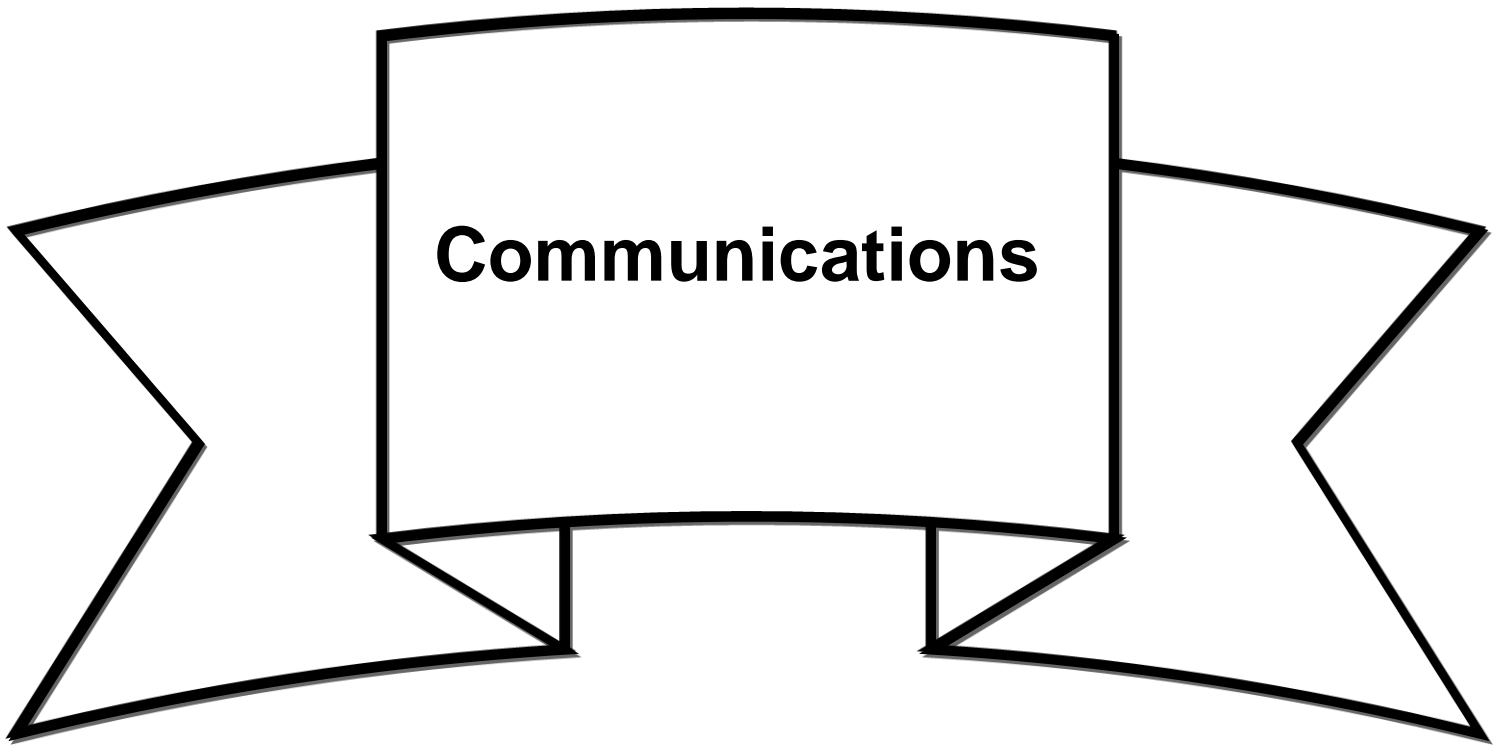
The ACC will research ways to assist homeless pet owners to secure housing. The ACC will also research and implement practical means to increase pet-friendly housing in Berkeley.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no identifiable fiscal impacts as a result of the FY 2019/2020 Work Plan.

CONTACT PERSON

Amelia Funghi, Manager, Animal Services, 981-6603



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(510) 981-6900

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